

Monday, 3 October 2011

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: May it please your Ladyship --

MRS JUSTICE GLOSTER: Just before you start, I have a number of things I want to say.

First of all, I understand that some of the members of the press would like there to be more seats for members of the press and/or members of the public. Could you speak to Mr Tim Pollen in the first instance to see whether health and safety considerations will enable us to put a few more chairs in the room.

The second thing is that so far -- and this really, Mr Rabinowitz, is addressed to you and Mr Sumption and all other counsel and their clients as well as members of the press and the public: you may all use electronic communication, whether it's Twitter, anything on your mobile phones, but please may I ask you all to have sounds on your mobile phones turned off so we don't get during the course of the trial irritating mobile phone text bleeps or whatever.

Secondly, if there is any abuse or I consider that there is any abuse of the use of electronic communication, that is to say if I consider that people are inappropriately communicating to witnesses who are

going to go into the witness box after the witness who is in the box, if I consider that there is any inappropriate communication and that is brought to my notice, then I may have to reconsider the permission that I'm giving to everybody to use electronic communication.

The next thing is please could there be complete silence in court and no moving about in court when witnesses are being sworn in. That is part of the formal process and it is very important that at that moment in time there is complete silence and no rustling in the court.

The next thing is -- and this is addressed to counsel and solicitors and witnesses -- please could you make absolutely sure that nobody even takes a mobile phone into the witness box. Can I have your assurance that that will be done? It's not just a sound issue, it's also a communication issue.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Or a prompting issue. Okay.

Yes, Mr Rabinowitz. Sorry, there's a request at the back of the court. Yes?

MEMBER OF THE PRESS: Sorry, from the members of the national press, there are only four members -- as far as we know -- here. The entire back row is taken up by

members of the public, no seats were reserved for the press, and in the annex it's a written feed only and not an audio feed.

MRS JUSTICE GLOSTER: Okay, just a second. More than four seats should have been reserved for members of the press in accordance with my instruction. Is Mr Pollen in court?

MR POLLEN: My Lady, the entire back row was reserved for press and public but not just press.

MRS JUSTICE GLOSTER: But not just press, okay. How many seats were specifically reserved for the press?

MR POLLEN: It was all reserved for the press and the public, the entire back row.

MRS JUSTICE GLOSTER: Right. So we need more seats for the press. Right.

What I'm going to do, gentlemen of the press, is I am going to shut the court at 1 o'clock. At 1 o'clock I will discuss with Mr Pollen what the arrangements should be specifically for the press because it's quite right that members of the press take priority over members of the public at least to an appropriate and limited extent. We can see what we can do.

MR RABINOWITZ: There are two seats here, my Lady.

Certainly for the openings, it may be possible to get a few more seats in there. There certainly are two here

which would be available.

MRS JUSTICE GLOSTER: Well, we're not having anybody sitting there for the time being.

MR RABINOWITZ: Not for the next few days.

MRS JUSTICE GLOSTER: I'm going to be very sexist here and if there's a pregnant lady of the press, she can come and sit down here.

Mr Pollen, we can put four seats there presently, four or five there, and I will discuss with Mr Pollen after no doubt the members of the press have bent his ear during the course of the morning, in the break, as to what the allocation should be between members of the public and members of the press.

MEMBER OF THE PRESS: And there are some lawyers in the gallery.

MRS JUSTICE GLOSTER: Right. I will also identify with counsel how many lawyers are, as it were, back-spilling out. But they also may be of course not just directly involved in this case.

Okay, can we get four or five more chairs down there, Mr Pollen, for members of the press.

MR POLLEN: They're on their way.

MRS JUSTICE GLOSTER: One of you can come up here, first come, first served. We'll see what we can do for the rest of you.

MEMBER OF THE PRESS: Thank you very much.

MRS JUSTICE GLOSTER: I don't know whether in the inquiry or the inquest they had a daily allocation of press seats, I'll try and find out how it was done because we don't want to have you all arriving at 8.30 every morning to get seats. That's not a practical way of doing things.

MEMBER OF THE PRESS: With the inquest there was a live audio feed into the annex.

MRS JUSTICE GLOSTER: We don't have that here. You all realise this is the first day of the building opening so we'll have to be flexible and see what we can do to accommodate it.

Okay. We'll get a few more seats in there. Basically, we'll just have to keep the liaison up, members of the press.

Mr Rabinowitz.

Opening submissions by MR RABINOWITZ

MR RABINOWITZ: As your Ladyship knows, I appear in this matter for Mr Berezovsky together with Mr Gillis QC, Mr Masefield, Mr Colton, Mr Forbes Smith, Mr Isaac, Ms Campbell, Mr Milner and Ms Shah. My learned friends Mr Sumption QC, Ms Davies QC, Mr Jowell QC, Mr Henshaw, Mr Eschwege, Mr Harrison and Mr Morrison -- I apologise if I've left anyone out -- all appear for Mr Abramovich, the defendant. Of course, also before your Ladyship in

relation to this hearing are Mr Ali Malek QC and Ms Tolaney QC and Ms Jeavons for Mr Anisimov, Mr Adkin and Mr Pringle for the family defendants and Mr Mumford for the Salford defendants.

Your Ladyship is of course aware that the claim by Mr Berezovsky against Mr Abramovich falls into two separate but overlapping parts. There is first the Sibneft claim, by which Mr Berezovsky seeks damages from Mr Abramovich totalling in excess of \$5 billion; and secondly there is the Rusal claim, by which Mr Berezovsky seeks damages on account of profits from Mr Abramovich totalling at least \$564 million.

As your Ladyship will no doubt have observed from the very long written opening documents, those claims, both the Sibneft and the Rusal claims, have given rise to an enormous number of issues, both issues of fact and issues of law. At bottom, however, my Lady, this is a case about two men who -- and this is common ground -- worked together to acquire an asset -- that is Sibneft -- that would make them wealthy beyond the wildest dreams of most people and who in the process, we say, became and remained good friends; until, that is, Mr Berezovsky, who had adopted a high political profile in Russia, not least through his control of certain media outlets, fell out with those in power in the

Kremlin and was forced to leave his home and create a new life abroad, leaving Mr Abramovich in a position where he was in effect required to make a choice: to remain loyal to Mr Berezovsky, his friend and mentor and the person to whom he owed his newly acquired great fortune, or instead, as we submit, to betray Mr Berezovsky and to seek to profit from his difficulties.

As your Ladyship knows, it is our case that Mr Abramovich at that point demonstrated that he was a man to whom wealth and influence mattered more than friendship and loyalty and this has led him, finally, to go so far as to even deny, as he does before your Ladyship, that he and Mr Berezovsky were actually ever friends.

So one of the major issues your Ladyship will now have to resolve relates to the true nature of the relationship between Mr Berezovsky and Mr Abramovich. Were they in fact friends and partners, as Mr Berezovsky contends? Or was the relationship between them altogether much more sinister, as Mr Abramovich, I think for the first time in the context of this litigation, has sought to suggest? Namely, according to Mr Abramovich, that it was a relationship in which Mr Abramovich, of his own volition and as a result of

his offering and agreeing to pay vast sums of money, in effect hired Mr Berezovsky, at the time a very substantial figure on the Russian stage, simply to provide Mr Abramovich with services that were basically criminal in nature, involving both corrupt political patronage and unlawful physical protection from Chechen criminal gangs or, to use the Russian word, "Krysha", a roof.

We submit that the answer to this question is obvious, but your Ladyship will of course be able to make up your mind about this once you've seen both men give evidence and heard all of their evidence being tested by cross-examination. As your Ladyship knows, Mr Berezovsky is to be the first witness in this trial. Mr Abramovich too, we have been told, will be coming to give evidence, although that is unlikely to be before November.

What I propose to do now, in what your Ladyship has asked should be relatively short openings, is first to say a little bit more about the general legal framework in which each of the two claims arise so that your Ladyship will have this firmly in mind when you come to hear the evidence; and secondly to identify for your Ladyship some of the more important documents that are likely to be central to the issues that your Ladyship is

going to have to determine.

MRS JUSTICE GLOSTER: Just at that juncture,

Mr Rabinowitz -- this is something I mentioned at the technical rehearsal on Thursday -- am I going to have an agreed list of headline issues?

MR RABINOWITZ: Indeed your Ladyship will have that. That is in the process of being agreed and I hope that certainly by the end of openings your Ladyship will have that.

MRS JUSTICE GLOSTER: That's fine.

MR RABINOWITZ: Your Ladyship will also have an agreed chronology which again the parties are currently working on agreeing.

MRS JUSTICE GLOSTER: Fine, very well.

MR RABINOWITZ: Can I therefore turn first to the Sibneft claim and that is the intimidation claim.

As your Ladyship will by now be well aware, Mr Berezovsky's case in relation to Sibneft is that Mr Abramovich intimidated him into selling his very substantial interest in Sibneft to Mr Abramovich himself at a very substantial undervalue and that he did so in effect by making threats to Mr Berezovsky and his partner, Mr Patarkatsishvili, the threats being first that unless Mr Berezovsky and Mr Patarkatsishvili sold those interests to him, he, Mr Abramovich, would take

steps with a view to the interest being effectively removed from them by those in the Kremlin, led by President Putin, who had come to regard Mr Berezovsky as his enemy; and secondly, that again unless they sold those interests to him, Mr Abramovich, at a price he was willing to pay, he, Mr Abramovich, would take steps with a view to preventing the release from custody of Mr Berezovsky's close friend Mr Glushkov, a man who, so Mr Berezovsky considered, was only in prison in the first place in order to place pressure on Mr Berezovsky to give up his interests in ORT, the television channel that had provided unfavourable coverage about President Putin and his policy.

In making these threats, Mr Abramovich was obviously, we submit, also threatening to breach the terms of what we submit was his partnership with Mr Berezovsky. As your Ladyship will know, Mr Berezovsky contends that as a result of this intimidation, he and his partner, Mr Patarkatsishvili, were pressured into selling their Sibneft interest to Mr Abramovich for very substantially less than they were worth and that they did so by way of the Devonia Agreement.

So far as concerns the elements of the tort of two-party intimidation that Mr Berezovsky would have to

establish, as regards English law those elements are perhaps most clearly set out -- and I'm not asking your Ladyship to turn this up now -- in a Court of Appeal decision in this case in the context of the strike-out application that Mr Abramovich pursued and lost. That case is reported at [2011] EWCA Civ 153.

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: Can I just identify the four elements of two-party intimidation that Lord Justice Longmore set out.

First, that there should be a threat by the defendant -- in this case obviously Mr Abramovich -- to do something unlawful or something which is illegitimate to threaten. It is not enough that there is a warning given; there must be a threat.

Secondly, that the threat must be intended by the person making the threat -- in this case again Mr Abramovich -- to coerce the claimant -- in this case obviously Mr Berezovsky -- to take or refrain from taking some course of action.

Third, that the threat must in fact coerce the claimant to take such action.

And fourth, that as a result of this conduct the claimant must suffer loss and damage.

My Lady, the parties are, I believe, broadly agreed

about the requirements of English law in this regard. Indeed the only element of the tort about which, as I understand it, there may be some dispute between the parties relates to the first of the elements I've identified, that is to say whether the threat must be to do something unlawful or whether it is enough that the threat is to do something which it is illegitimate to threaten, as in the law of duress or indeed the crime of blackmail. But since, as we submit, the threats made here were in fact on any basis, we allege, unlawful, that is unlikely to be a point that will detain your Ladyship very long.

Those are the elements of the tort and needless to say of course Mr Abramovich disputes that any of these elements are satisfied on the facts of the case. But as your Ladyship will have picked up, the legal framework for this claim has of course become more complicated as a result of the fact that, as your Ladyship will recall, earlier this year Mr Abramovich withdrew his acceptance that English law is the law that governs the claim, so that one of the issues that you will have to now consider in the context of the Sibneft claim is the question of the proper law of the claim.

There are three possible candidates for the proper law, namely first that the intimidation claim is to be

governed by English law; secondly that the intimidation claim is to be governed by French law; and third that the intimidation claim is to be governed by Russian law. So far as concerns your Ladyship, however, your Ladyship need not be concerned about any differences between English law and French law, the parties having agreed that for present purposes they are to be treated as the same, the only difference being that French law does not have a limitation period that would be even arguably applicable here.

Of course, if your Ladyship --

MRS JUSTICE GLOSTER: That is agreed, is it?

MR RABINOWITZ: It is certainly agreed -- I believe it's agreed, yes. I see Ms Davies is nodding so that appears to be agreed.

If your Ladyship concludes that in fact the applicable law is Russian law, then you will need to come to terms with the Russian law on this issue, although it appears that the experts for the parties, Dr Rachkov for Mr Berezovsky and Mr Rozenberg for Mr Abramovich, broadly agree that if Mr Abramovich did what Mr Berezovsky has said he did, then this would constitute a tort in Russian law as well. Indeed, as your Ladyship will see in due course, once one cuts through issues that are minor or theoretical, the only

dispute between the experts so far as Russian law is concerned -- the only dispute of real substance, that is -- is a dispute about the application of the limitation provisions as they exist under Russian law.

So far as the proper law issue is concerned, as your Ladyship will have seen from the written openings, it is Mr Berezovsky's case that the proper law applicable to the Sibneft claim should be either English or French. Mr Abramovich, by contrast, contends that the proper law should be Russian law. In due course that is a dispute that your Ladyship will need to resolve.

So that, in very brief and general outline, is the legal framework in which the Sibneft claim arises. Given that, in our submission, most of the differences between the parties about the law are unlikely to be determinative of this claim, I am not proposing at this stage to say much about the law.

My Lady, the Sibneft claim, in our submission, is very likely to turn on the facts. Whilst there are a number of factual issues that arise and that matter, there are, I submit, two central factual issues that lie at the heart of the Sibneft claim. They are these: first, the 1995 agreement.

As your Ladyship knows, it is common ground now between the parties that there was indeed an agreement

made in 1995 between Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili relating to the creation and in some form or other the acquisition of Sibneft. The dispute between the parties relates to what it was that was agreed.

Mr Berezovsky of course says that what the parties agreed was that the three men, Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili, would work together towards the creation and acquisition of Sibneft and that they would be partners in this enterprise with Mr Abramovich being entitled to a 50 per cent share in the ownership of Sibneft when created and acquired, as per the plan, while Mr Berezovsky and Mr Patarkatsishvili would together also be entitled to 50 per cent.

Mr Abramovich, however, whilst he acknowledges first that there was an agreement made in 1995 relating to Sibneft and secondly that without Mr Berezovsky's assistance he could never ever have obtained Sibneft, indeed it would never even have been created, nonetheless contends that the agreement made between these three men was not that they would act together as partners in this way but rather that their collective efforts would be directed towards ensuring that he and he alone was to acquire ownership of this incredibly

valuable entity whilst they, in return for their efforts towards ensuring that he and he alone acquired Sibneft, would in effect simply be rewarded from time to time with unspecified payments made by Mr Abramovich, although we submit it is what revealing that Mr Abramovich's case as to precisely what he says this money was to be paid for has changed from time to time as this case has progressed.

That is the first key factual issue: what was it that was agreed in 1995 and, more particularly, did Mr Berezovsky and Mr Patarkatsishvili ever in fact acquire an interest in Sibneft at all?

The second key issue of course relates to whether or not Mr Abramovich was guilty of intimidating Mr Berezovsky by, in the period leading up to April 2001, making the threats alleged by Mr Berezovsky. I ought, I think, just to say something about this issue, this second issue, the intimidation issue.

The first point to make about this issue, my Lady, is that whilst there is little in the way of contemporaneous material that provides direct confirmation of intimidation, that I would submit is not terribly surprising. Blackmailers will offer tend to favour oral threats as opposed to setting it all out in writing.

The second point to make -- and this flows from the first -- is that given, as one would anticipate, the absence of written material evidencing the making of threats here, one is therefore driven back in seeking to resolve this issue first to an evaluation of the evidence of both parties, the person who says he is threatened as well as the person who denies being guilty of blackmail; and secondly to what one might call the inherent probabilities of this matter, which, as your Ladyship will recall, was one of the factors stressed by Lord Goff in the Grace Shipping authority as being likely to help the judge to get to the bottom and to the truth.

Can I just make a few short observations in relation to this question of inherent probabilities and how your Ladyship is likely to be assisted by this in the context of the intimidation issue.

Your Ladyship will recall that the following matters are all common ground in relation to this issue: first, that at the end of 2000 the parties -- that is to say Mr Berezovsky and Mr Patarkatsishvili on the one hand and Mr Abramovich on the other -- concluded a transaction whereby Mr Berezovsky and Mr Patarkatsishvili sold their interests in ORT to Mr Abramovich. Your Ladyship is aware that the

divestment of ORT from Mr Berezovsky's control and influence was, says Mr Berezovsky, something very keenly sought by the Russian government itself, Mr Berezovsky's control of this really being at the core of his dispute with Mr Putin.

Secondly, it is also common ground that following the ORT sale there was a further agreement of some kind made between the parties in 2001.

It is thirdly also common ground that as a result of that agreement made between the parties in 2001, Mr Abramovich agreed to pay and did pay Mr Berezovsky and Mr Patarkatsishvili a sum of \$1.3 billion for something at least.

Fourthly, it is also common ground that following these events starting with the ORT sale and culminating in the agreement made between the parties and the payment to Mr Patarkatsishvili and Mr Berezovsky of the \$1.3 billion, Mr Abramovich and Mr Berezovsky ceased entirely to be friends at all. So that, I would suggest, one might surmise again that something happened between the parties during this time to mean that Mr Berezovsky was unwilling thereafter to have anything whatever to do with Mr Abramovich.

Of course, that falling out -- and there is no dispute that there has been such a falling out --

occurred notwithstanding that on Mr Abramovich's case, his taking the ORT shares off Mr Berezovsky's hands and his payment for them of a sum of over \$150 million involved him doing a very big favour for Mr Berezovsky. Indeed, his willingness to pay Mr Berezovsky and Mr Patarkatsishvili the sum of \$1.3 billion for, on Mr Abramovich's case, no interest in anything at all, it simply being in the nature of a goodwill payment, was an even bigger favour.

My Lady, we submit that against the backdrop of these areas of common ground, there are four points in particular that we would emphasise that your Ladyship will need to bear in mind when considering the inherent probabilities of each side's case.

First, your Ladyship will wish to consider whether Mr Berezovsky's case can in fact be squared with the sudden and dramatic end of his friendship with Mr Berezovsky, his old mentor, following the events that I've described, all of which are common ground.

MRS JUSTICE GLOSTER: Sorry, I'm not following you here, you said first that I would wish to consider whether Mr Berezovsky's case --

MR RABINOWITZ: Sorry, I meant to say Mr Abramovich's case, my apologies.

Your Ladyship will wish to consider whether

Mr Abramovich's case can in fact be squared with the sudden and dramatic end of his friendship with Mr Berezovsky, his old mentor, following the events which I've described, all of which are common ground.

If Mr Abramovich is to be believed that he was being generous in both taking the loss-making ORT off of Mr Berezovsky's hands and later agreeing to a substantial pay-out of \$1.3 billion to Mr Berezovsky and Mr Patarkatsishvili, one would expect that Mr Berezovsky would have been eternally grateful to Mr Abramovich. But instead, one finds exactly the opposite: one finds the friendship coming to a bitter and conclusive end. On Mr Abramovich's case we submit that there is no real explanation for this at all.

MRS JUSTICE GLOSTER: Give me the date for the falling-out.

MR RABINOWITZ: It starts in December 2000, my Lady. There is a dispute between the parties as to whether they ever saw each other again, as your Ladyship knows.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We submit on Mr Abramovich's case there is no explanation for this at all. On Mr Berezovsky's case there is: it was because he was betrayed and because he was blackmailed by someone who had been his friend and partner.

Secondly, if Mr Abramovich can be shown, as we say

he will be, to have put forward a false case as regards the ownership interests in Sibneft and Rusal, then the question for your Ladyship will of course be: if Mr Abramovich had nothing to hide in terms of the allegations made, then why would he, Mr Abramovich, have chosen not to be open and honest about these matters? Why would he put forward what we will be submitting is a dishonest case unless, of course, he had something also to hide on intimidation?

Third, and again just looking at the inherent probabilities, Mr Abramovich's case is, we would submit, difficult to square with the sale of Sibneft at what we and our experts will say was a massive undervalue. Mr Berezovsky's case is, of course, not. Just so your Ladyship has this, we submit that at the time of the sale of Mr Berezovsky's interests in Sibneft, his interests were worth at the very least \$2.9 billion and as much as \$6.6 billion.

If your Ladyship therefore concludes, having heard the expert valuation evidence, that Mr Berezovsky and Mr Patarkatsishvili did not receive anything approaching the full value for their ownership interests in Sibneft, then I would submit, in the absence of any evidence that Mr Berezovsky and Mr Patarkatsishvili were being very generous to their former friend and were seeking to

confer very substantial benefit on him -- and I can tell your Ladyship that there is no such evidence nor even any such suggestion by Mr Abramovich -- then that in our submission is again a very powerful indicator of the presence of coercion.

Fourth and finally on the inherent probabilities, your Ladyship will, in the course of the trial, get to hear a lot of evidence about the ORT intimidation, including, as your Ladyship will have picked up from the written openings, whether or not there was a meeting in Cap d'Antibes in December 2000. As your Ladyship may be aware, Mr Abramovich has gone to great lengths to try to establish a convincing alibi for his movements in December 2000. We are getting new witness statements almost every second day on this.

But if, as we say it will be, Mr Abramovich's case that the Cap d'Antibes meeting did not take place in December 2000 can in due course, once we have heard from Mr Abramovich, be exposed as false, and if as a result your Ladyship concluded that, contrary to what Mr Abramovich would have you believe, the Cap d'Antibes meeting did indeed take place, then I would submit that this too gives rise to a very strong inference that Mr Abramovich's claim that he in no way intimidated Mr Berezovsky and Mr Patarkatsishvili into surrendering

their interests in Sibneft to him at a gross undervalue is also unlikely to be true.

These are of course all matters we will need to pursue with Mr Abramovich when he comes to give evidence in due course. I am not sure that there is much I want to or can say about them now.

Can I then next turn just to say something briefly about the Rusal claim.

As your Ladyship knows, the core of the Rusal claim depends very substantially on whether the interests that Mr Abramovich acquired in the Russian aluminium industry in 2000 were, as he says, acquired solely for himself with no partners of any kind whatsoever, that being his case, or whether, as Mr Berezovsky says, here too those assets were acquired by these three men, Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili, acting together.

As you know, it is Mr Berezovsky's case that when these assets were originally sold, that is in early 2000, by, among others, the Trans-World Group and Mr Anisimov, they were acquired jointly by and for Mr Berezovsky and Mr Patarkatsishvili and Mr Abramovich.

When, in March 2000, it was agreed that these assets would be combined with assets held by Mr Deripaska's group, leading ultimately in December 2000 to the creation of Rusal, Russian Aluminium, it is again

Mr Berezovsky's case that the assets which were part-owned by Mr Berezovsky and Mr Patarkatsishvili were only permitted to be used in this way on the basis of an agreement by Mr Abramovich that he would hold half of the shares allocated in consideration of those assets being contributed to form this combined company, that is to say 50 per cent of Rusal, on behalf of and on trust for his partners, Mr Berezovsky and Mr Patarkatsishvili, it being agreed by Mr Abramovich, as would in any event be expected from such an arrangement, that he would not sell any part of the Rusal shares to be allocated in respect of the contribution of those assets without first getting the agreement of Mr Berezovsky and Mr Patarkatsishvili, who might otherwise be left holding only an unprotected minority within Rusal, much to the detriment of the value of those shares.

As your Ladyship knows, the claim in relation to Rusal arises because in September 2003, in what Mr Berezovsky contends was a total disregard of the promise that he had made, Mr Abramovich sold 25 per cent -- that is half of the 50 per cent Rusal holding that was in his name or the names of his holding companies -- to Mr Deripaska for some \$1.578 billion, Mr Abramovich netting that sum being common ground in this case.

It is also common ground that in carrying out that sale, Mr Abramovich failed even to tell Mr Berezovsky or Mr Patarkatsishvili that this is what he was proposing to do; he simply sold those shares without reference to them.

What is also common ground in relation to this claim -- indeed this cannot be disputed -- is that the consequence of Mr Abramovich's actions in this regard was to leave the remaining 25 per cent holding in Rusal as a minority stake, with Mr Deripaska's group holding the remaining 75 per cent, so that when an attempt was made in July 2004 to dispose of this remaining 25 per cent to Mr Deripaska, he was willing only to pay some \$450 million for that stake; that is to say less even than a third of what Mr Abramovich had taken for himself.

The net effect of Mr Abramovich's disregard, we submit, of his fiduciary and contractual duties owed to Mr Berezovsky and Mr Patarkatsishvili is, therefore, to have caused them very substantial loss. So this claim is brought, as your Ladyship knows, as a claim for breach of trust and breach of fiduciary duty and breach of contract.

As your Ladyship will have seen in relation to Rusal, also there is a major dispute as to the proper

law that should govern that claim. Mr Berezovsky's case is that the proper law governing both the breach of trust and fiduciary duty claims and also the breach of contract claim is English law. As your Ladyship will also have seen, Mr Abramovich disputes this and contends that the Rusal arrangements, if in fact they existed, would be governed by Russian law.

As your Ladyship again will appreciate, the issue as to the proper law governing the Rusal claim is an important one because if Mr Berezovsky accepts that Russian law were to be the proper law governing the Rusal arrangements, then the Rusal claim would be bound to fail because it is accepted by Mr Berezovsky that Russian law does not recognise the concept of a trust.

Again, so that in outline is the shape of the Rusal claim. Whilst of course there are again a number of issues that your Ladyship will need to consider, we submit that hereto your Ladyship's conclusion on this claim will largely depend on your Ladyship's finding in relation to two key factual issues, namely first, who were the individuals who acquired the aluminium assets from the Reuben brothers, Mr Chernoi, Mr Bosov and Mr Anisimov in early 2000? Was it just Mr Abramovich all by himself, as he is contending, or were Mr Berezovsky and Mr Patarkatsishvili his partners in

that acquisition? In our submission, my Lady, the evidence very strongly points here to Mr Abramovich not being the sole acquirer of those assets in early 2000.

The second key factual issue that arises in relation to Rusal is this: who were the parties with an interest in those assets when they came in December 2000, and in accordance with the agreements made in March 2000, to be combined with the aluminium interests of Mr Deripaska to form Rusal? And what, if anything, was agreed by the parties at the meeting at the Dorchester Hotel in London on 13 March 2000?

My Lady, subject of course to the issue of the proper law of the claim, an issue that is itself very likely to be one determined by your views as to which of Mr Abramovich or Mr Berezovsky is telling the truth about these matters, if your Ladyship is with Mr Berezovsky on these two key factual issues, then I would submit it is very likely that your Ladyship will decide the Rusal claim in favour of Mr Berezovsky.

I say that because of course, as I've already indicated, there can be and is no dispute that in fact Mr Abramovich, acting unilaterally and without regard to any interests of Mr Berezovsky and Mr Patarkatsishvili, did sell his shares to Mr Deripaska in September 2000 for close to \$1.6 billion. So that if there were

a trust arrangement in respect of these interests or a fiduciary relationship or a contractual agreement that Mr Abramovich would not sell without first obtaining the consent of his partners, then Mr Abramovich would have to accept that he acted in contravention of his obligations under the Rusal arrangements.

There can moreover also be no serious dispute that this left the remaining and unsold 25 per cent, which by virtue of his conduct of Mr Abramovich had turned into a minority holding, having a very substantially lower value. Therefore there can also really be no dispute that Mr Abramovich's conduct will have caused Mr Berezovsky to suffer very substantial loss and damage.

So that again in outline is the Rusal claim.

My Lady, having identified obviously in very summary terms what we would submit are the key factual issues, indeed probably the key issues in this case, I was proposing next to show your Ladyship some of the documentary evidence that is likely to assist your Ladyship in resolving these and other issues.

As will be obvious to your Ladyship, I plainly don't have the time to show your Ladyship all the documents that are going to be material but what I would submit would be helpful at this stage is to show your Ladyship

a small selection of documents that in our respectful submission are of particular significance because in a case rather lacking in contemporaneous documents, there are nonetheless certain documents that stand out like a beacon because, more than most, they do give one an insight into the contemporaneous views of the parties as to what was actually going on. They are in the main also documents that your Ladyship is unlikely to be taken to for a very long time, until at least we get to hear from Mr Abramovich.

I ought also just to say this about the documents: that is that inevitably, given the way these issues arise as well as the time when the material events occurred, your Ladyship will find there is more material that may assist your Ladyship in relation to the Rusal claim than there is in relation to the Sibneft claim -- again, as I submit, that is not surprising given the very different nature of the two claims -- although, as your Ladyship will see, even in relation to the Sibneft claims there are some very important documents that your Ladyship does have to guide your Ladyship.

I know it's not yet but I don't know what time your Ladyship wants to break?

MRS JUSTICE GLOSTER: I will break about 11.45 I think, or maybe a bit earlier. If you get to a break, let me

know.

MR RABINOWITZ: Can I just ask your Ladyship before we launch into the documents: is your Ladyship using the electronic documents?

MRS JUSTICE GLOSTER: I hope to be because, as you see, all I asked for and all I have are the written openings, the witness statements and the pleadings in hard copy.

MR RABINOWITZ: Right. Perhaps we can see how that goes and if we need to change courses then --

MRS JUSTICE GLOSTER: Yes. I would rather deal with it electronically because that's how I work, but if it's going to take too long then obviously I'll switch to hard copy.

MR RABINOWITZ: Can I then just begin by taking your Ladyship to some Rusal-related documents.

MRS JUSTICE GLOSTER: Just for the purposes of my note, I like to annotate the hard copy of the skeleton arguments where possible. Should I be looking therefore at the first section of your skeleton written openings where you're dealing with Rusal, like section G?

MR RABINOWITZ: Section G, page 219.

MRS JUSTICE GLOSTER: If the documents are there then it's quite nice for me to highlight them there, as it were, rather than making a separate note.

MR RABINOWITZ: I'm afraid I won't be able to give you page

references to the skeleton on each page.

MRS JUSTICE GLOSTER: That doesn't matter.

MR RABINOWITZ: Can I therefore ask your Ladyship please to go first to the document that your Ladyship will have -- I think all the references, unless I say otherwise, will be in the H(A) bundles. So H(A), bundle 17, page 33, please H(A)17/33. Your Ladyship should have there --

MRS JUSTICE GLOSTER: H(A)17, page 33?

MR RABINOWITZ: That's right. Your Ladyship should have there, when it comes on to your screen, a document in English headed:

"Agreement.

"Moscow, 10 February 2000."

MRS JUSTICE GLOSTER: Yes, thank you.

It's taking too long to load.

MR RABINOWITZ: I have put together a bundle of the documents that I'm likely to refer to, which I can hand to your Ladyship. It's a composite.

MRS JUSTICE GLOSTER: Let me just try once more.

Mr Fleming, I'm going to need your help. Just bear with me, Mr Rabinowitz. (Pause)

MR RABINOWITZ: My Lady, I wonder if this would be a good moment to take a break. We could take the transcript writers' break now. That will give people ten minutes to --

MRS JUSTICE GLOSTER: Yes, okay, to see whether it's a real difficulty or just a local difficulty. I'll take ten minutes.

(11.18 am)

(A short break)

(11.35 am)

MRS JUSTICE GLOSTER: I'm having more discussions at the luncheon break about seating for members of the press and the public, but in the meantime I'm afraid you'll have to stand.

Yes.

MR RABINOWITZ: Does your Ladyship now have on a screen H(A)17, page 33? If your Ladyship finds that this isn't working the way your Ladyship would like it to, as I say, I have produced a composite file containing the documents that I'm likely to be taking your Ladyship to today.

MRS JUSTICE GLOSTER: Yes, okay. I think it is working now but what I'll do is pass me up the hard copy and maybe it's just me who needs some more training.

MR RABINOWITZ: I have some for my learned friends as well.

(Handed)

Your Ladyship should find this document at tab 2.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: They all, as your Ladyship can see, have the

bundle references at the bottom of the page. I will continue to give the bundle references for those who do choose to follow electronically.

At tab 2, as I said earlier, this is an English translation of a Russian language agreement. For those who would like the reference to it, that's at H(A)17, page 38, the Russian language. It's an agreement dated 10 February 2000 by which the aluminium assets were originally sold by Trans-World and the other sellers to -- and I will put this neutrally -- the Abramovich interests.

Can I invite your Ladyship to look at the following provisions. First, the definition of the parties, top line:

"Roman Abramovich, Evgeniy Shvidler, Badri Patarkatsishvili and companies represented by them (hereinafter, 'Party 1') ..."

Your Ladyship sees who parties 2 to 5 are.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Just so that your Ladyship has this, the "companies represented by them" is a reference to the four offshore companies through which the aluminium assets were to be acquired. We're going to see the names frequently: Runicom Fort Limited, Palmtex SA, Galinton Associated Limited and Dilcor International

Limited.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Those companies, your Ladyship, were bearer share companies and the ownership is, of course, a matter of dispute in these proceedings. That's a matter which I'll come back to in a moment, if I may.

That is who we are told the parties are, or at least, as your Ladyship sees, party 1 to the agreement by which the aluminium interests were acquired.

Can I next ask your Ladyship just to glance at clauses 1 to 3 of this agreement, which, as your Ladyship will see, explain first what the assets are that are being acquired and secondly what part of those assets or shares are owned by each of parties 2 to 5, who, as your Ladyship sees, were the sellers.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As I say, one need only glance at that for present purposes.

Then clauses 4 and 5 are important. Clause 4:

"Party 1 shall acquire from Parties 2 and 3 all their shares and interests in business of BRAZ for 300 conditional units (150 [conditional units] to Party 2 and 150 [conditional units] for Party 3)."

Your Ladyship may wish to note at that stage, a conditional unit, if your Ladyship goes to H(A)17,

page 36 H(A)17/36, clause 20 tells us that:

"... 1 [conditional unit] under this Agreement shall be equal to 1,000,000 (one million) US dollars."

So where you have a clause which says 300 conditional units, that's \$300 million.

Then clause 5:

"Party 1 shall acquire from Parties 2, 3, 4 and 5 all their shares and interests in business of KrAZ and other Siberian Complex industries for [\$250 million] ([\$125 million] to Parties 2, 3, 4; and [\$125 million] to Party 5)."

If I can ask your Ladyship next to go to clause 9 on page 34 H(A)17/34, the following page, your Ladyship sees clause 9:

"Title to the shares defined in para 1 of this Agreement shall be transferred from Parties 2-5 to Party 1 within 3 business days after Party 1 effects the first payment under para 6 of this Agreement subject to the account of Party 1 in depositary and registry being open."

Then, again, just glancing back at who party 1 is said to be, as your Ladyship sees, this is not confined to Mr Abramovich at all but also includes Mr Patarkatsishvili, who, as your Ladyship will see from a great deal of evidence in this case, plainly

considered that he was acting also or representing Mr Berezovsky. Party 1 also includes, as your Ladyship saw, the four offshore companies, Runicom Fort, Dilcor, Galinton --

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: -- into whose name the acquisition was made.

As I've already noted, the beneficial ownership of those companies is in dispute. But what is perhaps interesting, as I shall show your Ladyship, is that in other documents that your Ladyship will see, these companies are from time to time identified as belonging to Sibneft or the Sibneft shareholders. That, as your Ladyship will see, is a matter of some significance.

In any event, just pausing here, if one takes this contract at face value and if one takes the view that the people writing the agreement understood and meant what they said, this would suggest that Mr Abramovich's case that he and he alone was the purchaser of the aluminium assets from these parties is very unlikely to be correct.

This fact, my Lady, that this acquisition was not one made by Mr Abramovich alone, is not just something that is suggested on the face of this contract; it is, as you will hear in due course, also what was thought by the counterparties to the contract, a number of whom are

going to come to court and say that they understood that they were selling to a group of which Mr Berezovsky was part.

It is also clear from the press reporting at that time, the reference in the press reporting of this acquisition being consistently to the acquisition having been made by the Sibneft shareholders, and more specifically by Mr Berezovsky and Mr Abramovich.

I don't propose to take your Ladyship to those now but can I perhaps give your Ladyship two or three references to that. There is a Financial Times report of 12 February which is at H(A)18, page 12 H(A)18/12; there is a BBC report of 12 February 2000 at H(A)18, page 13 H(A)18/13; and there is a Moscow Times report of the same date --

MRS JUSTICE GLOSTER: These are all referred to in your skeleton?

MR RABINOWITZ: They are.

But again, my Lady, the matter obviously doesn't stop there because the February 2000 agreement is by no means the only contract made at this time that suggests that Mr Abramovich's case that he and he alone acquired the aluminium assets is very unlikely to be correct.

Can I next ask your Ladyship please to go to the next substantive contract that was made in relation to

these aluminium assets and that is the document that your Ladyship will find in -- I'm going to give a bundle reference first -- H(A)16, page 47T H(A)16/47T. The Russian language version is at H(A)16, page 47 H(A)16/47T. Your Ladyship will find that in this opening bundle I have handed up at tab 1.

Your Ladyship should have there a document headed "Preliminary Agreement".

MRS JUSTICE GLOSTER: Yes, I do.

MR RABINOWITZ: This, for your Ladyship's note, it doesn't seem to carry a date but it's an agreement that was made in early March 2000. As your Ladyship may recall from the written opening, this agreement titled "Preliminary Agreement" is the agreement that ultimately led to the formation of Rusal. It led to the formation of Rusal by combining the aluminium assets acquired from the Trans-World Group and Mr Anisimov and others in February 2000, as a result of the agreement I've just shown your Ladyship -- that's the 10 February agreement -- together with aluminium assets that were held by Mr Deripaska's group.

If I can just show your Ladyship the preliminary agreement. Your Ladyship sees from the top of this agreement Mr Abramovich alone is identified as party 1 and Mr Deripaska alone is identified as party 2. Then

clause 1 identifies the aluminium assets that are to be the subject of this agreement.

If your Ladyship glances at clause 2.1, dealing with party 1, that's the Abramovich interests, they are set out, the aluminium interests said to be held by party 1 and these correspond to the aluminium interests acquired under the February agreement that we've seen made by the Sibneft shareholders, if I can put it that way.

Can I next ask your Ladyship to go to clause 4 on page 48T H(A)16/48T:

"The parties agree that in addition to the standard terms the Agreement shall by all means include the following terms ..."

Just pausing there. What this agreement is about, my Lady, is an agreement between these people that they will enter into an agreement for the purposes of combining their assets and in due course forming Rusal. This isn't, if you like, the merger agreement itself; it's a preliminary agreement which was intended to lead to the merger agreement.

Then just going back to clause 4:

"The parties agree that in addition to the standard terms the Agreement..."

And that's the agreement that they're intending to enter into:

"... shall by all means include the following terms..."

Just glancing at 4.1:

"Parties 1 and 2 warrant that, together with their partners (not including TWG or any companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of Parties 1 and 2 and are not subject to any third party rights, disputes or attachments."

This on its face, my Lady, I would suggest would appear to be a warranty both by party 1, Mr Abramovich, and by party 2, Mr Deripaska, that each of them own the relevant assets together with their partners. Of course, if, as Mr Abramovich now contends, he in fact didn't have any partners at all with whom he owned these assets, this would be a very odd warranty to be given; indeed I would submit it would be a misleading warranty.

Can I ask your Ladyship next to look at clause 4.2:

"Party 1 warrants its and its partners' concerted will to sign the Agreement on the terms determined herein, and shall be fully liable to Party 2 for any action (omission) by its partners associated with the performance hereof."

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Again, your Ladyship sees a warranty has been given by Mr Abramovich not only for himself but also in respect of his partners. As your Ladyship will note, this makes clear that the understanding of the contracting parties here was that Mr Abramovich had more than one partner who was agreeing to merge these aluminium interests. Indeed, as you see, he is in fact offering an indemnity in relation to their concerted will and as regards their actions and omissions with regard to entering into the agreement.

Again, my Lady, if Mr Abramovich, as he would have you believe, did not have any partners at all, this again is a rather bizarre provision for him to be agreeing to because obviously if he had no partners, what on earth would he be doing giving a warranty about his partners' concerted will? This would just be nonsense.

Of course the document does make sense if, as Mr Berezovsky has said, he and Mr Patarkatsishvili were partners with Mr Abramovich in the acquisition of the aluminium assets. Mr Abramovich was of course warranting that they would consent to the merger and offering indemnities for them.

Of course this would also help explain the Dorchester meeting, which took place around eight or

nine days later, as a meeting of the principals: that is to say when all the partners on Mr Abramovich's side were present, so that Mr Abramovich could show that his partners really did consent to the merger arrangements which formed the subject matter of the preliminary agreement.

In other words, my Lady, just as with the earlier agreement, if one is to allow for the possibility that the parties wrote down what they believed to be the true position, if one just allows for that possibility, this fatally undermines Mr Abramovich's case that he had no partners and is strongly supportive of Mr Berezovsky's case that Mr Abramovich did indeed have partners.

Can I, before leaving this document, make two further points about it. Can I first ask your Ladyship to go to clause 14 of this contract, page 49T

H(A)16/49T:

"The Parties agree that the Agreement shall be governed by English law. Any dispute or disagreement arising out of the Agreement which cannot be resolved by negotiation shall be referred to the Court of Arbitration of the UK Chamber of Commerce and Industry, London, for resolution in accordance with the rules of this court of arbitration. A dispute or disagreement may be referred to this court by the Party concerned

upon the expiration of thirty days from the date on which a claim notice was given to the other Party."

As is clear from this, one has here an agreement -- and just standing back, one needs to think about what this agreement is about. It's made entirely between Russian businessmen, that is to say Mr Abramovich, Mr Shvidler, Mr Deripaska and Mr Bulygin. We are told that they are the people who were present when this was made; all Russian businessmen. Apparently, we are told, agreed between them whilst they're all together in Russia. As I've said to your Ladyship and as would perhaps be obvious, it was made in the Russian language; this is of course a translation we're looking at. And it was to deal with Russian aluminium assets.

Despite all of that, the parties chose to include an express provision that the arrangements they were going to make between themselves in relation to these Russian assets should be dealt with not under Russian law but under English law.

Can I just make this point. Your Ladyship will see they agree that the agreement shall be governed by English law. In other words, it's not this agreement that is to be governed by English law; it's the arrangements to be entered into in relation to Rusal.

Perhaps, if I ask your Ladyship just to go back to

clause 2 on page 47T, your Ladyship can see why I say that:

"This Preliminary Agreement is executed in connection with the Parties' intent to conclude an Agreement in respect of the Parties' title to the following assets..."

So this is looking forward to the agreement that is to be made and in looking forward to the agreement that is to be made, these Russian businessmen in Russia dealing with Russian assets say that the arrangements must be dealt with in accordance with English law. That makes it perhaps a slightly unusual provision because it is looking forward to an agreement that is to be made and saying that in that contract there should be an English law provision. It's not simply a cut-and-paste job.

Now, as your Ladyship will immediately appreciate, this is a matter of some significance in relation to the proper law issue that arises in the context of the Rusal claim. Your Ladyship will have in mind Mr Berezovsky's case in this regard.

Mr Berezovsky contends that the parties to the Rusal arrangements which are the subject of his claim all agreed that their merger arrangements when subsequently drawn up should also be governed by English law. It has

been suggested, and certainly was in the context of the strike-out application, that that evidence was fanciful and that Russian businessmen dealing with Russian assets would simply not contemplate either being concerned about such things, still less agreeing that those arrangements should be governed by English law.

The relevance of this document, my Lady, is that it entirely belies that argument because here one has clear contemporaneous evidence in relation to Rusal which demonstrates the exact opposite. It shows that by March 2000 Russian businessmen did indeed concern themselves with such things and indeed that these businessmen, despite the fact that the assets were in Russia, that they were Russian and they were making an agreement in the Russian language, felt sufficiently strongly about not wanting Russian law to apply to the arrangements that they were agreeing to put in place and sufficiently strongly that English law should apply that they regarded it as appropriate to stipulate expressly in this preliminary agreement that this was the way it was to be: that is that the main agreement, when entered into, would contain a provision that ensured that the arrangements between them should be governed by English law.

Given this, my Lady, if anyone at the Dorchester

Hotel meeting -- which is obviously a critical meeting in the context of this dispute -- just a few days later, on 13 March 2000, had tried to summarise for Mr Berezovsky, for his benefit, what had been agreed in relation to the preliminary agreement, they would, I would suggest, given what they had taken the trouble expressly to agree in (inaudible), have said words to the effect -- indeed have been bound to use words to the effect -- that, "We have agreed that our merger relations will be governed by English law". That, as your Ladyship may recall, is precisely what Mr Berezovsky has consistently said he was told at the Dorchester meeting.

Just to be clear, my Lady, since this may be a material point here, Mr Berezovsky's case about the proper law having been expressly raised and agreed and that this was to be English law was not some recent invention of Mr Berezovsky produced after he had seen these documents. On the contrary, this is a case that Mr Berezovsky advanced well before Mr Abramovich eventually disclosed the preliminary agreement, with its bespoke choice of English law to govern the future merger contracts.

Just so your Ladyship has the chronology, the order of events here, as your Ladyship knows, Mr Abramovich

pursued a strike-out application on the basis that Mr Berezovsky's case that the Rusal arrangements were governed by anything other than Russian law was hopeless. In response, Mr Berezovsky set out his case as to why the parties had expressly agreed that English law would govern their legal relations and only then did Mr Abramovich, in his reply evidence, disclose the preliminary agreement.

As I have suggested already, Mr Berezovsky's case about the agreement in respect of English proper law has from time to time been described by those acting for Mr Abramovich in terms suggesting that given the assets, given the parties, this is simply an incredible suggestion. But as this document shows, far from being incredible, this is precisely what these Russian businessmen dealing with these Russian business assets chose to do.

That's the first point I was going to make about this before moving on from the document. The second point is this.

Your Ladyship may wish to note that despite the countless witness statements that he has served and indeed continues to serve, Mr Abramovich himself has never been able to explain -- indeed has never begun to explain -- why, if he had no partners, he had signed an

agreement that plainly proceeded on the basis that he did indeed have more than one partner; not in his original witness statement nor in his most recent witness statement, his sixth witness statement, served after receipt of our written opening, in which we had effectively challenged him to explain the reference to "partners" in this contract.

The only response to this point that it appears Mr Abramovich is able to make is to try and write off this contract and these words to some sort of drafting aberration on the part of Mr Bulygin, Mr Deripaska's associate who we are told held the pen in respect of the drafting of this agreement. Indeed, my Lady, Mr Bulygin has served a witness statement and he may or may not in fact turn up to give evidence before your Ladyship.

I say he may or may not actually turn up to give evidence before your Ladyship: there is a doubt about this because subsequent to our serving of our written opening we have been told that Mr Bulygin has a health issue which may prevent this. If he does turn up, one will then have the opportunity to ask Mr Bulygin questions about his evidence.

What I would say at this stage, my Lady, is just this: that it is very clear that Mr Bulygin's evidence does not even come close to providing, so far as

Mr Abramovich is concerned, a satisfactory answer to the question why, if, as he now claims, he indeed had no partners, he would have signed an agreement which appears to suggest precisely the opposite and in which he expressly agreed to warranties about the existence of such partners.

Again, one of the problems for Mr Abramovich is that the matter doesn't stop with this contract either. We have the first contract which suggests that Mr Patarkatsishvili is a party; we have this preliminary agreement which then talks about partners; and so it goes on.

Can I ask your Ladyship next to go to the document at H(A)18, page 124 H(A)18/124. It's I hope at tab 7 of the opening bundle that I've given your Ladyship. Your Ladyship should have a document headed "Share Purchase and Sale Agreement". As your Ladyship sees, this is an agreement made by Runicom Limited, that's an Abramovich company, and GSA (Cyprus) Limited, and that is a Deripaska company.

Can I ask your Ladyship first if you could turn to page -- well, on page 124 your Ladyship will notice the definition of "Companies". It means:

"... those companies more particularly described in Schedule 1 Part I."

Your Ladyship will find schedule 1 at page 138 H(A)18/138 and your Ladyship sees there listed the four companies that I mentioned earlier: Runicom Fort, et cetera.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As I've mentioned, those were the vehicle companies through whom the shares in the aluminium assets were owned. They're "the Companies". There are a number of provisions dealing with them; I don't think I need to be concerned about that now.

Can I ask your Ladyship next to look at the definition of "Other Selling Shareholders", which your Ladyship will see at page 125 H(A)18/125:

"'Other Selling Shareholders' means those other persons who together with the Vendor are the legal and beneficial owners and holders of 100 per cent of the shares ... of the Companies at the Completion Date."

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As to who these other selling shareholders are, my Lady, a question that arises is this: if, as Mr Abramovich contends, he and he alone had an interest in the acquisition of the aluminium assets that are the subject of this contract, then, one asks rhetorically, who are these other selling shareholders? Because in our submission the fact that this agreement is one made

not just by Runicom Limited, Mr Abramovich's company, but also for and behalf of other selling shareholders is, we submit, yet a further major difficulty with Mr Abramovich's contention that he and he alone owned the aluminium assets and that he and he alone was to benefit from the injection of those assets into the company that became known as Rusal.

If one asks "Who were the other selling shareholders?" on Mr Berezovsky's case the answer to this is easy and it is the same answer as to the question "Who were the other partners of Mr Abramovich that were expressly referred to in the preliminary agreement?" The partners and the other selling shareholders were of course Mr Berezovsky and Mr Patarkatsishvili. It was they who had the ownership interests in the four offshore companies and they who acquired the original aluminium assets one month earlier, acting as partners with Mr Abramovich.

But who on Mr Abramovich's case were these other selling shareholders? My Lady, we have quite literally no idea. He has again said nothing and offered no explanation at all, and this despite the point being very carefully flagged up and dealt with in our written opening. It appears, therefore, that your Ladyship is going to have to wait again until Mr Abramovich comes to

give evidence in four weeks' time to find who, on his case, these other selling shareholders were.

Still on this agreement, can I ask your Ladyship next to go to clause 8.2 on page 134. Your Ladyship will recall that clause 14 in the preliminary agreement contained the agreement that the parties to the actual merger arrangements should be governed by English law and, as one would expect in light of that, one finds at clause 8.2 just such a provision.

Your Ladyship will know from what I have submitted a short while ago why we submit this is relevant and important in relation to the Rusal claim.

Now, there are a number of other agreements and materials relating to Rusal that give rise to similar points. Given the limited time I have in this oral opening, I only propose to dip into a few further selection of Rusal documents.

Can I next ask your Ladyship please to go to the document that we have in the bundle at H(A)18, page 221.001T H(A)18/221.001T; in this opening bundle at tab 8. I think at tab 8 your Ladyship may find something in Russian.

MRS JUSTICE GLOSTER: Yes. After the blue page.

MR RABINOWITZ: After the blue page, indeed, your Ladyship has a translation.

As your Ladyship hopefully sees, this is a document headed "List of documents". I should explain immediately that it is not entirely clear who precisely produced either this document or the other documents associated with this document that I'm going to show your Ladyship. I can, however, tell your Ladyship that they've come from the family defendants' disclosure. Your Ladyship sees that if you go back to the Russian document: the bottom left-hand corner is where you get the indication of who this version has come from.

We are at the moment trying to locate the original file out of which these documents were produced and that may shed some light on who it was that prepared the document.

MR SUMPTION: We understood it was common ground that the list was produced by Mr Jenni, whose name indeed appears at the end of it.

MR RABINOWITZ: In fact I think it suggests exactly the opposite because it says:

"The documents listed in this index are received by me..."

And it's prepared for him to be signing to acknowledge that he has received it. So, with respect, that isn't common ground at all.

What we submit is fairly clear, in relation to this

and the other documents I'm going to show your Ladyship, is that they were produced by a Russian speaker who was assisting Mr Patarkatsishvili at this time, possibly Mr Fomichev, possibly Mr Kay, and possibly someone from Mr Anisimov's camp, for example Mr Streshinsky.

We submit that what is also fairly clear is that these documents were produced for Mr Berezovsky and Mr Patarkatsishvili sometime in March or April 2000; that is to say very shortly after the aluminium asset transactions to which I have taken your Ladyship, those contracts your Ladyship has seen.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If I can just ask your Ladyship to go to the second page of the list of documents. Again, I've taken your Ladyship to this already in light of my learned friend's intervention. Your Ladyship sees:

"The documents listed in this index are received by me on 21 April 2000."

And one sees Hans-Peter Jenni's name there. This gives an indication of when this document was produced, although your Ladyship will note it is not in fact signed by Mr Jenni nor apparently received by him.

If your Ladyship then goes back to the first page, your Ladyship sees a reference at point 1 to an explanatory note, and that your Ladyship will find in

this bundle behind tab 9. For those trying to follow electronically, H(A)18, page 221.003T H(A)18/221.003T is where this will be found.

Just looking at the opening words:

"In connection with the Clients' likely trip to Europe, it is proposed that work begin on the Programme to put their assets in order."

As your Ladyship will see in due course, "the Clients" are plainly Mr Berezovsky and Mr Patarkatsishvili. We know from other evidence that Mr Berezovsky and Mr Patarkatsishvili were indeed contemplating a trip to Geneva with Mr Jenni to see a Mr Samuelson --

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: -- Christopher Samuelson, in the spring of 2000, with a view to moving their assets away from Russia and into new trust structures set up offshore.

So again this assists in time, this document, date-wise, to around March or April 2000. It also assists us in identifying the reason why these documents were produced: they were produced in connection with that proposal.

Can I then take your Ladyship back briefly to the list of documents behind tab 8 H(A)18/221.001T. Your Ladyship sees that in addition to the explanatory note

at point 2, there is a reference to:

"Structure chart of share sale-purchase deals and... intermediary transactions."

Your Ladyship may also wish to note point 4:

"Brief biography of [Mr] Patarkatsishvili (in English)."

I'll take you to those documents in due course.

Then what one has listed out from numbers 5 to 16 are agreements that Mr Patarkatsishvili had made under which commission was to be paid in respect of the February 2000 aluminium acquisitions. Your Ladyship will have seen those commission agreements referred to in the written openings. Your Ladyship can see that whoever prepared this bundle had produced not just the original agreements but also English translation copies of those agreements as well as a notary certificate in respect of each such agreement.

Those commission agreements are, as your Ladyship may have picked up from the written openings, agreements on which the defendants had and I think still do place some reliance, it being suggested I think that those commission agreements represented the entirety of what it was agreed Mr Patarkatsishvili was to get out of the February 2000 aluminium acquisition; although, as your Ladyship shall see, that is an argument which is very

difficult to square with, among other things, this agreement itself.

Can I just next ask your Ladyship to go to the document referred to at point 2 of the list: that's the structure chart. Your Ladyship will find that behind tab 3. It's at H(A)17, page 37.002 H(A)17/37.002. As your Ladyship will see, this document may assist you in understanding the structure of the aluminium sales with which you're going to be very much concerned.

You see that at the top of the schedule one has a list of the offshore vehicle companies which are the sellers of the aluminium assets. The Coalco companies are Mr Anisimov's companies and we have the Trans-World company sellers, Mr Reuben, Bosov, and Mr Chernoi's companies on the right. So two for Mr Anisimov and six for what we could call the Trans-World sellers.

Then, as your Ladyship sees, this is a representation of the fact that they are selling the aluminium interests -- those are described outside the boxes, between the various arrows pointing downwards -- to the four offshore companies, who again your Ladyship will recognise as having been the parties to the Rusal arrangements. Your Ladyship may wish to note that these four offshore companies are placed within a circle that appears to be titled "Sibneft".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As you will recall, I suspect, from our written opening, there is a consistent reference by third parties to the aluminium interests having been acquired by the Sibneft shareholders.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, the arrows show each of the aluminium acquisition contracts between Coalco and Trans-World Group on the one hand and the Sibneft four offshore companies on the other, and you may wish to note that the size of the share transfers and the purchase price, which your Ladyship sees is also shown there, just taking the by the first arrow, your Ladyship sees that KrAZ and KrGES interests and then there's a figure there given for how much is to be paid for that.

That tallies exactly with the aluminium acquisition contracts of 10 February 2000. I haven't taken your Ladyship to those detailed contracts; there are, I think, eight of them. I should say they all also include an English choice of law provision. But the figures, both in terms of the interests which are being sold and the amounts being paid for those interests, are precisely accurately set out. I say that because it's

pretty clear that whoever prepared this document had a very detailed and full knowledge of the aluminium asset transactions.

Now, your Ladyship sees below the boxes representing the Trans-World and Coalco sellers, and indeed the Sibneft purchasers, a slightly lighter oval shape containing the words "Intermediary", representing, as I will show your Ladyship, that there was to be commission paid on the sales. Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then one sees in what amounts and by which companies this commission was to be paid.

If you go to the bottom of the chart, where you have another intermediary circle and four boxes: K1, K2, K3 and K4. As your Ladyship will see in due course, K1 and K2 were to be Mr Patarkatsishvili's companies; K3 and K4 were to be Mr Berezovsky's companies.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, with this in mind, can I ask your Ladyship then to go back to the explanatory note at tab 9 H(A)18/221.003T. Can I invite your Ladyship, if you would, to read the whole note to yourself.

MRS JUSTICE GLOSTER: Yes. (Pause)

Whose note is this?

MR RABINOWITZ: That is one of the mysteries. It was plainly, as I've suggested, made by a Russian speaker because this is a translation. So it was made in the Russian language. It was made, we think, either by Mr Fomichev or possibly by Mr Kay, who again was someone who worked for Mr Patarkatsishvili; possibly by Mr Streshinsky, who worked for Mr Anisimov.

MR SUMPTION: My Lady, if it helps, my understanding from my clients is that the most likely author of this document is Mr Kay, the reason for that being that although he has written it in Russian, his Russian is not actually all that good -- he is not a native Russian speaker, I am told -- and this looks like a document prepared by somebody who was not a native Russian speaker but did know Russian.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: That is a mystery we hope to get to the bottom of in due course but I'm grateful to my learned friend for that.

MRS JUSTICE GLOSTER: And he worked for OP(?), did he?

MR RABINOWITZ: Yes, he did.

Can I make a few observations about the note. First, as your Ladyship sees from the introductory sentence, what the note is directed towards is putting the assets of the clients -- and it is plainly

Mr Berezovsky and Mr Patarkatsishvili -- in order and there is to be a three-stage programme for that. Given that, one would in due course in this document expect to find a reference to what those assets are, and we'll come to that shortly.

Secondly, and as regards the first or initial stage of the programme -- that's under the first heading, "Stage 1" -- one sees that this involves opening accounts and transferring certain funds across. Your Ladyship sees:

"In order to complete the intermediary transaction and thus the first stage of the Programme, the following action should be taken..."

And that includes the opening of accounts and the transfer of funds.

The funds that are to come in are, as one sees if your Ladyship glances at point 4, just above the heading, the funds that are to come in are the commission payments for the intermediary services provided in relation to the sales of the aluminium assets.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If one goes to around a third of the way down the page, towards the top, one has the description of the intermediaries and we see that this is described

as two companies belonging to Mr Berezovsky -- that's "BAB" -- and two companies belonging to Mr Patarkatsishvili, Badri Shalvovich -- I have that wrong I'm sure -- Patarkatsishvili. Your Ladyship will recall that I mentioned companies K1, K2, K3 and K4 were two for each of them.

This of course is relevant because, as your Ladyship may have picked up, the suggestion is made in some quarters that the aluminium transaction really had nothing whatever to do with Mr Berezovsky at all. Indeed, it's been suggested that whilst Mr Patarkatsishvili might have had some involvement, whatever he was doing, he wasn't doing it as a partner for Mr Berezovsky. As your Ladyship sees, this document is an indication that this is unlikely to have been the position.

Just still under "Stage 1", dealing with the opening of accounts and the transfer of funds, one sees, again about a third of the way down, next to the side heading "Total intermediary fees", that this is said to be approximately \$100 million. Does your Ladyship have that?

MRS JUSTICE GLOSTER: No, I don't. Where do I --

MR RABINOWITZ: On page 003T.

MRS JUSTICE GLOSTER: Yes, I'm there.

MR RABINOWITZ: "Total intermediary fees", approximately \$100 million. It may be halfway down.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: Again, your Ladyship may recall that there is a debate about why it is that Mr Patarkatsishvili was paid, at the time of the sale of the second Rusal tranche in July 2004, some \$585 million. There's no dispute that there was a payment of \$585 million to Mr Patarkatsishvili at around that time.

Your Ladyship may also recall that Mr Abramovich in his evidence has sought to suggest that this has nothing whatever to do with Mr Patarkatsishvili or Mr Berezovsky having an interest in Rusal. His suggestion is that that was to be a reward in effect for Mr Patarkatsishvili doing the intermediary work that he did in putting the original aluminium deal together.

But with respect to Mr Abramovich, this explanation makes little sense, we would submit, given the fact that, as your Ladyship sees here, the amount that Mr Patarkatsishvili was to get for the work, in terms of acting as an intermediary, had actually been agreed and it was to be around \$100 million, a wholly different and much smaller amount. That amount was fixed by contracts, indeed contracts which have been --

MRS JUSTICE GLOSTER: So your case is that this was the only

intermediary fee, is it, and that this \$100 million was paid to whom?

MR RABINOWITZ: It was never paid. My case, my Lady, is this: if there was an agreement made between Mr Abramovich -- on his case, what he says is: the only reason I paid \$585 million to Patarkatsishvili in 2004 was because he acted as an intermediary, that is to say he was involved in putting the original February 2000 deal together for the acquisition of those aluminium trusts, and that's why I paid him \$585 million.

MRS JUSTICE GLOSTER: So you say that's inconsistent with this \$100 million provision here.

MR RABINOWITZ: Precisely.

MRS JUSTICE GLOSTER: My question is: were intermediary fees of \$100 million paid; and if so, to whom were they paid?

MR RABINOWITZ: No.

I should say that although he wasn't given \$100 million, he was given a plane, his own plane, and there's discussion of that in the witness statements, as your Ladyship will recall. I don't know whether that was worth precisely \$100 million but that may be a partial explanation for that statement.

What we say is this, my Lady. If the \$100 million is what had been agreed in writing to be Mr Patarkatsishvili's fee, as it were, for the

commission payments, then it's difficult to square that with Mr Abramovich's case that that is why he paid Mr Patarkatsishvili \$585 million in 2004. If that is right, it follows also that there has to be a different explanation for why that amount of money was paid to Mr Patarkatsishvili in 2004. It has nothing whatever to do with the explanation that Mr Abramovich has come up with.

The third point to make about this document is this. Your Ladyship will have seen that "Stage 2" is referred to at the bottom of the first page of this document as the "main" stage and that was to involve structuring the assets. Just looking down at point A:

"Allocating assets to partners in proportion to their stakes."

If I can just focus on this for a moment. Your Ladyship sees the reference there to these gentlemen being partners, that's the same Mr Abramovich (sic) and Mr Berezovsky being partners, and that is obviously relevant in the context of this.

If your Ladyship then looks just below the identification of points A and B, on the top of the following page:

"It is initially envisaged that assets owned by the partners in the main business interests will be

distributed. Such business interests include..."

Your Ladyship sees point 2 and point 3: "The aluminium sector"; point 3, "Sibneft".

Sorry, I think I misspoke. The partners here are Mr Berezovsky and Mr Patarkatsishvili. I might have said in this context Mr Abramovich, and I apologise for that.

Just looking at this, as your Ladyship sees, they are "assets identified as owned by the partners", assets in the aluminium sector and Sibneft. So again, my Lady, I would submit that it's fairly clear that the understanding of whoever it was that created this document in March or April 2000 -- and that is a person who clearly had a detailed knowledge of the aluminium transactions, as we've seen from those diagrams at tab 2 of the bundle -- that person's clear understanding was that Mr Berezovsky and Mr Patarkatsishvili as partners had an ownership interest in those assets.

Patently I would submit that this was in addition to their entitlement to the \$100 million of commission in relation to the aluminium transactions, which, as your Ladyship will recall, is dealt with back in stage 1. So this note deals separately with the \$100 million which is coming in and then separately with the aluminium assets, which include the aluminium -- sorry, which deal

separately with the aluminium assets.

Now, your Ladyship will observe that this was a document created long before any dispute arose between Mr Berezovsky and Mr Abramovich about the ownership of those assets. Just pausing there, your Ladyship may recall that Mr Sumption in his opening document in fact appears to accept that from around 1999 all of Mr Berezovsky and Mr Patarkatsishvili's business associates understood or at least assumed that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft and indeed in Rusal, I think.

That I would submit is a rather important concession for Mr Sumption to have made. For your Ladyship's note, that is at paragraph 234, page 96 B(C)/96 of my learned friend's opening. He accepts that people around Mr Berezovsky and Mr Patarkatsishvili understood that they had initial interests in these companies.

As your Ladyship may also recall, Mr Sumption in his written opening, while he makes that concession, then seeks to explain it away -- that is, the fact that those in Mr Berezovsky's circle understood that he had such an interest -- on what I would suggest is the really rather ingenious basis of what Mr Sumption in his written opening labels "the classic psychology of the political exile".

That is at paragraph 235.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR RABINOWITZ: But there is an obvious difficulty with this for Mr Sumption, and it is this. Your Ladyship will of course note that these documents, the documents we've been looking at, were in fact produced in March or April 2000 or thereabouts. That creates a chronological problem for what one might call Mr Sumption's attempt to explain all this away by the psychology of the political exile and that is because at the time these documents were produced, Mr Berezovsky --

MRS JUSTICE GLOSTER: Sorry, just jogging back, how do we know they were produced in the March or April? That's from separate evidence?

MR RABINOWITZ: I've given your Ladyship two ways to identify that as a fact.

(1) If your Ladyship goes to the list of documents, I think that was at --

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: That was to be signed saying he'd received it in April.

(2) It's pretty clear that these were produced in advance of a trip that Mr Berezovsky and Mr Patarkatsishvili were going to make to Europe, which we know they were going to make in the spring of 2000.

If your Ladyship looks at the explanatory note, "In connection with the Clients' likely trip to Europe".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So we know that was to be in the spring of 2000 and we'll see -- this is not the only place where one can make this point -- that that indeed took place.

So the chronological problem for what one might call Mr Sumption's attempt to explain all this away by the psychology of the political exile is this: the documents were all produced at a time when Mr Berezovsky was not in fact in political exile at all. In fact, at the time Mr Berezovsky was basking in the glory of having been involved in President Putin's election victory and he was still living in Moscow. Political exile was in fact some way off.

So whilst I would not doubt for a moment that Mr Sumption may have a great knowledge of psychology, and even psychology of the political exile, it is clear that this simply does not explain these statements in documents like this one.

My Lady, I would suggest that the explanation as to why these statements were made that Mr Berezovsky and Mr Patarkatsishvili had these ownership interests is in fact a far simpler one and one for which no great knowledge of psychology is needed: they made those

statements about having an ownership interest because that is what they honestly understood the position to be. Whilst on this point, your Ladyship will recall that the fourth document on the list of documents was a short CV in English for Mr Patarkatsishvili and that is a document that your Ladyship will find at tab 28, I hope, of this bundle. It's at H(A)102, page 89.001 H(A)102/89.001.

If your Ladyship glances down about a fifth of the way towards the end:

"Mr ... Patarkatsishvili is a shareholder of Sibneft..."

It says nothing about the aluminium assets and that may be down to the fact that this was obviously produced so soon in time after that. But the reference to Badri being a shareholder of Sibneft, if that is right -- this document produced by more political exiles -- that drives a coach and horses through the story that Mr Abramovich is coming to this court to tell your Ladyship. As your Ladyship knows, Mr Abramovich's case is that he and he alone of these three men had an interest in Sibneft and that the other two never had any interest whatever in Sibneft.

Now, it might just be helpful to follow the story here through a little bit further. Can I ask your

Ladyship next to go to -- I'm going to give the bundle reference first again -- H(A)19, page 10 H(A)19/10.

It is tab 10 of the bundle we're working from. Does your Ladyship have there a document, Valmet, "Interoffice Memorandum"?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship may recall that the documents we were looking at were, as we understand it, prepared for a meeting with Mr Samuelson at Valmet. This was an organisation that Mr Berezovsky and Mr Patarkatsishvili approached in the spring of 2000 about sorting out a way to hold their Russian interests outside of Russia.

What we have here is a note made by Mr Samuelson, who is the person with whom they were dealing, dated 9 May 2000, recording what was said about those assets by Mr Berezovsky, Mr Patarkatsishvili and those representing them, including Mr Fomichev, to Mr Samuelson. Again, your Ladyship may wish to note this again is a document produced before Mr Berezovsky went into political exile.

MR SUMPTION: My Lady, I think my learned friend may be mistaken here about the dates. I made the same mistake in my skeleton argument. The date is in fact 5 September, it's the American dating system. That can be established by looking at the bottom paragraph on

page 11, which refers to Mr Jenni as having written reference letters. Those reference letters will be found at H(A)21/137 H(A)21/137. They're dated 2 September.

MR RABINOWITZ: I'm grateful to my learned friend for that. I'm not sure it matters to the point I'm making. As your Ladyship knows, Mr Berezovsky only left Russia in October. So be that as it may, May or September, still not the ramblings of a political exile.

Can I invite your Ladyship please to glance at the whole of this note.

MRS JUSTICE GLOSTER: I've read it before, I'm not sure why. Perhaps it was in one of your skeletons.

MR RABINOWITZ: I'm not sure it is. You can glance at the whole of the note if your Ladyship wishes. For my purposes I was only going to be concerned with the first page and a little bit.

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Again, I think there are two main observations that I would make about this document in the context in which we are looking at it at this stage.

First, as your Ladyship sees, Mr Berezovsky and Mr Patarkatsishvili have presented themselves to Mr Samuelson as partners. One sees that in the first paragraph, third line. It is very clear that that is

how they regarded themselves. Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Secondly, as one sees from the end of the first paragraph and more particularly from the third paragraph and the sentence beginning:

"Thus BB and AP were able to buy control of Sibneft... and subsequently have acquired 70% of Russia's aluminium smelters and have created a new holding company called Russian Aluminium to own all their aluminium holdings."

This suggests, I would submit, that, again, Mr Berezovsky and Mr Patarkatsishvili certainly understood and certainly represented to the advisers dealing with them that they had an ownership interest in Rusal and Sibneft.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, it is interesting, if I can just take your Ladyship to further documents to show your Ladyship the interest which they were telling Mr Samuelson at this time they held in these companies because that again is consistent with the case they make before this court.

Can I ask your Ladyship next to go to tab 11. It's H(A)21, page 212 H(A)21/212. In tab 11 your Ladyship

has first an email to a Mr Kenneth Maillard. If your Ladyship looks at the bottom, he's saying:

"I attach the two charts with the changes that you all raised."

That's in September, September 11.

If your Ladyship then goes to 212, what one has here is the structure that Mr Samuelson is putting in place for Mr Berezovsky at 212 and for Mr Patarkatsishvili at page 213.

Just so your Ladyship is clear about this -- this is something which I think will recur from time to time -- the "H" structure, that is a reference to the Hotspur Trust structure, and that is the structure put in place for Mr Berezovsky. Then the "O" structure on page 213 is a reference to the Octopus Trust structure, and that is what was being put in place for Mr Patarkatsishvili.

Your Ladyship sees that the structure looks incredibly complicated and indeed is. It was intended to be complicated given that it was in order to protect assets. Some information as to why this was so, of course, is clear from the note that your Ladyship saw of 9 September.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But just ignoring the complexity for the moment, what I would submit is of some assistance, my

Lady, is that these structures, produced certainly long before any dispute between Mr Berezovsky and Mr Abramovich arose, do enable us to identify precisely what share of both Sibneft and Rusal Mr Berezovsky and Mr Patarkatsishvili appear to have understood themselves to own.

Just looking at page 213 -- this is the Patarkatsishvili structure -- your Ladyship sees a bar on the top headed "Sibneft" and a bar on the bottom headed "Russian Aluminium", Rusal.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If one just looks at the bar on the bottom and adds up --

MRS JUSTICE GLOSTER: Sorry, I have Sibneft -- yes, I see. We're on 213 now, are we?

MR RABINOWITZ: 213, yes. This is the Patarkatsishvili structure. Just picking it up, looking at the bar on the bottom which is the Rusal bar, your Ladyship sees percentage figures immediately above the Rusal bar.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: I can tell your Ladyship that that adds up to 12.5 per cent. If your Ladyship then goes back to the Berezovsky and looks at the bar at the bottom, the figures there also add up to 12.5. Together --

MRS JUSTICE GLOSTER: It doesn't say "Rusal" in the

bottom --

MR RABINOWITZ: No, it doesn't, but I can show your Ladyship other documents and maybe in due course we will have to. It is plain that that was intended to be Rusal. The only reason I have taken your Ladyship to these is one could date them or we can date them, they're sometime in September, whereas the other documents, although they for Mr Berezovsky also say "Rusal", don't have a date.

I can just perhaps give your Ladyship a reference to that without turning it up.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It's bundle H(A)102, pages 70 and 71  
H(A)102/70.

Now, the significance of the 12.5 and 12.5, obviously that adds up to 25 per cent and that is exactly in line with what Mr Berezovsky has consistently said was the interest in Rusal that was held for both himself and Mr Patarkatsishvili. So their story about this has been consistent long before this dispute arose. This is what they're telling their advisers.

Now, the same is true in relation to Sibneft. Again, just looking at those diagrams again, the Patarkatsishvili diagram, page 213: again, without making your Ladyship do the maths, I can tell your Ladyship that the percentage figures leading to the

Sibneft holding add up to 17 per cent. If your Ladyship then goes to the Berezovsky structure, the Hotspur structure at page 212, that adds up to 33 per cent. Together 50 per cent, split in a ratio of two to one.

Again, that is exactly in line with Mr Berezovsky's evidence. For your Ladyship's note, he explains this at paragraph 175(b) in his fourth witness statement. We don't need to go to it.

Again, my Lady, if this is correct, then that would again suggest that the story that Mr Abramovich is coming to this court to tell simply cannot be true. This exactly reflects the story that Mr Berezovsky has come to court to tell your Ladyship, both in relation to Sibneft and in relation to Rusal, but it is 100 per cent inconsistent with Mr Abramovich's case, although I accept that the most that one can say about this, given that it's a Berezovsky document, is that it reflects Mr Berezovsky's understanding of the position. But in my respectful submission, that is significant. He isn't a political exile, this isn't the ramblings of a political exile, no dispute has arisen, but he understands that he owns these interests.

Can I next -- and again this is primarily of relevance to Rusal -- just show your Ladyship some of the documents generated at the time of we call the sale

of the second Rusal tranche in June and July 2004, which again, I would submit, are very damaging to the case Mr Abramovich seeks to advance about Rusal.

Just to put the second Rusal sale into context, your Ladyship will recall that after Mr Abramovich disposed of 25 per cent of the Rusal shares or 50 per cent of the shares held by his group for just under 1.6 billion in September 2003, this meant that he had produced a situation in which the remaining shares he held were a minority holding since Mr Deripaska now held 75 per cent of the shares. One might think that that in itself was a rather odd thing to have done, even to oneself. This led to the remaining equal quantity of shares having to be sold in June/July 2004 for something not much more than a quarter of that amount, some \$450 million.

Of course, there is a great deal of dispute about what was going on in relation to that second sale. Mr Berezovsky's case, as your Ladyship knows, is that that second sale was a sale of a tranche that Mr Abramovich had agreed to hold on trust for Mr Patarkatsishvili and Mr Berezovsky jointly.

Mr Abramovich's case, once again, is very much more complicated. He of course disputes that he ever held the shares for Mr Berezovsky and Mr Patarkatsishvili on

trust and so he has to explain why he was making this payment, why the money was going to Patarkatsishvili, we say to Patarkatsishvili and Berezovsky, and indeed Patarkatsishvili says to Patarkatsishvili and Berezovsky.

What he suggests is that this isn't because Mr Patarkatsishvili was the beneficial owner of the tranche at all; rather the whole second tranche sale was just a very complicated way of enabling him to pay Mr Patarkatsishvili for what was really no more than an uncontracted reward for past work. I've mentioned that already; I'm not going to get into that again. He has to explain why the \$100 million which had been agreed wasn't what he was going to pay.

Can I just show your Ladyship a small selection of the documents generated in this context which in our respectful submission shed a great deal of light on the truth. Can I first ask your Ladyship to go to the document that I hope your Ladyship will find at tab 17 of this bundle. It's at H(A)74, page 219 H(A)74/219.

Your Ladyship should have there a memorandum produced by a law firm, Bryan Cave --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: It's Mr Hauser is the partner at Bryan Cave who produces this document; your Ladyship sees that.

Mr Hauser, an English solicitor. He is getting instructions from a Mr Mishakov. Your Ladyship may wish to know Mr Mishakov was the assistant to Mr Deripaska.

Mr Deripaska, you will recall, was one of the people at the Dorchester meeting when the decision to merge the aluminium interests to create Rusal was, we say, discussed and agreed in March 2000. Of course he was also the person with whom Mr Abramovich -- acting, we say, for Mr Berezovsky and Mr Patarkatsishvili, that is his other partners -- was contracting at that time, in February I think it was.

Your Ladyship may wish to note that it's clear from the witness statements that Mr Mishakov and Mr Hauser were very closely involved in the production of the Rusal agreement documentation, that's to say the February and March documentation. Given that, your Ladyship may think Mr Hauser and Mr Mishakov would be able to have at least some insight as to the people with whom they were dealing.

Can I ask your Ladyship please to read this memorandum, at least down to point 6 on page 220.

(Pause)

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Can I just make the following observations about this note.

First, as your Ladyship sees -- this is paragraph 1 -- Mr Hauser of Bryan Cave explains that he's been advised that:

"... Madison..."

That's the Abramovich company.

"... has bearer shares... in the possession of its parent..."

And that the way the sale of the second tranche would work is that in the first instance:

"... [these] would be transferred to a company ('B') which [as he notes] is owned by the ultimate beneficiaries ('BB')."

Just pausing there, my Lady, it is clear that his instructions are that there are two ultimate beneficiaries, B and B.

If there's any doubt about that, then in my respectful submission that doubt is removed. If you look at paragraph 5 on the following page, your Ladyship sees a reference has been made there to getting a guarantee as to the ownership of shares from "each of BB". Second last line of paragraph 5. So BB is not one person, they're two people, otherwise he wouldn't referring to them as "each of BB".

Secondly, if your Ladyship is on page 20, one sees in the body of paragraph 6 that what Mr Hauser has in

mind, following his instructions from Mr Deripaska's team, is that:

"... it would... be necessary to ensure that BB were the only persons beneficially entitled to the Shares..."

So that Mr Deripaska could feel confident that he had a release from any person who might have a beneficial interest in the shares.

Now, it will be obvious to your Ladyship that our case is that BB were Mr Berezovsky and Badri, Mr Patarkatsishvili.

Your Ladyship will also have noted the part in italics that follows paragraph 6 referring to "Deeds of Release and Indemnity" and the statement there that, the last three lines:

"In addition, we would expect [Mr Abramovich's] Deed of Release to include an assurance that BB were the only persons who have ever been beneficially entitled to the Shares."

That of course we submit is wholly consistent with Mr Berezovsky's case about this. What we would submit emerges very clearly from this document is that it was at least the understanding of Mr Deripaska's team -- these were people who were the people who contracted with Mr Abramovich in February and March 2000 -- it was at least the understanding of those people that

Mr Berezovsky and Mr Patarkatsishvili, Boris and Badri, BB, were the persons who had a beneficial interest in the shares that were being sold.

That, of course, is entirely easy to reconcile with the documents I've previously taken your Ladyship to which talk of Mr Abramovich having partners, which talk about there being other selling shareholders. It's also entirely consistent with what we have seen was Mr Berezovsky's understanding and Mr Patarkatsishvili's understanding of the position: that they had an interest in Rusal. Of course, if this is right, this would again suggest that the case that Mr Abramovich is putting before the court that no one other than himself had any interest whatever in the Rusal shares is simply untrue.

But it doesn't stop with this document. Can I ask your Ladyship next to go to the document that you should have at tab 19 of this bundle. It's at H(A)74, page 223 H(A)74/223. At tab 19 we have a chart that Mr Hauser explains was produced by Mr Mishakov -- that's Mr Deripaska's associate -- and it was produced at around the same time that Mr Hauser produced the memorandum that we've just looked at. Again, it maps out Mr Mishakov's understanding of the transaction that was proposed in relation to the second tranche of shares.

Again, I don't know whether your Ladyship has had an opportunity to glance at the chart and more particularly at the notes below, but your Ladyship will see that fundamental to the understanding of Mr Mishakov, in effect Mr Deripaska's point man on this, is that B and B -- and obviously there are two of them, I would submit quite obviously Mr Berezovsky and Badri, Boris and Badri -- were the beneficiaries of 25 per cent of the Rusal shares that were to be sold. This is clear, for example, from point 4 in the notes:

"[Abramovich] provides guarantee with regard to the representation and warranty that the beneficiaries (B&B) are the ultimate beneficiaries of 25% of RH's shares."

Also see point 6:

"Beneficiaries' company jointly with beneficiaries B&B execute the Joint Deed of release and indemnity by which they warrant that they are the beneficiaries of 25% of R."

That's Rusal.

MRS JUSTICE GLOSTER: Did that happen?

MR RABINOWITZ: Well, we're going to see what happened.

What actually happens is that Mr Berezovsky gets painted out of the picture completely. I'm going to take your Ladyship through the chronology.

There are a lot of other documents which people

produce on the basis that Berezovsky and Patarkatsishvili are the beneficiaries and then at some point someone says, "We can't do this, we have to go a different route", and the reasons for that will be clear to your Ladyship when I take you through the documents.

He gets whitewashed out of the picture, does Mr Berezovsky, for reasons which I will submit in due course are obvious. He gets whitewashed out of the picture largely, I will be submitting, because Mr Abramovich or his associates in effect say to people, "We can't show this transaction in this way because of representations we've previously made to banks about the position". So he gets whitewashed out. This, in our respectful submission, represents the true position.

Your Ladyship will find as you go through this case that there are any number of documents produced by Mr Abramovich -- we've already seen a few of them -- where he has to disavow what the document says as not being the true position. He is a man who is perfectly happy to put his name, or at least the name of his associated companies, to documents which misrepresent a position. That in our respectful submission is exactly what has happened here, for reasons which you will see.

Just so your Ladyship should know this, Mr Hauser's evidence -- he has served a witness summary and one hopes he will be coming to give evidence -- is that he understood during the negotiations that Badri had a beneficial holder in Rusal, paragraph 10 of his summary, and that references to the other beneficial owner described elsewhere in the draft contractual document as "B2" -- I'm not going to take your Ladyship to that because I didn't think I was going to have time -- were references to Mr Berezovsky. That's his summary, paragraph 12. Although he says that he personally made no enquiries into the relationship with Mr Berezovsky or the strength of what he says is Berezovsky's claim, because he talks about the fact that there was an indication in the newspaper that Mr Berezovsky was claiming (inaudible) as well.

Now, your Ladyship, in our respectful submission, sees that these documents certainly suggest that the understanding of Mr Deripaska's team, the person with whom the deal had been made in March 2000 and to whom Mr Abramovich had made warranties about his partners, was that they were indeed partners or other persons with a beneficial interest in the Rusal shares and indeed that those persons were Berezovsky and Patarkatsishvili. This is totally inconsistent with Mr Abramovich's whole

case.

Your Ladyship should know that it's not just those in Mr Deripaska's camp who understood that there were beneficial interests in these shares and that these were held on behalf of Mr Berezovsky and Mr Patarkatsishvili. As your Ladyship will have gathered from our written opening, those instructed by Mr Patarkatsishvili in relation to this transaction, including with (inaudible), who were instructed by Mr Anisimov's assistant, Mr Streshinsky, with the assistance of investment managers Salford(?), also appear from the documentation to have clearly understood and have appreciated first that Mr Berezovsky and Mr Patarkatsishvili were the ultimate beneficial owners of 25 per cent of Rusal and secondly that Mr Abramovich was holding that 25 per cent on trust for them. So they appear to have been labouring under the same supposed misapprehension as Mr Hauser and Mr Mishakov on Mr Deripaska's team.

For your Ladyship's note, this is an occasion on which I can give you a reference to our skeleton: we deal with that at paragraph 847 and following of our written submissions at page 424 and following B(A)1/02/424.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: That may be a convenient moment, my Lady.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: I'm happy to go on.

MRS JUSTICE GLOSTER: No. I'll sit again at 2 o'clock.

(12.58 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Members of the press, I've been told that the arrangement for you will be this: that every morning if when you show up at security you present your press passes, there will be reserved ticketed seats for up to ten members of the press. If you report to the commercial listing counter on the ground floor as you come through security, you will be given an allocated seat. There will also obviously be more seats in the public gallery. If I'm informed that ten reserved seats for members of the press is not sufficient going forward, then I will reconsider the position with the Courts Service staff.

I'm also told that arrangements have been made in consultation rooms 40 and 42 for an audio feed as well as the LiveNote feed. So any overspill, go to consultation rooms 40 and 42, where there will be an audio feed of the proceedings. Hopefully that should remove the need for anybody to stand at the back of the

court. Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I'm grateful. Before the short adjournment I had shown your Ladyship the memo and diagram at tabs 17 and 19 of the opening bundle and I made the point that it wasn't just Mr Deripaska's advisers who had the understanding that we see is reflected in those documents.

MRS JUSTICE GLOSTER: Sorry, just before we start off again, Mr Rabinowitz, Ms Davies, there is an outstanding application which you mentioned to me on Thursday, I think, in relation to the Clydesdale Bank.

MS DAVIES: Yes, my Lady.

MRS JUSTICE GLOSTER: I'm proposing to make the order but I would like a further copy of it to sign.

MS DAVIES: Of course, my Lady. We'll get that available for 4.30.

MRS JUSTICE GLOSTER: Thank you very much.

Sorry, Mr Rabinowitz.

MR RABINOWITZ: I had referred also to the understanding of is the Leboeuf lawyers who were involved. Can I now please ask your Ladyship to go to the document we have at tab 18 of the opening bundle: it's H(A)74, page 222 H(A)74/222.

Your Ladyship should have a document containing an

email.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If your Ladyship looks at the email towards the second half of the page, your Ladyship sees it's from Mr Mishakov. Your Ladyship sees that it's dated 9 June 2004 and it's sent to two people. The first is Mr Streshinsky, who is one of Mr Anisimov's people. Then your Ladyship sees that it is also sent to the person "nataliakh", that is Ms Natalia Khudyk, who is one of the very senior people engaged by Mr Abramovich.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If your Ladyship looks to the bottom part of that document, your Ladyship will see that attached to that email were two documents, being the scheme document produced by Mr Mishakov and the Bryan Cave memo. Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As your Ladyship has seen, both of those documents suggested that the 25 per cent holding in Rusal was beneficially owned by someone other than Mr Abramovich's companies and indeed that B and B or BB were the persons who had that beneficial interest.

It is not just Ms Khudyk on Mr Abramovich's side of the fence, as it were, among his senior people, to whom these documents were sent at the time. Can I ask your

Ladyship next to go to tab 20. It's H(A)75/93, 93T for the translation H(A)75/93T.

At tab 20 one has again an email sent -- I don't know whether your Ladyship is looking at the translation but this is sent from a Ms Panchenko again to Ms Khudyk, and again if you look at the attachments you see there it's the Bryan Cave memo and also the diagram, the scheme. So not only Ms Khudyk from Mr Abramovich's team but also Ms Panchenko from Mr Abramovich's team were sent these documents reflecting the understanding of at least others that Mr Berezovsky and Mr Patarkatsishvili were beneficial interest holders.

I can tell your Ladyship that it was not just these two people in Mr Abramovich's camp that were sent these documents; there were others and we will deal with that in due course in cross-examination. I'm not going to go through all of them now.

Of course, if what was said in these documents was just nonsense -- "I don't know what you're talking about. Why do you have B&B and BB as the beneficial interest holders?" -- one would have expected some reaction. One would have expected a document to come back and say, "No, no, no, you've got it all wrong", or an internal document saying, "I don't know what these people are talking about. Where did they get this

information?" One gets nothing of the sort, my Lady.  
Nothing of the sort.

Whilst it is right, as I mentioned before the short adjournment, that in the end the documents which were produced whitewash Mr Berezovsky out of the picture entirely, there is certainly nothing ever that we see which takes issue at all with what is being said in those documents.

Now, one gets a further indication of the understanding of the parties involved in the transaction, in particular those from Mr Deripaska's team, if your Ladyship then goes to the document that you should have at tab 21A: H76, page 106 H(A)76/106.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Does your Ladyship have there a memo, again from Mr Hauser?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So again Mr Hauser of Bryan Cave is sending a memo to Mr Mishakov, Mr Deripaska's assistant, and your Ladyship sees it's dated 18 June 2004. Can I invite your Ladyship just again to read through the whole of this memo, please. (Pause)

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Can I make again a number of observations about this document.

First, as one sees from the opening line, Mr Hauser has consulted on the telephone with Mr Mishakov and appears to have been advised by Mr Mishakov -- who, as I've said earlier, was involved in the drawing-up of the Rusal documents in March 2000 -- what the position is.

Secondly, as one sees from the second paragraph, Mr Mishakov and Mr Hauser understand that Mr Abramovich's company, Madison:

"... is... holding... 25% [of the Rusal Holding Limited shares] on behalf of B Company or that company's ultimate [beneficial] owners..."

And I would ask your Ladyship again to note the plural there, ultimate owners. They're described as B but there's more than one of them. That of course is consistent with the earlier memorandum and diagram drawn up by Mr Mishakov which your Ladyship has seen, which identifies the ultimate beneficiaries as B&B.

Third, your Ladyship sees that Mr Hauser, analysing the consequences of what he understands to be the arrangements under English law, we say quite correctly, perhaps not sufficiently emphatically, concludes that Madison, and perhaps Mr Abramovich himself, is a trustee for the ultimate owners with respect to the shares and/or is under fiduciary obligations to them. Your Ladyship sees that.

Fourth, as your Ladyship sees, Mr Hauser has been told that relations between Mr Abramovich and the ultimate owners have broken down and that Mr Abramovich no longer wishes to deal directly with the ultimate owners. That, of course, is certainly something that your Ladyship knows applies to his relationship with Mr Berezovsky at this point in time and perhaps also to Mr Patarkatsishvili, given what Mr Abramovich did with the first tranche of the Rusal shares. No one on Mr Abramovich's side has ever suggested who else might be the person with whom Mr Abramovich now no longer has good relations. So in my submission the identity of these people with whom Mr Abramovich has fallen out is obvious.

Fifth, again as your Ladyship sees, in order to overcome Mr Abramovich's reluctance to deal directly with the ultimate owners, Mr Hauser suggests an alternative way in which the transaction could be structured, with Mr Abramovich resigning as trustee and Mr Deripaska taking over the trusteeship and then buying out the shares --

MRS JUSTICE GLOSTER: This is all Mr Deripaska's team, is it?

MR RABINOWITZ: This is all Mr Deripaska's team, correct. The important point about that, as your Ladyship will

appreciate, these were the people who were the parties to the contract in which someone said, "Abramovich and partners are entering into this contract". They were there when all these contracts were made and negotiated.

Sixth and finally, one sees that Mr Hauser, in the final two paragraphs, notes that Mr Abramovich risks boxing himself into a corner with respect to the ultimate beneficial owners. On the one hand he's refusing to deal with them and on the other hand he's exposing himself to the risk of a breach of fiduciary duty. Mr Hauser's patience, as one sees, is running out and he's telling Mr Abramovich that he needs to come up with a solution and fast.

With that in mind, can I ask your Ladyship please next to go to the document that you find at tab 21: H76, page 57 H(A)76/57. Now, just so your Ladyship knows what this document is, it would appear to be a letter drawn up -- I'm not sure it is ever sent -- by Akin Gump, the lawyers who have been engaged by Mr Anisimov to assist with the transaction with a view to it being sent by Mr Streshinsky to Mr Abramovich's people.

Just starting, can I ask your Ladyship first to look at the first two lines here:

"As discussed over the phone, in order to meet the

representations that you previously made to the banks, please find below an alternative structure."

Just pausing there, one can see, my Lady, that is what is happening here: there is a conversation over the phone and someone says, "We can't go with the structure you're thinking about because of representations which we've made to the banks. Please come up with an alternative proposal".

If you glance then further down the letter, one can see that an alternative structure is proposed, the purpose of which it would appear is to avoid any reference to Mr Berezovsky and Mr Patarkatsishvili as having had any beneficial interest in shares because, so this says, of the representations previously made to the banks.

Perhaps I can ask your Ladyship just to look at the first numbered paragraph there:

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, [Mr Patarkatsishvili]..."

Well, "BP and B" is what it says.

"... participated in the sale of shares" --

MRS JUSTICE GLOSTER: You say that's Mr Berezovsky and Mr Patarkatsishvili?

MR RABINOWITZ: Indeed, Mr Berezovsky and -- and in fact if

your Ladyship just looks above it, you'll see:

"BP (an individual) and B (a company with B as the sole shareholder)..."

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So:

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery and also in the establishment and capitalisation of R Holding and at the time of the establishment of R Holding, M undertook to pay to BP and B the amounts equal to those received as income on 25% of shares in R Holding, including dividends payable on such 25% of shares and amounts/assets received from any sale of such 25% of shares. (Therefore, it was solely a right in personam rather than a trust or a right in rem -- a lawyer's comments)."

This has come, as your Ladyship sees, from Mr Abramovich's disclosure. What is interesting about this alternative structure which is being proposed is that even now what they're suggesting, even after this pep talk has taken place, what they're suggesting was the arrangement is almost identical to what

Mr Berezovsky says the position was.

In other words, the arrangement that's described, rather than simply him having a legal ownership, one sees that he has everything but a legal ownership because what in our respectful submission Mr Abramovich wants to be able to deny is that anyone other than he was the owner of the Rusal shares. But what this appears he's willing to acknowledge is that the interests that Mr Patarkatsishvili and Mr Berezovsky had was one that entitled them to all the benefits that they would have as if they were the beneficial owners of this 25 per cent: that is to say 25 per cent of the dividends and 25 per cent of whatever is received on the sale of those 25 per cent shares.

If your Ladyship looks at what is said here as well --

MRS JUSTICE GLOSTER: This draft from Akin Gump is going to?

MR RABINOWITZ: It's one that we understand was prepared for Mr Streshinsky so that he could send it to Mr Abramovich's people. Mr Streshinsky is Mr Anisimov's assistant. They were assisting Mr Patarkatsishvili.

So we have this telephone call. I can tell your Ladyship that no one deals in their witness statements with this telephone call; a very surprising omission. We have this telephone call and what we have is suddenly

everyone is having to change directions. Forget about what Mr Hauser has been saying about transfers to the B company owned by B and BP; we have to find a new route which in a sense disputes or doesn't recognise that they are the beneficial owners but gives them rights as if they were. That is in effect what this is saying.

What is, I would submit, also interesting about this is that even after the pep talk, no one is disputing that both Mr Berezovsky -- that's the B -- and Mr Patarkatsishvili -- that is the BP -- both participated in the sale and purchase of the aluminium assets and indeed in the establishment of Rusal. Instead what is now sought is to change the story somewhat to say that whilst they weren't given an ownership interest in the shares, they were to be given an entitlement that would in effect correspond to them having a beneficial ownership but do not recognise the ownership interest. As I submit, that again is still not a million miles -- despite the pep talk about misleading statements to the bank -- from what Mr Berezovsky says the position was.

So I would respectfully submit that again one has a document that is slap bang inconsistent with the case that Mr Abramovich seeks to present in relation to Rusal.

In the end, as I've already indicated, the position continues to evolve so that what eventually emerges are a suite of contractual documents, the documents that are referred to extensively in the written opening, that do indeed manage to whitewash Mr Berezovsky entirely out of the picture; although even those documents, your Ladyship should know, contain a representation and warranty by Mr Abramovich, in a contract which he makes, that Mr Patarkatsishvili was at all times the beneficial owner of these shares since March 2000.

So even in this changed, parallel-universe world which they start creating, even then you have a document which has Mr Patarkatsishvili expressly warranting that he was the beneficial owner of these shares from I think it's 15 March is the date, which of course is the date of the Rusal sale and purchase agreement that I took you to earlier.

Now, if that is right, if again we are to take what is said there at face value, again that is 100 per cent inconsistent with the story that Mr Abramovich wishes to tell your Ladyship: that he and he alone held an interest in these shares.

Just before leaving this area, can I ask your Ladyship next to go to the document that we have at tab 23: that's at H(A)84, page 64. This is the document

that I was mentioning. This is one of the documents that is finally produced.

For present purposes can I ask your Ladyship first just to glance at who the parties are. Your Ladyship sees that Mr Patarkatsishvili is identified as the beneficial owner. Your Ladyship sees Cliren Investment, that is a Patarkatsishvili company; Rusal Holding is obviously an Abramovich company; and Eagle Capital Group is a Deripaska company.

Can I ask your Ladyship to go to clause 3.1 of this contract at page 66:

"The Beneficial Owner..."

And your Ladyship will recall the beneficial owner is Mr Patarkatsishvili.

"The Beneficial Owner represents and warrants to the Purchaser and the Company that as of Completion:

"3.1.1 during the Period..."

And your Ladyship just may want to glance back to page 65 to see what "the Period" is:

"'Period' means the period commencing on March 15, 2000 and ending on Completion."

So we're here in July 2004. 15 March was the date that the parties make the Rusal contracts.

So just going back to 3.1, Mr Patarkatsishvili represents and warrants that:

"... during the Period..."

That is to say the period from 15 March 2000:

"... [Mr Patarkatsishvili] was the sole and ultimate beneficial owner of the Business Interests..."

Then it goes on to say it wasn't held for the benefit of any other person or any other business interests. It's a rather obscure definition, as many of the definitions in the contracts these parties made were, perhaps deliberately, it certainly covers the Rusal shares.

I just need to make two points about that. The first is the point I've already mentioned: that if this is true, if it is the case that Mr Patarkatsishvili was the beneficial owner since March 15, then, with respect to Mr Abramovich, it shows his case to be utterly untrue because his case is that he was the only person with an interest at the time.

The second point to make is this: as your Ladyship will see, what the parties to this contract have done is to require Mr Patarkatsishvili to say that he was the sole beneficial owner during this period, and that again is an attempt to cut Mr Berezovsky out of the picture.

Now, we have, as you'll see when we come to the Badri proofs, as they've been called, a lot of evidence from Mr Badri effectively saying they made him say this.

Again, we know from a great deal of evidence in this case that Mr Patarkatsishvili did not regard himself as the only beneficial owner. I've already taken your Ladyship to a number of contract documents which say he had this interest with Mr Berezovsky.

So even when they get to the last document, the whitewash of Mr Berezovsky is complete but they can't take Mr Patarkatsishvili out. As I say, this is flat bang inconsistent with Mr Abramovich's case in a document to which he or his company is a signing party.

MRS JUSTICE GLOSTER: And this was actually signed in this format?

MR RABINOWITZ: This was signed in this form, indeed. Your Ladyship sees it being initialled all the way through. Then if you go to page 70 --

MRS JUSTICE GLOSTER: What does the "Beneficial Owner DR", in the bottom left-hand corner, mean?

MR RABINOWITZ: Deed of release; that's the name of this document. I think there were seven documents, I may be wrong --

MRS JUSTICE GLOSTER: I see, that's just the name of the deed. I see, yes.

MR RABINOWITZ: I have no doubt that my learned friend will go to this document in due course, and indeed to other

documents, and say -- you'll remember he has a release argument which says: well, Mr Berezovsky, if he had a claim, has released it. We would respectfully submit that's a hopeless argument and I'm not going to get into it now. But that's one of the documents that was agreed. I think there was seven in all for agreement at this time.

Now, can I next just leave off the documents which are directly related to Rusal. Those are all matters we can ask Mr Abramovich about in due course. Can I take your Ladyship to another document that may assist in relation to a number of issues in this case and that is what we have called the Curtis notes, produced by the late Mr Stephen Curtis, a solicitor and senior partner in Curtis & Co who acted for Mr Berezovsky and Mr Patarkatsishvili at various stages and who made these notes in 2003, prior to his sudden death in a helicopter crash in March 2004.

Your Ladyship will find those in a number of places. I have them in this bundle at tabs 15 and 16. I'll just give the references for those who don't have this bundle. The original notes are at H(A)59/110.00 H(A)59/110.00 and at H(A)59/110.005 H(A)59/110.005 there is a transcript of the notes produced by Mr Curtis's partner in his law firm, Mr James Jacobson.

Just so your Ladyship knows what we're dealing with, at tab 15 we have the originals and at tab 16 we have Mr Jacobson's transcript. I'll in due course take your Ladyship through the transcript, which is obviously there to read. But can I just say something looking at the original at tab 15 before going to the transcript.

Your Ladyship will recall that we've explained in our written opening that it is Mr Berezovsky's case that these are notes of a meeting that took place at Mr Patarkatsishvili's house in Georgia either in early June 2003 or some 12 weeks later, between 21 and 26 August 2003. It was a meeting attended by Mr Patarkatsishvili, Mr Tenenbaum -- your Ladyship will know that Mr Tenenbaum is a very close associate of Mr Abramovich -- Mr Fomichev, and a fourth individual identified in the note only as Igor.

Again, as your Ladyship will have seen from the written openings, there is something of an authenticity challenge to these written notes because although Mr Tenenbaum does not dispute that he did go to a meeting in Georgia attended by Mr Patarkatsishvili, by Mr Fomichev and also by someone who he acknowledges may have been Mr Curtis sometime in 2003, he apparently wishes to dispute that he discussed any of these matters recorded in the note. Although I think what cannot be

disputed -- and I don't think is seriously disputed -- is first that this is a note made by Mr Curtis, it is in his own handwriting; and secondly, and necessarily, the notes must have been made before Mr Curtis's death in March 2004.

Just pausing there, again, it will obvious from that chronology that that is a long time before a dispute in relation to Rusal emerges.

MRS JUSTICE GLOSTER: If there are going to be critical documents, please may you get them transcribed.

MR RABINOWITZ: We have them transcribed and I'm going to show your Ladyship the transcription in a moment. It's at tab 16. The only reason to start with this document is so that your Ladyship can see the -- just looking at this document first. I will go to the transcript because that's plainly easier to read. Top right-hand corner, your Ladyship sees:

,Meeting -- Badri, Eugene..."

That's Mr Tenenbaum.

Then there is a reference to Igor and then there's a reference to Ruslan, who is Mr Fomichev, together with Mr Curtis, who made the note. Then in the middle of the page your Ladyship sees what was a yellow sticker.

I think this has all been inspected in the original by my learned friends. Your Ladyship may wish to know that

the yellow sticker which was found on top of these notes again obviously assists in trying to work out when these notes were produced and by whom. They were produced --

MRS JUSTICE GLOSTER: Well, the lady is coming along to give evidence.

MR RABINOWITZ: She is coming along. It's a note which was made by Ms Jackie Flynn, who was Mr Curtis's secretary in 2000. As your Ladyship remarks, Ms Flynn will be coming along to give evidence to the court and she will confirm that the writing on the sticker is hers. She will also confirm that the writing on the note itself is that of Mr Curtis. I don't, as I say, understand the latter point to be disputed. She will be able to confirm the approximate time before which the notes will have been made because, as she explains, she left Curtis & Co after Mr Curtis's death in early 2004.

Now, as I've indicated, Mr Tenenbaum, as I understand it, doesn't dispute the fact that he was indeed in Tbilisi sometime in 2003 with Mr Fomichev and Badri, Mr Patarkatsishvili, and indeed he acknowledges that Mr Curtis might well have been there as well. So his case appears to be -- and Mr Abramovich's case on this appears to be -- that although Mr Tenenbaum did meet with these people at around this time, Mr Curtis simply imagined the translation and then wrote it down

and then presumably as part of this total sham Mr Curtis also on his return presumably gave these notes to his secretary, told her that they were vitally important and told her that they needed to be filed, all as part of a sham.

In other words, Mr Tenenbaum's and indeed Mr Abramovich's case must be that Mr Curtis, an English solicitor, in 2003 or 2004 deliberately fabricated notes of a meeting and that he said nothing of the sort. In my respectful submission that is, with respect, a somewhat far-fetched position to be taking. Unfortunately, of course, while Mr Tenenbaum can make that sort of allegation about Mr Curtis, Mr Curtis, having died in 2004, cannot defend himself.

In all events, perhaps I can now just invite your Ladyship to look at the transcript version at tab 16.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Can I invite your Ladyship to read through the whole of this and then I'll make, if I may, some observations on it. (Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: May I just make a few observations about this.

First, as your Ladyship sees from the extract from side one of card one -- that's the first page of this --

there is a discussion about the initial acquisition of aluminium assets by the Sibneft shareholders. That's the first two paragraphs. Your Ladyship sees not only a reference to the shareholders of Sibneft buying most of these plants, and one is dealing there with the aluminium plants, but one also sees Mr Patarkatsishvili as recorded as having noted that the shareholders of Sibneft were Boris, Badri and Roman; that is to say Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich.

That, of course, confirms two aspects of Mr Berezovsky's case and, if right, is utterly destructive of Mr Abramovich's case in that it shows first that all three were Sibneft shareholders and second that all three participated in the aluminium acquisitions.

Secondly, and again just staying with card one, side one, so still on the first part of this page, your Ladyship sees in the last three sentences before side two:

"Agreed with R..."

That's Roman, Mr Abramovich.

"... [and] Partner into Russian Aluminium --  
Shareholders 50/50.

"We agreed 25 B/B..."

That's Boris and Badri, Mr Berezovsky and

Mr Patarkatsishvili].

"... 25 Roman."

That is Mr Abramovich.

"We are passive shareholders so R..."

That's Mr Abramovich.

"... operating partner and every year we get dividends from [aluminium] activities."

Again, as your Ladyship will appreciate, that precisely accords with Mr Berezovsky's case as to the arrangements that were made in relation to Rusal. If this is an accurate reflection of the position, it is 100 per cent inconsistent with Mr Abramovich's position. Indeed, if this is correct, Mr Abramovich is plainly coming to the court to give your Ladyship evidence which simply cannot be true.

Now, third, and just looking at card one, side 2, so halfway down the first page here, there is then a discussion about Mr Abramovich acquiring the 25 per cent Rusal shares held by Mr Patarkatsishvili and Mr Berezovsky. This then goes on for most of the note, as your Ladyship has seen. There is a discussion as to how one is going to bring this about.

If your Ladyship can just go over the page and if I can ask your Ladyship to glance at card two, side 3, your Ladyship sees that we have Mr Tenenbaum -- that is

T -- apparently acknowledging an awareness of the structure used for the sale of the Sibneft holding:

"Eugene was asking if liked structure for [Sibneft]/[Badri] yes. Problem complicated and costly."

Your Ladyship knows that despite this, Mr Abramovich claims that he was completely unaware of the Devonian sale agreement and the structure that was used. So again, if this is accurate, that evidence again would appear not to be true.

We then have a discussion about the way in which the Rusal shares were then held: that is to say all through BVI companies with bearer shares. Your Ladyship sees this:

"... problem is existing shares are..."

This is Mr Tenenbaum speaking:

"... problem is existing shares are bearer company with bearer shares."

Then just picking it up on side 4, Tenenbaum again:

"Problem -- shareholders of [Rusal Aluminium] -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 not RA."

MRS JUSTICE GLOSTER: What does that mean on your --

MR RABINOWITZ: I'm going to tell your Ladyship what it means. It relates to this. The arrangements that had been made between Mr Deripaska and Mr Abramovich as to

how the 50/50 holding would be split with regard to the Rusal shares was unusual, it was counterintuitive, in that what they did was they set up -- and this evolves over time but certainly the position is as at this stage there were six BVI companies holding the shares in Rusal. What they didn't do was to say that three would be Abramovich companies and three would be Deripaska companies. The way they set it up was they each held 50 per cent of the six BVI companies. So, in a sense, they locked their positions together at that level.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So what Mr Tenenbaum is saying, first accurately saying about the BVI companies all being bearer shareholdings, and secondly:

"... shareholders of [Rusal Aluminium] -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 not RA."

Not Mr Abramovich. It precisely reflects what I've just said to your Ladyship.

Now, in our respectful submission what is interesting and important about that is this: this information about the structure by which the Rusal shares were held is information that would have been known to Mr Tenenbaum. Indeed, Mr Tenenbaum in his evidence accepts that it is information he would have

had. That, for your Ladyship's note, is E3, tab 11, page 110 E3/11/110, paragraphs 1103 and 1104. That sort of information, however, is not the sort of information that one would expect Mr Curtis, who apparently made this note up, to have. In our respectful submission, that again is an important indication of the authenticity of this note.

The second point I want to make relating to card two, side 4, is this. Your Ladyship sees at the end of side 4 Mr Tenenbaum is recorded as saying:

"... we have already made certain disclosures in market [and] we will have to consider what we have said -- Not to public.

"But to banks/insurance [companies]."

Now, as your Ladyship sees, this is put forward by Mr Tenenbaum in response to what Mr Curtis was saying should be the way in which the transactions should be accomplished. If your Ladyship goes back -- it's really the bottom of side 3 and also side 4, particularly the long paragraph where you see the S, where he's saying:

"... if shareholding already at BVI level it is easy to transfer ownership once we have established ownership route to RA -- no need to show changed in Russia just in BVI ... as going to have to change because of law..."

I'll come back to that.

"... good reason to show real. No need to show sale -- just say this was the true position -- reflecting actual position."

So what Mr Curtis appears to be saying is: transfer the shares into the names of Mr Berezovsky or Mr Patarkatsishvili or into their ownership because that would reflect the true position or the actual position. Mr Tenenbaum's response to that, in language that in my respectful submission echos the draft letter from Akin Gump we've just seen, is that, "We need to be careful about doing that because of representations we have may have made to the banks". Your Ladyship will recall that Akin Gump draft.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We don't have Mr Tenenbaum in this note saying, "That's not the actual position. That's not the real position". What we have is him saying, "Well, we need to be careful about the actual real position being reflected because of representations made to the banks".

MRS JUSTICE GLOSTER: Did Mr Curtis speak Russian?

MR RABINOWITZ: No, he didn't, but Mr Fomichev, who was at the meeting, did, he spoke English as well, and Mr Patarkatsishvili I think spoke English and Russian. Mr Tenenbaum plainly spoke English and Russian. I think Mr Patarkatsishvili's Russian was not fantastic.

MR SUMPTION: His Russian was excellent but his English was not fantastic.

MR RABINOWITZ: Sorry, it's the other way round.

Can I then also just make this point about this note. If your Ladyship looks at the last sentence recorded as coming from Mr Curtis on card two, side 3:

"S -- changing [bearer] shares now in BVI -- so do have to be registered anyway -- can transfer shares in BVI."

That's a response to Mr Tenenbaum making a comment about bearer shares.

As your Ladyship just sees, going again down to side 4, again there's a reference to BVI: the position of BVI is going to "change because of law". Your Ladyship sees that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: What again we would respectfully submit is interesting about this is that we know that at the time in the BVI there was new legislation being brought in to regulate the ability of companies in the BVI, and in particular international business companies, to issue bearer shares. What we appear to have Mr Curtis doing here in this note is referring to this legislation which is about to come in and which was about to restrict your ability to deal with bearer shares in the way that I'm

told then had been the case, and that is, for your Ladyship's note, the IBC (Amendment) Act 2003.

Now, the interesting point, in our respectful submission, about that is this. Mr Tenenbaum wants to say to your Ladyship that this is a sham; this note was simply (inaudible). If it was a sham, then in our respectful submission it was an incredibly sophisticated sham to have Mr Curtis here, in the context of a discussion about bearer shares and BVI company, dropping into the conversation the new change in BVI laws relating to bearer shares. So if it really was a fictitious note made up by Mr Curtis, then I have to say it was an incredibly detailed and sophisticated one, given the references made to this BVI legislation then being introduced.

So I would just repeat this about this note, my Lady: unless the Curtis notes are indeed bogus, they provide the clearest possible evidence that Mr Abramovich's whole case before this court, both in relation to Sibneft and in relation to Rusal, is simply dishonest and untrue. That is why the authenticity of these notes is such an important issue.

Can I then move on to deal with the Le Bourget transcript. Your Ladyship is, I suspect, very familiar with the background to Le Bourget, not least because it

has been so extensively referred to in the written openings. That in my respectful submission is hardly surprising because it is, we would submit, another of the key documents in this case.

It is a key document because it captures the unguarded exchanges at least on the part of Mr Abramovich and Mr Berezovsky, neither of whom were aware that Mr Patarkatsishvili was secretly recording the conversation, covering a number of the key aspects of this case, including the nature of the parties' relationships as regards Sibneft and the nature of the relationship as regards Rusal.

It also, in our respectful submission, assists your Ladyship enormously with regard to the nature of the relationship between these men. Were they friends and partners or was their relationship, as Mr Abramovich contends, more criminal in nature, in the sense that he had been paying Mr Berezovsky for corrupt political practices and criminal protection? Again, in our respectful submission, the answer to that question also emerges very clearly from the Le Bourget transcript. So it is an important document.

As your Ladyship is aware, we've dealt in detail in writing -- and this is in our written opening at paragraph 60, page 42 in section B B(A)1/01/42 --

first with the history of the recording and its introduction as evidence in these proceedings; secondly with what we submit was Mr Abramovich's obvious discomfort when the recording was introduced as evidence in these proceedings; and third, with the fact that Mr Berezovsky has of course obtained evidence to establish that the Le Bourget transcript is indeed genuine.

Again, as your Ladyship is aware, we have set out the key extracts from the Le Bourget transcript in our written opening at the points where what is said there is material. Given that, I don't propose to spend too much time now dealing with it. In our submission, however, given the very central role that this is likely to play, it might just be worth taking a short bit of time to introduce your Ladyship to the document as it appears in the files. Can I ask your Ladyship -- it's in fact in tab 29 of this file. It's at E6/tab 01 of the trial bundles E6/01/1. Just.

So that I can explain the position to your Ladyship about this, there is a separate transcript of the Le Bourget conversation in the bundles -- for your Ladyship's note, that is at H(A)24, page 1T H(A)24/1T -- but the parties have tended, in my respectful submission sensibly, to use this version of the document

for the purposes of their submission and I suspect will continue to do so because, as your Ladyship sees, it is a composite document in nature.

Just to show your Ladyship the way this works -- it's fairly obvious but I just show your Ladyship -- if your Ladyship goes to page 3, your Ladyship sees columns, left-hand column "Speaker", and just paging forward we have "P", "B", and if you go a few pages on to page 6 you see "A". "P" is Mr Patarkatsishvili, "B" is Mr Berezovsky, and "A" is obviously Mr Abramovich.

It's recorded in the airport and it starts -- you only hear Mr Patarkatsishvili and Mr Berezovsky at the outset because they're waiting to find Mr Abramovich. You see tannoy announcements coming across. So we have the speaker identified, then we have the Russian text and English translation. I think although there are some outstanding issues in relation to the translation, the parties are pretty close in terms of getting towards an agreement where that matters.

Then, as your Ladyship sees, the last two columns, one has Mr Berezovsky's commentary and then Mr Abramovich's commentary. Your Ladyship I expect will find that very helpful as one goes along.

Now, again, we are likely to be spending some time on this, certainly with Mr Abramovich when he comes to

give his evidence, and I don't propose now to use up much time with it. We have set out the key parts of the transcript in our written document. Can I just remind your Ladyship of some of the main references to this. I'm not going to take your Ladyship to it; I will just, if I can, identify it.

MRS JUSTICE GLOSTER: I have it in the bundle.

MR RABINOWITZ: Boxes 456 to 470, beginning at page 159 and going through to page 165, that deals with Sibneft. We have set out the relevant passages at paragraph 228 to 230 of our written opening, pages 122 to 124 in section D B(A)1/01/122.

Boxes 495 to 510, beginning at page 170 and going through to page 175, that deals with both Sibneft and Rusal. Again, we've set out most of that at paragraphs 488 and following of our written opening, page 249, section G B(A)1/01/249.

Boxes 518 to 555 begins at page 177 and goes through to page 187. That deals with both Sibneft and Rusal and is also very helpful, we submit, in deciding whether these individuals were partners or persons in a Krysha relationship.

Finally, boxes 488 to 592, beginning at page 194 and going on to page 195, again dealing with all of those issues.

Now, as I say, I'm not going to take your Ladyship through that now; it's been set out in our written document and theirs as well. Can I just say this about Le Bourget, and that is to do with the authenticity challenge because although at the outset it appeared there was going to be a very substantial authenticity challenge to this, that seems to have largely disappeared. We are left with really what is rather a minor challenge to this document.

Can I perhaps take this by asking your Ladyship to go to annex C of our written opening, where we explain the position in this regard. Page 668 of that document B(A)3/668.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: If I could just show your Ladyship paragraph 3, which sets out what is left of the --

MRS JUSTICE GLOSTER: Yes, I've read all this.

MR RABINOWITZ: Okay. If your Ladyship has seen that, then I don't need to take your Ladyship to anything.

So that is the Le Bourget transcript. Now, what I was proposing to do next, my Lady, is just to say something about evidence that has been given in other proceedings that may be material to the matters which your Ladyship has to decide; in particular where evidence has been given by parties who, for whatever

reason, have declined to come before this court to give evidence.

I would respectfully suggest that there are perhaps two reasons that it may be worth just spending a short time on this evidence. The first reason is that given that the parties have chosen not to call any evidence, and I have in mind in particular the family defendants, given that they've actually decided not to call any witnesses --

MRS JUSTICE GLOSTER: This is the Gibraltar proceedings.

MR RABINOWITZ: This is the Gibraltar proceedings. This may be the only occasion on which your Ladyship gets to see this evidence.

The second reason, which is related to that, is this: in my submission the evidence highlights what I would submit is the somewhat strange game being played in these proceedings by the family defendants. Your Ladyship will recall we spent some time in our written opening, especially at annex B, that's page 660 B(A)3/660, describing the convulsions in the family defendants' position and how, despite having previously admitted that Mr Patarkatsishvili and Mr Berezovsky were (a) partners and (b) partners who had an ownership interest together in both Sibneft and Rusal, they have for the purposes of this litigation now adopted a wholly

different position altogether more hostile to Mr Berezovsky.

What I would like to do is just to show your Ladyship some of the evidence -- it won't take very long -- that has previously been given about these issues by Ms Gudavadze, the wife of Mr Patarkatsishvili, in proceedings in Gibraltar. Your Ladyship knows which proceedings I have in mind. Does your Ladyship feel you know enough about what those proceedings were about or shall I take a minute just to...?

MRS JUSTICE GLOSTER: I read, and I read it yesterday evening in fact again, annex B. If there's anything in addition to that you would like to tell me, please do.

MR RABINOWITZ: Annex B is about the change in case rather than the evidence so perhaps I can just say something about the Gibraltar proceeding and show your Ladyship just a little bit of evidence.

MRS JUSTICE GLOSTER: Yes. Where do I find it in the first volume of your main skeleton?

MR RABINOWITZ: Perhaps I can just show your Ladyship the evidence. You will find it in this bundle, tab 31, so right at the back. The bundle reference is S1, tab 13, page 201 S1/1.13/201.

Again, just so your Ladyship has this, the Gibraltar proceedings were proceedings commenced in April 2004 in

the Chancery Division of the Supreme Court of Gibraltar by Miselva Etablissement, a Liechtenstein trust company, and Nexus Treuhand AG, a Swiss trust company. Nexus and Miselva were respectively trustees of two trusts, the first named the Valmore Trust, the second the Summit Trust. The trustees sought directions from the Gibraltar court as to how to distribute assets in their trusts.

The defendants to that claim were Ms Gudavadze, the widow of Mr Patarkatsishvili, Mr Kay and two daughters of Mr Patarkatsishvili to his marriage with Ms Gudavadze: that's a Ms Iya Patarkatsishvili and Ms Liana Zhmotova. The main issue in that litigation concerned who was the real settlor of this trust, was it Mr Patarkatsishvili or Mr Kay; and for whose benefit had these trusts been established, for the benefit of Mr Patarkatsishvili's family or for the benefit of Mr Kay.

In the course of those proceedings, evidence was given by a number of people about the assets which were understood to have been owned by Mr Patarkatsishvili and also about Mr Berezovsky's relationship to those assets, including Ms Gudavadze.

What one finds at S1, tab 13, page 201, at tab 31 of the bundle I've handed up, is evidence given by

Ms Gudavadze. On the top left-hand corner your Ladyship has page 109, I hope.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It's almost impossible to read, I'm afraid, and I apologise for that.

I understand Ms Gudavadze is in court at the moment so is plainly not unable to come and give evidence.

What we have -- I don't know whether your Ladyship has this up on the screen?

MRS JUSTICE GLOSTER: Yes, I have.

MR RABINOWITZ: Question:

"You see, another thing is this: I don't know whether you know about, he is discussing his business with you" --

MRS JUSTICE GLOSTER: What line?

MR RABINOWITZ: Sorry, line 1. The question is this:

"... he is discussing his business with you, you know that he sold most of his Russian assets over time after he left Russia in, was it 2001?"

Ms Gudavadze:

"Yes, he sold part of his assets.

"Question: He sold Sibneft, he sold ORT, he sold his interest in Rusal?

"Answer: Yes."

So she agrees.

So your Ladyship sees there's an exchange between counsel and Ms Gudavadze and she's asked about Sibneft, ORT and Rusal, and we see that she appears to confirm that Mr Patarkatsishvili both had and disposed of an interest in Rusal and indeed in Sibneft. That of course is entirely consistent with Mr Berezovsky's case and of course wholly contrary to Mr Abramovich's case and indeed no longer squares with the family defendants' own pleading.

Perhaps I can just ask your Ladyship next to go to tab 13.

MRS JUSTICE GLOSTER: Who is cross-examining or examining here?

MR ADKIN: My Lady, I can assist: it's Mr Kay's counsel, Mr Steinfeld was cross-examining at this point.

MR RABINOWITZ: Can I ask your Ladyship next to go to tab 30. Top left-hand corner --

MRS JUSTICE GLOSTER: What was the issue that the trustees were raising: who was the settlor?

MR RABINOWITZ: They wanted to know who was the settlor of the trust. Mr Kay was obviously saying he was the settlor of the trust and that he should therefore have been entitled to the benefit of his trust. The Patarkatsishvili family were saying Mr Patarkatsishvili was the settlor of this trust and they were entitled to

the assets. So the question of the assets and who owned them was very much part of the issues in dispute.

Now, at tab 30, there's S1, tab 12, page 200 of the trial bundle S1/1.12/200. Your Ladyship has page 30 of the transcript. Again, I think this is Ms Gudavadze giving evidence:

"What sort of details..."

Perhaps one should pick it up at the bottom of page 29.

"Question: I am not going to go back, I assure you, to the memorandum of understanding. Did [Mr Patarkatsishvili] discuss with you his business dealings with Boris Berezovsky?"

"Answer: His business dealings with Berezovsky, to certain extent yes. Yes.

"Question: What sort of details did he give you about those?"

"Answer: I had general knowledge of Sibneft or RusAl, Kommersant was more close to me because I was taking part in, in fact, when Badri purchased Kommersant, about ORT.

"Question: Did he, for example, ever mention that he had an oral arrangement or partnership with Boris Berezovsky? Did he mention that to you?"

"Answer: Yes, until 2006, yes, they were partners."

Your Ladyship knows there's a dispute in the Chancery Division about whether or not that partnership ended in 2006 but what one has here is, again, Ms Gudavadze making perfectly clear that to her knowledge they were indeed partners, Mr Berezovsky and Mr Patarkatsishvili.

Now, it wasn't just Ms Gudavadze who in her evidence appeared to say that she knew and understood not only that Mr Berezovsky and Mr Patarkatsishvili were partners but also that they had ownership interests in both Sibneft and Rusal; in fact, that was their whole case at this trial.

Can I ask your Ladyship next, please, to go to tab 32 of this bundle. It's S1, tab 14, page 202 S1/1.14/202. You should have page 114 of the transcript of 12 June 2009. Page 114 is at the top right-hand corner.

This is Lord Goldsmith, who was acting for Ms Gudavadze and her family, and he was cross-examining Mr Kay at this stage. I can tell your Ladyship that just prior to obviously appearing in this way, Lord Goldsmith had actually met with Mr Patarkatsishvili on the day that Mr Patarkatsishvili died.

Here we have Lord Goldsmith saying this, if I can pick it up at about line 6:

"Question: Let's just be clear what this deal was. We know from other evidence, don't we, that as a result of pressure being put on Berezovsky and Badri, they had to sell certain businesses including Sibneft to Roman Abramovich?"

Now, there is a debate, as your Ladyship knows, about what Badri's evidence would have been had he lived. But we have here Lord Goldsmith putting this case:

"... as a result of pressure being put on Berezovsky and Badri, they had to sell certain businesses including Sibneft to Roman Abramovich?"

"Answer: That is correct.

"Question: And they had direct communications with Abramovich about this; isn't that right?"

"Answer: Direct and... through us as well.

"Question: It was decided that the deal was going to be done through a third party so that the money would not actually go... from Abramovich to Berezovsky and Badri?"

"Answer: It couldn't go directly.

"Question: Because the Russian Government would have taken exception to that; is that right?"

"Answer: Yes."

And then Mr Kay talks about it going through the

sheikh.

They are talking, as your Ladyship sees there, about Sibneft. It's absolutely part of the family defendants' case -- sorry, Mr Gudavadze's case and her daughters -- that Mr Patarkatsishvili did indeed have an interest in Sibneft and he did indeed sell that interest with Mr Berezovsky to Mr Abramovich.

Again, one has to compare that with the position that they are now taking in this litigation. They put a positive case before the Gibraltar court that Mr Patarkatsishvili and Mr Berezovsky were partners with an interest in both Sibneft and Rusal and perhaps, given that positive case, it's not surprising that Ms Gudavadze or indeed any of the other family defendants have decided not to come and give evidence to your Ladyship about these matters.

My Lady, this, we would submit, does bring into focus the appropriate scope and role of the family defendants in this trial. They have, as your Ladyship knows, served no witness statements at all, although it is clear from what I've shown your Ladyship the only thing those witness statements could have said if they had been served. But what they have done, wherever possible, my Lady, is to take a position in this litigation that is -- wherever they can do this and

indeed in circumstances where they can't properly do it -- adverse to Mr Berezovsky and his interests.

I stress that they do it even when they cannot legitimately take that sort of position because, as your Ladyship knows -- your Ladyship will have seen this in our written opening -- they have entirely trampled over what your Ladyship ordered in relation to the scope of their wrong with regard to the overlap issues when one comes to deal with the Russian history evidence and the Russian law.

MRS JUSTICE GLOSTER: I haven't let that evidence in yet, have I?

MR RABINOWITZ: You Ladyship hasn't let that evidence in. We're going to suggest that it should be excluded because there is something very odd about the way the family defendants are behaving here.

I'm going to show your Ladyship what we say about the Russian law position because we've never even had an attempt to answer why they've taken this position. Perhaps I can just pick this up. We had the same problem with the history evidence: they simply run roughshod over what your Ladyship made clear was the proper extent of their role, to put in whatever they can to hurt Mr Berezovsky's interests. Their Russian law position is just an egregious disregard of what your

Ladyship has said.

Can I just show your Ladyship -- pick it up from our written opening. Your Ladyship will find this in paragraph 950 on page 470 of our written opening, so it's section O, volume 2 B(A)2/470. Just picking this up at paragraph 950. I'll just pick it up from after the "Nonetheless":

"... the Family Defendants have served an expert report..."

I'm not going to deal with the Russian history position but I have to say it is not much better. It is marginally better because they do manage to trespass on a relevant issue there, but here they don't even manage that.

"... the Family Defendants have served an expert report on Russian law from Professor Peter B Maggs. This report addresses two questions as a matter of Russian law: whether the Dorchester Agreement was a binding contract under Russian law, and whether Russian law recognised the concept of trusts and trust property at the time of the Dorchester meeting: Maggs..."

"Professor Maggs' report does not go to any Overlap Issue and it is respectfully submitted that it is wholly inadmissible and should be excluded:

"(1) Neither Mr Berezovsky nor Mr Abramovich

maintain that the Dorchester Agreement was a binding contract under Russian law, or that any trust property arose under Russian law in respect of that meeting or RusAl.

"(2) Professor Maggs concludes that he is in full agreement with the opinions of Mr Rozenberg and Dr Rachkov on the questions which he has been asked to consider...

"(3) Hogan Lovells have not been able to identify any pleaded issue to which Professor Maggs' evidence relates. Nonetheless they insisted on Professor Maggs attending the Joint Meeting of Experts on Russian law, even though he was in full agreement with his fellow experts on the issues he had been asked to consider...

"(4) Professor Maggs proceeds in his report to comment, however, on other issues of Russian law which have been debated between Mr Rozenberg and Mr Rachkov in the context of the Sibneft claim -- a claim that does not give rise to any Overlap Issues or concern the Family Defendants in any way."

Then we said:

"(5) It is an abuse of process for the Family" --

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Your Ladyship should also know that we kept writing to them saying, "Well, you tell us, what is the

pleaded issue which this relates to?" No response which engaged with that at all. They just, in a sense, filibustered their way into that position.

The irrelevance of the Russian law to the family defendants' position is perhaps highlighted by the fact that it is not mentioned once at all in the 50 pages of their opening submissions. It's not there, and that's not surprising, because it just doesn't arise on the overlap issue.

As I've indicated, it will be our submission -- we've warned the family defendants about this -- that your Ladyship should exclude this evidence entirely. There is no permission for it; it is utterly irrelevant; it will be a huge waste of time if we have to cross-examine Professor Maggs about it at length just because of the way he tries to give support to Mr Abramovich's own experts on matters which have nothing to do with the overlap issue.

The only matter of relevance that arises from this, I would suggest, is why the family defendants have chosen to act in the way they have, notwithstanding that it must have been obvious to them that they had no basis whatever for wanting to adduce this evidence in circumstances where it so obviously went beyond the overlap issue. The family defendants are, as I've

suggested, playing a rather odd game here and, as we've indicated in our written opening, Mr Berezovsky has a general concern about what precisely lies behind this.

Finally in terms of documentation, can I next say something about the evidence your Ladyship has from Mr Patarkatsishvili. It will be clear to your Ladyship from the written openings that this evidence has something of the curate's egg about it, with both parties claiming that it provides them with assistance.

As your Ladyship may perhaps have observed, there is rather a lot of material collected from the various solicitors at various times from Mr Patarkatsishvili before he died in February 2008. Although it is fair to say, I would submit, that the process was far from completed, even on the evidence that Mr Patarkatsishvili had by the time of his death given to his solicitors, there is at least some material that would assist the court.

Your Ladyship will be aware that these are very substantial -- I plainly don't have the time to take your Ladyship through all of this, I suspect we're going to see a fair amount of it in the course of the evidence, but if I can just take your Ladyship to one or two extracts that might assist.

Can I ask your Ladyship --

MRS JUSTICE GLOSTER: Shall I have a ten-minute break for the shorthand writers?

MR RABINOWITZ: Yes.

(3.10 pm)

(A short break)

(3.24 pm)

MR RABINOWITZ: My Lady, I was about to show you some of the evidence taken from Mr Patarkatsishvili before his death in February 2008. Can I invite your Ladyship first to go to tab 25 in this bundle: H(A)96, page 151 H(A)96/151.

At tab 25 your Ladyship should have a draft and unsigned witness statement that had been produced by Cadwalader, who were then the solicitors on the record for Mr Berezovsky. As Ms Duncan, the Cadwalader partner, and Mr McKim, her assistant, explain, in evidence they will give to your Ladyship in due course, this is a document they had put together following first their review of the earlier notes that had been taken by Mr Berezovsky's previous solicitors of Mr Patarkatsishvili's evidence; and secondly, evidence that they had collected following meetings over two days with Mr Patarkatsishvili, with Mr Berezovsky also present, in Tel Aviv on 29 and 30 November 2007.

I take your Ladyship to this first because although,

as will be clear to your Ladyship, it is still a work in progress -- one sees that because there are from time to time notes from the solicitors asking further questions; they are still trying to get all the relevant information from him -- it does represent, I would suggest, a very much better understanding of Mr Patarkatsishvili's position on the key issues than any earlier notes, which, although certainly useful, are necessarily much rougher in terms of gathering Mr Patarkatsishvili's view of things that would be the later notes.

At this stage I don't want to take up too much time on this. As I say, they are likely to be referred to at length during the evidence of the witnesses. Can I perhaps take your Ladyship to one or two passages -- in fact that's a lie, I'm going to be taking you to more than one or two passages -- but can I begin by taking your Ladyship to paragraph 12 on page 154.

Just if I can show your Ladyship what is said here:

"In a series of discussions between myself, Boris and Roman, we agreed that any interests we acquired in Sibneft would be beneficially held as to 50% by Roman, and as to the remaining 50% by Boris and myself."

I'm happy for your Ladyship to read the whole of that --

MRS JUSTICE GLOSTER: Shall I read all that for myself?

MR RABINOWITZ: Indeed. (Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: As your Ladyship sees, at the beginning he says:

"... we agreed that any interests we acquired... would be beneficially held as to 50% by Roman, and as to the remaining 50% by Boris and myself."

He says he remembers the principle of 50/50 sharing very clearly, in the last line. Again, if that is right, that is again completely contrary to Mr Abramovich's case.

Paragraph 19 on page 156:

"We first became involved in the aluminium industry in 1999 at the time aluminium assets became available in the market. I was of the view that this sector represented a good opportunity and I shared my opinions with Boris and Roman. They agreed with me and we decided to purchase aluminium assets with funds generated through our core shareholdings in Sibneft."

Then paragraph 25 on page 158:

"The final agreement for the creation of RusAl was reached at a meeting at the Dorchester Hotel in Park Lane... in March 2000. It was agreed that we would merge our aluminium assets, KrAZ, BrAZ", et cetera --

MRS JUSTICE GLOSTER: I've read all that.

MR RABINOWITZ: "The shares in RusAl were to be held between [Mr Deripaska]... and ourselves in the ratio of 50:50; the shares were held 25% Boris and myself, 25% Roman and 50% Deripaska."

MRS JUSTICE GLOSTER: I've read a few of these.

MR RABINOWITZ: Perhaps I can point your Ladyship to it and if you've read it, I won't read it again.

MRS JUSTICE GLOSTER: It may be that I haven't actually read the paragraph that you've taken me to, but certainly in the course of my pre-reading I've read a few of these documents.

MR RABINOWITZ: All right. Can I ask your Ladyship next to go to paragraph 51; that's at page 163.

MRS JUSTICE GLOSTER: Yes. Let me just read that.

MR RABINOWITZ: In fact, can I invite your Ladyship to read from paragraph 51 down to paragraph 60 on page 165.

(Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: Then paragraph 65 on the following page:

"I reiterate that had Roman not exerted the pressure I discuss above I would never have contemplated selling my stake in Sibneft. It was a growing company in which I had invested significant sums, and that was becoming increasingly profitable, and its dividends represented

my principal source of income once the business was up and running. There was simply no good commercial reason for us to sell when we did -- it was solely down to Roman's pressure."

Then, if your Ladyship has read that, I can invite you to go to paragraph 68 in relation to the sale of Rusal; that's at page 167.

MRS JUSTICE GLOSTER: Just give me the date again of this proof.

MR RABINOWITZ: It was taken in 2007, I think November 29 and 30. It has a date at the bottom, 14 December 2007. It followed meetings with Mr Patarkatsishvili and Mr Berezovsky --

MRS JUSTICE GLOSTER: That's the computer-generated date of the document?

MR RABINOWITZ: Indeed. There were meetings -- they took notes at meetings which took place in Tel Aviv on 29 and 30 November 2007.

MRS JUSTICE GLOSTER: Yes, thank you. Where do you want me to read to now?

MR RABINOWITZ: Paragraph 68, I think that may be what your Ladyship just has read. If your Ladyship has read that, then paragraphs 78 and 79.

MRS JUSTICE GLOSTER: These are the documents you were taking me to this morning, is that right?

MR RABINOWITZ: Indeed. Your Ladyship sees in particular paragraph 79 where he says --

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: -- can't see the documents. So, as I say, this is not signed, indeed it's not finally approved by Mr Patarkatsishvili but it's the last stab at trying to get evidence from him and, in our respectful submission, on the key elements it certainly helps Mr Berezovsky's case.

I entirely accept, as I think is clear from my learned friend's skeleton, that there are other aspects of the documents, the notes taken from Mr Patarkatsishvili to various solicitors that my learned friends can rely on and indeed they do, but I would make two points about the earlier notes on which they rely.

First, that in my respectful submission one is much more likely to have got closer to the true position as those asking the questions became more familiar with what the issues were really about than is the position with the earlier conversations where there was much more room for misunderstanding.

Secondly, that even in the earlier notes of conversations that my learned friends would prefer to rely upon, even then two things are very clear and both,

if true, suggest that Mr Abramovich's entire case before this court is false.

Those two things are, first, that Mr Abramovich was not the owner of Sibneft on his own and that in fact Mr Berezovsky and Mr Patarkatsishvili were his partners and, secondly, that Mr Abramovich is again simply not telling the truth when he suggests, again, that he and he alone was the acquirer of the aluminium interests in 2000 or indeed the person beneficially entitled to the 50 per cent interest in Sibneft.

Can I therefore take your Ladyship to the first occasion on which notes were taken from Mr Patarkatsishvili as to what his understanding of the position was in relation to these matters. In the bundle that I've handed to your Ladyship, you'll find these or at least some of them at tab 24. It's at H(A)89, page 220 H(A)89/220, for those of you looking at the screen.

Just to say what these notes are, this is a transcript of notes which were made following the first meeting with Mr Patarkatsishvili which took place in Tbilisi, Georgia, I think the meeting was on 29 June 2005. It was attended by, among others, Mr Andrew Stephenson, a partner from Carter Ruck, and Mr James Lankshear, a partner from Streathers. My Lady,

the notes that begin at page 220 are a typed-up version of those made by one of the attendees at that meeting, I think it was Mr Stephenson.

Whilst there is a fair amount of material, perhaps for present purposes I can invite your Ladyship to go to page 224, where we get an indication of Mr Patarkatsishvili's evidence to these solicitors of the position in relation to Sibneft. It's above the page:

"Purchase of Sibneft.

"Badri cannot give exact answer -- maximum amount of RA - several million US BP less than 10 m[illion] ...

"All rest our resources -- bank credits -- BB negotiated everywhere, worldwide -- pledged everything -- BP clear understanding serious money.

"Offers to sell after elections to sell for billions -- results of election."

Then this is the key aspect of this for present purposes:

"Sibneft shareholders.

"50/50.

"Roman 50 -- BP/BB 50%.

"Roman who brought idea -- in while RA idea to make business -- from beginning want to split 3 ways -- RA know how to run business. No human resource to manage

company. Wanted RA to feel as partner."

That's a clear indication as to what Mr Patarkatsishvili's understanding again was of who were the shareholders in Sibneft.

Then, if I can invite your Ladyship next to -- well, just look again, still on page 224, to what he says about Rusal:

"Rusal.

"BP, Vasiliy -- co-owners of aluminium company. Lev Boiko -- Rossiskaya -- Lev -- owned 75%..."

He's identifying the various interests.

"BP helped to solve problem -- Chernoi and Anisimov -- saw BP help very important -- could do more if a partner -- invited to buy other aluminium resources ... new [negotiations] in BP's presence; his office achieved success in this."

Just scrolling down, your Ladyship sees:

"Alfa Group was enemy for Lev Chernoi -- ask BB what to do, BB [that's Mr Berezovsky] talk to [Mr Abramovich] -- went to Roman office -- let's go -- take these actions -- we start [negotiations]."

And then this:

"Buyer, not middlemen."

So, again, it's perfectly clear, I would submit, what his position is about this and it becomes clearer

still if your Ladyship goes to page 229.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: This is under the heading "Rusal":

"Shares held by [Mr Abramovich];

"50% jointly with [Mr Abramovich] --

"Found Roman negotiating sale of his 25%.

"RA -- holding [negotiations without] informing us.

"After [Abramovich] sold 25% -- invite him to talk of future -- Badri told RA didn't want to stay alone against Deripaska -- wanted to sell -- [Abramovich] represented common interests -- didn't want to have to deal with Deripaska directly."

Your Ladyship sees what is said there, plainly again Mr Patarkatsishvili confirming that the 25 per cent that was unsold was shares in which he had an interest.

Then in terms of the Sibneft sale and the reasons why there was a payment of 1.3 billion, your Ladyship may wish to glance at page 228. Can I invite your Ladyship just to read what is said about the position at page 228. (Pause)

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: In my respectful submission, my Lady, the key thing that emerges from what one has at page 228 is this. As your Ladyship knows, Mr Abramovich -- it goes to why the 1.3 billion was paid which in a sense is, as

I indicated at the outset, one of the key issues in this case. Mr Berezovsky's case has always been that that was paid in respect of his Sibneft interests and it was at an undervalue and that he was pressured by Mr Abramovich to sell, with threats having been made. Mr Abramovich's position, of course, is that the \$1.3 billion was not paid in respect of any interest at all. It was, in a sense, a gratuity. He was paying these people even though, on his case, they couldn't give him anything. There was nothing more that they were doing for him, they were not selling him anything, he previously paid them for something, he says, services, and he was just paying this for little more than gratuity purposes.

Again what one has here is Mr Patarkatsishvili making it clear that certainly his understanding was that he was selling an interest in Sibneft. Again, in our respectful submission, if this is right, that undermines in a very serious way Mr Abramovich's case.

Now, that is all I was proposing to show your Ladyship from this. As I say, there are plainly bits in these unfinished documents where evidence is still being gathered that both sides can and do rely upon, but what I would submit --

MRS JUSTICE GLOSTER: Just before you leave page 228, the

last paragraph there, how do you analyse:

"Initiative of Badri -- where complaining -- better option to sell [and] to stop pressure"?

MR RABINOWITZ: That is Badri coming to Mr Berezovsky.

Mr Berezovsky never wanted to sell, Mr Patarkatsishvili was much more willing to sell than Mr Berezovsky. So what appears to be happening here is Mr Patarkatsishvili is saying that, as between the two of them, he was the one who was saying "We should sell". That again reflects Mr Berezovsky's ambivalence.

What I would submit is clear from these documents and this evidence is that, if these notes do prove to be reliable evidence about the position in relation to Sibneft and Rusal, then the case that Mr Abramovich has put before this court on the key issue of were these men people who had an interest in these companies, will be shown not to be a true case. It will be a false case.

Subject to that and subject to your Ladyship having anything that you would like me to deal with, that was all I was proposing to say in opening. I've finished slightly ahead of schedule.

MRS JUSTICE GLOSTER: No, that's excellent. I'm very grateful to all your team for the very full written submissions, all of which I have read. Thank you very much indeed, Mr Rabinowitz.

Mr Sumption, are you going next and do you want to start today?

MR SUMPTION: I'm in your Ladyship's hands. I would actually rather start tomorrow. I think your Ladyship appointed 10.15 as the starting point but if you want me to start now I will.

MRS JUSTICE GLOSTER: No, unless Mr Rabinowitz is pressing --

MR RABINOWITZ: I'm perfectly happy for Mr Sumption to start tomorrow.

MRS JUSTICE GLOSTER: Very well. How is the timeframe?

MR SUMPTION: I shall finish well within tomorrow just as my learned friend has done. I will probably take about the same time as he did. So we will start on the amendment application --

MRS JUSTICE GLOSTER: I'm going to let the others --

MR SUMPTION: There's then short statements by the others, forgive me. We probably will get to the amendment applications first thing on Wednesday.

MRS JUSTICE GLOSTER: Right. Mr Malek, is that how you see things?

MR MALEK: My Lady, I appear for the Anisimov defendants, I will be 10 to 15 minutes so I agree with Mr Sumption's assessment.

MRS JUSTICE GLOSTER: Right. So it looks as though we might

complete your submissions tomorrow as well.

MR MALEK: Yes.

MRS JUSTICE GLOSTER: And, Mr Mumford, that goes for you,  
does it?

MR MUMFORD: My Lady, I'll be very short indeed.

MRS JUSTICE GLOSTER: And Mr Adkin as well?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Okay. Well then, do you prefer to sit  
at 10.15?

MR SUMPTION: I was simply remembering, perhaps wrongly,  
what your Ladyship directed. I will sit -- there's  
something to be said for it.

MRS JUSTICE GLOSTER: I think I said 10.15 because of the  
quarter of an hour breaks for the shorthand writers, but  
if it's inconvenient -- Mr Rabinowitz, are you happy to  
sit at 10.15?

MR RABINOWITZ: I'm in your Ladyship's hands. I don't mind  
either.

MRS JUSTICE GLOSTER: Why don't we sit at 10.15 and that  
means we may be able to rise a bit earlier than  
1 o'clock which makes it easier for getting in and out  
of the building.

Ms Davies.

MS DAVIES: My Lady, I have the order. It still has  
paragraph 4 in it which we're not pursuing just at the

moment so if I can ask my Lady to cross that out.

(Handed)

MRS JUSTICE GLOSTER: I've read the application, I'm minded to make the order.

MS DAVIES: Paragraph 4 is the one that Douglas (inaudible) have indicated they want to make some oral submissions on so we're not pursuing that just at this moment.

MRS JUSTICE GLOSTER: Yes, right.

MS DAVIES: My Lady, the other thing I said I would hand up last week, which I hadn't yet given to my learned friend, is a draft timetable so I'll just hand that up now as well. (Handed)

MRS JUSTICE GLOSTER: Thank you. Subject to changing the date, I will sign that.

Would you let my clerk have a copy of the signed order?

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: Right. This is a proposed timetable.

MS DAVIES: It's a proposed timetable which sets out the order of the proposed witnesses and counsel's best estimates at the moment of the likely time for each witness. Obviously everyone is aware that it's very difficult to be precise about these things and flexibility has to be taken into account. My learned friend Mr Rabinowitz is shaking his head, I did show it

to Mr Gillis.

MR RABINOWITZ: I haven't seen it and I'm certainly not going to say it won't work. The only thing I would say is that, if it's changed in a way which means -- we need to check with the witnesses who thought they would be in week seven who are now told they're going to be in week three or four, that they can do the time that it is now suggested they will have to do.

MS DAVIES: Of course. I don't believe there has been very much change to my learned friend's witnesses but, of course, if there are problems they will no doubt notify us as soon as possible.

MRS JUSTICE GLOSTER: Right. Thank you very much.

MR GILLIS: My Lady, might I just enquire, on our application under CPR 31.22 which was in relation to the French documents and the --

MRS JUSTICE GLOSTER: Yes, I thought I'd signed that.

MR GILLIS: That's what I wanted to ask. I wasn't sure whether that --

MRS JUSTICE GLOSTER: I thought I signed that on Thursday, but if I didn't, I'll get my clerk to provide you with a copy.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: Right. Very well. 10.15 tomorrow.

(3.45 pm)

(The hearing adjourned until  
Tuesday, 4 October 2011 at 10.15 am)

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Tuesday, 4 October 2011

(10.15 am)

(Proceedings delayed)

(10.28 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Opening submissions by MR SUMPTION

MR SUMPTION: My Lady, Mr Rabinowitz began yesterday by inviting your Ladyship to find the facts in this case with an eye to the inherent probabilities. Obviously that is right in principle and it's a point that I will be making myself at a number of points in this trial. We do, however, have to remember that what is inherently probable in a secure and relatively ordered society like ours, governed by the rule of law, is not necessarily inherently probable in the really quite extraordinary conditions that prevailed in Russia in the 1990s.

Your Ladyship knows the outline: it is apparent from the historical experts, from a number of witnesses and indeed from Mr Berezovsky's own evidence. After the final collapse of communism in 1992, Russia became Europe's "Wild East". A country which had never in its entire history been either liberal or democratic in its governmental institutions now experienced in less than a decade a transition to capitalism which had taken other European countries are more than a century to

achieve.

MRS JUSTICE GLOSTER: Just a second. There's a gentleman who is standing there: can you either stand at the back or find yourself a chair, please.

MR SUMPTION: The result of this was an immense social upheaval, the partial collapse of old structures of authority the enfeeblement and the impoverishment of the state and the disappearance of the rule of law.

Of course there were laws; Dr Rachkov and my experts will be dealing with them in due course. There were codes which spoke of rights and duties, contracts and torts, but there was no rule of law. We know from Mr Berezovsky's own evidence that criminal violence had become simply business by other means. We know that policing was corrupt, selective and manipulable and that the courts were unreliable at best -- this is his own evidence -- and at worst open to manipulation by major political or economical interest groups.

It is a fact, also apparent from Mr Berezovsky's evidence, that nobody could acquire or build up a substantial business in Russia in the 1990s without access to political power. If you did not have political power yourself, then you needed access to a godfather who did. Mr Berezovsky himself says in his witness statement that he turned to politics in 1994

after finding that the showrooms of his motor dealership were being attacked by gangs employed by business rivals and that he himself was the target of an attempted assassination which killed his chauffeur.

Now, in a society without law, people devise alternative structures to govern their relations based not on law but on power. That is what happened in the society with which your Ladyship is concerned in these proceedings. It isn't easy for an English lawyer on either side of the court to assess the behaviour of people who have to live in such a world. In our own national experience we have to go back to the 15th century to find anything remotely comparable.

MRS JUSTICE GLOSTER: I hope I'm not going to be having any expert evidence about life in the 15th century.

MR SUMPTION: Not from me, but your Ladyship has read Shakespeare I have no doubt.

Of course no system based on power can exist without its own rather special code of personal obligations. It depends on a system of reciprocal favours going well beyond legal obligation and indeed supplanting legal obligation; an automatic and unspoken assumption that favours will be returned in proportion to their value, which became a rule of self-preservation in a world where there could be no effective resort to law.

Mr Berezovsky in fact expresses it rather well in his witness statement when, in describing why the agreement that he claims to have made with Mr Abramovich was never recorded in writing, he said that:

"... a high emphasis on personal trust and on the mutual expectations of good faith between the parties (not least because the court system in Russia was an unreliable way of settling disputes, even if agreements were in writing)."

That is a paraphrase of what he says in his fourth witness statement at paragraph 107(b) D2/17/220.

Now, Mr Berezovsky was a highly controversial figure in Russian politics in the 1990s, in a decade when there was no shortage of controversial figures. Boris Berezovsky was a power broker; he turned from business to politics in the middle of the decade precisely because of the difficulties of running a business without access to power. What he discovered was that the exercise of political power could itself be a source of considerable wealth.

His own case in this action is a very good illustration of this. Mr Berezovsky received between 1995 and 2002 at least \$2 billion from businesses controlled by Roman Abramovich. There may be differences between the parties about the precise amount

but it is quite clear from the evidence of both sides that it was of that order.

For the purposes of my present point, it does not matter whether these payments represented the value of Mr Berezovsky's services as a political godfather, as we contend, or the value of an interest in Mr Abramovich's businesses, as he contends. The point is that Mr Berezovsky did not contribute a single cent to the cost of either acquiring or building up those businesses, either on the oil side or later on the aluminium side, not a cent, nor does he claim to have done.

Not only did Mr Berezovsky contribute nothing to the cost of acquiring and building up these businesses but he contributed nothing to the managerial skills which built the business up, except to serve as a director of Sibneft for a brief period of three months in 1996. Mr Berezovsky accepts that the deal with Mr Abramovich was that Mr Abramovich and his team were going to manage Sibneft.

He claims in his witness statement to have offered advice and enjoyed some influence over major decisions affecting Sibneft. However, a fairer account of his role in the management would be the one that he gave to the Gibraltar court in the course of the North Shore

litigation against his former factotum, Mr Fomichev.

In that litigation he refused to answer questions in cross-examination about the business of Sibneft or its associated trading companies because he knew absolutely nothing about their business, that being, he said, left entirely to Mr Abramovich. "I know nothing about oil", he said, and nor did he. Your Ladyship will find the relevant part of the transcript at bundle H(A), volume 98, page 98 H(A)98/98. I don't ask you to -- sorry, that's in the Commercial Court action, forgive me, not in Gibraltar. I don't ask your Ladyship to turn up that extract now.

Mr Berezovsky's case must be --

MRS JUSTICE GLOSTER: The Commercial Court action against Fomichev?

MR SUMPTION: Yes, that's right. I was getting muddled with the Valmore litigation, forgive me.

Mr Berezovsky's case has got to be, if only implicitly, that he and Mr Patarkatsishvili were entitled between them to a half-share of the capital value and profits of Sibneft, and later Rusal, without making any financial contribution to their acquisition or any managerial contribution to their subsequent fortunes.

Now, if Mr Berezovsky's contribution was not money

and not management then what was it? The answer in our submission is that his contribution was important, indeed it was indispensable, but it was entirely political; or I should perhaps say almost entirely political because in addition to his political services we accept that Mr Berezovsky did provide Mr Abramovich with valuable introductions to financial institutions who were involved at an early stage of the process. But that was marginal by comparison with his political contribution.

Mr Berezovsky persuaded the Russian government to create Sibneft out of two major state-owned oil businesses in Siberia, the Omsk refinery and an oil producer called Noyabrskneftegas, which I'm going to call Neftegas for reasons that your Ladyship may well understand. Otherwise those two businesses would have been consolidated into the Russian state oil company Rosneft, for which they have been earmarked.

Mr Berezovsky persuaded the Russian government to sell the right to manage Sibneft on the State's behalf under an auction procedure which was easy to rig and was in fact rigged, mainly by Mr Berezovsky himself. I will explain how that happened in a moment. That's what enabled Mr Abramovich to take control of Sibneft at a time when the state remained a 51 per cent majority

shareholder in it.

Now, this is how it was done according to Mr Berezovsky's own witness statement. In 1995 Mr Berezovsky had two main sources of political power. The first was that he had established a close relationship with influential people in the immediate circle of President Yeltsin, in particular the president's daughter, Tatyana Dyachenko and Mr Valentin Yumashev, who was the president's future son-in-law and future chief of staff. The second source of his power was his control over the only Russian television network with a truly national reach: 98 per cent of the national territory.

In the previous year, 1994, using his contacts within the presidential circle, Mr Berezovsky persuaded President Yeltsin to partially privatise the state-owned broadcasting network, Ostankino. The assets of Ostankino were therefore vested by the state in a private company, ORT, 49 per cent of which was sold off to a consortium of oligarchs formed by Mr Berezovsky himself. Mr Berezovsky was allowed by his fellow oligarchs to take management control over ORT under a power of attorney and in fact he bought the other private investors out over the following years.

The problem about ORT was that it was bust.

Mr Berezovsky had always known that it was bust; his interest in it was as a source of political influence. ORT needed, according to the evidence of one of Mr Berezovsky's assistants in this period, Ms Nosova, about \$200 million a year to keep it going. The financial position of the company seems to have improved somewhat from 1997 onwards, when Mr Patarkatsishvili, who in practice ran ORT, succeeded in bringing some sort of order to its affairs, but it was never a financially flourishing enterprise.

The acquisition of control over Sibneft was, as Mr Berezovsky acknowledges, a project brought to him by Mr Abramovich during a Caribbean cruise at the very end of 1994. Mr Berezovsky's interest in it, as he accepts, was motivated by his need to find a source of funds to contribute to the huge funding gap in ORT. Mr Berezovsky therefore made two related deals: one with Boris Yeltsin and the other with Mr Abramovich.

The deal with Boris Yeltsin in 1995, as described in Mr Berezovsky's witness statement, was very simple. President Yeltsin agreed to create Sibneft and vest the two Siberian businesses in it. The new company would then be included in the loans for shares scheme under which the State auctioned the right to manage its 51 per cent controlling interest in the company while

selling off the other 49 per cent. The avowed purpose of this exercise was to enable Boris Berezovsky and his associate, Mr Abramovich, to take control over Sibneft and use it to provide a source of funds to finance the operations of ORT and enable it to support President Yeltsin in the elections that were due to occur in June 1996.

Mr Berezovsky in his witness statement says that the main reason why he was able to prevail on President Yeltsin to do this was that he was trading access to State assets on favoured terms in return for electoral support by his powerful media empire. The parallel deal between Mr Berezovsky and Mr Abramovich was equally simple: in return for getting what was needed out of President Yeltsin, Mr Berezovsky was going to be provided by Mr Abramovich with the cash stream which he could use to contribute to the funding of ORT.

My learned friend said that if such a deal was made, it was a corrupt deal. It was made, according to Mr Berezovsky's own evidence. I accept of course that my client was privy to it. But the reality was that that was how business was done in Russia at the time. Mr Berezovsky says repeatedly in his witness statement that without his political influence over President Yeltsin, Mr Abramovich would have got nowhere in the

world of Russian business and would certainly not have acquired control of Sibneft. We accept that that was so.

Although Mr Abramovich acquired Sibneft with his own funds, as I shall explain, and built it up by his own management, he has always acknowledged that he would not have had the opportunity to do that without Boris Berezovsky's political patronage. He has always recognised also from the outset that he would have to pay Mr Berezovsky for that advantage and also that in a more general sense, in the world of reciprocal favours on which all of this was based, he owed Mr Berezovsky a great deal.

Now, these payments are referred to in Russian as "Krysha", "roof". An alternative English expression which was recorded by Mr Berezovsky's solicitors when they interviewed Mr Patarkatsishvili in 2005 was "refuge", "protection".

Now, it will be readily apparent to your Ladyship why a deal of this nature was not reduced to writing or even privately recorded in writing by either side. An agreement to sell media support to the president of Russia in return for privileged access to state-owned assets, accompanied by another deal to sell to Roman Abramovich for money or monies' worth that advantage, is

simply not the kind of agreement which the parties can ever envisage would be legally binding.

Can it ever have been seriously thought that these kind of matters would, in the last resort, be adjudicated upon by the Russian courts, those being the only courts that any of them can have anticipated in 1995 would be available to them for the purpose? Of course not.

Mr Berezovsky in his reply complains about the use of the term "Krysha" because he says that it is redolent of protection rackets operated by criminal gangs. That is not the sense in which I am using it.

The evidence of my client is that there was an element of physical as well as political protection involved in Mr Abramovich's relationship with Mr Berezovsky. It was important, as Mr Berezovsky of all people knew, having been the victim of a campaign of vandalism and attempted murder at the hands of his business rivals. But physical protection was not provided by Mr Berezovsky but by his associate Mr Patarkatsishvili. I am not going to invite your Ladyship to make any finding about it; I have no desire to be more abrasive than I need to be and in fact nothing in this dispute turns on the physical aspect of the protection accorded.

The one exception to that, and it's a very minor one, concerns Rusal. A significant part of the business rationale for Mr Abramovich acquiring the aluminium assets in 1999 and 2000 was that their profitability had been depressed by criminal extortion over the previous years and could be restored if the criminal activities affecting the aluminium industry could be brought to an end. Mr Patarkatsishvili played an important part in bringing them to an end by methods which are not in evidence, thank goodness.

I am not going to, in the course of this opening, offer your Ladyship a complete narrative of events. We have sought to do that in our written opening.

MRS JUSTICE GLOSTER: Yes, I've read the entirety of your written opening. As I said to Mr Rabinowitz, I'm very grateful to all members of the legal team for the very comprehensive written arguments on all sides.

MR SUMPTION: My Lady, in addition to that, I would invite your Ladyship, at the earliest stage in the course of the trial which is feasible and after reading Mr Berezovsky's witness statement, to read Mr Abramovich's because I suspect that --

MRS JUSTICE GLOSTER: I have read it.

MR SUMPTION: I see.

MRS JUSTICE GLOSTER: I have read the one you asked me to

read.

MR SUMPTION: This point is then redundant.

My Lady, the first critical question which your Ladyship will need to answer is: what was the nature of the deal which Mr Abramovich made with Mr Berezovsky in 1995?

It's common ground, as my learned friend told your Ladyship, that there was a deal. It's common ground that it included an agreement, first of all, that Mr Berezovsky would exercise political influence -- I think "lobbying" is his word for it -- to enable Mr Abramovich to obtain control of Sibneft. And it's common ground that once he got control, Mr Abramovich would be responsible for managing Sibneft. That is where the common ground ends.

The real issue is about the nature of the benefit that Mr Berezovsky was going to get out of this. Mr Berezovsky says that the deal was that he and Mr Patarkatsishvili between them were going to get half of Sibneft or at least of the proportion of Sibneft which was acquired by Mr Abramovich. What he says is that the cash stream that he got from Mr Abramovich represented a half-share of Sibneft profits corresponding to the half-share of Sibneft itself which he claims to have owned. That's Mr Berezovsky's case on

Sibneft in a nutshell.

Mr Abramovich says that this stream of cash represented Mr Berezovsky's fees for his political protection. There was, on Mr Abramovich's case, an informal understanding between them in early 1995 that Mr Berezovsky would require about \$30 million a year to contribute to the funding of ORT. But Mr Berezovsky did not sell his influence for a fixed price; he demanded what he thought that he could get. As Sibneft prospered and Mr Abramovich was in a position to pay more, Mr Berezovsky demanded more.

The amounts paid, therefore, to or to the order of Mr Berezovsky were accordingly the subject of a continuous process of ad hoc negotiation in which Mr Berezovsky's bargaining power derived from the continuing importance of his political patronage as well as on Mr Abramovich's recognition that he owed him a debt of honour.

There were periodic agreements, therefore, about the amounts that would be paid in each year, but in fact these amounts were often exceeded. Moreover, as time went on, the proportion of the money that Mr Berezovsky received that went into ORT diminished and the proportion that went into building up Mr Berezovsky as a great figure in Russian politics increased.

By the late 1990s Mr Berezovsky's evidence is that substantially all his personal expenditure was being met from Mr Abramovich's companies and this was personal expenditure on a most exuberant scale: palaces in France, private yachts and aircraft, jewels for his girlfriend, valuable paintings at Sothebys and so on. The amounts which Mr Berezovsky received were never related to Sibneft's profits; indeed, Mr Berezovsky never even troubled to enquire what Sibneft's profits were. He didn't ring up Mr Abramovich and say, "How much have I got in the piggy bank now?" It was a continuous process of negotiation based primarily on Mr Berezovsky's needs and demands at the moment.

Now, there are, in our submission, three compelling reasons why this deal cannot have involved an interest in Sibneft or in its profits. The first reason is that Mr Berezovsky's case about this is not consistent with the way in which, between 1995 and 1997, the shares in Sibneft were actually acquired. It is very important to appreciate the sequence of auctions which occurred between December 1995 and May 1997 because this has, to some extent, been misstated in Mr Berezovsky's pleadings and evidence.

There were three stages. The first stage was the loans for shares auction in December 1995. Now, at this

stage Sibneft had been created as a joint stock company by a presidential decree which required the State to retain 51 per cent of the company's shares. The loans for shares auction was a sale of the right to lend money to the State on the security of that 51 per cent. The bidder who offered the largest loan would get first a pledge of the 51 per cent holding by way of security and secondly the right to manage that holding for three years. The latter would of course give the winner of the auction effective management control over the company but not ownership.

Now, it was expected, although by no means certain, that the state would default on the loan. In that event the lender would be responsible for conducting a sale by auction of the 51 per cent to the highest bidder. The critical point about the loans for shares auction is that the successful bidder in the loans for shares auction would not acquire any Sibneft shares at all either immediately or in the event of a default. If there was a default, clearly the manager of Sibneft could not both conduct the auction and bid in it.

That was stage one, therefore, of this three-stage process: the loans for shares auction in which what was being sold was the right to manage Sibneft but not shares in it.

Stage two was the sale, again by auction, of the remaining 49 per cent, the minority holding which the State sold off to private investors. That was achieved in the course of three successive auctions. 15 per cent was auctioned in December 1995, at about the same time as the loans for shares auction; another 19 per cent was auctioned in September 1996; and the final 15 per cent was auctioned a month later, in October 1996.

Stage three was after the State defaulted at I think the end of 1996, that event triggered the right of sale of the 51 per cent. The auction of those shares occurred in May 1997.

MRS JUSTICE GLOSTER: That's the investment auction?

MR SUMPTION: The investment auction, as it's sometimes called, the 51 per cent auction.

My Lady, the loans for shares auction of December 1995 was won by NFK. Ownership of NFK is dealt with in our written opening at paragraphs 52 and 74 to 75.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: In short summary, it was a company owned 50 per cent by Mr Abramovich, through an intermediate holding company called Vektor-A, and 50 per cent by Consolidated Bank. Consolidated Bank was the in-house bank of the Logovaz Group, over which Mr Berezovsky had

effective management control but a relatively modest shareholding. Mr Berezovsky owned, through a chain of intermediate companies, 13.7 per cent of Consolidated Bank, so effectively he had an indirect interest of 6.85 per cent in NFK.

There is an issue on the evidence about exactly what Mr Berezovsky contributed to the funding of NFK and its success in the loans for shares auction. It probably doesn't matter because we accept that Mr Berezovsky's role in the preparation of that auction was significant. It was his contacts which put us in touch with SBS Bank, which put up most of the money. Moreover, it was Mr Berezovsky and Mr Patarkatsishvili who played the leading part in rigging the auction.

What happened was that a bidder called Inkombank was disqualified on technical grounds. Ms Nosova, who was working for Mr Berezovsky, says, I think, that this was the work of her team. There was then a second potential bidder called Sameko, which was persuaded at the last minute by Mr Patarkatsishvili and Mr Abramovich to withdraw in return for money. There was then a third competing bidder, Bank Menatep, the only bidder who, in the event, participated in the auction. Mr Berezovsky made a collusive agreement with Bank Menatep that they would bid fractionally less than NFK; he tells us that

in his witness statement.

So the outcome of the bid was a foregone conclusion and that outcome was that NFK won the loans for shares auction with a bid of \$100.3 million, which was fractionally above the minimum bid stipulated in the auction rules and less than half of what NFK would have been prepared to pay. Mr Berezovsky had another bid for much more in his pocket which he would have had to use if it hadn't been possible to buy off Sameko.

Now, none of the \$100.3 million which NFK and its associated party in this bid, SBS Bank, was contributed by Mr Berezovsky or Mr Patarkatsishvili; none of it. The position is this: \$3 million was borrowed by NFK on commercial terms from the Russian Industrial Bank. The other \$97.3 million was lent to the State by SBS Bank, which was simply interposed as the lender, being a more creditworthy entity.

SBS Bank did not take any risk on that loan. SBS Bank took cash counterdeposits in the sum of \$80 million from the Omsk refinery and Neftegas themselves, ie the businesses being acquired, and \$17.3 million from Mr Abramovich's own trading company, Runicom.

So the position was that as between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili, the only one who

put up any money at all was Mr Abramovich. His company, Runicom, provided \$17.3 million of the cash security which was given to SBS Bank.

Mr Berezovsky claims to have put up a personal guarantee in favour of SBS. That appears to be incorrect, although Mr Berezovsky did give a personal assurance that they would be repaid. It doesn't in fact matter because nobody, I think, suggests that a personal guarantee was actually called upon.

NFK's success in the loan for shares auction enabled Mr Abramovich to assume management control of Sibneft. It was, however, completely irrelevant to the question of title to the company's shares, which were not being sold in that auction. It's a very important feature of these arrangements that the only auctions in which Mr Berezovsky and Mr Patarkatsishvili actively participated was the auction of the right to manage the State's holding of 51 per cent. The only auction in which they actually participated, in other words, was the one auction which did not involve any acquisition of shares.

The auctions that mattered for the purpose of the acquisition of Sibneft shares were, of course, the auctions at what I have called stages two and three. They did involve the acquisition by the successful

bidders of shares in Sibneft. The striking thing about those auctions is that whereas Mr Berezovsky and Mr Patarkatsishvili were extremely active in relation to the loans for shares auction, they took no interest whatever in the auctions at stages two and three. This is, I think, common ground, but at any rate it is plainly the case.

Mr Berezovsky's witness statement says he had nothing to do with the bids made in those auctions; he was merely aware that they were happening. The decision to bid in the stage two and stage three auctions was Mr Abramovich's decision alone. It is not suggested that Mr Abramovich had ever promised that he would bid or in any way committed himself to bidding, either under the 1995 agreement so-called -- it's not suggested he was under any obligation to bid.

Moreover, 100 per cent of the funding for the bids that he chose to make, was provided by Mr Abramovich. Mr Berezovsky did not put up and doesn't claim to have put up a single cent towards the purchase of those shares; nor did Mr Patarkatsishvili. Moreover, subject to one twist which I shall come to, the companies which acquired Sibneft at stages two and three were all of them companies owned and controlled by Mr Abramovich.

The twist which I mentioned a moment ago concerns

a company called PK-Trast, which isn't mentioned anywhere in Mr Berezovsky's evidence but the facts about it appear in paragraphs 76 and 77 of our written opening B(C)/37. In very short summary, PK-Trast had an indirect interest in the company which acquired Sibneft shares in the cash auction of October 1996, the third of the three cash auctions at stage two. It also had a very small indirect interest in the company which acquired Sibneft shares in May 1997.

PK-Trast was a company controlled by Mr Abramovich but Mr Abramovich arranged for Mr Berezovsky to be made a 50 per cent shareholder at the time of the October 1996 cash auction in order to associate him with the bid and show effectively that he had the powerful man on his side. After the auction was over, Mr Berezovsky's shareholding was transferred back to Mr Abramovich's companies.

There was at one stage a claim in these proceedings arises out of that transfer back, but it was withdrawn and is no longer a matter of complaint. We are not aware that there's any live issue about PK-Trast now but your Ladyship can find the facts with references to the relevant documents in our opening.

The result of the auctions at stage two and stage three was that about 88 per cent of Sibneft ended up in

the hands of Mr Abramovich's companies. The other 12 per cent were acquired by the general public. The shares were traded on the Moscow and New York stock exchanges but the only actual trading on those exchanges was, of course, in the 12 per cent that Mr Abramovich did not own.

The absence of any funding contribution by Mr Berezovsky or Mr Patarkatsishvili to the acquisition of Sibneft shares is, in our submission, a matter of great significance. The case pleaded by Mr Berezovsky at paragraph 34 of the particulars of claim is that it was agreed in 1995 that any shares which any of Mr Abramovich, Mr Berezovsky or Mr Patarkatsishvili might acquire in Sibneft would be held for their benefit in the proportions 50/25/25. That's all. It isn't suggested that there was any agreement that any of them would actually bid. It is not suggested that there was an agreement that they would bid at any particular price. The only thing that is said is that if they did choose to bid and won, the shares thus acquired would be held in those proportions.

Crucially, it is not alleged, either in the pleadings or in Mr Berezovsky's evidence, that there was any agreement entitling whichever party acquired the shares to a contribution towards the cost of acquiring

them from the other two; nor, as I've told your Ladyship, was a contribution actually made.

So Mr Berezovsky's case appears to be that although Mr Abramovich was under absolutely no obligation to bid for Sibneft shares at all, he, Mr Berezovsky, was entitled to the benefit of a quarter of those shares for nothing. That is, in our submission, a most bizarre proposition.

As described by Mr Berezovsky, this agreement would have operated in the same way if Mr Berezovsky had decided to bid in stage two and stage three auctions instead of Mr Abramovich: he would then, it seems, have had to pay the price but Mr Abramovich would have been entitled to the benefit of 50 per cent of the shares for nothing. That's the logic of his position.

The absence more generally of any interest on the part of Mr Berezovsky or Mr Patarkatsishvili in the stage two and stage three auctions is, in our submission, just as significant as the absence of a financial contribution.

NFK, the successful bidder in the loans for shares auction, was a jointly controlled bidding vehicle controlled 50/50 by Mr Abramovich and Mr Berezovsky, although Mr Berezovsky's actual ownership stake was much smaller, as I've explained. Mr Berezovsky, as we've

seen, took a big part in the preparation for the loans for shares auction. When it came, however, to stages two and three, no attempt was made to set up a jointly owned or controlled bidding vehicle; it was simply left to Mr Abramovich to buy the shares for his own companies, with his own money, with no interest being taken in the process by the other two.

Now, the reason for the difference is reasonably clear and it's pointed out by Mr Abramovich in his evidence. Mr Berezovsky was never interested in acquiring industrial assets like shares in Sibneft, which, apart from anything else, would have required him to lay out money in buying them and investing. What interested Mr Berezovsky was getting management control from Mr Abramovich. He therefore took an active part in the auction of the right to manage Sibneft but none at all in the right to own it.

There is a very good reason why Mr Berezovsky should only have been interested in control and not in owning shares. The main reason for Mr Berezovsky's interest in Sibneft, according to his own evidence, is that the cash stream from Mr Abramovich would contribute to funding ORT. Now, that was urgent. It was urgent both because ORT was effectively bust when Mr Berezovsky took over the management of it but also because it was vital to

keep ORT funded during the lead-up to the presidential elections of June 1996 so that it could support Boris Yeltsin's campaign for re-election, as he had promised the president in 1995.

Owning shares in Sibneft was of no interest at all to Mr Berezovsky because it would not have helped him to fund ORT. Sibneft, as your Ladyship knows, was an amalgamation of two inefficient and loss-making State-owned businesses; they were inevitably going to take some time to turn round and make profitable. First of all, the two separate businesses had to be integrated into a vertically integrated company. Secondly, the entire culture had to be changed to transform a business which had previously been run by administrative direction -- effectively by officials -- into one responding to market signals.

Mr Berezovsky couldn't wait for that. We know that in the event Sibneft only became profitable in 1997 and then only marginally. It had to retain all its profits for reinvestment until 2001, when the first relatively modest dividend was declared by the company in respect of the year 2000 but actually in 2001. Mr Berezovsky couldn't wait for all that to happen. The cash stream from Mr Abramovich simply couldn't be dependent on Sibneft's prosperity because what Mr Berezovsky needed

was cash for his Krysha right now, in order to pay to ORT; otherwise the deal was no good to him.

Mr Abramovich's position, as your Ladyship will appreciate, was quite different. What Mr Abramovich wanted was management control. He wanted that because he wanted to amalgamate the two businesses and build up the company, with the result that any shares that he might buy in it at stages two and three would greatly increase in value. For as long as the State retained its 51 per cent holding, Mr Abramovich could only achieve management control and build up the business by acquiring the right to manage it in the loans for shares auction.

That brings me to the second main reason why Mr Berezovsky cannot have been entitled to the benefit of a quarter of Mr Abramovich's acquisitions and that is that the cash payments that flowed into Mr Berezovsky's coffers between 1995 and 2000 bear no relation whatever to Sibneft's profits or lack of them. These payments were not made from Sibneft's assets at all until 2000; they were made from cash in the hands of Mr Abramovich's oil trading companies in Russia and Switzerland. These companies were personal assets of Mr Abramovich which he had had and run well before 1995; they were the foundation of his pre-Sibneft wealth.

In 2000, for the first time, most of the payments to Mr Berezovsky or to his order did come from within the Sibneft group because the trading operations previously carried out by the trading companies had by then been incorporated into Sibneft itself. Mr Berezovsky's evidence is that these payments represented his share of Sibneft profits or possibly -- it isn't always clear -- his and Mr Patarkatsishvili's combined share of Sibneft profits.

That's a critical part of his case because Mr Berezovsky denies that these payments were made by Mr Abramovich in return for his Krysha; he says that they were payments to which he was entitled by virtue of his interest in a quarter of the shares held by Mr Abramovich's companies, they weren't payments for political favours that he had procured for Mr Abramovich's benefit. The deal made in 1995, as Mr Berezovsky describes it in his witness statement and pleadings, was that the three men would share out the profits attributable to their shares. That, he says, was what the payments he received from Mr Abramovich's companies represented.

With great respect, that is an impossible contention. It is impossible for a number of reasons which have not been addressed, either in my learned

friend's written opening or yesterday in his oral opening.

We do not have the banking or accounting records which would have enabled us to reconstruct precisely the exact scale of the payments to Mr Berezovsky and Mr Patarkatsishvili, although we have some of them. The separate trading operations effectively ceased to carry on business at the end of the 1990s. Sibneft was then sold to Gazprom in 2005. So that there is a dearth of accounting documents originating within those companies in the hands of Mr Abramovich and, correspondingly, Mr Berezovsky and Mr Patarkatsishvili have lost much of the documentation that they must once have had as a result of their flight from Russia and possibly in Mr Berezovsky's case as a result of his estrangement from Mr Fomichev, who actually conducted that side of his affairs.

What we do have is estimates from the individuals who handled these payments and who will be giving evidence to your Ladyship and also a contemporaneous spreadsheet recording in detail the position in 2000. This is a Excel spreadsheet which in due course I will be inviting your Ladyship to look at as a Excel spreadsheet -- it is not easy to look at it in hard copy and it's incapable of being loaded on to Magnum -- but

we will sort that logistical problem out in due course.

The first point to be made is that the payments to Mr Berezovsky began in March 1995 with a delivery of \$5 million in folding money to Mr Berezovsky at the Logovaz Club, and evidence will be given by the person who delivered it. About \$20 million to \$30 million was paid out to Mr Berezovsky or to his order in the course of 1995, mostly not in cash, in dollar bills, but in bank transfers. That was, of course, before any management control had been acquired or any shares had been acquired by anyone. It follows that these payments cannot have represented Sibneft profits; they couldn't be anything other than Krysha.

Mr Berezovsky's response to this is to deny that anything was paid to him in 1995. He says that the payments began in 1996. Now, the evidence will show that it did begin in 1995, even if there is room for doubt about the precise amount of the payments. Many millions were paid to him.

The second point to be made about these payments concerns the payments made in 1996. These cannot have represented a share of Sibneft profits either because there weren't any Sibneft profits in 1996. Sibneft made losses in 1996, as everybody knew it would, because Mr Abramovich had only just taken over its management at

the beginning of 1996.

The third point to be made is that in 1997 and 1998 Sibneft made very modest profits; then in 1999 and 2000 it made rather larger profits. It is, however, impossible, even in the years when there were any profits there, to relate them to the payments made to Mr Berezovsky and/or Mr Patarkatsishvili. In 1997 and 1998, the payments made to or to the order of Mr Berezovsky substantially exceeded the entire profits of Sibneft, let alone the half of them that Mr Berezovsky says that he and Mr Patarkatsishvili were jointly entitled to.

In 1999 and 2000 the profits of Sibneft for the first time exceeded the payments made to Mr Berezovsky and Mr Patarkatsishvili but those payments bore no relation to the profits. This is particularly evident in 2000, when the surviving spreadsheet gives us precise figures.

2000 was a bumper year for Mr Berezovsky and Mr Patarkatsishvili: they received payments from Mr Abramovich's companies amounting in the course of that year to no less than \$490 million, of which \$461 million went to Mr Berezovsky and \$29 million to Mr Patarkatsishvili. Apart from a sum of \$30 million, Mr Berezovsky claims that all his receipts in 2000

represented a share of Sibneft profits. However, on any view, the sums that he received vastly exceeded what he claims to have been his contractual share.

The fourth point that one should make about these cash streams is that no dividends were declared by Sibneft until September 2001, when Sibneft declared a dividend of just \$50 million in respect of the year 2000. All profits up to 2000 and most profits in 2000 were retained for reinvestment. Mr Berezovsky has therefore got to contend that the amounts that he received represented a share of the undistributed profits of Sibneft. Now, that would effectively have been a theft of Sibneft's funds and a fraud on the holders of the 12 per cent of the company's shares that were held by members of the public and traded on public stock exchanges inside and outside Russia.

There is a suggestion in my learned friend's opening that Sibneft profits should be taken to include the profits of Mr Abramovich's trading companies so far as they were derived from trading with Sibneft. What appears, as we understand it, to be said is that the profits of Mr Abramovich's personally owned trading companies --

MRS JUSTICE GLOSTER: This is the transfer pricing thing?

MR SUMPTION: Exactly -- were artificially fixed by transfer

pricing, which had the effect of transferring profit from Sibneft to Mr Abramovich's own companies.

The short answer to this, but not the only one, is that it has nothing to do with the agreement that Mr Berezovsky says was made in 1995, which was that he would receive the profits attributable to his shares in Sibneft. He does not claim and does not give evidence that the agreement was that he should share the profits which Mr Abramovich made on his own oil trading business, nor would such agreement have been consistent with what Mr Berezovsky does claim.

As a matter of fact there is no basis at all for the allegation about transfer pricing anyway and none is put forward by Mr Berezovsky in any of the evidence that he proposes to call either from himself or from others. The best source of information -- I won't turn it up at this stage -- about the trading relations between Sibneft and Mr Abramovich's trading companies in the late 1990s is the offering circular for the Sibneft Eurobond issue of 1997.

For the transcript and your Ladyship's note, the reference is bundle H(A)07/19/19. At pages 79 to 80 of that document in the bundle numbering, your Ladyship will in due course find a document or part of a document which explains how this worked.

Now, this was a document prepared to western standards, as the bonds were traded on western exchanges, and due diligence was done by the New York firm Cleary Gottlieb. What is said in that document, which is correct, is that the crude oil sold to Runicom companies, Mr Abramovich's own companies, before March 1997 was sold at world market prices less a commission of about 2 per cent. From March 1997 onwards, crude oil was sold to the trading companies at full world market prices. Products, as opposed to crude oil, were sold to the trading companies at all times at current world prices. That continued until 2000, when the trading operations were, as I told your Ladyship in a different context a few minutes ago, taken in-house and vested in a subsidiary of Sibneft itself called Siboil.

There is no evidence in support of the transfer pricing allegation and the evidence indeed is against it. The witnesses who will give evidence, in particular Mr Shvidler, will explain how the system works insofar as it is not clear.

Mr Berezovsky says that the deal was that he was to be entitled to half the profits attributable to the shares in Sibneft which he claims to own or be entitled to. It is quite plain that if there really was an

agreement in those terms, Mr Berezovsky would have received absolutely nothing because until 2001 there were no dividends. So the profits attributable to his shares were zero until after he claims to have parted with this interest, yet he acknowledges that he actually received enormous sums of money. His receipt of those sums can therefore only be explained as payments for Mr Berezovsky's political services.

The third main reason why Mr Berezovsky's claim to be entitled to an interest in Sibneft's shares is a reason that can be much more briefly pointed out. Mr Berezovsky has consistently denied or allowed others to deny, at least until the early years of this century, that he had any interest. He has made a succession of public statements that he had no interest in Sibneft or in the ownership of Sibneft and that position, as far as his public statements are concerned, did not change until after he'd left Russia.

I'm not going to weary your Ladyship with all of these statements but two might perhaps particularly be mentioned. First, he omitted any interest in Sibneft shares from the declaration of assets which he was legally required to make in his capacity as a state official under the relevant Russian anti-corruption legislation. Secondly, Mr Berezovsky approved

a statement to investors about his position which was included in the Eurobond offering circular of 1997.

MRS JUSTICE GLOSTER: That's the one you just referred me to?

MR SUMPTION: Yes, I referred it to you for a different point --

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: -- but the other reason why that document is important is that it contains a paragraph which explains Mr Berezovsky's relationship with the company: basically that he has no shares in Sibneft and no interest in any shares in Sibneft but was involved in its creation.

MRS JUSTICE GLOSTER: What's the page of that? I have the circular on the screen.

MR SUMPTION: I think from memory it's page 5.

It's in the bundle numbering at page 34 at H(A)07.

H(A)07/34. What it says is:

"An influential Russian figure, Boris Berezovsky, who is currently the Deputy Secretary of the Security Council of the Russian Federation, served on Sibneft's Board of Directors until October 1996 and was chairman of NFK when it won the right to manage 51% of Sibneft's shares in the loan-for shares programme. Mr Berezovsky does not own or control, or have any other interest in, any shares in Sibneft, directly or indirectly. He does,

however, maintain a close relationship with certain members of the senior management and the Board of Directors of the Company."

In our submission that statement is true.

Mr Berezovsky, who acknowledges that it was referred to him -- and Ms Nosova confirms that she was consulted about it -- approved that statement. It's got to be his own case that he was perfectly happy to tell a lie to investors in public securities of Sibneft. In fact, this was an occasion when Mr Berezovsky realised that he had to tell the truth.

Mr Berezovsky proposes to call a number of witnesses to say that he privately claimed to have an interest in Sibneft at an early stage. In particular his old friend Mr Goldfarb is apparently going to say that this was something that was said to him as early as 1996. We will hear their evidence when they give it.

I will say at once that it's perfectly possible that Mr Berezovsky did occasionally brag to friends about his interests in this Russian large oil company in a way that he wouldn't have dared to do in public for fear of being authoritatively contradicted. But so far as we can discover -- and one hesitates to say that anything is not to be found somewhere in these 200 bundles -- there is no public claim by Mr Berezovsky to have owned

any interest in Sibneft until about 2003.

Now, as my learned friend Mr Rabinowitz told your Ladyship, we accept that Mr Berezovsky and Mr Patarkatsishvili can be shown to have told their own associates and advisers that they had a 50 per cent interest in Sibneft from late 1999 onwards. It is quite important to understand how this change came about.

In late 1999 Mr Berezovsky and Mr Patarkatsishvili began to look into the question of establishing an offshore structure of trusts and closed registry companies to hold their assets outside Russia. This is because they were concerned at the possibility that those assets might at some stage be attacked by adversaries within Russia, evidently the State.

Now, after a certain amount of planning among their own staff, Mr Berezovsky and Mr Patarkatsishvili approached an asset manager called Valmet, which later changed its name to MTM. Valmet in turn introduced them to a solicitor called Stephen Curtis of Curtis & Co. Valmet and Curtis & Co in fact shared a building off Park Lane. Valmet and Curtis & Co were both specialists in the creation of complex and opaque offshore structures for holding assets on behalf of super-rich individuals.

Both firms began to work for Mr Berezovsky and

Mr Patarkatsishvili at the beginning of 2000, when they were engaged in organising the receipt outside Russia of the proceeds of the sale of ORT. They were assisted in this endeavour mainly by Mr Fomichev, who was Mr Berezovsky's financial manager, and Mr Kay, who was a cousin of Mr Patarkatsishvili and performed similar functions for him, although at a rather lower level of competence and honesty. I will say why I say that in a moment.

One of the main difficulties which they encountered in the course of planning the offshoring of their assets arose out of EU and American money-laundering regulations which prevented western banks or other financial institutions from accepting significant sums of money without being satisfied, generally by documentary evidence, about their origin.

The significance of this problem cannot be overstated. It infected almost everything that Berezovsky and Patarkatsishvili did in the management of their financial affairs from 1999 onwards. These people, Mr Berezovsky and Mr -- would your Ladyship like me to --

MRS JUSTICE GLOSTER: No, I was going to go on until your next break, as it were.

MR SUMPTION: Yes, I will find a suitable place to stop.

These people, Mr Berezovsky and Mr Patarkatsishvili, were living a life of tremendous opulence, spending in Mr Berezovsky's case hundreds of millions a year and in Mr Patarkatsishvili's case tens of millions, although his house in Georgia is said to have been a wonder to behold. They both lived on income streams derived mainly from companies in which they had no documented interest at all.

Mr Berezovsky and Mr Patarkatsishvili would have found it difficult to get their money accepted by western financial institutions if they had explained that they were living on frequent and large payments made to them by a Russian industrialist for no reason of which there was the slightest documentary evidence. It was precisely the fact that these payments did originate in Krysha, paid by Mr Abramovich's companies, which gave rise to the money-laundering problem. If the payments had all been above board, they could have been documented and the money-laundering problem would have gone away.

I can't speak for the rest of Mr Curtis's practice but the function which Mr Curtis performed for these particular clients was to devise schemes to launder their money. He did that with appropriate and gentlemanly reluctance after exhausting all other

possibilities. He uttered the occasional Pecksniffian platitudes about the importance of compliance, especially when discussing these matters with counsel, but on the face of his own files that is what Mr Curtis was for.

I will go into the details of how this was done or some of them, at least by way of summary, perhaps after the short adjournment if that would be a convenient moment.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(11.34 am)

(A short break)

(11.48 am)

MR SUMPTION: My Lady, can I just correct three minor points which I got wrong on going through the transcript when your Ladyship was behind the scenes.

First of all, the dividends. The \$50 million dividend which I mentioned was in fact paid in November 2000 and not in the following year. In the following year, 2001, 16 August 2001, there was a much larger dividend payment, \$612 million, but by that time Mr Berezovsky does not claim to have been a part-owner of Sibneft anymore.

So the timing and amounts of those dividends need to be corrected from what I told your Ladyship a few

minutes ago.

MRS JUSTICE GLOSTER: Yes. Can you just tell me the date of the second one?

MR SUMPTION: The second one was on 16 August 2001 and was for \$612 million. I can give your Ladyship a reference if you would like one but it's H(A)37/146 and H(A)37/153.

Secondly, the free float of Sibneft shares held by the public was in fact smaller initially than the 12 per cent that I mentioned. The position, like everything else in this case, is a little more complicated. In fact, Mr Abramovich's companies at the end of stage three held 97.2 per cent of Sibneft but the holding was diluted over the following years as a result of the issue of American depository receipts and suchlike things and it gradually rose to 12 per cent by 2000.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: The third correction I should make, which is an unintentional slip-up of mine, concerns the time when Valmet and Curtis & Co began to work for Mr Berezovsky and Mr Patarkatsishvili. Valmet, so far as one can see from their documents, began to work on their affairs in early 2000 and Curtis & Co began to work on his affairs in January 2001. I by mistake said 2000. The first

thing they were concerned with was the dealings with the ORT proceeds.

When your Ladyship rose I was dealing with the question of money-laundering regulations. In practice the only reliable way of explaining the receipt of large sums of money was by presenting the receipt as the proceeds of the sale of an asset which the recipient owned. That is what they set about trying to do over much of the following years.

One can see this process at work in the very first document in which Mr Berezovsky and Mr Patarkatsishvili unequivocally claimed to have an interest in Sibneft, namely the Valmet memo of September 2000 at tab 10 of my learned friend's bundle, if your Ladyship still has that H(A)19/10. This document records the information which was given to Mr Samuelson of Valmet in the course of a meeting in the south of France with Mr Berezovsky and Mr Patarkatsishvili. It is, however, clear from the document itself that they had also spoken to Ms Nosova and Mr Fomichev and it is therefore possible that some of this information came from them, but it seems generally to be from the principals.

One can see, in a passage that my learned friend pointed out to your Ladyship at the top of the second page of the memo, that they claimed to have an interest

in Sibneft which they said:

"We will start by moving the Sibneft holdings into the funds..."

That's the funds -- perhaps one should start on the first page to get the context.

Your Ladyship will see on the first page that there is some reference to the way in which Mr Berezovsky operated in Russia:

"[He] recognised that media was key to political power and acquired ORT and TV6..."

And something is said about them and his other media assets:

"Most large Russian businesses needed political clout to be favoured in the State sell off of significant assets."

That is indeed so.

The document then goes on to describe the Hotspur and Octopus Trust structures and the assets that are to be put into them. What they then say is that they will be:

"... moving the Sibneft holdings in to the funds..."

That's into the offshore structures.

"... in about ten days. These holdings are owned through Cypriot companies mainly today. The relation between [Hotspur] and [Octopus] in regard to Sibneft are

33:17. The amount of Sibneft that will be held by 'H' and 'O' combined will be 44% of 100%."

Now, that of course was utter nonsense, as both Mr Berezovsky and Mr Patarkatsishvili must have known. They did not own any shares in Sibneft and certainly there were no shares in Sibneft owned by Cypriot companies of theirs. What they actually had was a stream of cash payments emanating from the owner of Sibneft, which they have claimed in the present action represented a contractual right to be paid a share of Sibneft profits. What they are doing here is presenting a stream of cash income as if it were the ownership of the asset. They could hardly say to Valmet, without immediately encountering money-laundering problems, anything else.

This point emerges most clearly from the next paragraph, which contains a reference to Aeroflot. Now, it's necessary to say something about Aeroflot and Mr Berezovsky's relationship with it. What is being said in this memorandum is that:

"[Berezovsky] and [Patarkatsishvili] also own a large stake in Aeroflot and Transaero..."

Just looking at Aeroflot, Mr Berezovsky and Mr Patarkatsishvili never owned any shares in Aeroflot. Mr Glushkov, who will be giving evidence on his behalf

to your Ladyship, says this:

"Boris was not involved in Aeroflot either as a director, shareholder, employee or otherwise."

And that is the truth. Their only financial interest in Aeroflot in fact arose from the fact that Mr Berezovsky had an interest in a Swiss company called Andava, which was essentially a joint venture between himself and Mr Glushkov.

When Mr Glushkov became director general of Aeroflot in 1996 he transferred the management of all its foreign currency treasury operations, which of course in the case of an airline are were considerable, to Andava, his own joint venture company with Mr Berezovsky in Switzerland. Thereafter these operations, the treasury operations in Switzerland, generated substantial interest and penalty payments, much of which ended up in the pockets of Mr Berezovsky and Mr Glushkov.

These were the transactions that led to the charges that were laid against Mr Berezovsky by the Russian public prosecutor in the autumn of 2000, which is what obliged him to flee from Russia in October of that year. They are the transactions which led to Mr Glushkov's arrest and subsequent conviction in Russia for theft. They are also the transactions which Mr Jenni assisted Mr Glushkov to carry out, according to the courts of

Switzerland, who have convicted him as an accessory to Mr Glushkov's frauds.

Your Ladyship will find the references to all of this at annex VI of our opening B(D)/109.

I fully acknowledge that there are legitimate issues about the fairness of Russian criminal proceedings in cases involving high-profile political figures. I doubt whether the same can sensibly be said of the criminal courts of Switzerland.

The relevance of this point for present purposes is that in explaining the source of their wealth to Mr Samuelson of Valmet, Mr Berezovsky and Mr Patarkatsishvili were quite clearly, in the case of Aeroflot, dressing up an unclassifiable stream of cash payments as an interest in the company itself when it was nothing of the kind and we say that they were doing exactly the same thing in the case of Sibneft.

Now, exactly the same point can be made about the explanatory note that my learned friend took your Ladyship to at flag 9 H(A)18/221.003T. If your Ladyship looks at the English translation of that document, this is a document which we can probably agree in due course is likely to have been prepared by Mr Joseph Kay. Mr Kay is identified as the author partly by his less than perfect Russian and partly by

the fact that, as we understand it from the family defendants, who first disclosed this document, it was found in Mr Kay's offices in London.

This document is a programme for dressing up Mr Patarkatsishvili's cash receipts as capital assets. It was prepared at about the time when Mr Berezovsky and Mr Patarkatsishvili were trying to shift their assets offshore. That is why your Ladyship will see, under the heading "Main. Structuring assets", which deals with the proposal to allocate assets to partners in proportion to their stakes, that among the assets which are going to be dealt with in that way is, as we see -- number 5 over the page -- Aeroflot.

Now, there can't really be any doubt that this memorandum is a programme for satisfying money-laundering enquiries which was explaining how a structure could be set up that would comply with what Mr Kay rather charmingly calls "the legal rules of the game", halfway down the second page of the memorandum, but was clearly not intended to reflect the true position; otherwise Aeroflot could hardly have been comprised in it.

Now, in the course of 2001, a string of bogus documents was concocted by Mr Kay and Mr Fomichev, in some cases with the assistance of Mr Curtis, in order to

satisfy the money-laundering enquiries of western banks. This was done by presenting what were actually income streams as if they were the proceeds of capital assets or in some cases the undocumented proceeds of capital assets as documented proceeds.

This is the smoke and mirrors world in which your Ladyship has to work when trying to interpret documents of this kind. The first question that one has to ask about all of them is whether they are to be taken at face value, who was preparing them and why. The two most egregious examples, which are both documented in some detail, are the Spectrum transaction and the Devonia transaction.

The Spectrum transaction is described in our written opening at paragraphs 157 to 165 B(C)/67. In short summary, Spectrum was a vehicle owned by the Crown Prince of Abu Dhabi, Sheikh Sultan. Spectrum was used essentially to explain the receipt of the proceeds of the ORT sale, which is a genuine sale.

Now, the principal document which was prepared by Mr Curtis for Mr Berezovsky and Mr Patarkatsishvili purported to be a contract drafted in January 2001, executed some time later, by which Mr Berezovsky and Mr Patarkatsishvili sold a call option over their shares in ORT to Spectrum for \$150 million. This document was

manifestly a sham because the shares at the time it was drafted had already been transferred to Mr Abramovich's company, Akmos, at the end of December. That was several weeks before the so-called call option was executed; it can never actually have been intended to operate as a call option at all.

Why was this document created? It was created because the formal agreements between Mr Patarkatsishvili and Mr Berezovsky on the one hand and Mr Abramovich's company Akmos on the other to sell the stake in ORT only dealt with \$10 million of the agreed consideration. The other \$140 million was paid to them outside that agreement.

Now, that meant that they only had a contractual document that accounted for a small proportion of the sum that they were receiving into the account which they had opened for the purpose at Clydesdale Bank. It was therefore necessary to invent a transaction which accounted for the whole \$150 million.

So Mr Curtis drafted a document in which Mr Patarkatsishvili and Mr Berezovsky purported to sell to Spectrum an option. It is extremely probable that Mr Curtis was aware that the shares had been registered with Akmos already because we have a document that was supplied to him by Mr Ivlev, his correspondent lawyer in

Moscow, in which that was explained.

There is a second version of the Spectrum call option which we identify at paragraph 157(2) of our opening --

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: -- in which Mr Kay is rather mystifyingly described as the owner of some of the ORT shares.

MRS JUSTICE GLOSTER: I think it's 160(2).

MR SUMPTION: I'm sorry, I stand corrected.

Now, in the Valmore judgment, the judge, having heard the evidence, found that that version of the Spectrum document was forged by Mr Kay in 2002 in order to explain to Bank Hapoalim how he came to be paying 75 million into a company of his own that originated in the sums paid to Clydesdale Bank for the account of Mr Patarkatsishvili. He simply adapted Mr Curtis's draft so as to suggest that he also had an interest which he was selling and then presented that to explain the receipt of the 75 million.

There is a third version, the exact purpose of which we have not been able to discern, but which appears, for reasons which are set out in detail in our witness statement, also to have been a forgery. There is no reason to suppose that that third version and its forgery was anything with which Mr Curtis was concerned.

He was concerned with the version that we referred to in the first subparagraph.

Now, the Devonia transaction I will deal with later in a little more detail because it's critical to my learned friend's claim for loss. In summary, the Devonia transaction was another money-laundering scheme designed to explain how Mr Berezovsky and Mr Patarkatsishvili had come to sell their so-called interest in Sibneft without being able to produce a single contractual document or other documentary record of having done so.

The problem was they didn't have an agreement with Mr Abramovich to sell it or any other documentation of the sale to Mr Abramovich. So what did they do? They invented an agreement to sell their shares to Devonia, which was another vehicle company owned by Sheikh Sultan, and they used this document to mislead the European compliance officer of Clydesdale Bank.

This also appears to have been a scheme dreamed up by Mr Curtis, although I should mention that it is possible that Mr Curtis was simply acting on information supplied to him by Mr Fomichev. There are reasons for doubting that, but it is undoubtedly a possibility.

Now, my learned friend took your Ladyship yesterday to a number of documents which refer to the interests of

Mr Berezovsky and Mr Patarkatsishvili in Rusal. These documents were generally prepared by other parties to the various transactions in 2000 and 2004. None of them were seen at the time by Mr Abramovich, although one passed into the hands of Ms Khudyk and Ms Panchenko, whose functions -- essentially bookkeeping -- did not require them to study their contents. They will be dealing with that.

Now, the basic problem about most of these documents is that whenever any arrangement was made under which Mr Berezovsky or Mr Patarkatsishvili were to receive money, they always had to try to organise things so that documents would be generated which portrayed the money as the price of a proprietary interest in some asset. They can therefore not be taken as face value as evidence in these proceedings.

I will say a bit more about Rusal in due course. I am still basically dealing with Sibneft and explaining the problem which arises in the interpretation of documents from the fact that from late 1999 onwards Mr Patarkatsishvili and Mr Berezovsky were continually obsessed with the important problem of how to get their money in the west.

In a sense, the strongest point to be made in Mr Berezovsky's favour on the question of whether he has

an interest in Sibneft -- and my learned friend naturally has made it -- is that Mr Abramovich promised him a total of \$1.3 billion in early 2001 and paid that amount in 2001 and 2002. What is said by my learned friend is that since Mr Berezovsky was no longer a powerful figure when these payments were agreed but an impotent exile, they can only be explained on the footing that Mr Abramovich was buying Mr Berezovsky's and Mr Patarkatsishvili's share of the company. There was no sense in paying Krysha at that stage.

Of course, one irony of this is that it is of course Mr Berezovsky's own case that the money which Mr Abramovich agreed to pay him for his share -- he agrees it was \$1.3 billion -- actually bore no relation, he says, to the value of his share in Sibneft. He says it was a gross undervalue which he was induced to accept by intimidation. But the difficulty about much of this argument is this: if Mr Abramovich had obligations to Mr Berezovsky to account to him for Mr Berezovsky's shares and had wanted a way out of those obligations, his logical course was simply to refuse to recognise the existence of this wholly undocumented interest.

It appears to be common ground between the Russian law experts that in a Russian court the absence of documentation would have been fatal. It's arguable that

that's a procedural or evidential provision which therefore might be irrelevant in England but it's still relevant on the facts because in 2001 the parties can't possibly have supposed that a claim to an interest in a Russian company would come before any other court than a Russian court.

If -- which is the premise of Mr Berezovsky's argument -- Mr Abramovich was bent on getting out of his obligations, he didn't need to take a plane to Cap d'Antibes, he didn't need to threaten Mr Patarkatsishvili at Munich and elsewhere; he simply had to say, "Interest, what interest?" So much of this simply doesn't hang together.

Now, Mr Abramovich has given in his witness statement a detailed account of why he decided, in fact against the advice of his closest advisers, that he would make this very large payment to Mr Berezovsky and Mr Patarkatsishvili. His main reason was quite simply that he owed his business career to Boris Berezovsky and in fact had absolutely no desire to escape what he regarded as a strong moral obligation. He wanted to draw a line under the past and to put an end to the financial importunity of Mr Berezovsky on a basis that would satisfy him.

That explanation should, in our submission, carry

a good deal of weight, coming as it does from a man who had a complete let-out, if he wanted to take it, owing to the undocumented nature of the alleged interest. He could actually have paid Mr Berezovsky and Mr Patarkatsishvili nothing, simply defying them to try and establish their case in a Russian court. If he could have easily got away with paying them nothing because they had no interest which they could prove, then why should one assume that he was trying to evade his obligations at a cost of \$1.3 billion?

Mr Abramovich's account of his reasons is wholly consistent with the code of honour that, on the evidence, was a substitute for legal obligation in the remarkable conditions of late 20th century Russia. But there was also another reason, which is also explained by Mr Abramovich in his evidence: he could not take it for granted that Mr Berezovsky was a spent force in Russian politics quite as readily as we can a decade later.

When Mr Abramovich agreed with Mr Patarkatsishvili in 2000 to make a final pay-out in the sum of \$1.3 billion, Mr Berezovsky had only been in exile for three or four months. In the 1990s he had proved to be a remarkably resilient politician, recovering from apparently impossible situations and recovering

influence which at different times he appeared to have lost. Indeed, Mr Berezovsky had once been very close to Mr Putin and had helped to fund his election campaign in the year 2000. There was a lot to be said at the start of the Putin era in laying the ghosts of the 1990s to rest in case, in the perennially unstable cycle of Russian politics, they came back to haunt him.

Now, there is finally the historical evidence which we debated before your Ladyship in June, which has predictably turned out to take matters not much further forward.

The main point that my learned friend makes by reference to the historical evidence is that the pattern of privatisations in Russia at the time was that the parties who acquired the right to manage state assets under the loans for shares auctions invariably, it is said, acquired the shares through an associated company when the State duly defaulted and the pledged securities had to be sold. The paradigm of this is said to be the acquisition of Yukos by Mr Khodorkovsky and the acquisition of Norilsk Nickel and Sidanko by Mr Potanin. Why, my learned friend asks forensically, should one suppose that Mr Berezovsky should be an exception to such a well-established pattern and not have acquired an interest in Sibneft?

Some of the factual premise of this argument, the supposed pattern, is in fact wrong, as Mr Shvidler points out in some of his reply evidence; but the simplest answer to this is that the circumstances were completely different. Mr Khodorkovsky and Mr Potanin were primarily industrialists who wanted to manage and expand major industrial concerns, just as Mr Abramovich did, in the oil industry in the case of Mr Khodorkovsky and in the metals industry in the case of Mr Potanin. These people created huge and highly successful businesses out of nonperforming or previously nonperforming State assets.

Mr Berezovsky had absolutely zero interest in doing that. Mr Berezovsky was primarily a politician and power broker who made his money out of political influence. The management of industrial assets was something that he left, as he accepts, to Mr Abramovich. There is therefore nothing particularly surprising in the fact that Mr Abramovich owned the shares.

It's right to add that, as far as we are aware, Mr Khodorkovsky and Mr Potanin actually bought their shares in the enterprises that they built up. It may be that they acquired them cheaply but they were not in the position of Berezovsky, who claims to have acquired shares without paying anything for them at all.

We've been discussing the question of whether Mr Berezovsky had an interest in Sibneft but one needs to remind oneself, of course, that he doesn't claim to have one now. The existence of that interest is relevant because Mr Berezovsky claims that he was induced to part with it by intimidation for too little.

So I turn to the allegation of intimidation. Now, the curtain-raiser for the intimidation issue is a distinct allegation of intimidation relating to Mr Berezovsky's sale of his stake in ORT in December 2000. Mr Berezovsky doesn't make any claim against us in relation to ORT but this allegation of intimidation relating to ORT is nevertheless extremely important in his case.

He alleges that Mr Abramovich acted as a messenger for Mr Putin and his head of administration, Mr Voloshin, in conveying to Mr Berezovsky, at the meeting in Cap d'Antibes in December 2000, a threat that unless he sold his stake in ORT to Mr Abramovich two unpleasant consequences would follow: (1) the stake would be expropriated; and (2) Mr Berezovsky's friend Mr Glushkov, who had been arrested on 7 December 2000, would be kept in prison for a long time.

This part of Mr Berezovsky's case is critical to what he later says about being bullied into selling

Sibneft. In both Russian and English law there is a critical distinction to be made between a warning and a threat. A warning that unless you act in a particular way, a third party will take adverse action against you is not a threat and is not actionable. A threat must involve some indication of adverse action by the person uttering it.

Mr Berezovsky's case is that Mr Abramovich says that unless he sold out of Sibneft, the State would expropriate his interests in that and keep Mr Glushkov in prison; exactly the same sorts of threat. On the face of it, that's a warning. Mr Berezovsky seeks to turn that warning into a threat by saying that because of Mr Abramovich's behaviour at Cap d'Antibes, he interpreted the later warnings about the risk of expropriation by the state and prolonged imprisonment of Mr Glushkov as implicit threats that Mr Abramovich would bring about these results himself.

Now, as related to ORT, there is an air of unreality about the suggestion that the State, via Mr Abramovich, intimidated Mr Berezovsky into surrendering his control over ORT. Of course, the State or the government of Mr Putin had fallen out with Mr Berezovsky precisely over his use of ORT's media influence to serve his political ends, as the Russian government saw things.

Now, the problem is that the Russian State was and always had been a 51 per cent owner of the shares of ORT; it didn't therefore need to bully Mr Berezovsky in order to assume control of ORT. Mr Berezovsky says about this that the rights of the minority were entrenched under the company's charter but that is not in fact correct.

We've summarised the position at paragraph 301 of our opening B(C)/139. In short, the position was that the election of directors for ORT required a quorum at the general meeting of shareholders of ORT and the quorum was two-thirds of those registering to attend. Therefore, under that provision, the minority holding the 49 per cent could have blocked any valid general meeting simply by registering to attend and then failing to turn up.

It will not surprise your Ladyship to learn that the minority shareholders did not in fact have the right to obstruct the occurrence of a valid annual general meeting of a public company indefinitely. The charter provided that if a valid meeting did not occur, a further meeting had to be called at which the quorum would be reduced to 30 per cent. At that meeting, of course, a simple majority would approve decisions on the composition of the board of directors.

In addition to the provisions relating to the board of directors, the charter of ORT also provided that the broadcasting service was to be run by the director general, who had to be chosen from a list of persons approved by the president of the Russian Federation.

The State therefore, if it wanted to assume control of ORT, which it may well have done, did not need to force Mr Berezovsky to surrender his shares in order to achieve that. It had the means of making his shares impotent and depriving him of management control. The idea that the Russian State might have sent Mr Abramovich out to bully Mr Berezovsky into selling his shares is therefore rather far-fetched.

On the facts, however, this is rather more significant than that because it is perhaps the clearest example of a number of examples in this case of Mr Berezovsky having simply made up his story.

The alleged intimidation could only have occurred after the arrest of Mr Glushkov on 7 December because it related to Mr Glushkov's continued imprisonment, among other things. There is overwhelming evidence that the sale of the ORT stake had in fact been agreed in principle between Mr Abramovich and Mr Patarkatsishvili in the course of October and November. That agreement included agreement on the price which was ultimately

paid, \$150 million.

Moreover, Mr Berezovsky actually publicly announced his intention to sell out of ORT in a telephone interview with a Moscow radio station on the very morning of Mr Glushkov's arrest; before, therefore, any meeting between him and Mr Abramovich could possibly have occurred.

The other problem about this story has been greatly exercising Mr Berezovsky and his advisers over the last few weeks and that is that there is no date between the arrest of Mr Glushkov and the execution of the sale agreements at the end of December when Mr Abramovich could have visited Mr Berezovsky at Cap d'Antibes because for most of that time both of them were elsewhere.

Mr Berezovsky told his solicitors in one of the interviews with Mr Patarkatsishvili in 2007 that this visit to Cap d'Antibes occurred on 17 December 2000. In his main witness statement for trial, which is broadly consistent with that, he said that the visit had occurred two weeks after the arrest of Mr Glushkov and a day or two before Christmas.

Mr Berezovsky was then presented with the clearest documentary evidence that he himself was in the United States, or flying there and back, between 16 and

27 December. He was also presented with evidence that Mr Abramovich was fighting an extremely public election campaign for the governorship of the Russian province of Chukotka between 10 and 24 December.

My learned friend says rather dismissively that Mr Abramovich has been trying to put forward an alibi. The main problem is that Mr Berezovsky himself turned out to have an alibi for his own alleged meeting: he was actually in the United States.

Mr Abramovich's alibi is mainly important to meet the case which has recently emerged from Mr Berezovsky. His solicitors have now conceded in correspondence that the alleged meeting cannot have occurred after 16 December 2000. They have served a further statement from Mr Berezovsky in which he says that he now thinks that this meeting occurred on the very day that Mr Glushkov was arrested or within a few days afterwards. This position is maintained, with much obduracy and artifice, in my learned friend's submissions in writing.

The facts are perfectly simple. Mr Abramovich met Mr Berezovsky and Mr Patarkatsishvili at Le Bourget Airport on 6 December and flew straight back to Moscow after that meeting. His passport stamps record that he entered Russia that evening and did not leave again

until 2 January. That material has been confirmed by the Russian border guard service from its own records in a letter supplied in response to a request for information on the point.

The records of the chartered aircraft which Mr Abramovich invariably used for flights in and out of Russia reveal no flights between 7 and 10 December, which on this theory would have to have been made, bringing him to France. Mr Abramovich was in Moscow throughout the period between 6 December and his departure for Chukotka on the 10th, and has accounted for his movements day by day by listing his appointments, most of them appointments with public officials, during that period.

Now, there has been an attempt to suggest that Mr Abramovich might, having flown into Le Bourget and had a meeting at the airport itself, have decided after all to stay overnight in Paris and then accompanied Mr Patarkatsishvili down to Cap d'Antibes the next day, when Mr Patarkatsishvili did travel there, which coincidentally happened on the very day that Mr Glushkov was arrested. That theory is, with respect, clutching at straws. So is the further hypothesis that Mr Abramovich might have flown into Moscow on 6 December and then straight out again to Paris on the following

morning, the moment that Mr Glushkov had been arrested, had lunch with Mr Patarkatsishvili in Paris on the 7th and then accompanied him down, after lunch, to Cap d'Antibes in the afternoon. These are fantasies that have been dreamed up for no other reason than that something fantastic like that would have had to have happened for the rest of Mr Berezovsky's story to be true.

The truth is that the Cap d'Antibes meeting is a deliberate fiction. It could not have got into Mr Berezovsky's evidence by an honest error. It's described in his evidence with a mass of circumstantial detail. It is said by him to be the turning point in Mr Berezovsky's relationship with Mr Abramovich, after which he says he never wanted to speak to Mr Abramovich again. I'll come back to that question a bit later.

This story of a menacing visit by Mr Abramovich to Cap d'Antibes in December 2000 is a fiction. It has been invented by Mr Berezovsky to give himself some kind of case to the effect that he was bound to interpret what Mr Abramovich is said to have said to Mr Patarkatsishvili as a threat of action by Mr Abramovich himself.

Now, turning to the major allegation of intimidation relating to Sibneft, the main problem that Mr Berezovsky

faces about this lies in dressing up the prospect of aggressive action by the State so as to make it into a threat of aggressive action by Mr Abramovich, which it has to be in order to be tortious. Whatever law governs the tort of intimidation, it has to be a threat of adverse action by Mr Abramovich.

Now, two threats are alleged to have been uttered by Mr Abramovich, both of which concerned, on the face of it, prospective action by the Russian State: the first was the threat that the state would expropriate Mr Berezovsky's and Mr Patarkatsishvili's alleged interest in Sibneft if they didn't sell out first; and the second was the threat that the State would keep Mr Glushkov in prison for longer. These alleged threats have somehow got to be transformed into warnings of action by Mr Abramovich.

Obviously the first difficulty about this is that Mr Abramovich was not in control of the acts of the Russian State. It is suggested, I think, by Mr Berezovsky that Mr Abramovich had become a man of great influence in the inner circle of President Putin, that he was a friend of the public prosecutor and that he was, generally speaking, an adept string-puller behind the scenes, but Mr Berezovsky has no evidence to support these suggestions. His argument that the ORT

sale could reasonably have given him that impression would, I would suggest, be far-fetched even if the Cap d'Antibes meeting had occurred in the manner Mr Berezovsky says it did.

Mr Berezovsky, of all people in the world, has good reason to know that President Putin is his own man. We all understand that Mr Berezovsky has strong feelings about President Putin's government but it cannot be suggested that Mr Putin is a patsy or that he allows himself to be manipulated by rich men in the way that, with regret, one must say that President Yeltsin had done.

Now, the facts are that the final pay-out of \$1.3 billion -- or, as Mr Berezovsky would have it, the sale of his and Mr Patarkatsishvili's interests -- was negotiated between Mr Abramovich and Mr Patarkatsishvili in the first few weeks of 2001 and the agreement was reached in principle quite quickly, it seems by the end of January.

There was then, however, a delay in implementing that agreement because, as we can now see from the documents, Mr Berezovsky and Mr Patarkatsishvili wanted to receive the money outside Russia -- understandably enough -- in a form which would not give rise to either exchange control problems in Russia or money-laundering

problems in the receiving bank in the west. That involved a considerable amount of discussion between Mr Berezovsky and his advisers with lawyers, bank managers and so on in attendance.

The final arrangements were not agreed until May, when three meetings occurred between Mr Patarkatsishvili and Mr Abramovich at Munich Airport, Paris and Cologne. The Paris and Cologne meetings were also attended by the chief financial administrators of the principals: Mr Fomichev on Mr Patarkatsishvili's side and Ms Panchenko on Mr Abramovich's.

At the final meeting in Cologne on 29 May 2001, it was finally agreed that the first \$500 million of the \$1.3 billion would be paid in cash within a month and that the balance would be paid in stages over the year; not the calendar year, the next year. Now, the payments were made in accordance with that timetable into the account of Devonian, which was designated for that purpose by Mr Fomichev.

Mr Berezovsky's case is that it was in the course of the various meetings with Mr Patarkatsishvili that Mr Abramovich made his two threats. The expropriation threat is said to have been made as a continuous theme really during these meetings. The allegation in relation to the Glushkov threat is more limited: what is

said in the pleadings is that it was made at a meeting in Munich.

There are perhaps three main problems about this allegation of intimidation as well as a host of minor evidential difficulties which I won't trouble your Ladyship with at the moment.

The first problem is that all of the alleged threats are said to have been made by Mr Abramovich to Mr Patarkatsishvili on occasions when Mr Berezovsky agrees he was not present. The only witness who will be giving evidence of the relevant occasions is Mr Abramovich and, in relation to the meetings in Paris and Cologne, Ms Panchenko. Sorry, I'm told I've got her presence in Paris wrong: it's only Cologne, forgive me. Mr Abramovich denies uttering any threat and certainly Ms Panchenko did not witness one.

Mr Berezovsky, as I've said, wasn't present on any of these occasions and he relies, as far as one can see, entirely on the account which he says that Mr Patarkatsishvili subsequently gave to him. Unfortunately for Mr Berezovsky, his lawyers' waiver of privilege over their interviews with Mr Patarkatsishvili has resulted in the disclosure of the notes made of the interview with him and the draft proofs of evidence. At a later stage I will say a word about these in general

because they contribute something to an understanding of many aspects of the case.

These notes do show, as I accept, that by 2005, when the first interviews with Mr Patarkatsishvili took place, he was indeed asserting that he and Mr Berezovsky had had an interest in Sibneft which they had sold to Mr Abramovich. I have sought to explain why they were doing that. But the notes are completely inconsistent with any suggestion that there was some threat by Mr Abramovich either to bring about the expropriation of their stake or to prolong the imprisonment of Mr Glushkov.

The nearest that one gets in the interviews with Mr Patarkatsishvili to an allegation of a threat of expropriation is a suggestion by Mr Patarkatsishvili to the solicitors that Mr Abramovich was always complaining that the continued association of Mr Berezovsky with Sibneft in the public mind was damaging the interests of Sibneft.

On the subject of Mr Glushkov's position, Mr Patarkatsishvili said that he believed that if he and Mr Berezovsky sold out of Sibneft, Mr Glushkov would be released, but he makes it clear that that was not because of anything that Mr Abramovich said; it was because Mr Patarkatsishvili claimed to have received

a personal assurance to that effect from Mr Voloshin, the head of President Putin's administration.

Mr Patarkatsishvili was asked by the solicitors whether Mr Glushkov had been mentioned at the Munich meeting in May, which is when Mr Berezovsky claims the threat to keep Mr Glushkov in jail was uttered. Mr Patarkatsishvili's reply was that Mr Glushkov wasn't directly mentioned on that occasion; there was only a rather oblique reference to him, without mentioning his name, which is not said to have been accompanied by anything remotely resembling a threat.

Mr Patarkatsishvili makes it perfectly clear why he was in favour of selling out of Sibneft. The reason was that he and Mr Berezovsky were concerned that Sibneft as a company might be destroyed by the Russian government, just as we now know Yukos later was, and that Mr Berezovsky and Mr Patarkatsishvili, having become exiles, were desperately in need of funds to maintain their standard of living.

The next problem about the Sibneft threats is the extraordinary variation in Mr Berezovsky's account of the facts. In his early statements to the press, to the Metropolitan Police, to whom he made statements in relation to the investigation of the murder of Mr Litvinenko, and to my clients indeed in his letter

before action and in a number of other places, Mr Berezovsky described the threat as being that the State would take adverse action not to expropriate Mr Berezovsky's interest in Sibneft but to destroy Sibneft as a company.

That of course is exactly what Mr Patarkatsishvili describes in his witness statement as being Mr Abramovich's concern. That statement couldn't possibly have been a threat by Mr Abramovich himself. It can't seriously be suggested that Mr Abramovich was threatening to induce the State to destroy his own company just to spite Boris Berezovsky, like Samson pulling down the temple over his own head.

Mr Berezovsky's earlier account of the Glushkov threat was that Mr Abramovich had said, apparently at a meeting with Mr Patarkatsishvili in Munich in May 2001, that if they sold out of Sibneft, Mr Glushkov would be released. Now, that too bore some relation to what Mr Patarkatsishvili had said in the interviews but it manifestly wasn't a threat by Mr Abramovich against Mr Glushkov; as the Court of Appeal pointed out in the hearing of the summary judgment application, it was an inducement rather than a threat.

The pleadings assumed their current form, which alleges an implicit threat by Mr Abramovich to use his

influence in Russia to get their interest expropriated and Mr Glushkov kept in jail, only in the course of Mr Berezovsky's resistance to my client's application for summary judgment, after the Court of Appeal had pointed out that Mr Berezovsky's existing case did not appear to satisfy the elements of the tort. This reeks of invention by a man whose main concern is to navigate around the more awkward facts and the more awkward propositions of law by changing his story every time some unforeseen difficulty is raised about the previous version.

The third point that has to be made about this threat is that even in its current form the story doesn't hang together. How does the State set about expropriating what is now said to be a personal claim against Mr Abramovich under a Russian law joint activity or sui generis agreement, which is how we're told this 1995 agreement should be classified? What does it do to seize an interest of that sort? Presumably all it could do is legislate to vest the alleged contractual rights of Mr Berezovsky and Mr Patarkatsishvili in the State and then enforce them against Mr Abramovich. Is it going to be said that Mr Abramovich himself promoted that sort of expropriation? And how would it actually work, given that the rights would be worthless anyway in

a Russian court since they were undocumented?

Then again, if Mr Abramovich was trying to bully Mr Berezovsky and Mr Patarkatsishvili into releasing him from his obligations in respect of Sibneft shares, surely it is incomprehensible that he agreed, according to their evidence, to pay them a huge sum of money without seeking a release from them, because a release is, effectively, what Mr Abramovich was said to have asked for. He was bullying them, according to this story, into releasing him from his personal obligations to them in relation to the custody of these shares. Without a release how would Mr Abramovich ever know whether he had succeeded in his bullying?

Mr Abramovich's evidence is that he never asked for a release, as he surely would have done if he'd behaved in the way alleged, and it's not alleged by Mr Berezovsky that he got one. That could only be because Mr Abramovich did not understand Mr Berezovsky and Mr Patarkatsishvili to be releasing any obligation of his. If they weren't releasing anything, then where was the need to bully them?

There are, of course, a number of legal difficulties about these arguments even on the rather artificial footing, which we reject in its entirety, that the factual allegations are correct. The most notable of

them is that this claim cannot succeed unless either the tort is governed by English law, some law other than Russian law; or else, if governed by Russian law, the limitation period of three years can be extended by reference to some doctrine of Russian law.

We've set out in our written opening the grounds on which we say that Russian law was the proper law of the tort. I'm not going to argue that now. On the face of it, the critical fact is that the alleged threat was to do things in Russia which are unlawful, it is said, or illegitimate in Russia, with a view to causing damage in Russia to an asset -- the shares in Sibneft -- or a person -- Mr Glushkov -- located in Russia. So Russian law would appear fairly clearly to apply.

Turning to the Russian law extensions issue, on which Mr Berezovsky has to succeed if Russian law governed the tort, the exception relied on is primarily Article 205 of the Russian Civil Code, which is said to extend the limitation period if it can be shown that the limitation itself presented Mr Berezovsky from suing earlier than he did. There is an alternative argument which depends on exactly the same facts but reliance on limitation is, in the circumstances of this case, an abuse of rights.

Both of those points depend for their facts upon the

proposition that Mr Berezovsky could not bring this action earlier than he did because he didn't dare to sue while Mr Glushkov was still in Russia and liable to be kept in prison or, once released, reimprisoned.

Mr Glushkov didn't in fact leave Russia until July 2006.

It is pretty clear that this factor had no impact on Mr Berezovsky's conduct at all. Throughout the period when Mr Glushkov was in Russia, Mr Berezovsky was threatening and hectoring the Russian government in speeches and press interviews in a manner which is quite inconsistent with his supposed sensitivity to the position of Mr Glushkov.

If the problem about starting this action is that it would be thought liable to upset the Russian government to a degree that would adversely impact on Mr Glushkov, well, it is hard to imagine anything that Mr Berezovsky could have done to upset the Russian government more persistently than he actually did. Not only that, but he publicly announced his intention to bring this action four years before he actually did so; something which he surely wouldn't have done if he really thought that litigation against Mr Abramovich was liable to put Mr Glushkov in danger.

Before I leave the intimidation claim and turn to the Rusal claim, I ought to say a brief word about the

Devonia agreement, which I mentioned in another context a few minutes ago. Leaving aside a couple of unarguable estoppel points about which my learned friend is commendably reticent in his written opening, the Devonia agreement is the sole basis on which Mr Berezovsky claims to have suffered loss.

The Devonia Agreement purported to be an agreement by which Mr Berezovsky and Mr Patarkatsishvili sold an equitable interest in their Sibneft shares to a vehicle company, Devonia, belonging to Sheikh Sultan. The argument is that the equitable rights of Mr Berezovsky and Mr Patarkatsishvili were sold to Devonia with a view to their being sold on by Devonia to Mr Abramovich and that it was the sale of his assets to Devonia that constituted his loss.

One problem about this argument -- though not one I'm going to develop at the moment -- is that Mr Berezovsky didn't have an equitable interest in Sibneft to sell to Devonia, as he now accepts, yet that was what the Devonia contract purported to transfer. But that is a trivial problem by comparison with the more fundamental issue about the Devonia agreement, which is that the whole agreement was a sham.

Now, this is one area of the case which is relatively well documented. It is tolerably clear that

it wasn't a genuine sale but an artificial transaction designed to satisfy the money-laundering enquiries of Clydesdale Bank, into which Mr Berezovsky and Mr Patarkatsishvili had arranged for the money to be paid. There is no doubt that some of the documents relating to the Devonia transaction did pass under Mr Berezovsky's eyes and that some discussions about it occurred, although it may well be that he did not see all of those documents; Mr Fomichev, however, unquestionably did.

The main evidence on this point is going to be given by the only surviving partner of Curtis & Co, who I think he was a salaried partner at the time, Mr Jacobson. I should make it clear that it is not my case that Mr Jacobson was himself personally involved in any of the more surprising activities of Mr Curtis. He was involved in the transaction but he was involved very much in a subordinate capacity. He was asked to draft documents to this, that and the other effect; he did so, and so on. The essential decisions were made, so far as we can see, by Mr Stephen Curtis in conjunction with Mr Fomichev.

Now, the basic problem which the Devonia transaction was designed to address was that in order to satisfy the Clydesdale Bank's due diligence, they had to show the

Clydesdale Bank documentary evidence that the funds originated in the sale of an identifiable asset which they owned. So what they told the Clydesdale Bank was that the money was the proceeds of sale of an equitable interest in Sibneft, the legal title to which was owned by Mr Abramovich. In order to do that, they of course needed a documented sale.

Now, in the ordinary course they could have been expected to produce a written agreement with Mr Abramovich. Of course they couldn't do that. Mr Abramovich was clearly not going to sign a document recording a sale to him of an interest in Sibneft shares; that wasn't the nature of the deal that Mr Patarkatsishvili had made with him. Indeed, they never even asked him to sign a document of that kind. Documents like that were drafted by Mr Curtis but Mr Abramovich was never even asked to sign them; they perfectly well knew what the response would be.

So they had to pretend that they had sold their interest not to Mr Abramovich but to Devonia and that Devonia had then sold it on to Mr Abramovich. That would enable them to produce the sale contract with Devonia as evidence of the origin of the funds. The money would then be passed through Devonia's bank account and from there to Clydesdale Bank.

Now, the sheikh was induced to play his part in this charade by the promise of an exceptionally large commission, well over \$200 million, which he would deduct as the money passed through Devonia's accounts.

The author of the scheme appears to have been mainly Mr Curtis, who successively acted for both Mr Berezovsky and Mr Patarkatsishvili and for the sheikh. Mr Curtis also received, with the express consent of Mr Berezovsky, who signed a consent form, a personal commission of \$18.3 million out of the funds for taking part in this transaction in addition to the professional fees of his firm, which amounted to £461,000.

Now, the bank, of course, expressed understandable surprise that the sheikh was proposing to buy from Mr Berezovsky and Mr Patarkatsishvili for \$1.3 billion an undocumented interest in a Russian company which Mr Berezovsky's solicitor, Mr Curtis, himself described as a rather nebulous right.

It was also explained to Clydesdale Bank that it was not going to be possible to get any document recording Mr Abramovich's acknowledgement that he held an equitable interest for Mr Berezovsky and Mr Patarkatsishvili. That, of course, was a bit of a problem, at least for the, I have to say, relatively credulous European compliance officer of Clydesdale

Bank. The parent company in Australia hit the roof when it reached them. But various yarns were spun in order to reassure the bank.

Essentially Mr Curtis told them this. What he said was that the nebulous character of the interest being sold to the sheikh did not need to worry them because Mr Abramovich would be buying the interest from the sheikh under a mirror transaction. Moreover, Mr Curtis said that Mr Abramovich would be depositing the full amount of the payments with Devonian in a secured account in advance of Devonian committing itself to Mr Berezovsky and Mr Patarkatsishvili.

So what was being explained to the bank was that Devonian would be fully protected against the nebulous character of the transaction because they would have an absolute right beforehand of resort to Mr Abramovich, who would have secured it with 100 per cent deposit in Devonian's accounts.

Meanwhile, it was said, since the bank clearly were not willing to accept that the money should be paid straight out of the security account opened by Mr Abramovich into Clydesdale Bank, effectively just going round in a circle, that wouldn't do, so Mr Curtis told the bank that Mr Abramovich would deposit the money by way of security in an account of Devonian but the

sheikh would use his own funds, other than that, in order to make the payments to Clydesdale Bank.

All of that was a complete fiction. Mr Abramovich had no dealings with Devonian or the sheikh. He was unaware of their involvement until 2002, when Mr Patarkatsishvili approached him and asked him to indemnify them against the considerable costs that they had incurred in getting the money to a western bank account and Mr Abramovich agreed to pay more.

Mr Abramovich was unaware of the details of the Devonian transaction until after disclosure was made in these proceedings. In fact there was no contact between Mr Abramovich and Devonian or the sheikh, there was no on-sale, there was no advance deposit; the money simply went round in a semicircle from Mr Abramovich to Devonian to the Clydesdale Bank in exactly the way that Mr Curtis assured them would not be happening.

None of those who come out of the Devonian transaction come out of it with any credit, yet that is the whole basis -- apart from the alternative estoppel cases -- on which loss is claimed as a result of this intimidation.

Mr Rabinowitz spent most of his time yesterday dealing with the Rusal claim, although more than five-sixths of his loss is said to have arisen from the

allegation of intimidation. We have, after 727 pages of written submissions and four hours of opening, very little knowledge about how he proposes to show that the large payments that his client received really represented profit share or that Mr Abramovich intimidated him either at Cap d'Antibes or with his later meetings with Mr Patarkatsishvili; nor, of course, do we know how he proposes to show that the Devonia agreement on which his loss depends was a real transaction.

I don't say this by way of criticism but my learned friend is giving your Ladyship his hundred best tunes and he cannot reasonably be expected to dwell upon the clanking din which his clients are making below.

There remains my learned friend's emotional statement at the outset of his submissions yesterday that as a result of the way that Mr Berezovsky was treated on Sibneft, two close friends became declared enemies. How, he asks forensically, is that to be explained other than by reference to this kind of cataclysmic happening?

Your Ladyship can, I think, take it for granted that Mr Abramovich is no friend of Mr Berezovsky's now. But the attempts to relate the change of sentiment to what happened in December 2000 is a little extravagant. It

exaggerates both the closeness of these two men before that date and the distance afterwards. Mr Abramovich's evidence is that, with the benefit of hindsight, he would hesitate to call Mr Berezovsky a close friend in the 1990s, although he did feel a strong emotional bond to him.

The evidence shows that there wasn't in fact a sudden break after December 2000. From early 2000 Mr Abramovich had already been seeing less and less of Mr Berezovsky in any event. There was a perfectly amicable meeting in Megeve between them, which Mr Berezovsky denies, in January 2001, less than a month after the alleged intimidation relating to ORT, which was actually witnessed by Mr Sponring.

Mr Berezovsky's public statements about Mr Abramovich are quite amicable until about 2002. The first time that Mr Abramovich realised that Mr Berezovsky was not happy was in December 2002, when he read an article in which Mr Berezovsky said that he didn't know him. He discussed this, according to his evidence, with Mr Patarkatsishvili, who told him he should ignore it.

It is right to add, as that little incident perhaps shows, that throughout 2002 to 2008, right up to today, Mr Abramovich was on perfectly good terms with

Mr Patarkatsishvili, although Mr Patarkatsishvili was, if Mr Berezovsky's story is right, just as much the victim of this alleged behaviour as he, Mr Berezovsky, was.

Now, of course, by December 2000 Mr Berezovsky was in exile. As the years went on, he became increasingly bitter; he made more and more serious allegations against Mr Putin and the Russian government. None of this was a good reason for Mr Abramovich to be seen to be friends with him. The evidence in fact is that the break was the result of the festering feeling in Mr Berezovsky's breast that he had somehow been done out of things which developed in the course of the first decade of the present century, relatively slowly at that.

My Lady, the next thing I want to turn to is Rusal and I don't suppose you want two minutes of that before lunch.

MRS JUSTICE GLOSTER: That would be a very convenient moment, so that you can all get out before the rush.  
Very well. I'll sit again at 2.05.

(1.57 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: My Lady, the first point to be made about the Rusal claim is that it cannot be looked at, so to speak, in a self-contained compartment in isolation from the Sibneft claim. That's not only because major issues of credit affecting the evidence of both sides will arise from the evidence about Sibneft which may well colour your Ladyship's view about their evidence on Rusal but it's also because the question whether Mr Berezovsky or Mr Patarkatsishvili had an interest in Rusal is closely bound up with the question whether they had an interest in Sibneft.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: There are two reasons why that is so. The first is that Mr Berezovsky says that under the 1995 agreement it was agreed that if any of the parties embarked on any future business venture other than Sibneft, the others would share it in the same proportions.

Now, that contention is disputed, along with most of the other terms of the alleged 1995 agreement, but this is the agreement on the basis of which Mr Berezovsky claims that the parties in 1999 decided jointly to participate in the original acquisition of the aluminium assets which in the following year they then merged with those of Mr Deripaska. So it is rather a critical part

of their case that this all happened pursuant to what they say was agreed in 1995.

The second reason why they are interconnected is that, as in the case of Sibneft, Mr Berezovsky did not contribute a single cent to the cost of acquisition of the relevant assets. I don't think that it is his case this time that he was entitled to participate for nothing; that would be absurd. What he says is that his share of the price of the aluminium assets was to be satisfied from his share of Sibneft profits.

Now, that contention only works if the 1995 agreement entitled him to have a share of Sibneft profits and if there were some Sibneft profits to apply in satisfaction of his contribution to the price. Now, I've already explained why there were actually no Sibneft profits to which Mr Berezovsky could have been entitled and why the sums which he received can't have been Sibneft profits.

It is worth pointing out --

MRS JUSTICE GLOSTER: Well, because even in the plenty years his share exceeded, you say, the percentage of the profits attributable?

MR SUMPTION: Yes, exactly. They bear no relation -- in the plenty years they exceeded it and they were paid before the company had been acquired and indeed before it had

made any profits and they were unrelated to dividends as well.

It's perhaps in that context worth pointing out that Mr Berezovsky and Mr Patarkatsishvili got \$490 million between them out of Mr Abramovich's companies in the year 2000; that is to say the year in which it is alleged that the aluminium assets were to be paid for out of Mr Berezovsky's profits or share of profits. Now, that means that it must be contended that Mr Berezovsky and Mr Patarkatsishvili were entitled to treat as satisfaction of their contribution to the price of the aluminium assets a sum in excess of the \$490 million which they were actually paid. This perhaps suggests that their case requires one to suppose that this great pot of Sibneft profits was almost infinitely elastic.

Now, the first and fundamental question that your Ladyship will have to address under this head is which law governs the alleged English law trust said to have existed between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili. It is common ground, as my learned friend told your Ladyship yesterday, that the Rusal claim can only succeed if it is governed by some law other than Russian law because in Russian law there cannot be a trust and a claim would be time-barred

anyway.

Now, therefore the selection of the proper law -- this is a rare case in which the selection of the proper law, which is itself of course a question of English private international law, is absolutely critical to the outcome of this claim irrespective of the facts. It is not suggested in the context of the time bar that applies to the Rusal claim that there is any Russian law basis on which that time bar can be ignored or extended.

Our submission on the proper law is set out at considerable length --

MRS JUSTICE GLOSTER: I've got it, page --

MR SUMPTION: -- in our opening from paragraph 465 onwards B(C)/220 and I'm only going to deal briefly with it at this stage, mainly for the purpose of identifying what appear to be the facts relevant to considering it.

There are two planks to my learned friend's case that English law applies: the first is that it applies by express agreement at the Dorchester Hotel meeting; the second is that it applies by implication from the fact that a number of other agreements executed in the course of the merger arrangements with Mr Deripaska were expressly governed by English law and that Mr Berezovsky had good reasons for, at any rate, not wanting it to be governed by Russian law.

The first of those points, express choice of law, is a pure question of fact which your Ladyship is going to have to decide. Both Mr Justice Coleman and the Court of Appeal, in giving judgment on the summary judgment hearing, made some somewhat critical comments about this contention and the circumstances in which it came to be advanced.

I do not suggest to your Ladyship that there is something inconceivable or absurd about choosing English law to govern an arrangement between Russians about Russian assets. I do suggest that it must be most unusual to have an express choice of English or any law for that matter to govern an oral agreement. I've certainly never heard of parties saying, "We're not going to write down our agreement but our oral exchanges are going to be governed by the law of X". If you want to have an express choice of law, you have a written agreement.

As Lord Justice Burnton pointed out in the Court of Appeal, commenting on the suggestion from Mr Berezovsky that at the Dorchester Hotel meeting it was agreed that the parties would conduct their affairs in a proper British law way, that being the phrase that I think Mr Berezovsky claims was used, the proper British law way to deal with these matters is to write it down.

That didn't happen.

Now, an express choice of English law was first alleged as a direct response to Mr Abramovich's application for summary judgment. That application relied upon the fact that Russian law doesn't recognise the concept of trusts. Dr Rachkov, Mr Berezovsky's expert on Russian law, agreed with that proposition, thus making it essential, if Mr Berezovsky's case was to remain on the rails, that he should find some basis for saying that Russian law didn't apply.

The problem for Mr Berezovsky is that if, as he now says, he has a clear recollection -- and he claims to have a clear recollection of this -- of agreeing English law at the Dorchester Hotel, then he doesn't have any explanation of his failure to rely on this at any earlier stage of the proceedings.

Allegations that somebody has changed his approach in the course of the pleadings are not always terribly persuasive in commercial litigation and they can sometimes become rather a tedious theme of a complicated case, but that depends upon the particular nature of the allegation and the circumstances in which it was made. This is an allegation about an express exchange which a party claims to have clearly remembered which has a significant impact on a major part of the case.

The whole question of proper law was much canvassed in the course of the litigation, naturally enough, given its importance for the outcome. We have summarised at paragraph 480 the essential stages of that story.

I know your Ladyship has read this and I'm not therefore going to go through it in detail.

Perhaps the most significant single episode in that history, as your Ladyship will see, what was pleaded originally was not that there was an express choice of English law; indeed, it wasn't really alleged that there was an implicit choice of English law either. What was said is that Mr Berezovsky's intention was that it should be some law other than Russian law and therefore the court should assume that it was English law or possibly BVI law or possibly French law.

Perhaps the most significant episode in the interlocutory history relating to this aspect of things is the submission which Ms Dohmann QC, then acting for Mr Berezovsky, made to His Honour Judge Mackie in April 2008, which your Ladyship will see covered in paragraph 480 of our written opening.

MRS JUSTICE GLOSTER: Subparagraph 4, is it?

MR SUMPTION: It's subparagraph 8 in fact.

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: Now, at that hearing she presented a revised

draft pleading and she said that this draft was the result of a considerable amount of hard work by Mr Berezovsky's team which was directed to showing that the proper law was not Russian but either English law or BVI law. That led, as your Ladyship will see on the following page -- subparagraph 9 -- to a request for further information and an answer from Cadwaladers which we quote.

That answer is an explanation not of why the parties had a common intention that the proper law should be English law; it's simply an explanation of why the parties, in Mr Berezovsky's submission, had a common intention that the proper law should be something other than Russian law. It is therefore not relying on any express agreement.

In his reply Mr Berezovsky relied on an inference as to the parties' intentions which is spelt out in the passage from the pleading which is quoted in our subparagraph 11, if your Ladyship would be kind enough just to read through that part. (Pause)

MRS JUSTICE GLOSTER: Yes, I've read that.

MR SUMPTION: That pleading was verified by a statement of truth signed by Mr Berezovsky.

If Mr Berezovsky distinctly recalled his phrase that there was an express choice of English law at the

Dorchester Hotel meeting, then the answer had always been simple and indeed conclusive. Mr Berezovsky's team had never needed to rely on an implicit choice of some law -- possibly one of a number -- other than Russian law. Ms Dohmann and her team had never needed to groan and travail over the question what the proper law was, in the manner suggested to His Honour Judge Mackie. There was a perfectly simple answer: that Mr Berezovsky's sudden recollection within a few months of the service of that pleading of something which he had distinctly recalled all along but failed to mention to any of his solicitors is simply beyond belief.

This issue therefore, in our submission, depends on whether there was an implied choice of English law, in the sense that that was the implied intention of the parties, or an imputed choice of English law by virtue of English law being the law which is most closely connected with the transaction. As Ms Dohmann correctly perceived, it is not easy to come up with English law by a process of implication or imputation.

The case that there was an implied choice of English law is essentially founded on the express choice of English law in other agreements. These agreements which your Ladyship was shown yesterday by my learned friend have nothing to do with the relevant private

international law question. They are all concerned with the acquisition by Mr Abramovich of the aluminium assets and the merger of those assets with those of Mr Deripaska. They were not concerned with the distinct arrangements that Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili are alleged to have made among themselves as to how their interests would be shared out and how they would be held.

Now, English law did not in fact govern the critical agreements into which Mr Abramovich entered. The agreement of 10 February which dealt with the KrAZ and BrAZ aluminium sellers, which is at tab 2 of the bundle that your Ladyship was taken to yesterday -- for the record, this is H(A)17/33 -- was not governed by English law. Likewise the preliminary agreement between Mr Deripaska and Mr Abramovich at tab 1, the reference to which is H(A)16/47T in the English translation, is not governed by English law either, although it did envisage, as one can see at the end, that the definitive agreement which was in due course expected to supersede it would be governed by English law.

Now, Mr Berezovsky was not a party to --

MRS JUSTICE GLOSTER: Is that not a pointer?

MR SUMPTION: It may be a pointer, but perhaps not when you are dealing with a large number of interlocking

agreements, some of which are governed by English law and some of which are not. But I can quite see that it could be a pointer.

Now, Mr Berezovsky was not himself party to any of the agreements containing an English choice of law provision unless he was a party by virtue of being a "partner" or "another party represented", to quote the various phrases that appear in some of these documents. Mr Berezovsky appears to have been, so to speak, an undisclosed principal behind Mr Abramovich to the preliminary agreement but he does not claim even to have been aware of that agreement at the relevant time; he does not claim that he was aware of these documents. His evidence is that he wasn't involved in deciding on or implementing the various structures which were used to acquire and then merge these assets and it does not seem that he saw them. He is simply hitching a lift on the documents a decade later.

It follows from that that these documents cannot be treated as part of the factual matrix against which to interpret the distinct trust which is alleged to have been created by agreement at the Dorchester Hotel. They do help my learned friends to say, as I accept, that it isn't inconceivable that there could have been an express choice of English law, but they do not get one

any closer to finding that there was an implicit choice of English law.

In deciding whether there was an implicit choice of English law, in our submission the obvious weight would need to go to the fact that this was an agreement made in Russian about Russian assets between Russians, all of whom were at the time resident in Russia. The normal inference, certainly as a matter of English private international law, is that a trust is governed by the law of the settlor's residence or the trustee's residence, that being where you would have to pursue him in order to enforce the trust, and that was Russia.

Now, that is an oversimplified summary of what is necessarily rather a complicated position because these issues are determined by the Hague Convention but they're not wholly determined by the Hague Convention. In other words, as you work through the successive questions that the Hague Convention requires one to answer, you can reach a stage where you get no answer under the Hague Convention and you have then to resort to the common law. That is likely to be the position here.

What is, however, absolutely clear is that as a matter of English law, the fact that the implied choice of law would lead one to a law which does not

recognise trusts is not a ground for escaping the operation of that law. That principle is absolutely fundamental because as a matter of English PIL it is well established that the parties may implicitly choose a law to govern their transaction under which it is not valid.

If Russian law applies, that is the end of the Rusal claim, as my learned friend accepts. This is therefore an issue of very considerable importance. If English or some similar law applies -- and there's no suggestion of any difference between English, French or BVI law -- then it will be necessary for your Ladyship to decide (1) whether the agreement alleged to have been made at the Dorchester Hotel was in fact made; and (2) if it was made, whether it included the term alleged by Mr Berezovsky that none of Mr Abramovich, Mr Berezovsky or Mr Patarkatsishvili would sell their shares in Rusal without the agreement of the others.

The evidence of Mr Abramovich, Mr Shvidler and Mr Deripaska is that no agreement was made at the Dorchester Hotel. There was a discussion in general terms of a merger agreement that had in fact already been made some time earlier and made without any involvement on the part of Mr Berezovsky. Mr Berezovsky himself turned up an hour late to this meeting.

There was no agreement about the mutual relations between Abramovich, Berezovsky or Patarkatsishvili at all. The alleged agreement that none of them would sell the shares without the other is denied by all three witnesses present at the meeting, whom I shall be calling. It is also, interestingly enough, inconsistent with the notes that were taken of Mr Patarkatsishvili's evidence. Those notes do not record any agreement that an English law trust was to be created.

Mr Patarkatsishvili, judging by the notes, obviously thought that Mr Abramovich ought not to have sold without reference to him but he never suggested that there had been an agreement to that effect; his point was simply that it was contrary to what he described as Russian practice. If there had been an agreement not to do so, an express agreement not to sell without reference to the other parties, then surely Mr Patarkatsishvili would have said so.

Now, I can't usefully expand on those points in opening. Your Ladyship will have to assess the evidence on each side as it is given. What I can perhaps do at this stage is to comment relatively briefly on the submissions which my learned friend made about the reference to "partners" in the preliminary agreement and about the various documents produced after the alleged

agreement by other parties, not by Mr Abramovich, in which it was suggested that Mr Berezovsky and Mr Patarkatsishvili had an interest.

The reference to "partners" in the preliminary agreement is a matter which is dealt with by Mr Bulygin in his witness statement. We do not know whether we will be able to call Mr Bulygin, he has been very ill. We will call him if we can, but otherwise his witness statement will have to stand uncross-examined as his evidence. But what he says is that there was no discussion of the possibility that Mr Berezovsky or Mr Patarkatsishvili were Mr Abramovich's partners; for his part, he assumed that Mr Shvidler was Mr Abramovich's partner.

The clause in question was inserted, as he explains, mainly in order to deal with the possibility -- this is clause 4.1, which refers to "partners" -- that the Trans-World Group might be standing behind Mr Abramovich. Mr Deripaska had fallen out with the Trans-World Group, essentially the Cherney brothers, and he didn't want to see them coming back in under Mr Abramovich's cloak.

This is a reminder of one of the critical factors about the background against which one needs to look at these documents: all of them had to be viewed in the

context in which these individuals were operating.

The agreements were entered into against the background of the so-called aluminium wars in which -- and I think this is common ground -- the profitability of the aluminium industry had been reduced to next to nothing by racketeering and violence in the aluminium-producing areas. Nobody trusted anybody else. The practice of dealing through opaque structures of nominee holdings and so on meant that nobody could be sure that they could know who they were actually dealing with.

As Mr Bulygin points out, nobody actually knew if Mr Abramovich was really going to pay for the assets or, if he did, was going to pay for them with his own money. Mr Deripaska did not know if Mr Abramovich was really buying the assets or whether Messrs Cherney and the Trans-World Group were really involved behind him.

Mr Shvidler, who signed the preliminary agreement, will give evidence of the circumstances which lay behind these particular agreements, why they were worded in this way, and so will other Russian witnesses who were involved in the negotiations.

The various memoranda which came into being after the agreement are another matter. Those are documents which came into being after 2000, for the most part,

within the Patarkatsishvili camp or the Deripaska camp or the Berezovsky camp. Those documents, in our submission, hardly justify the time which my learned friend devoted to them.

The most significant documents are those included in the list at tab 8 of the bundle my learned friend handed up, which is H(A)18/221.001T, where they are listed as items 5 to 8. These documents are contracts between Mr Patarkatsishvili and the acquiring companies under which Mr Patarkatsishvili contracted to receive a commission for negotiating the deal; something which is hardly consistent with his being a principal.

Mr Patarkatsishvili must have regarded these instruments, the so-called protocols, as reflecting the true character of his involvement in these transactions. The reason for that is that Mr Patarkatsishvili brought these four protocols before a Moscow notary on 16 March 2000 and had them formally notarised in order to preserve them as evidence. 16 March was just three days after the Dorchester Hotel meeting at which Mr Berezovsky says that they agreed a totally different deal under which Mr Patarkatsishvili was a principal and not an intermediary.

Now, certainly Mr Abramovich, as well as Mr Patarkatsishvili, regarded the protocols as

reflecting the real nature of Mr Patarkatsishvili's involvement; but, as my learned friend told your Ladyship yesterday in answer to your Ladyship's questions, the four protocols were never acted on and the money was never paid. The reason for that is explained in Mr Abramovich's witness statement, where he says that he and Mr Patarkatsishvili agreed that they would wait and see how matters developed.

It is obvious as a matter of inference that Mr Patarkatsishvili hoped that if the aluminium deal went well, he would earn an even larger commission. As it turned out, he was absolutely right about that. At any rate, he couldn't do earn less because Mr Abramovich had at least agreed to pay him that.

The other documents to which your Ladyship was taken are all documents devoted to the familiar problem of trying to dress up an income stream as a capital asset so that the money can be received into western banks without undue suspicion about its origins. That certainly seems to be true of the explanatory note at tab 9 H(A)18/221.003T to which I took your Ladyship this morning, the document prepared by Mr Kay, although in the absence of any oral evidence about its origins, that must be a matter of inference. Particular doubts attach to any document which can be shown to have

emanated from Mr Kay, as this one did.

MR RABINOWITZ: Sorry to rise. My learned friend keeps asserting that this is Mr Kay's document as if this were common ground or an established fact. I just want both my learned friend and your Ladyship to be clear that that isn't in fact the case.

MRS JUSTICE GLOSTER: I think you said "the most likely contender", or maybe Mr Sumption said that.

MR RABINOWITZ: It started with Mr Sumption saying "the most likely contender", telling us that his client thought this was in bad Russian and that therefore it meant this was Mr Kay. I have to say that that is not agreed.

MRS JUSTICE GLOSTER: Right, okay. You don't dispute it was found in Mr Kay's office?

MR RABINOWITZ: I don't dispute it was found in Mr Kay's office, that's right.

MR SUMPTION: The inference -- I can quite see that the word "probably" should probably have appeared in my last sentence, but "probably" is good enough for your Ladyship.

If this document was prepared by Mr Kay, particular doubts attach to it. As I told your Ladyship this morning in another context, in the Valmore action Mr Kay was found to have forged one of the Spectrum documents. Indeed, it is said by Mr Berezovsky in the Chancery

proceedings that Mr Kay also forged a deed of appointment and letter of wishes appointing himself as executor of Mr Patarkatsishvili's assets. Mr Kay is a defendant in the Chancery proceedings but I understand that he has not been seen for quite a long time.

The same concern with money-laundering problems explains the rather peculiar form in which the sale of the second tranche of the Rusal shares to Mr Deripaska went through in July 2004. In 2004 the problems arising from money-laundering regulations must have been absolutely intolerable for Mr Patarkatsishvili.

The Clydesdale Bank, whose European compliance officer had been effectively deceived into agreeing to accept the Devonia monies in May 2000, refused to accept any more of it in August as a result of a decision by their Australian head office. They also required Mr Berezovsky and Mr Patarkatsishvili to close the accounts as soon as possible. Unfortunately, it took them more than three years to find another bank willing to accept balances that had already built up in the Clydesdale Bank accounts before the Clydesdale Bank required the accounts to be closed. So the money was effectively frozen because they couldn't transfer it anywhere; in large numbers of cash withdrawal machines perhaps.

Now, this experience almost certainly explains the odd way in which Mr Patarkatsishvili agreed to receive his commission on the Rusal transaction.

Mr Patarkatsishvili had made a very significant contribution to the success of the aluminium deal. He had personal contacts with most of the people involved, which Mr Abramovich did not have. He negotiated many of the agreements. Critically, after the acquisition and merger of the assets Mr Patarkatsishvili played a very significant role in putting an end to the gang warfare and racketeering which had come close to destroying the industry, thereby enabling it to resume its profitability, to the considerable benefit of its owners.

Mr Abramovich's evidence is that he ultimately agreed to pay Mr Patarkatsishvili a commission of \$585 million, that agreement having been made in August 2003. The problem to which that gave rise was the familiar problem of how that was going to be got into a western bank account, Mr Patarkatsishvili being now an exile living in Europe. So Mr Abramovich later agreed with Mr Patarkatsishvili that he would transfer the second tranche of the Rusal shares to him in lieu of commission so that he could then sell them to Mr Deripaska in his own name. The proceeds of that sale

could then, in all honesty, be presented to western banks as the price of a capital asset.

Now, it's clear from the Bryan Cave memoranda to which your Ladyship was taken yesterday, and indeed from a fair amount of other evidence, that Mr Deripaska was concerned that Mr Berezovsky might have an interest in assets that were being acquired by Mr Deripaska from Mr Patarkatsishvili. It was the case that he was acquiring them from Mr Patarkatsishvili but Mr Deripaska was understandably concerned about that because Mr Berezovsky had been claiming in the press that he had an interest in those assets. It therefore occurred to Mr Deripaska and his legal advisers that if he contracted with Mr Patarkatsishvili alone, Mr Berezovsky might have a claim against him at some subsequent stage.

This problem was ultimately dealt with by Mr Patarkatsishvili warranting that he was the sole beneficial owner of the shares that he was selling in Rusal and by Mr Abramovich entering into a deed with Mr Deripaska acknowledging that he, Mr Abramovich, had dealt with no one else and that Mr Deripaska could therefore take it that the beneficial interests were those declared by Mr Patarkatsishvili and no others.

Mr Patarkatsishvili was genuinely selling to Mr Deripaska but he had only temporarily acquired the

assets for the purpose of enabling him to receive money from an asset rather than an income stream. Now, Mr Patarkatsishvili had no interest in Rusal other than the interest in the second tranche which was created for him at the time when that tranche was sold.

Mr Berezovsky, in our submission, never had an interest in Rusal unless possibly he had one by virtue of the alleged partnership agreement between himself and Mr Patarkatsishvili.

We do not know the answer to that question. My learned friend is not entitled to rely on that as a route to a proprietary interest because of your Ladyship's ruling that he may not base a claim on that. We simply do not have the documentary resources -- they are mostly disclosures in the Chancery action which we haven't seen -- which would enable us to deal properly with it.

But if Mr Berezovsky had an interest, it can only have been by that route. If he had an interest then, however that interest arose, it seems clear on Mr Berezovsky's own evidence that he claims to have authorised Mr Patarkatsishvili to negotiate with Mr Deripaska and Mr Abramovich for the sale of that interest to Mr Deripaska on behalf of both of them; that is what he says.

Moreover, the way in which the various parties are defined would include Mr Berezovsky, simply looking at the definitions.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Now, the transaction which was negotiated in consequence, including a release executed by Mr Patarkatsishvili on behalf of those within the definition, including therefore Mr Berezovsky, in favour of Mr Abramovich from a wide range of liabilities including those of the kind which he is now asserting. So if Mr Berezovsky lost out on this basis, that is something which he resolved by the deal with which the last tranche was sold back to Mr Deripaska in July 2004.

Now, I have, notwithstanding my misgivings about separating them wholly, dealt separately with the two sides of this case, Sibneft and Rusal, because it seems in the interests of coherence to be the right way of doing it. As it has developed, Mr Berezovsky's claim to have had an interest in both Sibneft and Rusal has turned out to be heavily dependent on just two pieces of evidence, namely the Le Bourget transcript and the Curtis note. I will say a brief word about each of those documents as well as about Mr Patarkatsishvili's interview notes.

Now, I'm not going to take up your Ladyship's time

on the Le Bourget transcript for very long because it would take a very great deal of time and both Mr Berezovsky and Mr Abramovich will be dealing with it in their evidence in due course. The problem about the transcript is that it is, in most places, obscure and the discussion can only be understood against the background against which the parties were speaking. They were discussing a large number of recent transactions which had given rise to accounting one way or the other between them and unless you understand what those transactions were, it is quite difficult to follow what is being said on the transcript.

Now, there's a detailed line-by-line commentary on the transcript by both Mr Berezovsky and Mr Abramovich which your Ladyship can study in parallel columns in the annex at E6 E6/01/1. The problem that Mr Berezovsky has in dealing with the discussions at Le Bourget is that, as he freely admits, he himself was not in fact familiar with the detailed earlier transactions which were being discussed at Le Bourget because they were concerned with various technical methods of getting money out of Russia and satisfying money-laundering enquiries.

His commentary is therefore largely speculation about a discussion which he must have had as much

difficulty in following as we do; indeed rather more. This was the kind of technical financial operation which he was in the habit of leaving partly to Mr Patarkatsishvili and partly to his financial manager, Mr Fomichev, neither of whom, of course, will be able to assist your Ladyship with their evidence. Well, Mr Fomichev would be able to but he's not going to be called.

We have identified the main relevant passages for the purpose of these points in our opening at paragraph 269 and summarised the evidence each way about them.

Turning to the Curtis note, that is discussed in our written opening at paragraphs 504 and 505 B(C)/245. We do not say that Mr Curtis fabricated this note. We do not say that. What we say is that it is not reliable evidence of what was said.

We are unlikely to want to cross-examine Ms Flynn, although we have held off actually saying that because there remain --

MRS JUSTICE GLOSTER: She's the lady who put the sticker on it?

MR SUMPTION: The lady who put the sticker on it.

The only reason that we have not formally confirmed that we don't need to cross-examine Ms Flynn is that we

understand there is a further group of Curtis & Co documents which has been identified and which are being examined, I think, by Addleshaws -- oh, by the Curtis estate's solicitors, DLA, and we believe we may get more documents. In case we do, we are reluctant, so to speak, to let go of a witness who may be able to throw light on them.

But we certainly don't deny, on the facts as we presently know them, that Mr Curtis came back at some stage from Georgia and gave this document to Ms Flynn with instructions that she was to keep them because they were vitally important.

The background to the Curtis note appears to be -- and there are many questions about the Curtis note which are difficult to answer dogmatically -- that Mr Curtis, at some earlier stage in 2003, had drafted -- in fact the draft is dated April -- presumably on the instructions of Mr Patarkatsishvili, an agreement between Mr Patarkatsishvili and Mr Abramovich; an agreement under which Mr Abramovich would have transferred 25 per cent of Rusal to him.

Now, that agreement does not seem to have been discussed with Mr Abramovich; it is simply a document that emerged from the Curtis files. It was, as we understand it, a project. Now, this document may have

been prepared because Mr Patarkatsishvili wanted to document an interest which he claims to have already but which was only equitable and which he needed to make into a legal interest or at any rate an interest which was available for proof in documentary form; or it may have been a prototype for what was in fact later agreed between Mr Patarkatsishvili and Mr Abramovich in October, when Mr Abramovich agreed to transfer shares to Mr Patarkatsishvili in lieu of commission. We don't know.

One way or the other, however, it appears to have been a document which was prepared in order to give Mr Patarkatsishvili a documented right to something, presumably for money-laundering purposes. It looks as if at the meeting in Georgia Mr Curtis deliberately set out to find some evidence that Mr Patarkatsishvili was already interested in the Rusal shares. He seems to have concluded that in fact Mr Abramovich was not likely to enter into his draft agreement of April and was therefore looking for some other evidence of an interest.

The note appears to have been an attempt by Mr Curtis to create evidence out of a conversation which in fact he cannot possibly have understood because the conversation was in Russian, as Mr Tenenbaum says and as

one would indeed expect, a language which Mr Curtis did not understand.

Now, Mr Tenenbaum will tell your Ladyship that nobody was taking a note as far as he can recall. Both for that reason and because Mr Curtis knew no Russian, somebody must have told Mr Curtis what he was to write down after the meeting was over, presumably in the absence of Mr Tenenbaum. We don't know who that person was: it might have been Mr Patarkatsishvili; it might have been Mr Fomichev, who was among those present; I suppose it might have been the mysterious Igor, who was the other person said to have been there.

Mr Tenenbaum was the only person who appears to have been present at this interview who will be giving evidence at this trial. Mr Fomichev will not be called. Mr Tenenbaum's evidence is that the exchanges recorded in the note did not occur in his presence.

Your Ladyship was told yesterday there were certain details that only Mr Tenenbaum could have known. That is not, as we understand it, correct. The details to which he was referring are details which, for various reasons, would have been known to Mr Fomichev as well because they would have been known in the course of arranging payments, which was one of Mr Fomichev's responsibilities.

Now, there is finally the material garnered from Mr Patarkatsishvili before his death by Mr Berezovsky's solicitors. I have acknowledged in my written opening, and my learned friend Mr Rabinowitz acknowledged on his feet yesterday, that there is something for both sides in this material. In particular I acknowledge that the interview notes with Mr Patarkatsishvili are consistent with his having asserted an interest in both Sibneft and Rusal and I have explained why it was very much in his interest to say that in 2005 and indeed had been for a number of years before that.

The material is, however, inconsistent with every other aspect of Mr Berezovsky's case, although a bit less so in the case of the material arising from the interviews in 2007 than the interviews in 2005. Your Ladyship may therefore have to form a view about the relative reliability of these two stages in the process of interviewing Mr Patarkatsishvili.

Mr Rabinowitz submits that the 2007 material is more reliable but, if one thinks about it for a moment, that really can't be right. The 14 December 2007 draft of the witness statement for Mr Patarkatsishvili which your Ladyship was taken to yesterday, in particular is a document to be treated with really very considerable reserves. It was never seen by Mr Patarkatsishvili or

commented upon by him, and that is quite clear from the witness statements of Mr McKim and Ms Duncan. It is equally clear that the prior draft of the statement wasn't shown to Mr Patarkatsishvili either.

Contrary to my learned friend's submission yesterday, it was not in fact prepared by lawyers who had a more detailed or considered understanding of the case than had been true of their predecessors in 2005. In fact the lawyers that prepared this draft proof, Mr McKim and Ms Duncan, were very new to the case: they had only been instructed for the first time in October 2007.

The proof contains controversial paragraphs that appear to have been lifted bodily either from Mr Berezovsky's evidence or from the particulars of claim, which had been drafted in September 2007. They were simply slotted into the previous Patarkatsishvili drafts and therefore stand, I suppose, as something that the solicitors hoped Mr Patarkatsishvili might say.

Now, the two meetings in November 2007 in Tel Aviv that preceded that draft witness statement were both attended by Mr Berezovsky as well as Mr Patarkatsishvili, with Mr Berezovsky apparently dominating the discussion and doing the translation. Mr Patarkatsishvili's English improved over the years of

experience of life at Virginia Water but it can never be said, I believe, at any stage that his English was proficient.

The lawyer that created these draft witness statements accepts that he did in fact include information gleaned at the meeting which had been provided from both Mr Berezovsky and Mr Patarkatsishvili without distinguishing between the two. Mr McKim makes that point at paragraph 34 of his witness statement.

For all of those reasons, far more likely to be reliable is the earlier proof of evidence that two experienced lawyers had put together after the June 2005 meeting. It is significantly more proximate in time to most of the relevant events. Mr Berezovsky was not there, so there's no difficulty about distinguishing his views from what Mr Patarkatsishvili was saying and no question of his having influenced Mr Patarkatsishvili. Moreover, this was before the particulars of claim was issued, so that there was no question of the solicitors trying to find material to support a particular case. It is therefore as close to a neutral account of Mr Patarkatsishvili's recollection as one is likely to get.

Now, looking at the 2005 material as a whole -- and in fact, in spite of what I've been saying, the 2007

material is not that different -- the 2005 material first of all indicates that there was a meeting, not at Cap d'Antibes, regarding the sale of ORT and that Mr Abramovich acted in relation to ORT as what Mr Patarkatsishvili described as "a trusted intermediary".

Now, it was recognised as self-evident by Mr Patarkatsishvili that Mr Abramovich himself had no power to obtain Glushkov's release, which had been promised to Mr Patarkatsishvili directly by Mr Voloshin. So Mr Patarkatsishvili's recollection is destructive of the ORT intimidation allegation.

Secondly, the 2005 notes and drafts show that the \$1.3 billion transaction in relation to Sibneft was in fact initiated by Mr Patarkatsishvili, who sought out money in order to fund his and Mr Berezovsky's exile. He was also, as the notes show, concerned about the undocumented nature of his interest and the lack of management control over Sibneft: factors which undoubtedly were liable to depress any value it might have had.

This is entirely inconsistent with the suggestion of intimidation in relation to Sibneft. All that Mr Patarkatsishvili says about this is that Mr Abramovich made it a regular theme of his discussions

with Mr Patarkatsishvili that the Russian government was likely to damage the interests of Sibneft as a company if Mr Berezovsky remained associated with it.

Thirdly, these notes indicate that the interest in Rusal was, as Mr Patarkatsishvili put it, "to be held in the same way as our Sibneft shares", ie, one would suppose, under Russian law.

The reason why it was wrong for Mr Abramovich, in Mr Patarkatsishvili's view, to sell the shares first was not because it was a breach of an English law trust or because there had been an express agreement not to do so; because, as he put it, in Russia, if you go into a project together, you can't dispose of your shares in breach of oral agreements and normal principles of business. What was understood by Mr Patarkatsishvili was governed, as he thought it, by Russian practice, not by express agreement.

Perhaps the most telling fact is that if Mr Berezovsky has got a case on either the Sibneft or the Rusal side of this dispute, then Mr Patarkatsishvili had the same case, neither better nor worse. Yet Mr Patarkatsishvili has never asserted any claim against Mr Abramovich; indeed, on the Sibneft side he is recorded in the notes as saying that he was perfectly happy with the outcome.

There is some evidence that Mr Berezovsky put pressure on Mr Patarkatsishvili to join in this action but that he would not do so. Now, in our submission, Mr Patarkatsishvili's reticence about running an action or participating in an action which his recollection of events did nothing to support is a very telling indication of its merits.

My Lady, unless there's any other matter that your Ladyship would like me to deal with, that is all that I need to say in opening.

Can I turn to the next items on your Ladyship's agenda.

MRS JUSTICE GLOSTER: I think I'm going to hear from Mr --

MR SUMPTION: No, all I want to do is just -- I will deal with that later, yes, if your Ladyship --

MRS JUSTICE GLOSTER: I was going to hear from the others.

MR SUMPTION: Yes, absolutely. Okay. I'll deal with that later.

MRS JUSTICE GLOSTER: What I'll do is I'll take the break now for ten minutes. Thank you very much indeed, Mr Sumption.

(3.02 pm)

(A short break)

(3.12 pm)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

Opening submissions by MR MALEK

MR MALEK: Your Ladyship has read the skeleton so what I was proposing to do was cover two topics: first of all, why the Anisimov defendants are here; and then to explain how we see our participation at the trial, and that is tied in with any questions relating to trial management.

Why are we here? Five short points.

First of all, I wish to cover the question of how we fit into the various actions brought by Mr Berezovsky. As your Ladyship knows, we appear for the Anisimov defendants: that's Mr Vasiliy Anisimov personally and companies related to him. They're described in paragraph 15 of our skeleton B(G)/01/6: it's Coalco International and Coalco Metals. As your Ladyship knows, the action with which we are concerned is the Metalloinvest action and that's one of three actions commenced by Mr Berezovsky.

As your Ladyship knows, there are going to be conjoined Chancery Division trials that are due to take place in October. There are two phases to those trials and phase 2 is concerned with tracing issues and is dependent on Mr Berezovsky succeeding in phase 2. My learned friend Mr Adkin is going to say something about those actions, so I can move on to my next point, but simply stressing that we are defendant parties only to

the Metalloinvest action and we're only concerned with Rusal-related issues.

The second point goes to the question of the scope of the trial. One of the key issues is of course whether Mr Berezovsky had any interest in Rusal or more accurately whether he acquired what he describes as ownership interest in Rusal and that is the issue with which we're concerned. This trial will determine a number of issues relating to Rusal and the various routes by which Mr Berezovsky makes a claim.

As the court pointed out in its July 2010 judgment at paragraph 28, a trial of the Rusal issues once and once only is sensible, achievable, desirable and fair, it being common ground that the joint venture claim based on the alleged bilateral joint venture between Mr Berezovsky and Mr Patarkatsishvili will be left over and determined in the Chancery Division.

I just simply make one request at this stage, which is I wonder whether we could refer to Mr Patarkatsishvili as "Badri", as I think your Ladyship did in the joint judgment.

MRS JUSTICE GLOSTER: Yes. Well, I don't mind as long as nobody characterises that as disrespect to him, but I'm sure they won't.

MR MALEK: Lord Justice Longmore referred to him as AP, but

it doesn't matter. On that basis we will proceed.

MRS JUSTICE GLOSTER: Very well.

MR MALEK: So the Rusal issues will be determined here subject to that point about the joint venture between Mr Berezovsky and Badri. We say that there is no scope for Mr Berezovsky to raise additional Rusal issues in the Chancery Division, that being the point that there should be determined only once only and that is here.

The third point relates to the overlap issues. We've covered that in our skeleton submissions, it's paragraph 28 B(G)/01/15, and it's taken from the conjoined order of 16 August. As we point out at paragraph 29, there are two further issues which arise in the Abramovich action only but which are relevant to Mr Berezovsky's claim in the Metalloinvest action.

Just one other reference to the joint judgment at paragraph 35, where it is said this, and I quote:

"It is, for example, possible that evidence given in such statements might point to the desirability of additional issues or factual matters being resolved as overlap issues in the Abramovich action in a manner binding on the defendants in the Chancery actions."

All we would say at this point is that the overlap issues are now closed, subject to any variation in the overlap issues arising out of the amendment application,

which is the matter that next arises.

The fourth point we make in terms of why we're here is that our participation is directed to a number of issues that can be broken down into a number of phases. Just looking at them very briefly, at a very high level, phase 1 covers the period in late 1999 to 2000. You will hear that from 1997 to 2000 aluminium was Mr Anisimov's main business and the issue is whether Mr Berezovsky acquired an interest in the aluminium assets that eventually found their way into Rusal. As your Ladyship knows, the companies related to Mr Anisimov sold their KrAZ assets and it's not necessary to go into those details.

We will give evidence as to how, from our perception, Mr Abramovich and his companies became involved in aluminium. Mr Anisimov will explain that he did not have any meetings with Mr Berezovsky and he will also explain to your Ladyship that it was never suggested to him that Mr Berezovsky was involved in the purchase or acquired any interest in the KrAZ assets. There are two other witnesses that we will be calling who will be giving evidence to a similar effect: that's Mr Busuk, who at the material time was the CEO of Coalco International and Mr Streshinsky, who at that time was the treasurer of Coalco.

So if that's the first phase, the second phase is the Dorchester meeting in 2000. You will hear from Mr Anisimov that following the sale of his interest in KrAZ assets, he withdrew from the aluminium business. He will tell your Ladyship that he did not know about the Dorchester meeting. I believe no one has suggested he was in fact involved in this meeting. He will also say that he had not even heard about the meeting prior to the commencement of these proceedings.

Now, the Anisimov defendants deny that Mr Berezovsky acquired any interest in Rusal at the Dorchester meeting and clearly this meeting is of critical importance to all the parties before your Ladyship because the foundation of Mr Berezovsky's claim against the Anisimov defendants is the alleged agreement at the Dorchester meeting. If I can just make two points about this meeting by way of overview.

First of all, it confirms the appropriateness of dealing with this by way of a trial in the Commercial Court. At one stage we were faced with having to deal with this meeting in the Chancery Division, where we could give no evidence ourselves about it, but the advantage that your Ladyship has is that all the principal players who were at that meeting who are alive will be giving evidence to your Ladyship.

The second point about the meeting, which is covered in Mr Anisimov's evidence, is that Mr Berezovsky in his evidence suggests that at the time of the sale of the KrAZ assets and the formation of Rusal in early 2000 Mr Anisimov advised Badri, and possibly Mr Berezovsky as well, that all the arrangements between himself -- that is Badri -- Mr Berezovsky and Mr Anisimov should be made in a very precise British law way. Mr Anisimov denies saying this. This dispute is clearly relevant to the question of the governing law and the question of whether there was an English law trust that was created at this meeting.

Now, the third phase is the sale of the first tranche of the Rusal proceeds in 2003. Mr Anisimov was not involved in that. However, it is important to him because, as we understand the position, Mr Berezovsky's primary case in the Abramovich action is that his alleged interest in Rusal was sold in the first Rusal sale and yet in the Metalloinvest action, however, Mr Berezovsky seeks to trace the proceeds of the second Rusal sale.

Now, we contend that the two claims must be advanced in the alternative and therefore if Mr Berezovsky succeeds on his primary case against Mr Abramovich, he will then have no claim against the Anisimov defendants

at all.

The final phase is the second tranche --

MRS JUSTICE GLOSTER: I would just like to be clear where you're positioned. Are you supporting Mr Berezovsky's primary case against Mr Abramovich? I would just like to be clear where you're coming from.

MR MALEK: We say that Mr Berezovsky never did acquire any interest in Rusal. That's our case and has always been our case.

MRS JUSTICE GLOSTER: So you're not, as it were, standing in the same corner as Mr Berezovsky in relation to that.

MR MALEK: No. We're just putting the point that there's an alternative case and that it has an impact on us when it comes to the question of what the sale of the first tranche of the Rusal proceeds involved.

Now, as far as the last phase that I'm going to deal with, the second tranche in 2004, the Metalloinvest action concerns that second tranche. Mr Berezovsky claims that the second tranche encompassed his and Badri's shares in Rusal and he seeks to trace some of those share proceeds into the hands of the Anisimov defendants. Those claims are not the subject of this action and are to be determined in the conjoined Chancery actions.

We've set out an analysis of the Metalloinvest

action in section C of our skeleton simply so that the court is aware of what will be determined there. There are a number of rival cases about what this second tranche is all about; I'm not going to go into the case of Mr Berezovsky or Mr Abramovich because they've already done that.

Our case, by way of a short summary, is this. Mr Anisimov was involved in 2004, during the second Rusal sale, at the request of Badri, who Mr Anisimov was friends with. During the sale Mr Deripaska asked Mr Anisimov whether Mr Berezovsky had any connection to the transaction. Mr Anisimov confirmed the position with Badri, who assured him that Mr Berezovsky was not anywhere near the deal. Badri similarly confirmed to Mr Streshinsky both verbally and in writing that he was the sole beneficial owner of the 25 per cent that was being sold and the final transaction documents clearly recorded that position and that was the basis on which the deal was done.

Now, it's not the case that Mr Berezovsky was somehow whitewashed out of the picture, as my learned friend Mr Rabinowitz characterised the position yesterday. There was an issue in the early part of the discussions relating to the transaction as to whether there was a second beneficiary and whether that

beneficiary was Mr Berezovsky, but it was confirmed that he was not and that's reflected in the documentation. This is not a whitewash; the evidence of those involved in the negotiations and the transaction documents confirm that Mr Berezovsky was not a beneficiary.

Although the second tranche materials are extensive and they're covered in detail in the H(A) bundles, the focus of your Ladyship's investigation, we submit, at this trial is on whether those materials shed light on whether Mr Berezovsky had an interest in the Rusal proceeds. Other issues about the proceeds simply do not arise.

The last point on why we are here relates to Sibneft. The Anisimov defendants have no direct interest in the Sibneft issues but what makes our participation in this trial difficult to plan is that there is no clear line between the Sibneft and the Rusal issues and, as my learned friend Mr Sumption said this afternoon, there is no self-contained compartment and it's fuzzy.

There are a number of witnesses who cover both issues. There are crossovers: for example, one of the issues is how Mr Berezovsky acquired his alleged interest in the aluminium assets; one version of his case is that's from the profits in Sibneft. The context

of Sibneft is relevant to Rusal: for example, the alleged three-way joint venture and the allegations involving Sibneft form part of the context of the Dorchester agreement --

MRS JUSTICE GLOSTER: You're saying you need to be here all the time?

MR MALEK: Not all the time. I was going to come to our participation later. But the last point is one of credibility.

That really leads on to the second topic I wish to address your Ladyship on, which is: how do we see our participation?

The court has already made an order that we participate fully on the overlap issues and that's part 5 of the order of 16 August.

MRS JUSTICE GLOSTER: I think it's liberty to -- I mean, you don't have to participate.

MR MALEK: No, agreed. That we may participate is more accurate, yes. This issue it was touched upon in the judgment, where it said that proper trial management of that action will prevent the defendants from straying beyond the bounds of what is necessary in order to allow that participation. What I was going to do now is just to identify three points how we meet that objective.

The first is that we are only concerned with overlap

issues; we have nothing to say on non-overlap issues. If it arises at all, it's a matter for the court to decide how far cross-examination is appropriate on non-overlap issues. Clearly, findings of the court on non-overlap issues are not binding in the subsequent trial in the Chancery Division. But, as I say, we have no intention of going into the non-overlap issues.

The second point is that there is a common cause between Mr Abramovich and the Anisimov defendants in the sense that we have the same starting point, namely that Mr Berezovsky did not acquire an interest in the Rusal proceeds. As our opening submissions show, this means that we ought to be able to adopt many of the submissions made by Mr Abramovich, who is clearly the lead defendant; and going forward it also means that our cross-examination will not repeat areas already cross-examined in cross-examination by Mr Sumption's team.

We have adduced three factual witnesses. We've adduced no expert evidence. The factual evidence is, as I indicated earlier, Mr Anisimov, Mr Streshinsky and Mr Busuk and that's in file F1.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: The last point which is touched upon by your Ladyship, which is: how do we see our presence going

through the trial?

It's possible that the presence of our full legal team is not required for all the trial and what we were going to do was simply see how matters develop. Clearly there are some areas where we have nothing to say: for example, what happened in December 2000 and whether there were meetings in Cap d'Antibes, we've got nothing to say on that. If at any time during the trial there's a vacant seat here it's no disrespect to your Ladyship and I'm not going to say anything in advance if I'm not going to be here.

Just three other points to make by way of housekeeping relevant to my clients but I would submit to all the parties in this case, which is a point that I touched upon with your Ladyship at an earlier hearing: it concerns a duty on our part to put all points to witnesses.

In my respectful submission in a case of this complexity, with this many documents, it would be impossible to put all the points that are in dispute. What I would suggest is that the appropriate way forward is that there is no duty as such to put points other than in relation to allegations of dishonesty, where it's only fair that the allegation of dishonesty should be put so that that witness answers it.

Subject to that, I would suggest that we proceed on the basis that there is no duty to put and it's a matter of discretion for the individual advocates as to what matters they cover in cross-examination, particularly having regard to the weight of the material in this case.

MRS JUSTICE GLOSTER: Yes. But if at the end of the day I were to consider something to be important and you hadn't put it, then obviously you have to bear the consequences.

MR MALEK: Exactly. We're happy with that approach.

The only other point I make is concerning seating. Your Ladyship dealt with this. We're very happy where we are at the moment. My learned friend Mr Rabinowitz says he has no objection if we stay here throughout the trial.

MRS JUSTICE GLOSTER: You sort it out with each other. If Mr Rabinowitz's team is happy that you stay there, that's fine by me.

MR RABINOWITZ: So far so good, my Lady.

MRS JUSTICE GLOSTER: Right. If there gets to be any difficulty, no doubt you'll raise it with me.

MR MALEK: That's all I was going to say, your Ladyship.

MRS JUSTICE GLOSTER: Thank you very much indeed. Thank you to your team for your written submissions as well.

Mr Adkin, you're going next, are you?

Opening submissions by MR ADKIN

MR ADKIN: My Lady, yes, that's the batting order that we were proposing, with your Ladyship's leave, to adopt throughout the rest of trial.

My Lady, the first thing to say is that I don't propose to repeat what Mr Sumption or Mr Malek have said, either now or at any point during the remainder of this trial. Your Ladyship is not going to be assisted by hearing submissions in duplicate or triplicate.

What I do need to do is briefly explain the family defendants' position, where they fit in, and also briefly to deal with the attack that was made upon them both in the written and oral submissions produced on behalf of Mr Berezovsky.

MRS JUSTICE GLOSTER: You're also going to have to deal with your application to adduce your expert evidence --

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: -- but I don't propose to deal with that at the present time.

MR ADKIN: I was going to mention that briefly at the end because in a sense that is now water under the bridge because the case, as we understand it, is now being amended to introduce a resulting and constructive trust claim and that may well have --

MRS JUSTICE GLOSTER: That's opposed.

MR ADKIN: As we understand it, it isn't anymore. I surmise that's what Mr Sumption was going to come on to at the end of his opening.

MRS JUSTICE GLOSTER: Okay. I don't want to deal with any application to adduce expert evidence until further down the track.

MR ADKIN: My Lady, I am grateful.

What I therefore propose to deal with is four things: firstly, where the family defendants fit into the picture; secondly, where the overlap issues fit into the picture; thirdly, to summarise the family defendants' position on those issues and deal with the criticisms made of that position on Mr Berezovsky's behalf; and finally to summarise how we propose, with your Ladyship's leave, to participate in the trial, to deal with some of the practical points that Mr Malek has raised.

As your Ladyship is aware, the family defendants comprise Badri's widow, daughters and mother, Badri having died in February 2008. That death was, as your Ladyship will have seen, sudden and unexpected. There was no time for the extensive and complex commercial affairs to be put in order before it happened and it's fair to say that Badri's family have, since his death,

had to live with the consequences of that.

One or more of the family defendants is a defendant in all three of the actions presently progressing in the Chancery Division and they comprise the principal beneficiaries of Badri's estate. Although that estate is formally represented in England by court-appointed interim administrators, who are the first named defendants in each of those three Chancery actions, it has been sensible and convenient for the principal beneficiaries of the estate to make the running in defending Mr Berezovsky's claims against it and with the approval of the interim administrators and the other beneficiaries, that is what the family defendants have done.

MRS JUSTICE GLOSTER: So the administrators are Hine and Gibson, are they?

MR ADKIN: My Lady, yes. The family defendants are here because the determination of the overlap issues identified by your Ladyship and Mr Justice Mann and which arise both in the Chancery actions and the Commercial action have very significant consequences for Badri's estate and therefore for the family as beneficiaries of that estate.

But at the end of the day this is by no means, as your Ladyship will appreciate, the main battle between

the family defendants and Mr Berezovsky, which will take place in due course next year. This is an opening skirmish, albeit a very significant one, and the criticisms that have been made of the family in not putting forward their evidence et cetera at this stage need to be seen in that context.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: My Lady, the overlap issues. Although the divide is not a perfect one, Mr Berezovsky's claim against Mr Abramovich has conveniently been broken down into the two parts of Sibneft and Rusal. As your Ladyship is aware, the overlap issues are all matters which relate to the Rusal part of Mr Berezovsky's claim against Mr Abramovich. To the extent therefore that there is a reasonably clear dividing line between the areas in which the family defendants' interest in this trial is and is not engaged, that is where the line is to be drawn.

The reason why the family defendants are here at all is because of the overlap issues and their relevance to the Chancery actions. It's right that I briefly explain how they are relevant. They are relevant to two. The first is the Metalloinvest action, by which Mr Berezovsky claims a 5 per cent share in Metalloinvest, a valuable Russian ore and mining company

which is owned, at least in part, the share of which is owned by entities controlled by Mr Anisimov.

Mr Berezovsky asserts that claim to that stake on three alternative bases. Firstly, he relies on what your Ladyship will have heard referred to before as the bilateral joint venture; that is to say the joint venture agreement said to have been made between Mr Berezovsky and Badri in 1995. Second, he says that he, Badri, and Mr Anisimov made a contract at some stage in 2004 under which that stake was acquired. And third, most relevantly for present purposes, Mr Berezovsky says that the stake was purchased using the proceeds of sale of the Rusal shares sold in July 2004, in which he says he had an interest for reasons with which your Ladyship is familiar, pursuant to the meeting at the Dorchester Hotel. He therefore claims an ability to trace from the Dorchester agreement through the Rusal proceeds and into the Metalloinvest stake.

The overlap issues are therefore of importance in the Metalloinvest action in at least two ways: firstly because the alleged Dorchester Hotel agreement forms the foundation of Mr Berezovsky's claim to have acquired an interest in the proceeds of sale of the Rusal shares and it is those proceeds which were used to fund, it is said, the Metalloinvest stake; and secondly because the

findings on the overlap issues will form the factual backdrop against which another of the foundations of Mr Berezovsky's claims, namely his alleged agreement in 2004, will fall to be judged. It will obviously be considerably more difficult for Mr Berezovsky to make out such an agreement if, on the determination of the overlap issues, the court finds that he's unable to make out any interest in Rusal and its proceeds which lay at its heart.

That then is the Metalloinvest action. The other action to which the overlap issues are relevant is the main Chancery action, in which the family defendants are also participating. By that action Mr Berezovsky asserts --

MRS JUSTICE GLOSTER: You have set this out in your skeleton --

MR ADKIN: My Lady, yes. I will be --

MRS JUSTICE GLOSTER: -- which I've read.

MR ADKIN: Your Ladyship will therefore know that at the heart of that action is the bilateral joint venture but Mr Berezovsky does rely on what he says are a number of self-standing agreements, including the one made, he says, at the Dorchester Hotel in March 2000. On the basis of that he says he acquired an interest not only in the Metalloinvest stake but also in a number of other

very valuable and significant assets.

The determination of the overlap issues is therefore important in both of those actions and it's important to the family defendants for at least two reasons in both of those actions: firstly because he claims an interest in assets which are prima facie held for them; and secondly because in both of them he seeks to blame Badri for having failed properly to secure and record his interest in those assets, which he says was purchased with the proceeds of the second Rusal sale.

That claim might be thought to be a somewhat striking one in light of the position adopted by Mr Berezovsky in this trial as to his approach to the documenting of his interests in assets, but given that Mr Berezovsky estimates the value of the Metalloinvest stake alone to be over \$1.4 billion, it is a very significant claim indeed against the estate.

Your Ladyship has seen what the various parties have to say about each of the overlap issues and that is set out in full both in my skeleton and also in Mr Malek's skeleton and I don't propose to repeat that. Your Ladyship will also be aware, having read the skeleton arguments produced in relation to the amendments, that those overlap issues may need to be revisited in light of what is sought to be introduced by way of a resulting

constructive trust claim and it's hoped that that can be done overnight and an agreed position presented to your Ladyship in due course.

Your Ladyship is also aware that the family defendants are not giving evidence in relation to the overlap issues themselves and although the point has nowhere been trailed in his evidence, Mr Berezovsky has made submissions both in writing and orally to the effect that the family defendants are to be criticised for not adducing evidence. Indeed it's said that the family defendants' approach to all of this is some sort of strange game that in some way has been procured by bribery by Mr Abramovich.

MRS JUSTICE GLOSTER: He says you've changed your tune.

MR ADKIN: He says we've changed our tune. He says that our case has been through a number of convulsions.

MRS JUSTICE GLOSTER: And that the court can draw the inference that you've been bought off.

MR ADKIN: That is the submission that was made. It is a serious submission and it is a submission with which I need to deal. It is, however, a submission that I need to put in its proper context.

It's far from clear what, if anything, at this trial will turn on the credibility of the family defendants. To put it at its highest, the attacks made on the family

defendants -- none of which we accept -- are peripheral in my submission to the matters with which your Ladyship is going to have to deal at this trial. But nonetheless I do deal with them because the inference is sought to be drawn that somehow the family defendants are not giving evidence for an improper reason and if they were to give evidence, it would be helpful to Mr Berezovsky. In my submission that's really the only relevant argument that's made.

We say that that is not a proper inference that the court can draw. Before dealing with the bases upon which that submission has been advanced on Mr Berezovsky's behalf, three important points need, we say, to be made.

MRS JUSTICE GLOSTER: I think this point as to whether or not I should draw such an inference is something that I can only really deal with after I've heard the evidence. I think otherwise I'm just dealing with it in a vacuum.

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: At the present time.

MR ADKIN: I'm happy not to address your Ladyship on it at all if your Ladyship is --

MRS JUSTICE GLOSTER: I may want to hear you on it but I'm not sure that opening is the correct time.

MR ADKIN: No. I raise it simply because it was raised by my learned friend both in the annex to his skeleton and also at some length in his opening.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: I certainly don't want it to be said that it's a point that we either accept or ignore.

MRS JUSTICE GLOSTER: No, I am expecting to hear you on it in due course but I would have thought at the end of the evidence was a more appropriate time.

MR ADKIN: My Lady, that is a course with which I'm entirely content to comply.

My Lady, that just leaves the practicalities of our participation in all of this.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Three things. First, the running order.

It is of course a matter for your Ladyship but the order we have adopted now is the order that we propose to adopt in relation both to submissions and to cross-examination, save for the experts, because I have expert witnesses -- subject of course to the arguments that have been trailed -- and Mr Malek doesn't. So we were proposing that I would go first in relation to the experts but in relation to everything else he would.

A second point of practicality on cross-examination, two things on that. Mr Malek has already made the point

about putting matters to witnesses. There's a further two points as well.

The first is that of course there are three of us going to be cross-examining and I hadn't proposed, unless your Ladyship thought that I should, to simply put points to witnesses that have already been put by those cross-examining them. One wouldn't want it said against one that one was deprived of making submissions on those points because one hadn't put them but I wasn't proposing simply to repeat cross-examination that had already been done.

MRS JUSTICE GLOSTER: No, that would be unnecessary, but you may need to make it clear whether or not you're adopting a particular line of cross-examination.

MR ADKIN: My Lady, yes.

The second point of practicality on cross-examination is that there's a great deal of material in the evidence and the witness statements with which we disagree but which is not relevant to the overlap issues and on which I didn't propose to cross-examine at all.

MRS JUSTICE GLOSTER: That's a matter for your discretion.

MR ADKIN: My Lady, I'm grateful.

The third point is experts, but your Ladyship has indicated that that's best dealt with at another time,

certainly after the --

MRS JUSTICE GLOSTER: If we're going to have a battle about whether or not your expert evidence should be permitted to be adduced, then that's something I'd like to deal with in the context of the debate about where the expert evidence is going anyway and I think the stage has not yet been reached for that.

MR ADKIN: My Lady, I'm grateful for that. It's certainly something that's going to be better addressed after we know what the scope of the issues themselves are.

The final point that I've been asked to make relates to the various suggestions that have been made in relation to Badri and his role in the acquisition of the aluminium assets. There have been suggestions in the documents -- though nobody appears to be saying this is their case -- that Badri adopted some sort of violent or gangster-like approach. What my clients have asked me to make absolutely clear is that that's not something that they accept for a moment. Since it's not a matter that your Ladyship is being asked to determine, we can leave it there.

My Lady, unless I can assist you further.

MRS JUSTICE GLOSTER: Thank you very much indeed and thank you and your team for your helpful written submissions.

Yes, Mr Mumford.

## Opening submissions by MR MUMFORD

MR MUMFORD: My Lady, I'm grateful. As your Ladyship appreciates, I appear for the Salford defendants, who are the principal defendants to the third of the three Chancery actions.

Your Ladyship will have seen from my opening skeleton argument that the Salford defendants are neutral on the overlap issues which fall for determination in this trial and likewise on those other issues which we are to be bound by, those which are identified at paragraph 5 of the order made at the CMC last summer. Given that we are neutral, we propose to call no evidence on those issues and we certainly reject any criticism that others may seek to draw against us on the basis of our failure to do so.

In light of our neutrality we propose to take a very, very limited part in this trial, it will come as no surprise. We would like, my Lady, to be present to hear some of the witness evidence, in particular that which is to be called by Mr Berezovsky. It is extremely unlikely that we will be cross-examining any of those witnesses and it's even more unlikely that we will choose to be here at all for the witnesses who are to be called by the defendant or indeed for the expert evidence.

I suspect, my Lady, we will then seek to reappear at closing but only with a view to assisting the court with anything that may have arisen out of the evidence which impacts upon my clients and the action that's coming on for trial against them next year.

MRS JUSTICE GLOSTER: Mr Mumford, you come and go as you please.

MR MUMFORD: My Lady, I'm very grateful for that.

MRS JUSTICE GLOSTER: Thank you very much indeed.

Discussion re housekeeping

MRS JUSTICE GLOSTER: So far as the seating arrangements are concerned, Mr Sumption, are you going to be able to cope with the family defendants' representation where they're sitting at the moment or are they to be banished to the back row? Or do you want to wait and see how it goes?

MR SUMPTION: My Lady, I was hoping to be able to invade some of the space to our right, and I thought that that had been understood, once we start on actual evidence. There are members of my team I would welcome coming up front.

MRS JUSTICE GLOSTER: Yes. I think that was my original indication. Right.

Mr Adkin, I think that means your team going back until you're actually doing some cross-examination. Thank you.

Mr Rabinowitz, what's on the agenda?

MR RABINOWITZ: My Lady, there are a few housekeeping matters, if I may call them that. Can I just identify what I think they are. There are probably more than I know about but if I can just identify them and then my learned friends will add to that.

I suppose the first point is: when do we resume with the evidence, when do we start with the evidence? That may depend --

MRS JUSTICE GLOSTER: You tell me what's left on the agenda.

MR RABINOWITZ: Indeed.

Your Ladyship has asked for a list of issues: that is being worked upon and I think the hope is that it will be sorted out by tomorrow. So too with the chronology, which, as I understand it, is in the process of being agreed or attempted to be agreed.

There is the amendment application, which Mr Gillis will deal with. It appears that the differences between the parties on that have narrowed.

There is also --

MRS JUSTICE GLOSTER: Narrowed in the sense that some of it -- perhaps I can hear from Mr Gillis on that.

MR RABINOWITZ: Can I just finish? I'll just identify what they are. I think it may be even better than that so far as your Ladyship is concerned.

I want to say something about cross-examination, the problem of friendly cross-examination. I've spoken to Mr Malek about it because whilst I have no difficulty at all with whoever is represented cross-examining my witnesses, there is always a problem of friendly cross-examination of other witnesses. I don't suppose my learned friends will indulge in it but I do want to put down a marker --

MRS JUSTICE GLOSTER: It never carries much weight.

MR RABINOWITZ: It doesn't, but it would be better if a marker was put down so that people know not to try and indulge in it. But I say that; I'm not sure I need to say any more about it.

MRS JUSTICE GLOSTER: It slightly depends on the particular witness, doesn't it?

MR RABINOWITZ: It does, and that's why one can't say in advance, "You can't cross-examine this person". But I think people need to be aware that it's not going to go down well.

Indeed, as Mr Gillis reminds me, the Chancery defendants really need to cross-examine, if they are going to cross-examine, before we re-examine. I don't think -- Mr Malek certainly agrees with that; I haven't had an opportunity to speak to the other --

MRS JUSTICE GLOSTER: You sort it out between you as to how

it's to go and if there's any dispute.

MR RABINOWITZ: All right. We will do that.

MRS JUSTICE GLOSTER: You're saying that they should cross-examine Mr Sumption's witnesses before you do, are you?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: If you don't agree, I will rule on that.

MR RABINOWITZ: All right, thank you.

There is also, as I understand it, a brewing issue about translators. Can I just identify what it is. It was hoped that this wouldn't be an issue but it appears that it might be.

Mr Berezovsky, as your Ladyship knows, English is not his first language but he has agreed that he will be giving evidence in English. In order to facilitate that, he has asked that he should have one of the translators sitting with him. Mr Berezovsky has a great deal of experience of translators and as a result of this experience the translator he feels comfortable with -- and it is in relation to words that he's having difficulty with; he's not going to sit there and have everything translated for him but there will be occasional difficulties where he simply doesn't understand the English expression -- is a Mr Victor

Prokofiev.

Now, Mr Prokofiev is one of the translators that we have identified --

MRS JUSTICE GLOSTER: Sorry, one of the translators?

MR RABINOWITZ: Mr Prokofiev is also being used, as

I understand it, for the purposes of the simultaneous translation, which is being produced for, as

I understand it, primarily Mr Abramovich's benefit. One understands that and if Mr Abramovich wants

a translation of someone else's evidence while it is being given, that is all fine.

The difficulty about this situation is this: we are told by Skaddens that they have a problem with simultaneous translation whilst Mr Berezovsky is giving evidence unless they can use Mr Prokofiev for this.

Now --

MR SUMPTION: That's not our position at all.

MR RABINOWITZ: That's what I've been led to believe.

MRS JUSTICE GLOSTER: Can you try and sort this out?

MR SUMPTION: My Lady, can I try to summarise this quite shortly. I'm afraid we haven't been able to sort it out. Basically the position is Mr Berezovsky wants to have sitting beside him not just any old translator but a particular translator and only one. The problem about that is that when we have, for example -- as we will

next week -- only two simultaneous translators, it means --

MRS JUSTICE GLOSTER: How many do have we got at the moment?

MR SUMPTION: We've got three at the moment; we will sometimes be having four. But really skilled Russian simultaneous translators are not very thick on the ground.

The problem is that if, for example, we have only two -- and it's also a problem if there are three -- what will happen is that one of them is permanently engaged sitting next to Berezovsky: that means we've only got one of them sitting in the box and basically you can only do about three-quarters of an hour or an hour at the most of this job before you need a rest of at least similar length; much more than just a ten-minute break.

This is normally dealt with, if you've got two people in the box, they take one hour on, one hour off, and there's continuous simultaneous translation. But Mr Berezovsky says: no, I wanted to have Mr Prokofiev and no one else sitting beside me the whole time, even if that means there's only one translator left to sit in the box and that translator has to take an hour off every hour. That, in our submission, is an absolutely ridiculous proposition.

We are perfectly happy that one of the translators, even if there are only two, should be sitting next to Mr Berezovsky. We say that the efficient way of dealing with this is that -- and we've discussed this with the translators, who are apparently agreeable to it -- a translator, not necessarily Mr Prokofiev, should sit beside Mr Berezovsky at any one time.

MRS JUSTICE GLOSTER: During his or her hour off?

MR SUMPTION: Exactly. They are apparently perfectly agreeable to the idea that when the translator in the box needs a rest they will swap round and the one who has just been translating for an hour will then sit and assist Mr Berezovsky as necessary because it's actually very unlikely that all that much assistance will be required. They can swap round, for instance, during the stenographer breaks.

That means that there's somebody available to translate in the box at all times and somebody available to sit by Mr Berezovsky at all times. The only need that will not be satisfied is Mr Berezovsky's insistence that it should be the same person all the time, which is completely impractical. That is the issue, as I understand it, that has arisen.

Mr Abramovich is obviously at the receiving end of a \$7 billion claim and he is entitled to have

a translation of what is going on, about which he is going to have to answer and deal with in due course in his own evidence.

Mr Berezovsky, by comparison, is pretty proficient in English. Your Ladyship might find it useful to know that in the North Shore litigation in the Chancery Division, Mr Berezovsky was cross-examined by Mr Swainston for an entire day. In the course of that day, those on behalf of my solicitors who were attending tell me that he needed assistance with particular words two or three times in the course of the entire day but was basically perfectly capable of fielding the questions as recorded on the transcript.

Now, in our submission a witness cannot simply demand the services of translators who are there for the assistance of the court translation rather than for their personal assistance or on any terms, however unreasonable, and Mr Berezovsky should put up with having to have a translator occasionally who is not Mr Prokofiev, bearing in mind that all four of the translators who are at the service of the court are absolutely outstandingly skillful, as one can see from the way in which, without interruption of the proceedings or any pause or difficulty, they have continuously served the court very well in the short

time that we've been hearing this matter.

MRS JUSTICE GLOSTER: Do you want to --

MR RABINOWITZ: I am grateful to Mr Sumption. That was exactly the issue I was going to identify but perhaps in different language to Mr Sumption, but he decided he wanted to present it. Can I just put it slightly differently.

Mr Sumption says it's impracticable for Mr Berezovsky, who is not an English speaker -- he can speak English and unlike Mr Abramovich, who has a problem, he is going to do his best. He wants a translator. He is comfortable, as a result of his experience, with Mr Prokofiev.

If it really was impracticable, then one could understand a basis of what Mr Sumption is saying. Mr Sumption talks about three or four translators being involved in simultaneous translation --

MR SUMPTION: There's only two next week.

MR RABINOWITZ: Well, then Mr Sumption can get a third.

MR SUMPTION: No, he can't.

MR RABINOWITZ: Well, they can make efforts to do that.

MRS JUSTICE GLOSTER: Can you not, please, row between each other. Can you please address your submissions to the court.

MR RABINOWITZ: It's difficult to believe that -- let me

take a step back.

Mr Abramovich wants simultaneous translations because he wants to listen to what Mr Berezovsky is saying and that's fair enough. Mr Sumption says it's a \$7 billion claim, Mr Abramovich should be able to hear what's being said, and one understands that. Equally, Mr Berezovsky will be the witness on this particular occasion.

Insofar as one has to balance Mr Berezovsky's interests in ensuring that he understands the questions that are being put and that he gives as clear an answer as possible with Mr Abramovich's position, who wants to hear what is being said, in my respectful submission the balance undoubtedly comes down in favour of Mr Berezovsky in a sense being indulged with what he needs in order to give evidence as accurately as he would wish.

Now, we are told that they can only get two translators; in my respectful submission that is extremely unlikely to be the case. There must be other translators who can assist us. Insofar as they haven't made efforts to find another, then in my respectful submission they should. But insofar as one has to try and balance the interests, in my respectful submission the balance of the interests, as I've just said,

undoubtedly favours Mr Berezovsky being very comfortable with the translator that he has with him.

Can I just make another point about the evidence. Mr Berezovsky can speak English; he doesn't always find it easy. He also finds it a lot easier to follow written English than the intonations of spoken English. One of the other things -- I haven't yet had a chance to raise this with my learned friend but since we're talking about the giving of evidence and how it might be given -- what Mr Berezovsky has asked is whether he could have the LiveNote in front of him, just so he can read the question as well. It's just that he will find it easier to see what is being asked.

MRS JUSTICE GLOSTER: I think that's something you need to discuss with counsel on the other side. I personally don't have any problem with that. I've had experience actually in a criminal trial where it was extremely helpful for the witness also to have the LiveNote transcript because otherwise we're all operating under the advantage or having the benefit of having the questions there in front of us.

Sometimes there's a question as to whether that enables the witness, as it were, to check up on what he's been asked previously or check up on his answers; sometimes there's an objection to that. But speaking

for myself, I wouldn't have a problem with it.

Mr Sumption, what's your --

MR SUMPTION: I have no problem at all about that.

MRS JUSTICE GLOSTER: Right. Mr Malek?

MR MALEK: No problem.

MR ADKIN: No problem.

MRS JUSTICE GLOSTER: So the answer is: so far as LiveNote is concerned, no problem.

Is there anything else you want to say about the translator issue?

MR RABINOWITZ: No, I don't think there is anything else I can say.

MRS JUSTICE GLOSTER: So far as the translator is concerned, it's obviously important that Mr Berezovsky should have the assistance of a highly competent and professional translator if he needs it. However, I think it's unsatisfactory for any witness or any party in a case, as it were, to be in a position to choose a translator with whom he or she may be comfortable. Accordingly I do not accede to Mr Rabinowitz's application that Mr Berezovsky should be able to choose the translator of his choice.

What else is on the agenda?

MR GILLIS: My Lady, could I just explain about amendments and business for tomorrow.

MRS JUSTICE GLOSTER: Yes, sure.

MR GILLIS: The main matter before your Ladyship tomorrow was going to be Mr Berezovsky's application to amend C64, subsections 2 and 3, which was the application to introduce claims under --

MRS JUSTICE GLOSTER: I've read it.

MR GILLIS: I'm glad to say that that issue has now been resolved and Mr Abramovich has consented to the amendments to C64(2) and (3) being made.

MRS JUSTICE GLOSTER: Hang on, let me just -- I'm looking at your skeleton. C63 is agreed?

MR GILLIS: C64(2) and (3).

MRS JUSTICE GLOSTER: C64(2) and (3)?

MR GILLIS: Yes. So those were the pleas of resulting trust and constructive trust.

MRS JUSTICE GLOSTER: Which you say are kind of remedial consequences?

MR GILLIS: Indeed so. The objection that was being made was those claims were time-barred or they did not arise out of the same or substantially the same effects. We said: not so, it falls within section 21.1(b) of the Limitation Act. Your Ladyship is going to be deprived of the delights of all of those arguments --

MRS JUSTICE GLOSTER: That's a pity.

MR GILLIS: I'm sure that's exactly what your Ladyship

thinks -- because it's been accepted that we can have permission to make those amendments and also a very minor consequential amendment to C59B. I don't think I need trouble your Ladyship with that at the moment because we'll be putting in a draft order.

For his part, Mr Berezovsky has consented to Mr Abramovich's amendment to D63, which was the amendment to plead that the express trust claim was invalid because the trust would not be validly constituted.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So, my Lady, on that basis, all the amendment issues between the parties in the Abramovich action have been resolved.

MRS JUSTICE GLOSTER: Even C64(1)?

MR GILLIS: My Lady, yes.

MRS JUSTICE GLOSTER: Right. So all three subparagraphs of that have gone?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: Your Ladyship will see from the order when it's produced that those amendments are being consented to on terms that if there are subsequent tracing issues which arise, they will be dealt with at a subsequent hearing.

MRS JUSTICE GLOSTER: Yes. That's the order I've already

made.

MR GILLIS: That's the order that has already been made in respect of various defence points that were being raised by Mr Abramovich in relation to their tax arguments and the requirement for permits to pay money out of the country. The same solution is being adopted if tracing claims arise in relation to --

MRS JUSTICE GLOSTER: Any of these new claims?

MR GILLIS: -- any of these new claims.

MRS JUSTICE GLOSTER: Yes, I see. Well, you'll let me have an order for me to sign on.

MR GILLIS: Indeed so.

My Lady, potentially these amendments have an impact on the position of the Chancery defendants but none of them are opposing in principle the amendments that are being made.

MRS JUSTICE GLOSTER: They just want the overlap issues redefined?

MR GILLIS: Exactly. They just want to make sure that the overlap issues are sufficiently clearly defined so that all parties understand the position. So that is in the process of being worked out and we don't anticipate any difficulties in relation to that. So hopefully that can be put before your Ladyship as an agreed position tomorrow morning.

MRS JUSTICE GLOSTER: That's agreed, Ms Davies, is it?

MS DAVIES: My Lady, yes, subject only to this: there was certain further clarification about my learned friend's new case that we sought that he has also indicated to me orally that he's happy to provide. We haven't yet seen the consent order but assuming that we manage to resolve those differences between us then, yes, that's all agreed.

MRS JUSTICE GLOSTER: Ms Tolaney?

MS TOLANEY: My Lady, that's also agreed on the part of the Anisimov defendants. The only concern we had was that the claim was articulated in our action in exactly the same way, so that there was an overlap, and that is in hand.

MRS JUSTICE GLOSTER: Yes, thank you.

Mr Adkin?

MR ADKIN: We have the same position as Ms Tolaney.

MRS JUSTICE GLOSTER: And Mr Mumford?

MR MUMFORD: Subject to the clarification of the overlap issues, we're quite content.

MRS JUSTICE GLOSTER: Yes, okay. I'll leave you, Mr Gillis, to sort out with the others the reformulation of the overlap issues.

MR GILLIS: My Lady, yes. So on that basis I would not suggest that you re-read the skeleton arguments this

evening.

My Lady, the other matter that will be before the court tomorrow is Mr Berezovsky's application under CPR 33.4 --

MRS JUSTICE GLOSTER: For leave to cross-examine.

MR GILLIS: -- for leave to cross-examine the two border guards. In respect of that, your Ladyship has Mr Berezovsky's skeleton argument and Mr Abramovich's skeleton argument and I think that will be the only substantive issue which is live before the court tomorrow.

MRS JUSTICE GLOSTER: So we can start evidence tomorrow?

MR GILLIS: I think that is then an issue which Mr Sumption wishes to raise but I think probably the CPR 33.4 issue is unlikely to take more than an hour. It may be that there are some overlap issues still to clarify, but hopefully not.

MRS JUSTICE GLOSTER: Can I just raise with you, Mr Rabinowitz, first of all the timetable. I didn't know but I realise it's Yom Kippur on Friday; is that right? Is that why we're not sitting in the afternoon?

MR RABINOWITZ: We're not sitting in the afternoon.

MRS JUSTICE GLOSTER: Do you want to start early on Friday morning?

MR RABINOWITZ: Not especially --

MRS JUSTICE GLOSTER: Let me just tell you before -- you're going to, I'm afraid, have to reschedule the 25th and the 26th. I'm sorry about that. I have to sit in the Court of Appeal criminal division and I have to sit those two days. I'm happy to sit earlier or late to try and make up the hours, to make up the lost days on the 25th and the 26th, on other days.

MR RABINOWITZ: Again, my Lady, I'm in your hands. It may be worth hearing from Mr Sumption about his views on the timetable.

MR SUMPTION: My Lady, as to sitting early or late, we would welcome it if your Ladyship would do that, although if we find that we get into difficulties we will obviously have to raise that with your Ladyship.

Can I just deal with the question of when Mr Berezovsky starts his evidence. I have mentioned this to my learned friend, who is neutral and doesn't object. One of the problems, with which your Ladyship has not been troubled, about the preparation of this case is that, for reasons which I'm certainly not criticising anyone for, bundles became available very late, things took a very long time to load up on Magnum, before which they couldn't be given bundle references. There are also documents which we are awaiting from Clydesdale Bank -- we assume we will get those

quickly -- in addition to a process of catching up which I had certainly, for my part, hoped to be able to achieve well before the trial started but haven't been able to do so.

Now, if your Ladyship wants me to start cross-examining Mr Berezovsky tomorrow, I am in the position to do so. I would actually, I have to say, very much prefer it if your Ladyship could start the cross-examination of Mr Berezovsky at the beginning of the proceedings on Thursday, as in fact originally envisaged in the page, so that I can take on board material which has arrived too recently for me to have studied it properly.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz?

MR RABINOWITZ: My Lady, as my learned friend indicated, I am neutral. I do sympathise with his position, there are things that --

MRS JUSTICE GLOSTER: We all know in a long trial if you haven't got the references it's very difficult.

Right. Well, I will then hear the application tomorrow in relation to the cross-examination of the Russian border officials or whoever they are, and that is all I will do unless there are any other housekeeping issues. Then Mr Berezovsky will start his evidence on Thursday, the 6th.

It's up to the parties whether you wish me to sit at the 9.00 or 9.30 on Friday to give us a longer day.

MR RABINOWITZ: It may be that Mr Sumption at that stage can indicate whether he needs --

MR SUMPTION: I would welcome it, but if my learned friend is not --

MRS JUSTICE GLOSTER: I feel that if I'm taking out the 25th and the 26th to sit in the Court of Appeal, I will certainly start at 9.00 or 9.15.

MR SUMPTION: We are very grateful to your Ladyship for doing that.

MRS JUSTICE GLOSTER: Right. I will sit at 9.00, 9.15, which?

MR SUMPTION: 9 o'clock.

MRS JUSTICE GLOSTER: Right. 9 o'clock on the 7th.

Mr Rabinowitz, what then: and go to 1 o'clock?

MR RABINOWITZ: My Lady, I would be grateful for that, yes, if we could rise at 1.00.

MRS JUSTICE GLOSTER: Right, very well.

We might as well start at 10.30 tomorrow. There's no reason not to start at 10.30 tomorrow.

(4.10 pm)

(The hearing adjourned until

Wednesday, 5 October 2011 at 10.30 am)

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Wednesday, 5 October 2011

(10.30 am)

Discussion re housekeeping

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Good morning. My Lady, can I just deal with two matters briefly before I make my application.

The first relates to the redaction regime, which we should probably talk about briefly before the witnesses start to give their evidence. As my Lady will recall, there is an order preventing public reference to certain named entities because those entities are regarded as being commercially sensitive. It's an issue which the Salford defendants have been particularly concerned about and what they have produced is a card which we are proposing should be put in front of the witnesses.

Might I just pass that up. (Handed)

MRS JUSTICE GLOSTER: Yes, certainly. Touching confidence that everybody will remember to apply the protocol.

MR GILLIS: My Lady, yes. We weren't going to insult your Ladyship by providing you with one unless you wish one but basically a traffic light system: the red entities down the left-hand side bad, the green entities good.

MRS JUSTICE GLOSTER: Yes, I better have one.

MR GILLIS: So, my Lady, that will be put in front of all the witnesses.

MRS JUSTICE GLOSTER: Yes. And they'll be told in advance?

MR GILLIS: They will.

MRS JUSTICE GLOSTER: And the redaction regime will continue through to the documents?

MR GILLIS: Yes. The redaction, some of it, as I recall, has been done automatically by using Adobe to search and replace and it may well be that that process has not been 100 per cent accurate, particularly where there have been poor photocopied documents. So it may be that some redacted terms still appear in the documentation before the court. That will just have to be dealt with as and when if it occurs.

MRS JUSTICE GLOSTER: Okay.

MR GILLIS: That's the first issue.

The second issue is the definition of the overlap issues arising from the agreed amendments in the Abramovich action. My Lady, that's why the Chancery defendants are here today. At present we haven't finally resolved upon appropriate amended wording to the definition of the overlap issues but none of the counsel involved think it's sensible to try and debate that before your Ladyship because we've not actually had time to --

MRS JUSTICE GLOSTER: Think about it.

MR GILLIS: -- discuss it between ourselves yet. What we

would propose, if it is acceptable, is that we will try and resolve that between ourselves and if that's not possible then we'll bring it back to your Ladyship.

MRS JUSTICE GLOSTER: If that's agreed, fine.

MR GILLIS: On that basis, I think the Chancery defendants are wishing to leave.

MRS JUSTICE GLOSTER: Yes. Well, thank you for coming along, see you tomorrow. We'll start tomorrow at 10.15, if that suits everybody.

MS DAVIES: Yes, my Lady. I just asked my learned friend Mr Mumford to produce a Russian version of this too, because obviously some of the witnesses giving evidence don't read English, and he's agreed to do that.

MRS JUSTICE GLOSTER: Fine. Okay, 10.15 tomorrow then.

Application by MR GILLIS

MR GILLIS: My Lady, if I can then move to my application.

MRS JUSTICE GLOSTER: Yes. This is the application to cross-examine the border guards.

MR GILLIS: Yes. My Lady, it's an application under CPR 33.4 in relation to Mr Fomichev and Mr Mochalov.

MRS JUSTICE GLOSTER: Hang on. Let me just get out the right -- I'm just trying to find the correct skeleton argument.

MR GILLIS: The application bundle is bundle T(C).

MRS JUSTICE GLOSTER: Just let me get it. I've got just two

skeleton arguments.

MR GILLIS: That's correct. My Lady, we have a hard copy of the application bundle if you want that.

MRS JUSTICE GLOSTER: Which one is it?

MR GILLIS: It's T(C).

MRS JUSTICE GLOSTER: Well, hopefully I can just do it on the... If it's not been handed up this morning, I'll just do it on this. Is it a new bundle, is it on Magnum?

MR GILLIS: It is on Magnum, yes.

My Lady, it relates to the evidence that those two individuals have provided regarding Mr Abramovich's border crossings in December 2000 which Mr Abramovich seeks to rely upon by way of hearsay evidence. The application is at T(C) at tab 2 T(C)/02/1 and the letter and the attachments which contain the hearsay evidence, we've set those out at paragraph 12 of our skeleton. They're also at T(C), tab 5, at page 14 T(C)/05/14.

MRS JUSTICE GLOSTER: Yes. Just a second, I just want to -- this is being a bit slow. Yes, I have it now. Okay.

Now, what is the position under the rule? Can I just look at the rule first of all.

MR GILLIS: My Lady, the rule is at page 984. So:

"Where a party proposes to rely on hearsay

evidence..."

And that's the case here because Mr Abramovich is relying on this documentary evidence in his statements.

"... and the person does not propose to call the person who made the original statement to give oral evidence, the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined."

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So that is our application: an application that we be permitted to call the maker of the statement to be cross-examined.

MRS JUSTICE GLOSTER: I see that it says at page 985:

"Part 33 is silent as to what should happen if the court gives permission for cross-examination and the person does not then attend as required."

MR GILLIS: Yes. My Lady, the --

MRS JUSTICE GLOSTER: What is the consequence?

MR GILLIS: The consequence that is referred to there -- and they refer to Lord Justice Thomas in the Polanski case -- is that the court can exclude the evidence in the event that the party who is seeking to rely upon the hearsay statement does not produce the maker to be cross-examined. So that's the consequence that is identified in Polanski.

MRS JUSTICE GLOSTER: I don't have to do that.

MR GILLIS: You don't.

MRS JUSTICE GLOSTER: I can just decide what weight I attach to the evidence in the event that the deponents don't turn up.

MR GILLIS: Absolutely, and that's the consequence of the decision -- or it was Mr Justice Mann's view in *Dyson v Qualtex*, which isn't actually referred to in the notes here, but he respectfully, because he was commenting upon Lord Justice Thomas's Court of Appeal decision, doubted that that was the necessary consequence, that the court exclude it. The court is entitled to take into account the fact that the person seeking to rely upon the hearsay statement didn't call the maker to be cross-examined; that is a further factor that the court can take into account in assessing the weight of the evidence.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So the consequence, if your Ladyship acceded to our application and Mr Fomichev and Mr Mochalov did not make themselves available for cross-examination, we would not say that the necessary consequences of that is that the documentary hearsay evidence would have to be excluded. Your Ladyship may decide that's the appropriate course but on the other hand your Ladyship

could equally say: it's again simply a factor I take into account in assessing the weight that is to be attached to this evidence.

MRS JUSTICE GLOSTER: And what I'm doing is permitting you to call the maker of the statement to be cross-examined, aren't I?

MR GILLIS: The rule is quite bizarrely expressed.

MRS JUSTICE GLOSTER: I'm not requiring the other party -- sorry, I'm not requiring a party, which is the first party, to call him; I'm permitting you to call him for the purpose of cross-examination.

MR GILLIS: How the last part of the note indicates it operates is that if the party who is seeking to rely upon the hearsay statement does not make the maker of the statement available, then the court can draw the appropriate consequence.

MRS JUSTICE GLOSTER: I'm not sure that's what it says. Maybe there's authority. It's weirdly worded, isn't it?

MR GILLIS: Well, it is.

MRS JUSTICE GLOSTER: Because if I make the order you want me to make, I'm not requiring Ms Davies to make the person available; I'm saying you can call him.

MR GILLIS: My Lady, I agree that --

MRS JUSTICE GLOSTER: So you have to make the arrangements to get the border guards here.

MR GILLIS: My Lady, no, because that's what Polanski v Conde Nast is indicating, that that's how the rule operates. So it ends by indicating:

"If the court considers in all the circumstances that the person outside the jurisdiction should attend and be cross-examined at court in person but the party intending to call them refuses to arrange for them to come to the English court, then the ordinary consequences of a refusal to obey an order of the English court should follow."

MRS JUSTICE GLOSTER: Where is that?

MR GILLIS: That's the penultimate sentence on page 985. So following on from Polanski:

"If the court considers in all the circumstances that the person outside the jurisdiction should attend and be cross-examined at court in person but the party intending to call them refuses to arrange for them to come to the English court, then the ordinary consequences of a refusal to obey an order of the English court should follow."

MRS JUSTICE GLOSTER: Is that what the Court of Appeal said in Polanski or what the writer of the White Book has said?

MR GILLIS: I think that accurately reflects what Polanski says.

MRS JUSTICE GLOSTER: Have I got Polanski here?

MR GILLIS: My Lady, no, we have not brought it to court.

MRS JUSTICE GLOSTER: Perhaps you could let me have a copy.

MR GILLIS: Yes.

But, my Lady, it must work in that way because if you grant Mr Berezovsky permission to cross-examine with the suggestion that we are then under the obligation to require Pronichev to attend, and we don't, that couldn't then be a basis for shutting out Pronichev's evidence.

MRS JUSTICE GLOSTER: No, but this is why the wording of the order seems to me to be key. What I'm doing is permitting you to call him. I'm not imposing an obligation on anyone else to call him; I'm permitting you to call him. That's why it seems to me that it doesn't necessarily follow. Obviously I'll see what the Court of Appeal say. But it doesn't necessarily follow that I'm permitting you to call him. That is tantamount to an order of the court requiring the other party to produce him.

MR GILLIS: My Lady, I think that's how both Polanski and Mr Justice Mann in *Dyson v Qualtex* have interpreted the order as working, as I would respectfully suggest one sees in the notes. In other words, it's simply saying the court is indicating that it's appropriate that the person who is seeking to rely upon the hearsay statement

should make the maker of that hearsay statement available for cross-examination and by making this order the court is signalling that the hearsay evidence is of sufficient importance to warrant that. If in consequence the person who is seeking to rely upon that evidence doesn't make the maker of the hearsay evidence available for cross-examination, then the court can make the appropriate order in terms of either excluding or it's another factor which goes to weight.

MRS JUSTICE GLOSTER: Yes. Well, perhaps you would let me have the two cases. I would quite like them -- if somebody can go out and ring a clerk and get them, I would be quite grateful.

MR GILLIS: My Lady, yes.

My Lady, subject to that, it may be appropriate if I make the application and then we can come back to that.

MRS JUSTICE GLOSTER: Yes, sure.

MR GILLIS: My Lady, I was proposing to take the matter quite shortly because your Ladyship has read the skeleton arguments and has heard the opening. Your Ladyship knows that the -- I don't know whether your Ladyship has refamiliarised yourself with paragraph 12 of our skeleton, which sets out what the hearsay evidence is.

MRS JUSTICE GLOSTER: Yes, just take me -- we're talking --  
can we just remind ourselves that we've got -- it's  
General Pronichev, is it?

MR GILLIS: Yes. Mr Pronichev --

MRS JUSTICE GLOSTER: He's the head of the FSB Border Guard  
Service.

MR GILLIS: Yes, I think he is the deputy head of the FSB.  
So Mr Pronichev's title is the first deputy director of  
the Border Guard Service.

MRS JUSTICE GLOSTER: First deputy director of the Border  
Guard Service, yes.

MR GILLIS: And Mr Mochalov is the head of the border  
control division.

MS DAVIES: My Lady, I hesitate to interrupt. Mr Pronichev  
is actually the first deputy director head of the Border  
Guard Service.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: First deputy director head of the  
Border Guard Service, yes.

MR GILLIS: Then Mr Mochalov is the head of the border  
control division of the Border Guard Service.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So, my Lady, it may be appropriate just to look  
at the relevant letters, which we have at bundle T(C),  
tab 5, at page 12 T(C)/05/12.

MRS JUSTICE GLOSTER: I think you had better give me the hard copy. (Handed) My mouse isn't working. I'll have the hard copy in the meantime.

Yes.

MR GILLIS: Tab 5 at page 12.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: This is the letter from Mr Pronichev.

MRS JUSTICE GLOSTER: Just a second. (Pause) Yes.

MR GILLIS: It's a letter dated 23 April 2011 at page 12.

Mr Pronichev starts by explaining the regulations that are in place and the power of general inspection and to stamp documents and then the critical part is at the bottom of that letter:

"Based on the available records and documents, the information sheet requested by you was prepared..."

And then is enclosed.

Then over the page we have the information sheet which was prepared by Mr Mochalov and that purports to show Mr Abramovich's entries and exits into and out of Russia. The entries which may be regarded as being of particular interest are the 6 December exit from Russia, 6 December return into Russia, and then on the face of it this is put forward as evidence of indicating that between 6 December and 2 January Mr Abramovich did not leave Russia.

My Lady, that's the hearsay evidence that Mr Abramovich seeks to rely upon and one can see the reliance in his third witness statement and his fifth witness statement.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: I don't propose to ask you to turn that up but for the record it's at paragraph 262 of the third and paragraph 7.1 of the fifth.

My Lady, in terms of relevance of this evidence, your Ladyship has read the skeleton and heard the openings and so I don't think there's much that I need to say about the relevance of Mr Abramovich's movements in this period because your Ladyship knows that Mr Abramovich denies having attended a meeting at Cap d'Antibes in December 2000 with Mr Berezovsky and Mr Patarkatsishvili, which Mr Berezovsky now dates as most likely to have taken place in the few days immediately after Mr Glushkov's arrest on 7 December.

MRS JUSTICE GLOSTER: Mr Glushkov was arrested on 7 December?

MR GILLIS: Yes, and the information about that arrest seems to have come out at about 11 o'clock Russian time. Your Ladyship knows the --

MRS JUSTICE GLOSTER: Mr Berezovsky's case is that he may have attended on the Cap d'Antibes meeting or a meeting

at Cap d'Antibes on the 6th or any time thereafter?

MR GILLIS: On the 7th or any time thereafter, because  
Le Bourget was on the 6th.

MRS JUSTICE GLOSTER: Yes, exactly.

MR GILLIS: The meeting certainly took place after  
Mr Glushkov was arrested; that was on the 7th. So in  
a sense Mr Glushkov's arrest starts the clock ticking.

MRS JUSTICE GLOSTER: I thought there was some suggestion  
that he may have gone down from Le Bourget to  
Cap d'Antibes on the 6th.

MR GILLIS: There was. There was the suggestion that he may  
not have returned to Russia after Le Bourget on the 6th.

MRS JUSTICE GLOSTER: And that he was the unidentified  
person with Mr Patarkatsishvili --

MR GILLIS: Absolutely. It certainly seems as if  
Mr Patarkatsishvili's plane flew down from Le Bourget to  
Marseilles on the 7th and there were three passengers on  
board, so query whether Mr Abramovich was one of those  
passengers; because, as your Ladyship will remember,  
Mr Patarkatsishvili's plane then flies back from  
Marseilles to Moscow on the 7th.

MRS JUSTICE GLOSTER: On the 7th?

MR GILLIS: On the 7th. So that is a possibility, or the  
days immediately thereafter.

MRS JUSTICE GLOSTER: Mr Berezovsky's case is that it's

after the actual arrest on the 7th, so that even if Mr Abramovich did fly down on the 6th and therefore the Russian return stamp is incorrect, the meeting wouldn't have taken place at Cap d'Antibes until the 7th?

MR GILLIS: That's right. It certainly couldn't have taken place before 11 o'clock Russian time on the 7th.

MRS JUSTICE GLOSTER: So is part of the suggestion in the evidence that Mr Abramovich stayed with Mr Berezovsky at his villa or at an adjacent villa on the night of the 6th? Is that one of the possibilities?

MR GILLIS: No, I don't think there's a suggestion that Mr Abramovich flew down on the 6th because I think Badri's plane flies down from Le Bourget to Marseilles on the 7th.

MRS JUSTICE GLOSTER: Oh, right. Yes, I see.

MR GILLIS: So it would either be that Mr Abramovich stayed in Paris on the evening of the 6th and did not fly back to Russia and then flew down with Mr Patarkatsishvili on the 7th; or alternatively, having returned to Moscow on the 6th, then flew back on the 7th. But my Lady, it's that window of the 7th and immediately thereafter that Mr Berezovsky suggests is the period where it is most likely the meeting took place.

MRS JUSTICE GLOSTER: So the entries that you may wish to challenge are the 6 December entry into the Russian

Federation because that doesn't tally with the possibility of a flight down from Paris to Marseilles on the 7th?

MR GILLIS: My Lady, what we are seeking to do is to explore what is the documentary basis for this information sheet in the records.

MRS JUSTICE GLOSTER: You say if there wasn't a flight down on the 7th from Paris to Marseilles, you say there should be a record of a further exit from the Russian Federation in the period 6 December to 2 January?

MR GILLIS: Indeed so.

My Lady, it may be useful just to annotate this. Where this record says there is an exit from the Russian Federation on 6 December -- so that's when Mr Abramovich flies out to Le Bourget -- interestingly there is no exit stamp in Mr Abramovich's passport, and that's common ground.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: The entry back into Russia on 6 December, as your Ladyship may recall, there was a dispute as to whether the stamp in Mr Abramovich's passport was in fact saying 5 December or whether it was indeed dated 6 December; but it does now look, from the forensic evidence, as if it was 6 December.

My Lady, what this evidence is being relied upon for

is not just to establish entry and exit on 6 December but also implicitly to establish that there were no further movements across the border after 6 December.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Our fundamental position is that we think it's appropriate that an order for cross-examination should be made so that we can explore what is the documentary basis for this record. Therefore, how reliable is the evidence for the purposes of Mr Abramovich inviting the court to conclude that this establishes that he cannot have left and returned to Russia after 6 December? Because as your Ladyship will see -- and I'll expand upon this in a moment -- going back to the previous page, all it says is:

"Based on the available records and documents..."

We're not told anything about that. Without that sort of information, the court is simply not going to be in a position to assess what sort of weight can be put on this evidence.

So, my Lady, your Ladyship has clearly in mind the critical relevance to the Cap d'Antibes meeting of this evidence. So I can move on from that.

Your Ladyship also knows that Mr Abramovich has put before the court extensive evidence in relation to his movements during this relevant period. So that we have

Mr Abramovich's own evidence in his third and fourth statements; we have extensive hearsay evidence from individuals who say they can attest to Mr Abramovich's presence in Chukotka for much of the month. Then, my Lady, in the week before the start of the trial there have been a whole series of supplemental witness statements regarding this issue, most of which are now included in volume E8.

So, my Lady, there is much other evidence which Mr Abramovich seeks to put before the court but this hearsay evidence is potentially an important part of that case. What we say is that the evidence, as one can see from Mr Pronichev, is simply based on wholly unidentified documents which are described as being "available records and documents" and it's for that purpose and it's on that basis that we have the information sheet drawn up, from which the court is asked to infer that Mr Abramovich could not have left and returned to Russia after 6 December.

In our submission, as I've said, absent an order for cross-examination, it's going to be very difficult for the court to know what weight, if any, it can attach to this evidence because there are quite clearly, we would say, a whole series of questions that need to be asked and answered. That's the only way in which this

evidence can be tested.

MRS JUSTICE GLOSTER: It would be done by video-link, would it?

MR GILLIS: I'm not sure whether it would be done by video-link or whether the people would attend in person -- from Moscow I think it's just a three-and-a-half-hour flight -- but obviously that is something that could be decided at a later stage.

My Lady, if I could just give you a few examples. As we can see at page 12, Mr Pronichev at the bottom of that page, tab 5 at page 12, Mr Pronichev says that the answers given in the attached information sheet are "based on the available records and documents"; but, my Lady, he does not say what those documents and records are.

In our submission it's clearly relevant to know what the records are. How were they prepared and maintained? For example, how was the information collated from the no doubt many airports from which foreign flights could have been made? For example, were the passports scanned and was information then collated automatically in some central registry? Or, for instance, was the system dependent upon the filing of paper reports? All of those sorts of questions are inevitably going to be relevant for the purposes of the court forming a view as

to how reliable and complete the records are.

Then, my Lady, one sees that Mr Pronichev is referring at page 12 to "the available records" without giving any indication of what the available records are. My Lady, that qualifier of "available records" is obviously potentially very important.

MRS JUSTICE GLOSTER: Just a second. Just looking at the letter:

"... the border authorities have the power to affix appropriate stamps..."

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: It doesn't suggest they've got to.

MR GILLIS: No.

MRS JUSTICE GLOSTER: You, on your side, could no doubt check what the relevant laws are and no doubt you would tell me if there was a requirement. It may be good practice to stamp the documents but it doesn't look, just from this letter, that -- well, I don't know. I haven't seen the guidelines, which are different from the law. One can quite see that although the guidelines may say it's good practice to stamp, that on occasions they don't get stamped, or that may be the case.

MR GILLIS: No, absolutely. I don't think we need to look at it but it's the evidence of Mr Tenenbaum that exit stamps are mandatory, but in actual fact we can see from

Mr Abramovich's passport on 6 December that, mandatory or not, you can certainly leave Russia without getting an exit stamp in your passport because that's exactly what happened with Mr Abramovich and his wife whom he said accompanied him.

My Lady, this is all a bit confusing because what Mr Pronichev is talking about here is the power to stamp documents. It may be that what he's referring to is the power to stamp a passport. But he then goes on to say:

"Based on the available records and documents, the information sheet... [has been] prepared..."

But that information sheet clearly can't have been prepared on the basis of simply passport stamped because we know that the information sheet is saying that Mr Abramovich left on 6 December but equally we know that Mr Abramovich's passport doesn't have a stamp for that date. So that would all seem to indicate that there is some separate record that is being maintained but we're not told --

MRS JUSTICE GLOSTER: Well, one would imagine there was, if entry in and out of Russia is similar to anywhere else.

MR GILLIS: Exactly so. But then one needs to know how those records are maintained and it takes me back to the point that I just made: are passports being scanned and bar codes read and then information being uploaded

automatically or was it a paper system? And if it was a paper system, how did it operate?

So, my Lady, that's the point that we make in respect of that.

MRS JUSTICE GLOSTER: Why do you need them both? Why can't you just have one of them? Why can't you just have Mochalov? I don't know, are there any difficulties put forward? If the other gentleman is a general, if he was in charge of the army or something somewhere, or a division, it would be unfortunate, wouldn't it, to be dragging him away from his duties? Mr Mochalov seems to have done the actual preparation.

MR GILLIS: My Lady, we would suggest that it's appropriate that both should be called to give evidence just in order to make sure that we have somebody who is able to speak to how the system operates. On the face of it Mr Mochalov has just been looking at certain records but we think it's appropriate that Mr Pronichev, who is the person who is saying, "Based on the available records and documents", should also come to give evidence to explain what those "available records" are.

My Lady, as I said, that qualifier of "available records" is potentially significant. Let me give an extreme example just to illustrate the point. Let's assume that in fact there were no available records

after 6 December because the system fell over or ten years later the files have been lost. Now, if that were the case -- and, as I say, it's an extreme example -- the court could draw no inference from the fact that there is no record of Mr Abramovich's movements between 6 December and 2 January.

So, my Lady, in our submission there is obviously a need for further examination of this evidence in order to establish what weight can actually be attached to it.

My Lady, with that, could I just move quickly to deal with the objections that have been made --

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: -- by my learned friend.

I think there are really three objections that are made to the application to cross-examine. The first I think we see at paragraph 28 of the skeleton argument of my learned friend T(C)/11/88. It is said that:

"If no challenge to the authenticity of the [two Russian entry] stamps..."

So this is looking at 6 December. I think this is paragraph 28.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: "If no challenge to the authenticity of the two [Russian] stamps is forthcoming, there will be even more reason to refuse this application, as all that the

documents from Mr Pronichev and Mr Mochalov will do will be to confirm information that is in fact already apparent from other sources."

Well, my Lady, the suggestion that the documents are merely confirming information apparent from other sources is not correct because it's common ground that there's no Russian exit stamp in Mr Abramovich's passport for 6 December, yet that's what the information sheet purports to record.

As my Lady appreciates, what is critical about the border guard information is that it's relied upon to confirm that there was no exit and re-entry from Russia by Mr Abramovich between 6 December and 2 January. For the reasons that I've already indicated, in our submission that assertion and the weight that is to be attached to this evidence to that effect simply cannot be determined unless there is examination in relation to the information which is said to lie behind the information sheet.

MRS JUSTICE GLOSTER: Ms Davies's skeleton at paragraph 30 makes the point that all that the two prospective deponents are doing is communicating the content of the official State records. But you, as I understand it, want to cross-examine them about the mechanics of maintaining records and how they elicited the

information that is provided in the information sheet.

MR GILLIS: Absolutely so.

MRS JUSTICE GLOSTER: So you're not actually asking them, "Well, did Mr Abramovich leave Russia during that period?" because they won't know because all they will have done is to have looked at particular records. But you really want to understand the procedures; is that right?

MR GILLIS: Absolutely. Of course they're going to have no personal knowledge; they weren't on the desk on the day. But what they will do is these are the people who are, if I can put it this way, charged with administering the system so they can explain what the system is, they can explain how the records are created, they can explain how the records are maintained, they can explain whether these are records that are maintained in relation to everybody or just in relation to particular individuals.

MRS JUSTICE GLOSTER: I suppose they can answer the question whether it is possible that if a person leaves in a private plane there is no formal record.

MR GILLIS: Absolutely. They are the people who can explain how it is that there is no exit stamp in Mr Abramovich's passport for 6 December. They can explain how it is that, in respect of all of the airports from which foreign flights could have been made, they can be sure

that there was no undocumented flight or that they can be sure that if there was a flight and documents were created, those documents would necessarily still be on the records ten years later. That's the type of evidence that they can give.

Just to be provided with this evidence that says, "We've inspected our records but we're not going to tell you what they are, and this is what they say", is of no assistance to the court, particularly when the court can see it's inconsistent with what is already before the court in relation to Mr Abramovich's passport.

MRS JUSTICE GLOSTER: Is there any evidence about the difficulties -- I have some sympathy with the points that Ms Davies is making in paragraphs 30 and 31 in the sense that these are people maintaining records or in charge of the maintenance of records. It may be -- I know not -- that there is some reluctance on the part of the border agency or the Border Guard Service to make its officials available for cross-examination by a foreign court. One can see there might be all kinds of policy reasons why the Russian State might not wish to make its border guards subject to cross-examination by a foreign State. So I have to take that into account.

MR GILLIS: My Lady, let me deal with that.

MRS JUSTICE GLOSTER: Well, just take it the other way around: the UK might take the view that it is not appropriate to make its civil servants available for cross-examination by a foreign court in relation to civil litigation. It might take that view for all kinds of policy reasons. It might therefore be the case that, for reasons that had nothing to do with Mr Abramovich, the Border Guard Service or the Russian Federation says, "No, we're not going to have our people being subject to cross-examination. We're quite happy to provide a bit of paper but we're not going to wheel them in to have them cross-examined, courteously or aggressively, by leading counsel".

MR GILLIS: It would be courteous, I'm sure. That may be, but let me say --

MRS JUSTICE GLOSTER: But you say that would go to the weight that I would --

MR GILLIS: Absolutely. If that's the outcome of the order being made, let them say that.

But, my Lady, if I can take it in stages. The first point -- and it's an obvious point but it's a point that I should make -- is that this court, if it were to accede to my application, is not making an order against these foreign officials that they should attend for cross-examination. What the court is --

MRS JUSTICE GLOSTER: I'm permitting you to call them.

MR GILLIS: You're permitting me to call them; we can look at the ramifications of that.

What Mr Abramovich has done is he has put in this hearsay statement from high-ranking officials because he wants that information to be franked with their authority.

MRS JUSTICE GLOSTER: I can see all that.

MR GILLIS: Now, in that situation, if Mr Abramovich has been able to avail himself of access to these individuals to put this hearsay evidence before the court, the order that we ask the court to make is simply effectively saying to Mr Abramovich: this court thinks it's appropriate that if you want to rely upon this hearsay evidence, you should produce these people to be tendered for cross-examination. In our submission that doesn't engage any principle of comity or any similar principle because you're not making an order against the officials; you are basically giving an indication to Mr Abramovich that he should take steps to seek to ensure that these people can attend to be cross-examined.

Now, if he can't do that because the border authorities come back and say, "This is not something we're willing to permit", well, so be it, and then

that's a fact the court can take into account. But we do submit that this argument of comity, as it were, or showing proper respect to a friendly nation, is really not engaged by the type of order this court is being asked to make. So we do say that it's entirely proportionate and fair that the court should make this order.

My Lady, there is actually no evidence before the court that if this order was made it would be impossible for Mr Abramovich to secure their attendance.

MRS JUSTICE GLOSTER: I've got the point.

MR GILLIS: My Lady, there are two points that I would like to, in that context, just draw to your attention.

Mr Abramovich is obviously a person of some influence within Russia and we would say as a result there's every reason to suppose that Mr Abramovich, if he asks, will be able to secure Mr Pronichev's and Mr Mochalov's attendance. My Lady, can I give you an example of that because just a few days ago we were served with a third witness statement from Mr Voloshin. Can I just ask my Lady to look at that.

MRS JUSTICE GLOSTER: I don't think I have it.

MR GILLIS: No, and I'm afraid it has not actually been uploaded into Magnum yet. (Handed)

My Lady, as your Ladyship may recall, in

December 2000 Mr Voloshin was the head of Russia's presidential executive office. I don't know whether he --

MRS JUSTICE GLOSTER: That's passed me by, I'm afraid.

MR GILLIS: My Lady, he --

MRS JUSTICE GLOSTER: Oh, Mr Voloshin. Sorry, I thought we were talking about Mr Mochalov.

MR GILLIS: No, Mr Voloshin. So he was the head of Russia's presidential executive office.

MRS JUSTICE GLOSTER: Sorry, I thought you were talking about Mochalov.

MR GILLIS: So he was running President Putin's office and one has seen in other evidence that he gives evidence as to what meetings took place with Mr Patarkatsishvili and Mr Putin.

My Lady, could I just ask you to read paragraphs 1 to 5 and then look at the attached telephone log, which is the document which is at the back of that clip and is very heavily redacted.

MRS JUSTICE GLOSTER: So there's a telephone call, yes.

MR GILLIS: It would appear to be the case that

Mr Abramovich, in support of his case, is even able to access Kremlin logs of telephone calls.

MS DAVIES: My Lady, paragraph 3 of this statement,

Mr Voloshin explains that he recently asked his former

secretary --

MR GILLIS: No, I entirely -- I'm sorry, maybe that didn't put it quite fairly. But through asking Mr Voloshin -- I'm sorry, I was taking it too shortly. I certainly wasn't intending to imply that Mr Abramovich had access to Kremlin logs or telephone calls; but through the influence of Mr Voloshin he is able to access or get access to logs of telephone calls within the Kremlin.

In those circumstances we would suggest there's no reason to suppose that if Mr Abramovich asked, Mr Pronichev and Mr Mochalov would not make themselves available for cross-examination.

MRS JUSTICE GLOSTER: I don't know whether I agree with that. There may be all kinds of policy reasons why the State or any State doesn't want their border guards being cross-examined. I don't see that I can assume that just because Mr Voloshin is prepared to come and give evidence, that means that Mr Abramovich can secure the attendance of people. I just don't think I can draw that inference.

MR GILLIS: And I don't ask you to and I don't suggest that it is necessary that you should conclude that the witnesses will be made available before you make the order.

MRS JUSTICE GLOSTER: Or that Mr Abramovich can necessarily

secure their attendance. I haven't got any evidence on --

MR GILLIS: If he can't, he can explain that.

But the other point that we were going to make, and I can sort of make it quite shortly, is that in relation to other State officials where we have applied to cross-examine them in relation to Mr Abramovich's border movements in respect of Chukotka, not just in relation to border movements but in relation to his whereabouts in Chukotka, Mr Abramovich has acceded to our application to cross-examine various State officials.

Just to take it quickly -- and your Ladyship has the order at L(2011), tab 12, at page 239 L(2011)/12/239 -- the order includes a Mr Markin, and he was the chief federal inspector of the office of the penitentiary representative of the president of Russia in the far eastern federal district; Mr Kurilov, who was the head of border protection directorate of Chukotka; Ms Umanskaya, who was the chairman of the electoral commission in Chukotka; and Mr Kolpakov, who was the lieutenant colonel of the militia in Chukotka.

My Lady, I don't suggest any of those individuals are of the same high level as Mr Pronichev and Mr Mochalov, but we already have a situation where it's been accepted that it is appropriate to have

cross-examination in relation to civil servants, if  
I can put it that way.

MRS JUSTICE GLOSTER: Can I be clear: is this  
cross-examination going to be limited to what I call the  
exit and entry issues --

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: -- and the record issues?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: There's no suggestion that there's  
going to be any wider cross-examination of, for example,  
what you say about Mr Abramovich's connection with the  
Kremlin or anything of a wider... I think I need to  
appreciate what is actually the extent of all this.

MR GILLIS: CPR 33.4 is very clear about that: the  
cross-examination can only be in relation to the hearsay  
evidence.

MRS JUSTICE GLOSTER: Yes. So it wouldn't go wider?

MR GILLIS: No, it wouldn't.

So, my Lady, in our submission, in considering  
whether it's appropriate to make the order, it's not  
necessary for your Ladyship to conclude that if the  
order is made, the makers of the hearsay statements will  
appear. In our submission that's not a necessary part  
of the court's reasoning.

The court should ask itself: is the hearsay evidence

of relevance to an issue in the action? Then secondly: is that evidence of sufficient importance that cross-examination is required for the purposes of the court determining what weight can be attached to it? If the court answers yes to both of those questions, unless there are issues of comity or some suchlike principle, then the court should make the order.

In our submission there are no such issues of comity because the order is not directed against a foreign State official; it's in effect a direction to Mr Abramovich in relation to evidence which he has sought fit to put before the court in the context of this private litigation.

Now, if the relevant State officials are not willing to go further and not willing to make themselves available for cross-examination, well, so be it. As I've indicated, we do not suggest that the consequence of that is that the evidence is necessarily shut out; but it is, in our submission, a matter which would further go to the weight the court would attach to the evidence.

MRS JUSTICE GLOSTER: Well, it may be.

MR GILLIS: Or may be.

My Lady, if I can just look at Polanski, if I can pick it up at --

MRS JUSTICE GLOSTER: I haven't got it yet.

MR GILLIS: I'm sorry, I thought Ms Shah was passing it up.

(Handed)

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Picking up from Lord Justice Thomas at  
paragraph 62:

"The second reason advanced is that the claimant's evidence by use of VCF would be a better way of the claimant's evidence being before the court than through his witness statement served by way of hearsay notice. However, that presupposes that the statement would be before the court. The effect of the changes introduced under CPR 32 and 33 has not so far been widely appreciated, particularly as regards the way in which the changes relates to the position of witnesses who are outside the jurisdiction. Under CPR 33.4, when one party has served notice that hearsay evidence is to be given through a statement and the party does not intend" --

MRS JUSTICE GLOSTER: Let me read it to myself.

MR GILLIS: I'm obliged. (Pause)

My Lady, it's really down to letter C.

MRS JUSTICE GLOSTER: Yes. (Pause)

Quite a hard order, wasn't it?

MR GILLIS: My Lady, yes.

MRS JUSTICE GLOSTER: So the libel case didn't go ahead; is that right? Did Polanski ever come to this --

MS DAVIES: It was overturned in the Lords, my Lady. The result of the Court of Appeal decision was overturned.

MRS JUSTICE GLOSTER: Yes, I thought it was, because there's a human rights issue.

MS DAVIES: Absolutely, my Lady, yes.

MR GILLIS: I should have checked, but I don't think in terms of how the rule operates that was doubted.

MRS JUSTICE GLOSTER: I think I need to see what the Lords said, don't I? Well, if you give me the reference, I'll look at it.

MR GILLIS: We will. The sentence we rely upon is:

"If the court considers in all the circumstances that the person outside the jurisdiction should attend and be cross-examined in court in person but the party intending to call him refuses to arrange for him to come to London..."

And that in this case must be Mr Abramovich.

"... then the ordinary consequences of a refusal to obey an order of the court should follow."

MRS JUSTICE GLOSTER: It just must depend on the circumstances, mustn't it?

MR GILLIS: I'm not suggesting that the consequence follows but what it is contemplating is that the consequence of

the court's order is that the person who is seeking to rely upon a hearsay statement should make steps to make the maker of the hearsay statement available for cross-examination. He may not be able to do so, in which case the person won't attend for cross-examination; the court will look at the reasons and take that as a factor into account.

But, my Lady, it's not imposing, on the facts of this case, an obligation on Mr Berezovsky to require Mr Pronichev to attend, such that if Mr Pronichev doesn't attend or we fail to take steps to get him to attend, the evidence is shut out.

MRS JUSTICE GLOSTER: Yes, but if you go with Lord Justice Thomas that's exactly what would happen because Mr Polanski was not going to be allowed to produce his witness statement, was he?

MR GILLIS: My Lady, that's right. We do not, as I've said, indicate that that is --

MRS JUSTICE GLOSTER: You're cherry-picking Lord Justice Thomas a bit.

MR GILLIS: We --

MRS JUSTICE GLOSTER: Because --

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: -- this case, Polanski's case, the effects of it were very, very serious indeed so far as

his claim was concerned.

MR GILLIS: Absolutely, and obviously Mr Polanski wasn't going to come here. So that's why, in our submission, it was obviously wrong for Lord Justice Thomas to be suggesting that the automatic consequence is that the evidence should be excluded because, as your Ladyship indicates, that has fair trial implications.

But, my Lady, in circumstances where we're not suggesting that that would be the consequence of noncompliance with the order, that difficulty doesn't arise.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: My Lady, we will get the House of Lords decision.

MRS JUSTICE GLOSTER: I can look at it. If you just give me the reference, I can look at it myself. Yes. Thank you, Mr Gillis.

Submissions by MS DAVIES

MS DAVIES: My Lady, can I start with the issue of the effect of CPR 33.4.

MRS JUSTICE GLOSTER: Can I just say where I'm coming from.

I'm not going to exclude it if these people aren't produced for cross-examination, I wouldn't exclude the evidence, but obviously it's going to go to weight. I can quite see that there might be difficulties put

forward by the Federation for not wanting to have their servants cross-examined. Obviously I will listen to your submissions but it seems to me that it is an important issue in the case.

You yourself have said, or Mr Sumption has said, accepted that the ORT issue is an important issue. Whether this meeting took place or not is going to be an issue. You've produced this evidence. In a normal case where there's an issue about a date or when somebody has travelled, one would expect the people who are saying, "Yes, he did leave the country", "No, he didn't", would be produced for cross-examination.

At the moment, you're going to have to work quite hard to persuade me that I shouldn't make an order. I am not persuaded that the consequences should be that I should exclude it; it just depends as to the reasons why these people can't be cross-examined as to the records.

MS DAVIES: My Lady --

MRS JUSTICE GLOSTER: I quite see your point that they can't be cross-examined about anything else and they can't be cross-examined about their personal knowledge because they don't have any personal knowledge. But at the moment I am persuaded by Mr Gillis' submissions that in order to test this evidence, they do need to know

something about whether the records are complete; how the records are maintained; given that the exit stamp of 6 December isn't in the passport, whether there is a possibility, given the maintenance or the glitches in the maintenance of records, whether despite the record that's been produced, Mr Abramovich might have left Russia in the period between 6 December and whenever in January.

That's where I'm coming from. So I give you that indication.

MS DAVIES: My Lady, may I take it in stages.

MRS JUSTICE GLOSTER: Yes, sure.

MS DAVIES: Because there are a number of things, I'm afraid, in what my learned friend Mr Gillis said with which we disagree.

It's important that first of all we know what the order is that's being made and whose obligation it is to call the witness, which Mr Justice Mann in fact, in the other judgment my learned friend just handed round, makes clear. I'll come on to that.

Secondly, it's important -- of course we accept that the issue of the meeting in Cap d'Antibes in December is an important issue; there's no dispute from us about that. It's also important to remember in that context that the dispute has now actually become quite a narrow

one because, contrary to Mr Berezovsky's former position that the meeting was in the last days just before Christmas, late December, in the most recent witness statement from him he's moved that to most likely to be around 7 December; and in fact in correspondence since then it's now been conceded that the only relevant period is 7 to 16 December. So we're looking at nine days.

MRS JUSTICE GLOSTER: The 7th?

MS DAVIES: 7 to 16 December.

I'll come on to explain how this bit of evidence fits into our evidence in relation to that but one of the points we wish to make to my Lady is this is only one part of the material that we seek to rely on and there's actually a whole body of other material that we say, including witness --

MRS JUSTICE GLOSTER: You are relying on this, Ms Davies.

MS DAVIES: We are, but only as part of the story, and it's important.

CPR 33.4 is a discretionary remedy, there's no entitlement to an order requiring cross-examination where a party is seeking to rely on hearsay evidence, and we submit that there are a number of factors relevant to the exercise of the court's discretion: one is the significance of the evidence, and my learned

friend seems to accept that because he said this morning that the question was whether the evidence was of significant importance to warrant the order; the second is the nature of the evidence; the third is the value of cross-examination; and the fourth is the likelihood of the order having any utility, and that was a matter that troubled Mr Justice Mann in the Dyson v Qualtex case.

Before I come to that, can I just address this question of who calls the witness if an order is made under this provision because it affects some of the points that my learned friend made in relation to what are the difficulties here and who has adduced evidence on that.

MRS JUSTICE GLOSTER: I thought, looking at who calls it, he calls for the purposes of cross-examination.

MS DAVIES: Yes, indeed. My learned friend Mr Gillis is the one, if he obtains this order, who has to call Mr Pronichev and Mr Mochalov.

MRS JUSTICE GLOSTER: But he can cross-examine them. He's not limited to --

MS DAVIES: Exactly. That is what Mr Justice Mann said in terms in the Dyson v Qualtex case, my Lady, which my learned friend I think handed up.

MRS JUSTICE GLOSTER: Hang on. Do I have Dyson v -- did that get handed up?

MS DAVIES: It got handed up with Polanski. Is there another copy?

MRS JUSTICE GLOSTER: Not to me it didn't.

MS DAVIES: I do apologise, my Lady. It was handed to me.  
(Handed)

If I can just explain who the parties are, we see Mr Carr was appearing on behalf of the claimant and Mr Arnold was appearing on behalf of the defendant. At paragraph 7, Mr Arnold was seeking an order that a witness called Mr Anderson attend to be cross-examined by video-link under CPR 33.4.

Mr Justice Mann at paragraph 9, towards the bottom of the page, in the sentence starting, "It is not an application for an order", makes the point that:

"It is not an application for an order that the other party do attend for cross-examination: it is an order giving Mr Arnold liberty to call the maker of the statement... himself so that the witness can be cross-examined on the contents of the statement. In other words, it gives Mr Arnold the liberty or permission or opportunity. It leaves open the question of how that is to be brought about."

MRS JUSTICE GLOSTER: Let me just read 9 and 10 to myself.

MS DAVIES: Through to 11, my Lady.

MRS JUSTICE GLOSTER: Yes, sure. (Pause)

He's got the same concerns about what Lord Justice Thomas said, with respect, in Polanski that I have expressed.

MS DAVIES: Yes, my Lady.

In paragraph 11 he is dealing with the point that because the witness in question is beyond the jurisdiction and therefore there's no summons that can make him attend, there's a futility in the order, and that there's no possibility of making an order against the claimant, Mr Anderson being the claimant's witness in this case.

MRS JUSTICE GLOSTER: Yes, but let's put it this way: I give them liberty to cross-examine because I think it's right or appropriate that there should be cross-examination of this evidence if you're seeking to rely on it; arrangements are made for the attendance; and then it's a matter for me, in the light of the fact that I have made the order, what weight I then attach to it, isn't it?

MS DAVIES: Of course, my Lady, I accept that. But my learned friend was suggested that Mr Abramovich has particular influence in Russia, can secure the attendance of these witnesses --

MRS JUSTICE GLOSTER: There's no evidence to support that.

MS DAVIES: We don't accept that for a moment. In fact we

don't have direct access to these people; that's a point I want to make. But the first point is it's not us, if this order was made, who would have to secure the attendance of these individuals; it's Mr Berezovsky.

MRS JUSTICE GLOSTER: That depends if you go with Mr Justice Mann or Lord Justice Thomas.

MS DAVIES: My Lady, Lord Justice Thomas is saying, with respect, the same thing. If one looks at paragraph 62 at (a):

"Under CPR Rule 33.4, when one party has served a notice then the court may permit another party to call the maker of the statement for the purpose of cross-examining him."

So Lord Justice Thomas is reading the rule in exactly the same way that Mr Justice Mann subsequently does.

It might also be of relevance to note, if one turns back to page 392 of the report --

MRS JUSTICE GLOSTER: No, but look further down. Look further down.

MS DAVIES: That's the consequences if an order is made.

I'm on a different point, which is: who is the party who has to make the arrangements?

My Lady, the rule that Lord Justice Thomas is looking at was also actually in slightly different

terms. If one turns back, at page 392 we have CPR Rule 33.4, which the relevant part, three lines down, is:

"... on the application of any other party" --

MRS JUSTICE GLOSTER: Sorry, I'm not with you. Where are you?

MS DAVIES: Paragraph 20, CPR 33.4, three lines down:

"... on the application of any other party permit the party to call the maker..."

The rule has now been tightened up in fact because the rule, if we go back to page 984 of the White Book --

MRS JUSTICE GLOSTER: Hang on, just let me read this.

(Pause)

Yes.

MS DAVIES: If we go back to page 984 of the White Book, whereas the rule previously, at the time of the Court of Appeal in Polanski, said "permit the party", that has now been changed to "permit that party to call the maker of the statement", "that party" clearly being the party making the application, which is how at paragraph 62(a) on page 403 Lord Justice Thomas read it and how Mr Justice Mann is clearly reading it in the Dyson judgment.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: Now, that's just by way of context. What

I really wanted to address was the factors that go to the discretion of the court, starting with the significance of the evidence in question.

MRS JUSTICE GLOSTER: Yes, okay.

MS DAVIES: I've already accepted, as is obviously the case, that the question of whether there was a meeting in Cap d'Antibes in December 2000 is clearly an important issue in the litigation.

Now, in terms of the evidential arena, in support of Mr Abramovich's case that he was in Russia there are a number of items of evidence we rely upon. The first is that we're proposing to adduce corroborative evidence in terms of witnesses who saw Mr Abramovich in Russia, both in Moscow in the period 7 to 10 December and then in Chukotka, where he flew overnight on 10 December.

My learned friend made a point about the order that's been made in relation to Chukotka witnesses but those are people who are in a different category to these high-ranking civil servants in relation to whom the application is now, because those are people who are giving evidence that they actually saw Mr Abramovich in Chukotka at the relevant time. In circumstances where witness testimony of his presence in Russia is obviously potentially of great weight, we didn't oppose the application, but you can't read from that a view that we

accept that any evidence relating to this must also be tested.

In terms of the key period which really -- although my learned friend is, for understandable reasons, trying to keep his window open as broadly as possible, ie 7 to 16 December, Mr Berezovsky's most recent account is either on or immediately after 7 December most likely and we are calling Mr Voloshin, who says in his most recent statement he saw Mr Abramovich in Moscow on 7 December; Mr Kapkov, who says he saw Mr Abramovich in Moscow on 9 December and also believes he was in Moscow on 8 December; and Mr Mamut, who saw him in Moscow on 9 December --

MRS JUSTICE GLOSTER: At the party?

MS DAVIES: At the party. All those witnesses will be giving evidence.

We also rely on the absence of flight records. There are no flight records indicating any flight from Moscow or indeed from Chukotka insofar as the period after 11 December remains important. And we've made the point -- my Lady has seen it in our opening and in annex 2 to our opening -- that for all other meetings that are said to have taken place between the parties in the period October to May, there are flight records.

MRS JUSTICE GLOSTER: So you don't really need this

sentence; is that what you're saying?

MS DAVIES: Well, the next point I come to is the passports because we also, of course, rely on the passports, the stamps.

Here, this is where my learned friend is trying to sow some seed of doubt or, as we would put it, clutch at straws because he is saying: well, look at the list in Mr Mochalov's information sheet and there's a passport stamp missing on 6 December. I'll deal with that in a moment, if I may. It appears now to be common ground that there is actually a passport stamp for every other entry in Mr Mochalov's -- although my learned friend's opening suggested there wasn't an entry stamp on the 6th, we've had that forensically tested.

Mr Handy, whose report I'm not sure my Lady has seen but it's in the L bundles, produces a very much enlarged picture. It may be worth just --

MRS JUSTICE GLOSTER: I've certainly seen reference to it.

Do you want me to have a look?

MS DAVIES: Yes, shall we have a quick look at it? It's in L(2011)/19/92.

I do have a hard copy if the technology --

MRS JUSTICE GLOSTER: I have 19/2011. Is it file 19?

MS DAVIES: Yes, it's file 19. The correspondence bundles are done by year and then file number.

MRS JUSTICE GLOSTER: Just a second. It's my own stupidity, I've just taken something out.

MS DAVIES: I do have a hard copy.

MRS JUSTICE GLOSTER: Is a hard copy handed up?

MS DAVIES: It's a bundle of all the correspondence. I'll hand it to my learned friends so they can see. But I've opened it on the relevant page. (Handed)

MRS JUSTICE GLOSTER: Thank you very much.

MS DAVIES: So this is an appendix to Mr Handy's report in which he produces the best copy we have of the 6 December entry stamp. His conclusion we can see at paragraph 10 of his report, going back a couple of pages to page 88 L(2011)/19/88:

"The date was interpreted as reading [6 December], from the ink present no other numerals were considered feasible. There was no evidence to suggest that the un-inked sections of characters were due to deliberate 'erasure'."

Now, my learned friend's own forensic expert had access to the passport on Monday. We have not received any formal indication of what the results of that investigation were. Mr Handy managed to produce his report within one day of seeing the passport. But from what my learned friend said this morning it looks as if their own forensic expert has not reached any different

conclusion because he said this morning it does now look as if this was an entry stamp for 6 December.

We set out in paragraph 22 of our skeleton --

MRS JUSTICE GLOSTER: I can give this back. (Handed)

MS DAVIES: -- the information relating to the other stamps in Mr Abramovich's passport corresponding to the other dates on Mr Mochalov's list. Now, I accept we haven't been able to find an exit stamp on 6 December, although we do have both a French entry stamp on 6 December and flight records showing a flight on 6 December, which is the other material to which I was referring to in my skeleton. But in any event that's wholly irrelevant because there's no suggestion that the meeting took place prior to 7 December; it had to take place after Mr Glushkov's arrest.

I should say this about the 6 December exit stamp. There are lots of stamps in Mr Abramovich's passport, as one might expect. We haven't been able to identify one which is 6 December but not all of them are legible. So when my learned friend says it's common ground that there's no stamp, it's common ground we haven't been able to identify a stamp. That's the point.

MRS JUSTICE GLOSTER: But it's certainly possible, just talking from one's experience, that even where normally one gets one's passport stamped, sometimes if more than

one passport is being presented, they just don't stamp it. That's life.

MS DAVIES: My Lady, of course judicial experience is something that can be taken account of.

We have in our skeleton -- annex 2 to our skeleton, which lists the other meetings which either Mr Abramovich says took place or are said to be common ground -- not only identified all the flight records that show that those meetings did take place but also the stamps. For almost every other meeting, as you would expect, there's either an entry or a --

MRS JUSTICE GLOSTER: Yes, normally --

MS DAVIES: An entry, exactly.

So that's sort of the backdrop. Then where are we? The actual evidence to which this application relates. My learned friend took you to the two letters to which his application relates but he didn't in fact also take you to the letter which prompted those responses, which, in order to understand the genesis of the documents, we respectfully submit is important. That's at T(C)/05/14.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: That's a letter, my Lady can see, dated 18 April. It will be in the T(C) bundle, tab 5, page 14.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: This is a letter from Mr Malkin to Army  
General Pronichev.

MRS JUSTICE GLOSTER: He's the MP or something?

MS DAVIES: He's the MP. He's a member of the Federation  
Council of the Federal Assembly of the Russian  
Federation and he's making a request pursuant to  
Articles 14 and 17 of the federal law.

The reason I draw my Lady's attention to that is we  
don't have direct access to Mr Pronichev, he's a member  
of the FSB, and the request was made through Mr Malkin  
invoking effectively something equivalent to an Official  
Information Act request for information.

My Lady has also seen -- that was an innocuous  
request; we've seen what the response is. There is  
reference to guidelines, nothing surprising.

It seems the thing that has really prompted this  
application is the last sentence:

"Based on the available records and documents..."

Now, my Lady, those records and documents are, of  
course, not documents that are within our control;  
they're official records of the Border Guard Service.  
We have, however, written -- again through Mr Malkin  
because that's our only way of doing it -- to  
Mr Pronichev asking for details of the records and

I should perhaps show my Lady that letter.

MRS JUSTICE GLOSTER: Is that in this bundle?

MS DAVIES: No, my Lady, it's in the L bundles again.

MRS JUSTICE GLOSTER: Give me the reference.

MS DAVIES: L(2011)/21/273. I do have a hard copy if --

MRS JUSTICE GLOSTER: It's all right. I would really rather get quicker on this. Okay, I've got it.

MS DAVIES: Page 279 is the letter we sent to Mr Malkin asking him to pass a letter to Mr Pronichev as a matter of urgency. The letter that we asked to pass to Mr Pronichev --

MRS JUSTICE GLOSTER: Hang on, let me just read it.

Yes, and the reply is at?

MS DAVIES: No, the letter to Mr Pronichev -- we haven't yet had a reply -- is at page 273.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: We refer to the guidelines -- it's the third paragraph -- and also to the reference to "available records and documents". Then the request is to:

"... provide us, if you are able to do so, copies of the above documents, together with any other documents which you based your letter or Mr Mochalov based the information sheet enclosed with your letter... as a matter of urgency."

We've had confirmation from Mr Malkin that he's

received this -- Mr Malkin's office, I should say, actually -- but we haven't had a response from Mr Pronichev yet.

So my learned friend put the application on the basis that what he's seeking to explore is what is the documentary basis for the information in the records; that's what we've asked Mr Pronichev to provide.

MRS JUSTICE GLOSTER: I think it goes a bit further than that, doesn't it? It also goes to what are the systems. Even assuming that the records in your office don't record any further exits from the Russian Federation, is it possible that there could have been an exit which isn't recorded on some of these documents and records? I think that's the question, or questions along those lines.

MS DAVIES: Your Ladyship will be assisted in relation to that by the other material that's been put before the court in terms of passport stamps which show that, on Mr Mochalov's list, all bar the 6 December exit have a stamp, but there are other passport records in relation to that, the entry into Le Bourget, and my Lady will be able to assess that.

The real question is: is it appropriate --

MRS JUSTICE GLOSTER: I would quite like to see whether we are going to get any of the available records and

documents because it seems to me the story might be much clearer from that.

MS DAVIES: It may well be, my Lady. If my Lady were to say we should adjourn this application until we know what the answer is to the letter --

MRS JUSTICE GLOSTER: I think I would like to see the available records and documents, if they're forthcoming, to actually identify what further questions either of these two gentlemen will be asked in cross-examination once those records and documents were forthcoming.

MS DAVIES: Obviously we don't know.

I really must deal with this suggestion that we have some sort of influence in relation to Russian State records which allows us to ensure that these sorts of requests are answered. That was put on the basis of Mr Voloshin's evidence. Mr Voloshin, as he explains in his first witness statement, is no longer a State employee. He left his position in 2003. He is now a chairman of private companies. He also explains he's a friend of Mr Abramovich, they have been friends for many years, and what he is explaining he did, in his witness statement, is phone up his former secretary and ask her to do him a favour.

That's really no basis for suggesting that we have this ability to secure access to anything else. We've

done what we can, my Lady. If Mr Pronichev responds and is willing to provide the records, then we can test, but we can't do any more in that sense. He's the head of the border guard, a member of the FSB.

But if my Lady is saying to me that she'd like to defer the --

MRS JUSTICE GLOSTER: I think I would like to see -- what I've really got to get a grip on is what is the utility of testing the question with the witnesses: well, given this is how you maintain the records and this is what you do when people leave the country, is there any possibility that, your records notwithstanding, somebody could have left the country without there being any record of it; and if so, in what circumstances would that take place?

MS DAVIES: I accept that they must have some other records because they didn't have Mr Abramovich's passport when they produced, so I accept that.

MRS JUSTICE GLOSTER: Yes, precisely. Well, you've asked for them.

MS DAVIES: And we've asked for them. If we defer -- this evidence -- as my learned friend Mr Rabinowitz described it, alibi evidence -- is not going to be relevant until sometime in November, so we have a bit of time to try and sort this out.

MRS JUSTICE GLOSTER: Yes. I think what I would like -- have you got any indication as to when you're getting these available records and documents?

MS DAVIES: I have no indication of when Mr Pronichev might respond to the letter, which is the relevant -- because we don't know whether he's going to be willing to provide anything further in response to this request.

MRS JUSTICE GLOSTER: When did this letter go?

MS DAVIES: It went last week.

MRS JUSTICE GLOSTER: Pronichev is not the MP?

MS DAVIES: No, Pronichev is the general and he's the head of the Border Guard Service, so he's a very senior civil servant. All we can do, my Lady -- again, because we don't have direct access to him -- is chase Mr Malkin to see if he has heard anything, which of course we can do.

MRS JUSTICE GLOSTER: What is the date of this letter?

MS DAVIES: 30 September.

MRS JUSTICE GLOSTER: We'd be looking at November. I'm going to -- if I were to adjourn this, I would then have to make up my mind in the event that there were no documents forthcoming by a certain date because if I were to make an order for cross-examination then arrangements would have to be made.

MS DAVIES: On the current timetable, the earliest that Mr Abramovich would be giving evidence is 1 or

2 November. The other -- to use my learned friend's phrase -- alibi witnesses will be coming, I think, two weeks later. We're not due to finish my client's evidence until the end of November essentially.

Now, of course my position is that it's actually for Mr Berezovsky's team to make the arrangements to get these people here if the order is made --

MRS JUSTICE GLOSTER: Well, he's going to have difficulty, isn't he? They're not going to come at his request.

MS DAVIES: There's no reason to think they're going to come at our request either.

MRS JUSTICE GLOSTER: I appreciate that.

MS DAVIES: My Lady, all I was going to say is that we wouldn't take some sort of formal point that these people should have been called before Mr Abramovich, nothing like that, obviously. I just wanted to make that clear. So if my Lady at some later stage wanted to make an order then we have plenty of time in the timetable to accommodate -- although we do say it is, with respect, unrealistic to suspect that high-ranking civil servants either would be willing or be permitted to derogate from their official duties --

MRS JUSTICE GLOSTER: Yes, I can see that; it's just I have no evidence about that. I have common sense and what you say in your skeleton argument.

MS DAVIES: That's why, my Lady, the question of who has to make the arrangements is perhaps of some relevance because our understanding of the rules is it's Mr Berezovsky who has to call these people if he obtains this order and he's put no evidence before the court to suggest it's possible.

MRS JUSTICE GLOSTER: Okay. Well, conclude your submissions, Ms Davies, please.

MS DAVIES: My Lady, I think that essentially I've covered the ground that I wish to cover, unless I can assist on...

MRS JUSTICE GLOSTER: Thank you. Yes, Mr Gillis.

Reply submissions by MR GILLIS

MR GILLIS: My Lady, just briefly. If I can start with the question of timing.

My Lady, the first point is that as one can see from T(C), tab 5 -- and one can pick this up from page 14 T(C)/05/14 -- the request was made on 18 April for the information and within five days, 23 April, they got their response. So very prompt indeed. So that would suggest that these things can be dealt with quickly.

The second point is that we have been pressing this issue with my learned friends for quite a while now. If I could just very quickly run through the position in relation to it.

The border guard evidence, if I can call it that, was first produced to us on 8 September. Your Ladyship knows that it was purportedly exhibited to Mr Abramovich's third witness statement in April; in actual fact it wasn't. That mistake was corrected so that we were first given this information on 8 September. So we wrote on 12 September requesting that they should produce the available documentation. That, my Lady, is the letter that you have at L(2011), tab 16, at page 142 L(2011)/16/142. So at paragraph 12(b) we asked them to produce the available records and documents:

"If they have not been made available, please request the provision of the documents referred to (and disclose them when provided)."

So that's what we asked on 12 September. We got no response to that, so that on 22 September we issued our application. We then got a reply to that letter of 12 September on 27 September.

MRS JUSTICE GLOSTER: What's the reference?

MR GILLIS: That's L(2011), tab 19, at page 179

L(2011)/19/179. At the top of that page, referring to 12(b), they simply say:

"The 'available records and documents' referred to in the letter of Mr Pronichev are internal documents of

the Russian Border Authorities. They are for official use only and have not been provided to Mr Abramovich."

So, in other words, they didn't reply to our request that they should ask for them.

It was then only on 30 September, three or four days before the trial was due to begin --

MRS JUSTICE GLOSTER: Page?

MR GILLIS: That is L(2011) tab 21, page 271

L(2011)/21/271.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: 30 September. I think this is what you have been shown, the letter attached, asking it to be sent to Mr Malkin and Mr Pronichev.

So, my Lady, in our submission this issue should have been being dealt with from April 2011 onwards but it wasn't because the letter wasn't produced to us. It was produced to us on 8 September, we've pushed for it from 12 September and it's only on 30 September that my learned friends have actually made any effort to actually progress this issue.

So, my Lady, in our submission this is something which needs to be dealt with as a matter of urgency. It's not correct that this issue only arises once Mr Abramovich's witnesses come to give evidence because it's no doubt going to be put to Mr Berezovsky that the

evidence establishes that Mr Abramovich cannot have left Russia between 6 December and 2 January, relying in part on this.

MRS JUSTICE GLOSTER: Well, Mr Berezovsky can't be cross-examined about these records; he can only say what he can say. He's not going to have any comments.

MR GILLIS: Well, I imagine -- it is not for me to second-guess how Mr Sumption is going to put his cross-examination but I would suggest it would be surprising if it's not put to Mr Berezovsky that this evidence shows that what he is saying cannot have taken place. So, my Lady, in our submission it is a matter that needs to be dealt with with some urgency.

The second point my learned friend made was to suggest or to say that this evidence from the border guards is merely part of the evidence they seek to rely upon. Well, of course that's right and they rely upon it.

MRS JUSTICE GLOSTER: Well, I put the point: well then you don't need to rely on it.

MR GILLIS: Exactly. Either you don't rely upon it or, equally so, bear in mind we wish to test the other evidence that they rely upon; and equally so, if they are going to continue their reliance upon this evidence, we want to be able to test it.

The third point we would make is in relation to the question of who, in a sense, the obligation falls upon to make steps to have the maker of the hearsay statement available to give evidence. My Lady, CPR 33.4 is drafted in fairly oblique language, I'm afraid to say, but my Lady if one steps back, in our submission it's quite clear how it's intended to work and it's shown by Lord Justice Thomas how it is intended to work: where the court has indicated that the hearsay evidence should be available for cross-examination, there is an obligation on the person who seeks to rely upon that hearsay evidence to make the maker available for cross-examination.

MRS JUSTICE GLOSTER: So you're submitting there is an obligation?

MR GILLIS: Yes, indeed so. We would say that is clear from what Lord Justice Thomas says.

MRS JUSTICE GLOSTER: And can be enforced like any other order of the court; is that your submission as well?

MR GILLIS: Not enforced in the sense that because you are in breach of an order the evidence can be excluded. As I've said, we're not relying on that. We're simply saying in circumstances where the court has indicated the maker of the hearsay statement should be available for cross-examination, if that person is not made

available, that's a factor the court can take into account.

MRS JUSTICE GLOSTER: Okay, it may be a fact, but if it can be enforced, like any other order of the court, then theoretically that leads to the consequence that the order can be served on Mr Abramovich and he can be in contempt if he doesn't make arrangements.

Are you saying that's the position? Because I don't understand what is meant by "can be enforced like any other order of the court", what Lord Justice Thomas says. That seems to imply to me that there is actually an obligation to make the witness available and I have problems with that.

MR GILLIS: My Lady, it may be said that that is implicit in the consequence that the court has indicated that cross-examination is appropriate. But, my Lady --

MRS JUSTICE GLOSTER: If that's right, it's not just that I'm saying, "Yes, you should have liberty to cross-examine these people", but, "Yes, I think it's appropriate that the defendant should be subject to an obligation that can be enforced to produce them", which is a different question altogether because it brings in other considerations.

MR GILLIS: My Lady, I see that, but that is certainly the way in which Lord Justice Thomas is interpreting it and

I would suggest also Mr Justice Mann.

So again coming back to the passage that we have in Polanski at page 403 at letter C, I do submit that --

MRS JUSTICE GLOSTER: Sorry, why is Mr Justice Mann doing that? Look at paragraph 11:

"I cannot make, so far as I can see, any order directed at the claimant, therefore there is no order in respect of which they can be in breach."

MR GILLIS: My Lady, I was going to take you to paragraph 10 but can I just start with what Lord Justice Thomas has said at 403 at letter C:

"If the court considers, in all the circumstances, that the person outside the jurisdiction..."

So that's clearly Mr Polanski.

"... who is wishing to rely upon the hearsay evidence should attend and be cross-examined at court in person but the party intending to call him refuses to arrange for him to come to London, then the ordinary consequences of a refusal to obey an order of the court should follow."

That can only be interpreted in one way. If the person who refuses to arrange for him to come to London: that must be Mr Polanski, it can't be Conde Nast. If Conde Nast fails to take steps to get Mr Polanski to come to England to give evidence, that in consequence of

Conde Nast's failure, Mr Polanski's evidence is inadmissible; that would be nonsense.

Equally so when one sees how it's interpreted in paragraph 10 in Dyson. At the end of that paragraph, picking it up halfway through, and this is referring to the note in the White Book:

"I think that the note is probably explicable by the fact that in the Polanski case, as it was outlined to me by Mr Arnold, who has some familiarity with it, Mr Polanski was himself the claimant..."

Well, here Mr Abramovich is the defendant.

"... and may well in some way have been said to be in breach of an order, although it is not at all clear what order he can be said to have been in breach of."

So Mr Justice Mann was again interpreting the Polanski decision as being a situation which was imposing upon Mr Polanski -- substitute Mr Abramovich -- an obligation to make the hearsay witness available to give evidence.

MS DAVIES: My Lady, I hesitate to interrupt but if my Lady reads the first half of paragraph 10 --

MRS JUSTICE GLOSTER: I've read it, yes.

MR GILLIS: My Lady, the other point we would make is: how else can the rule work? Because otherwise one ends up in a situation where, the court having given permission

to cross-examine a witness who is outside of the jurisdiction because the court is persuaded that that would be of assistance to the court, there is going to be no sanction that could attach because if the obligation is upon Mr Berezovsky to arrange for the attendance of Mr Mochalov, which he can't do, there is then going to be nothing that lies behind the order that the court has made.

In our submission, in the context of civil litigation, where the defendant has sought to put before the court hearsay evidence which the court considers should be subject to cross-examination, it's obviously intended that the court should have some means of seeking to ensure compliance with that indication.

MRS JUSTICE GLOSTER: I think it makes your task more difficult if you're pursuing this submission because if you're right, I then have to take account in making my order for the cross-examination, or deciding whether I should make an order for the cross-examination of these witnesses, whether or not it is appropriate in the circumstances that I should subject Mr Abramovich to such an order.

MR GILLIS: My Lady, in our submission not. We can cross that bridge, if I can respectfully say so, when we come to it because Mr Abramovich can explain to the court

what steps he took in order to seek to have these people attend for cross-examination and explain why they refuse to do so. If the court concludes that appropriate steps were taken and it was beyond Mr Abramovich's control to secure their attendance, then the court will not attach any significance to the fact that Mr Abramovich did not do what, in those circumstances, he was not capable of doing.

My Lady, in our submission it's not necessary to determine whether it is actually going to be in Mr Abramovich's power to secure their attendance in circumstances where, at the present time, no evidence of that issue has been put before the court. It's appropriate to deal with that question on the basis of the evidence, not on speculation.

My Lady, my learned friend made references to the relevance of the absence of the 6 December exit stamp and sought to suggest that that really didn't matter terribly much because there were Le Bourget entry stamps. Your Ladyship will appreciate that's not the point. The question is: how reliable is the system that was being used to collate entry and exit information?

It's the point your Ladyship has already made that in a sense they are seeking to rely upon the negative, namely the absence of any record of entry and exit, in

order to establish that Mr Abramovich was there during the relevant period. That takes you directly into the question as to the reliability or otherwise of the systems and record maintenance that lies behind the production of the information sheet.

My Lady, unless I can assist any further, it's on that basis that we would ask that the order sought be made.

MRS JUSTICE GLOSTER: Yes.

What I'm going to do is I'm going to adjourn this application, Mr Gillis, because I think it's important that I should decide what to do once I have seen, if they are going to be forthcoming, the records and documents that have been requested through the member of the Federation Council of the Federal Assembly of the Russian Federation to -- has the request been made to one of the proposed witnesses, to Mr Mochalov or to Mr Pronichev?

MS DAVIES: The request has been sent to Mr Malkin with the request that he send it to Mr Pronichev urgently. That's what we've done.

MRS JUSTICE GLOSTER: Yes. The request for the records and documents?

MS DAVIES: Yes.

MRS JUSTICE GLOSTER: It seems to me that I ought to decide

this issue, particularly in circumstances where the claimant is suggesting that it imposes an obligation akin to an order requiring Mr Abramovich to produce these witnesses for cross-examination, it seems to me that in order to decide what I should do in the exercise of my discretion as to whether to make such an order, and irrespective of what is the correct construction of the relevant rule as to whether it does actually impose any such obligation on the party wishing to rely on the hearsay statement, it's necessary for me to know whether documents are going to be forthcoming as a result of the request that has been made to Mr Malkin to obtain access to the relevant records and documents, the available records and documents.

The question is, it seems to me, what timeframe I should put on that. I'm minded to say two weeks from today, Mr Gillis. The date for that will be -- what are we today? It's the 5th today. So the 19th, two weeks today. I'll adjourn it until then, or a convenient time thereafter, and we can deal with it I think quite speedily.

If there's been no response, then I'll have to deal with it in the light of there being no response. If there is a response, I can then hear further submissions if necessary as to whether there is still a requirement

for cross-examination. I'm sure you will be pressing your request for cross-examination even in the light of the further documents but I want to make my decision on the basis of such further documents, if any, as are produced.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: It may not be convenient on that particular date.

MR GILLIS: My Lady, I believe the 20th and 21st are nonsitting days so it might be sensible to try and find some time on the 19th. But we can discuss that nearer the time depending on what the results of the request show and how long we think any further argument might take.

MRS JUSTICE GLOSTER: Yes. That puts, as it were, some sort of end date by which the documents have got to be produced because it's obviously important that as much time as possible is given to the witnesses to make arrangements if indeed I'm going to make an order.

Right. Very well. Could somebody let me have the reference to the House of Lords in Polanski? I can find it for myself.

MS DAVIES: It's always been a puzzle to me that it's not referred to in this note in the White Book but it hasn't been for many years.

MR GILLIS: It's not helpful.

MS DAVIES: But we will, of course, let my Lady have  
a reference.

MRS JUSTICE GLOSTER: Just email my clerk, otherwise either  
I or my clerk have to do the work. You might as well do  
it.

MS DAVIES: We'll definitely do that, my Lady.

MRS JUSTICE GLOSTER: Very well. So I'll adjourn the  
application formally for 14 days or such convenient date  
thereafter.

Discussion re translation of witness statements

MR GILLIS: My Lady, I'm afraid one other issue has arisen  
and that is in relation to Russian translations of our  
witness statements.

As your Ladyship will have seen, Mr Berezovsky's  
witness statements were all in English. What has  
happened, understandably, is that Skaddens, for the  
purposes of putting Mr Berezovsky's witness statements  
to their witnesses, have created translations of those  
documents and we have requested Skaddens to produce  
those translations to us for two purposes: firstly,  
because in our submission it is going to be necessary  
for Mr Berezovsky to see what Mr Abramovich's witnesses  
are being told in Russian that Mr Berezovsky has said  
because Mr Abramovich's witnesses, as one can see, they

have all given their evidence in Russian and do not seem to either speak or understand written English.

So a translation has been produced and in our submission it's important that Mr Berezovsky should be allowed to see what has been communicated to Mr Abramovich's witnesses in terms of what it is suggested that Mr Abramovich has said. So that's the first reason why we say it's important that the translations should be produced.

The second reason is that from a case management point of view, in order to put Mr Berezovsky's evidence to Mr Abramovich's witnesses who only speak Russian, we and the court are going to require a Russian-language version of those statements.

So, my Lady, we have asked Skaddens to produce those translations to us and that request has been refused.

Now, my Lady --

MRS JUSTICE GLOSTER: Well, the second reason, irrespective of the first reason, there has got to be, hasn't there, a Russian translation of any statement in English so that you or whoever is cross-examining the witness, you or Mr Rabinowitz or whoever, can say to the witness, through the translator, "Look at paragraph 77 of this statement; what do you say about such-and-such?" So there's got to be, from a case management point of view,

a translation --

MR GILLIS: Absolutely.

MRS JUSTICE GLOSTER: -- if you're wanting to cross-examine on any particular English statement.

The court can direct translations if they're not already there on the table. There may be a privilege reason why extracts that the defendant has made available to his witnesses should not be made available to you; but if they've got a whole lot of translations, it might be quicker if they just provided them.

MR GILLIS: My Lady, two points.

Firstly, I think it's Sumitomo v Credit Lyonnais which indicates that translations of documents are not privileged.

Secondly, what we have --

MRS JUSTICE GLOSTER: No, but there's a difference, isn't there, because the selection of the particular paragraphs to put to their witnesses might be a privileged issue. I don't see we need to get there because there have got to be translations of any relevant statement.

So what's the position, Ms Davies?

MS DAVIES: My Lady, I have to say this has rather been sprung on us. There was no application and my learned friend mentioned it just before --

MRS JUSTICE GLOSTER: Yes, but we're here and we have another half an hour.

MS DAVIES: Yes, but I don't agree with the Sumitomo point and I don't have Sumitomo here so I can't deal with that point.

MRS JUSTICE GLOSTER: Right, okay. But there have got to be translations.

MS DAVIES: Of course. My learned friend can make translations: he has got translators, he can get official translations produced.

As I explained to my learned friend just now, we don't have certified translations; what we do have are exactly what my Lady postulated, which are privileged extractions that were put to Mr Abramovich during the course of the proofing process. I explained that to my learned friend just before we came in. We will review them to see if we can make them available but I don't know the answer to that now.

The simplest thing is presumably just to get official translations done of the witness statements, which my learned friend is more than capable of doing if that's what he wants.

MRS JUSTICE GLOSTER: Well, the court can direct both parties to do it --

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: -- and costs shared subsequently at the discretion of the court.

MS DAVIES: My Lady, the only reason I'm suggesting my learned friend do it is it's his witness statements that he wants translated. But that's fine. I'm sure those arrangements can be made. What I am not -- those are the facts.

MRS JUSTICE GLOSTER: But have you had witness statements translated on en bloc?

MS DAVIES: My instructions, just obtained this morning -- because this was raised just literally as we came in -- is that we've had parts of the statements translated for the purposes of putting to Mr Abramovich in the proofing sessions.

MRS JUSTICE GLOSTER: Or putting to other witnesses?

MS DAVIES: Or putting to other witnesses.

My Lady will recall that the witness evidence was exchanged on 31 May and then there was a six-week period in which to produce reply statements. Experience tells certainly us on this side of the court that getting lengthy documents translated into Russian is a very lengthy process and we didn't therefore get them all translated -- those are my instructions -- we had bits and that's why there's a privilege problem.

But we're happy to review what we've got to see if

we can speed the process up by making those available,  
but at the moment --

MRS JUSTICE GLOSTER: Otherwise, when it comes to court,  
when Mr Rabinowitz or Mr Gillis puts paragraph 65 of  
a particular statement to a witness, there's going to be  
a gap whilst the translator translates it.

MS DAVIES: Of course, my Lady. I understand that.

I completely understand that when the Russian-speaking  
witnesses are being cross-examined, they're going to  
have to have translations of any document that's put to  
them to speed things up. I can see that. Although  
actually that's not happened in the rest of the bundles  
but there we are; that's a different problem we're going  
to have to deal with on a document-by-document basis.

But that's a separate question as to whether what my  
learned friend is seeking now is an order that we make  
available such translations as we have. If that's what  
he's seeking, I can't deal with that order because  
there's a whole privilege issue that we would need to  
address.

MRS JUSTICE GLOSTER: Okay.

Mr Gillis, I can see from a case management point of  
view that we've got to have translations and we've got  
to have them quickly. I'm going to leave it for the  
moment with the parties because if there is any

possibility of Ms Davies's clients or instructing solicitors producing any translations that had been made of witness statements, that would be good. That would be a good thing. But I can see that there is a real privilege issue and I would have to look at Sumitomo and the other case you mentioned as to whether the selection of the paragraphs that were chosen to put to their witnesses was covered by privilege.

MR GILLIS: My Lady, yes. Clearly from the case management point of view that is critical. What I would say is that it certainly looks, from the witness statements that have been served by Mr Abramovich, that translations have been prepared and they are effectively referred to because, for instance, in Mr Gorodilov's second statement at paragraph 2, which is at bundle E4 at tab 5 E4/05/54 -- it appears that Mr Gorodilov is just a Russian speaker -- he says:

"I have reviewed the witness statements recently served in support of Mr... Berezovsky's case."

So that on the face of it would look to take you into 31.14.

MRS JUSTICE GLOSTER: I can quite see we've got to have them but it does seem to me that it's -- at least in the first instance -- incumbent upon you, if you wish to cross-examine a Russian speaker off an English

statement, you'll have to come up with a translation. It's something that both parties should have addressed earlier in the process because the translation issue has been on the table for some time now.

MR GILLIS: My Lady, I see that. But in our submission it is unsatisfactory that we're not going to be produced -- it seemed -- with the translations that had been prepared and seem to have been referred to in the witness statements so we can be quite clear as to how Mr Abramovich's witnesses are understanding the evidence that Mr Berezovsky is giving.

MRS JUSTICE GLOSTER: Yes, I can see that. But I think that it does require a bit of consideration because it's only in a situation where there is a lost in translation issue that this point is going to arise at all, isn't it?

MR GILLIS: I can see that.

MRS JUSTICE GLOSTER: Basically, if the worst comes to the worst, I will direct both parties to produce translations of everything and that seems to me to be an unnecessary expense. I think both of you should have addressed this earlier and I would expect Ms Davies to cooperate, as far as she can within the constraints of privilege, to produce the translations if you can, please.

MS DAVIES: I hope I was making it clear that we would do that. All I can say is there has been an awful lot to deal with in the last two weeks. My Lady has managed to escape the joys of the correspondence bundles because they would almost fill this room, mostly in the last two weeks. So we're all working frantically behind the scenes to try and get everything ready. So we will, of course, take this further.

MRS JUSTICE GLOSTER: It's going to be a lot of time-wasting if paragraphs of witness statements have got to be translated while the witness is in the witness box.

MS DAVIES: As I said, we'll review them, if we can, give them what we've got and then get them certified because that may well be quicker. We'll do that. But we just need to look and see what we have and take it further.

MRS JUSTICE GLOSTER: I really don't want to waste time having a privilege issue as to whether translations or particular translations of particular witness statements are covered by privilege because there's something in your selection process. Okay.

Very well. Tomorrow we said 10.15. Thank you very much.

(12.40 pm)

(The hearing adjourned until  
Thursday, 6 October 2011 at 10.15 am)

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statements

# OPUS 2

INTERNATIONAL

Berezovsky v. Abramovich

Day 4

October 6, 2011

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1 Thursday, 6 October 2011  
 2 (10.15 am)  
 3 (Proceedings delayed)  
 4 (10.20 am)  
 5 **MR RABINOWITZ:** May it please your Ladyship, before we start  
 6 with Mr Berezovsky, there are two things we need to deal  
 7 with. The first is just to ask your Ladyship if you  
 8 could sign the order which you should find in front of  
 9 you. It's the CPR 31.22(2) order. I understand we  
 10 don't yet have a signed copy of that.  
 11 **MRS JUSTICE GLOSTER:** Yes, there's no objection to that.  
 12 Yes.  
 13 **MR RABINOWITZ:** I'm grateful. The next matter before  
 14 Mr Berezovsky is called is that I think some members of  
 15 the press wish to make an application.  
 16 **MRS JUSTICE GLOSTER:** Yes, very well. Who's got the  
 17 speaking part on this? Yes.  
 18 **MEMBER OF THE PRESS:** My Lady, if I may address you. I'm  
 19 from the Financial Times and the gentlemen behind me are  
 20 from the national and international press as well. We  
 21 did get here in good time this morning but unfortunately  
 22 the desks downstairs that issues numbers was closed  
 23 until 10 o'clock and the more fundamental problem is  
 24 that there are only ten seats available and that is  
 25 woefully inadequate for a litigation that is of obvious

1

1 interest.  
 2 **MRS JUSTICE GLOSTER:** Well, I did say right at the start  
 3 that if ten was not enough I would reconsider the  
 4 position.  
 5 **MEMBER OF THE PRESS:** Thank you.  
 6 **MRS JUSTICE GLOSTER:** The ten reserved seats have been  
 7 allocated to members of the press, have they?  
 8 **MEMBER OF THE PRESS:** Perhaps. I know certainly there are  
 9 members of the press in some of the ten seats. If I may  
 10 respectfully suggest, there are people in court who  
 11 don't absolutely need to be in the courtroom to see the  
 12 witness giving evidence and for whom it's perhaps not as  
 13 essential as for the journalists to see facial  
 14 expression, et cetera, who perhaps could be asked to  
 15 move to the adjoining room before us.  
 16 **MRS JUSTICE GLOSTER:** I'm told that the consultation rooms  
 17 where there is an audio feed and also a transcript feed,  
 18 the LiveNote or Opus feed, are pretty well empty. So  
 19 anybody who wants to read what's going on or listen to  
 20 what's going on should go to the consultation rooms  
 21 which are, I think, on this floor.  
 22 **COURT OFFICIAL:** They are.  
 23 **MRS JUSTICE GLOSTER:** Out of the court and turn right.  
 24 **COURT OFFICIAL:** It's rooms 40 and 42.  
 25 **MRS JUSTICE GLOSTER:** I don't know whether -- obviously

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1 I quite understand the interest of the press. I don't  
 2 want to delay the start of proceedings today. I will  
 3 consult with HMCS court staff at lunchtime, because  
 4 obviously the court will be cleared at lunchtime, and  
 5 I'll see what we can do about allocating more seats for  
 6 the press. But the reality is there is no courtroom in  
 7 the land that is big enough to accommodate all of you  
 8 and whilst I can reserve public seats for the press,  
 9 I obviously can't, given the teams of lawyers here, as  
 10 it were, cross-examine each of them as to whether their  
 11 presence here is actually necessary --  
 12 **MEMBER OF THE PRESS:** No, I quite understand.  
 13 **MRS JUSTICE GLOSTER:** -- and then do a balancing act so as  
 14 to work out whether the interests of the press override  
 15 the interests of the lawyers. I can't get into that  
 16 game.  
 17 I don't know whether there's a health and safety  
 18 issue about so many of you standing there. What's the  
 19 position?  
 20 **COURT OFFICIAL:** I would need to find out about numbers.  
 21 I think there will be because we need access and that's  
 22 the only door.  
 23 **MRS JUSTICE GLOSTER:** Sorry, I don't hear you.  
 24 **COURT OFFICIAL:** That is the only access, so I need to find  
 25 out how many numbers we can actually have in here

3

1 standing.  
 2 **MRS JUSTICE GLOSTER:** Okay. Let's keep them here for the  
 3 time being. I don't want it to be, as it were,  
 4 oppressive for any of the witnesses giving evidence and  
 5 so therefore I am going to ask you to make sure that  
 6 you're the other side of that. Again, the most  
 7 important thing is that this is a fair trial and that  
 8 the witnesses or the parties aren't, as it were,  
 9 oppressed by too many people in court.  
 10 I will see what I can do at lunchtime about making  
 11 more seats available and I will give you an update then.  
 12 **MEMBER OF THE PRESS:** My Lady, we're very grateful, thank  
 13 you.  
 14 **MRS JUSTICE GLOSTER:** I think that is the best I can do.  
 15 But I obviously have your interests, as it were, at  
 16 heart.  
 17 **MEMBER OF THE PRESS 2:** Could I make a suggestion regarding  
 18 the ticketing. It normally works in court where it's  
 19 one ticket per organisation and it's ticketed in  
 20 advance. I think today it's been a little haphazard on  
 21 that score.  
 22 **MRS JUSTICE GLOSTER:** It was all right on Tuesday, wasn't  
 23 it? It seemed to work very well on Tuesday.  
 24 **MEMBER OF THE PRESS 2:** Fewer people, my Lady.  
 25 **MRS JUSTICE GLOSTER:** Yesterday hardly anyone was here at

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1 all, but on Tuesday it seemed to work well.  
 2 **MEMBER OF THE PRESS:** It did but, as my colleague has said,  
 3 there were fewer people. Today, because Mr Berezovsky  
 4 is giving evidence, there is obviously a lot more  
 5 interest.  
 6 **MRS JUSTICE GLOSTER:** Okay. Your suggestion -- I think  
 7 you're Mr Daily Mail, are you?  
 8 **MEMBER OF THE PRESS 2:** Telegraph.  
 9 **MRS JUSTICE GLOSTER:** Sorry. Mr Telegraph. Your experience  
 10 is that it's, as it were, formally allocated to each  
 11 organisation in advance?  
 12 **MEMBER OF THE PRESS 2:** That's normally the position.  
 13 **MRS JUSTICE GLOSTER:** What would be useful would be if you  
 14 could, anybody who is interested, just provide you  
 15 perhaps with a list or register your interest per  
 16 organisation with one of the court staff, or with you if  
 17 that's all right.  
 18 **COURT OFFICIAL:** Of course, my Lady.  
 19 **MRS JUSTICE GLOSTER:** Okay. So perhaps you could produce,  
 20 as it were, a template with two columns: name of  
 21 representative, name of organisation. We can get that  
 22 done and then we'll have some idea of the numbers who  
 23 want to have tickets. It may have to operate on  
 24 a first-come first-served basis, I'm just not sure.  
 25 All stay there for the moment and we'll try to keep

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1 as many of you here as possible. If we can't because of  
 2 health and safety, then the people at the back will just  
 3 have to go out to the consultation rooms.  
 4 Okay. I'll give you an update at 2 o'clock.  
 5 **MR RABINOWITZ:** I'm grateful for that, my Lady.  
 6 Can we then call, Mr Berezovsky, please.  
 7 **MRS JUSTICE GLOSTER:** Yes, certainly.  
 8 **MR RABINOWITZ:** He does have a translator.  
 9 **MRS JUSTICE GLOSTER:** Yes, very well.  
 10 MR INTERPRETER (affirmed)  
 11 MR BORIS BEREZOVSKY (sworn).  
 12 **MRS JUSTICE GLOSTER:** Mr Berezovsky, if you would prefer to  
 13 sit down, which I'm sure you would, please do so. If  
 14 you want to stand up at any time because you're more  
 15 comfortable standing up, please feel free to do that as  
 16 well.  
 17 **THE WITNESS:** Thank you very much, it's exactly my very  
 18 first wish: can I change my position?  
 19 **MRS JUSTICE GLOSTER:** Yes.  
 20 **THE WITNESS:** Thank you.  
 21 Examination-in-chief by MR RABINOWITZ  
 22 **Q.** Good morning, Mr Berezovsky.  
 23 **A.** Good morning.  
 24 **Q.** Mr Berezovsky, before we begin, can you just confirm  
 25 that you don't have any mobile phone or indeed any other

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1 electronic communication device with you in the witness  
 2 box?  
 3 **A.** I don't have anything except pence. But I need paper,  
 4 if it's possible, just white paper, please.  
 5 **Q.** Can I ask you please to be given bundle D2 and if you  
 6 could have that opened at tab 17. If you're at tab 17,  
 7 can I ask you to go to page 102 of that statement. It's  
 8 page 294 of the bundle, right at the back {D2/17/294}.  
 9 Can you confirm that's your signature?  
 10 **A.** Yes, it's my signature.  
 11 **Q.** Can you then please confirm that this is your fourth  
 12 witness statement in these proceedings and that it's  
 13 dated 31 May 2011?  
 14 **A.** Yes, that's correct.  
 15 **Q.** Thank you.  
 16 Now, I understand that there is a paragraph in this  
 17 witness statement that you would like to correct. Can  
 18 I therefore ask you to go to paragraph 114 at page 221  
 19 of the bundle. You see paragraph 114, it says:  
 20 "Mr Abramovich and I arranged in February 1995 for  
 21 Mr Gorodilov to write to President Yeltsin setting out  
 22 his proposal for the privatisation of this business."  
 23 Do you see that paragraph?  
 24 **A.** Yes.  
 25 **Q.** You should see in front of you, although it's covered by

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1 paper, a one-page document which looks like this  
 2 (indicates), Mr Berezovsky, on your desk.  
 3 **A.** Yes.  
 4 **Q.** You'll see the first paragraph there identifies  
 5 a slightly amended paragraph 114.  
 6 **A.** I don't understand, where is -- yes, sorry. Yes.  
 7 **Q.** Effectively you're deleting the word "privatisation" and  
 8 you're substituting for it the word "creation"?  
 9 **A.** Yes, it's correct. Yes, creation was the next step.  
 10 **Q.** So can you confirm that that's the amendment that you  
 11 want to make to paragraph 114?  
 12 **A.** It's correct.  
 13 **Q.** All right.  
 14 Now, just still on this document, can I please ask  
 15 you to go to paragraph 340 of this witness statement;  
 16 that's at page 269.  
 17 **A.** Yes.  
 18 **Q.** You'll see at paragraph 340 you're referring to the  
 19 transcript of your Le Bourget meeting with  
 20 Mr Abramovich.  
 21 **A.** Yes.  
 22 **Q.** You say there that you have produced a detailed  
 23 commentary on this which you have exhibited. Do you see  
 24 that?  
 25 **A.** Yes.

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1 Q. Can I therefore please just ask that you be given  
 2 bundle D3. I just want to show you the exhibit. If you  
 3 go to tab 18 of D3 {D3/18/1}, that's the beginning of  
 4 the bundle, can you just confirm --  
 5 **THE WITNESS:** Sorry, is it possible to remove that?  
 6 **MRS JUSTICE GLOSTER:** Certainly. Usher, please, could you  
 7 remove the...  
 8 **THE WITNESS:** That's fine. Okay.  
 9 **MR RABINOWITZ:** All right. So at bundle D3, tab 18, can you  
 10 just confirm that this is --  
 11 A. Just a second. 18?  
 12 Q. Yes. Can you confirm that what you have in front of you  
 13 is the commentary that you have produced on the  
 14 transcript of the Le Bourget meeting which you referred  
 15 to in your witness statement?  
 16 A. Yes, I think it's -- I can't go through each page but  
 17 it's -- it looks like that.  
 18 Q. Thank you.  
 19 Now, subject to the correction we identified  
 20 a moment ago, can I now ask you to confirm that the  
 21 contents of this, your fourth witness statement,  
 22 together with the commentary I've just taken you to, are  
 23 true to the best of your knowledge and belief?  
 24 A. Yes, it's correct. It's true of my knowledge and  
 25 belief.

1 Q. You may want to start closing some of those bundles.  
 2 I'm sure they'll be reopened but otherwise your desk is  
 3 going to overflow.  
 4 **MRS JUSTICE GLOSTER:** Is there enough room there for you,  
 5 Mr Berezovsky?  
 6 **THE WITNESS:** I think so. I think it's fine.  
 7 **MR RABINOWITZ:** What I would like to do next, Mr Berezovsky,  
 8 is to ask that you be given bundle D4 and if that could  
 9 be opened at tab 6, and if you go to page 47 of the  
 10 bundle; page 19 of that statement {D4/06/47}.  
 11 Can you confirm that the signature there is your  
 12 signature?  
 13 A. I confirm that.  
 14 Q. And can you confirm then that this is your fifth witness  
 15 statement in these proceedings, dated 8 July 2011?  
 16 A. Yes, it is.  
 17 Q. Thank you.  
 18 Now, again, I understand that there's a paragraph in  
 19 this witness statement also that you would like to  
 20 correct so can I ask you, please, to go to page 40 of  
 21 the bundle, paragraph 37(c) of this statement  
 22 {D4/06/40}. You will see, again if you take that  
 23 one-page document headed "List of Corrections to  
 24 Mr Berezovsky's Witness Statement" and you look at  
 25 point 2, you can see that's identifying a change to

1 paragraph 37(c).  
 2 A. It's correct.  
 3 Q. Thank you. So you're confirming that's a correction you  
 4 would like to make?  
 5 A. Yes.  
 6 Q. Subject to that correction that we've just looked at,  
 7 can you confirm that your contents of this, your fifth  
 8 witness statement, are also true to the best of your  
 9 knowledge and belief?  
 10 A. I think so, yes, it's true.  
 11 Q. Can you confirm that they're true to the best of your  
 12 knowledge and belief?  
 13 A. Yes. Yes. Ah, I didn't get the question. Yes, it's  
 14 correct.  
 15 Q. Can I ask you next in the same bundle -- that's D4 -- to  
 16 go to tab 9, where you should see a document -- it's the  
 17 bundle you've got in front of you. If you go to tab 9,  
 18 you should see a document headed "Sixth Witness  
 19 Statement of Boris Abramovich Berezovsky" {D4/09/69}.  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. If you then turn to page 77 of the bundle, that's page 9  
 23 of the statement, can you confirm that that's your  
 24 signature?  
 25 A. It's my signature.

1 Q. Can you therefore confirm that this is your sixth  
 2 witness statement in these proceedings, dated  
 3 14 September 2011?  
 4 A. Yes, it is.  
 5 Q. Again, as I understand it, there's a very minor  
 6 correction you want to make to paragraph 17 of the  
 7 statement, which you can find at page 73 of the bundle  
 8 {D4/09/73}. Again, if you refer to the one-page  
 9 document headed "List of Corrections", over the page you  
 10 will see point 3. (Pause)  
 11 A. Yes, it's correct.  
 12 Q. Can you confirm that that's a correction you want to  
 13 make to your statement?  
 14 A. This correction is correct.  
 15 Q. Thank you.  
 16 Now, subject to that correction, can you therefore  
 17 please confirm that the contents of this statement are  
 18 also true to the best of your knowledge and belief?  
 19 A. It's also true.  
 20 **MR RABINOWITZ:** Thank you very much, Mr Berezovsky. Can you  
 21 wait there, please. Mr Sumption will have some  
 22 questions.  
 23 **THE WITNESS:** Just some?  
 24 Cross-examination by MR SUMPTION  
 25 Q. Good morning, Mr Berezovsky.

1 A. Good morning.  
 2 Q. In 1995, what was your opinion about political  
 3 corruption?  
 4 A. Just a second. Can I be allowed to return back to 1995?  
 5 (Pause)  
 6 As far as me is concerned, my opinion is that  
 7 definitely it was corruption in Russia, much less than  
 8 now, but it was.  
 9 Q. You have in these proceedings indignantly denied the  
 10 suggestion that you were corrupt; presumably therefore  
 11 you disapprove of it, corruption that is?  
 12 A. I really confirm that I am not corrupt and I didn't  
 13 bribe anybody. But as far as my knowledge is concerned,  
 14 the corruption was -- I don't know how to estimate the  
 15 level. If you take for the maximum level of today ten,  
 16 for example, that means that at that time the corruption  
 17 was between three and four.  
 18 Q. But, Mr Berezovsky, I understand that there was  
 19 corruption in Russia in the 1990s; I'm interested to  
 20 know your opinion. Were you for it or against it?  
 21 A. Definitely against the corruption.  
 22 Q. Right.  
 23 Now, suppose a businessman approaches an elected  
 24 official and says, "I'm going to support your  
 25 re-election campaign so please will you exercise your

1 official powers in a way that favours my business  
 2 interests and those of my associates", and the elected  
 3 official says, "Yes". In your view, is that corrupt?  
 4 A. Just a second. Give me reference: where is that?  
 5 Q. Can you read my question on the screen?  
 6 A. No, no, I'm reading. But you said it's breaks(?), yes?  
 7 Just a second. (Pause)  
 8 Yes, it's corrupt.  
 9 Q. Right.  
 10 Now, Professor Fortescue is your expert on  
 11 contemporary Russia. Have you read his report?  
 12 A. No.  
 13 Q. Right. Well, let me tell you that Professor Fortescue  
 14 says that in the early and mid-1990s you were one of the  
 15 most politically influential oligarchs in Russia. Would  
 16 you agree with that?  
 17 A. I agree with that.  
 18 Q. In 1995 you held no official position, did you? That  
 19 came later.  
 20 A. In 1995 I have not any official position, it's correct.  
 21 Q. Nor had you been elected to any office of the State?  
 22 A. I have not been elected in any office.  
 23 Q. Right.  
 24 Professor Fortescue gives three reasons for  
 25 regarding you as one of the most politically influential

1 oligarchs: I'm going to list them and then ask you  
 2 whether you agree. First, your relationship with the  
 3 so-called family advisers of President Yeltsin;  
 4 secondly, your close relations with other oligarchs; and  
 5 thirdly, your control of media interests.  
 6 Would you agree that those three factors were the  
 7 main reasons for your political influence?  
 8 A. I think the main reason is not here mentioned at all:  
 9 it's my intellectual capacity. And I think that  
 10 so-called family -- I don't know what he means.  
 11 Q. You don't know what that means?  
 12 A. Yes.  
 13 Q. Okay.  
 14 A. No, not "that means"; what this gentleman means when he  
 15 gave his evidence or his understanding.  
 16 Q. I will come to that in a minute.  
 17 What about your media interests: would you agree  
 18 that that was an important source of political  
 19 influence?  
 20 A. No doubt. Maybe the most important in that time in  
 21 Russia.  
 22 Q. Yes.  
 23 Now, would it be fair to say that in Russia in the  
 24 mid-1990s, a businessman like Mr Abramovich had no  
 25 chance of building a major business unless he had either

1 political influence or was helped by somebody else who  
 2 had political influence?  
 3 A. I don't think so. I think that it depends on how smart  
 4 he is, not how leveraged he gets, because to get  
 5 leverage you need to be smart. He was not so, and it's  
 6 the reason that he didn't get that time.  
 7 Q. Is the leverage important so that he can get political  
 8 influence or is it important so that he can do without  
 9 it?  
 10 A. I understand that we are discussing now only about mass  
 11 media, as you mentioned. And as far as media is  
 12 concerned, I already give my answer: definitely, it is  
 13 absolutely important leverage for political reasons.  
 14 Q. I'm not talking about mass media; I'm talking about  
 15 political influence, influence with the government.  
 16 A. Before, as I understand, you put me a question about how  
 17 my -- how important media in political life at that time  
 18 in Russia and I give you answer. What is your question  
 19 now?  
 20 Q. The question I'm asking you now is a different one. Was  
 21 it possible for a businessman to build up a large  
 22 business in Russia in the mid-1990s without political  
 23 influence or the help of somebody else who had political  
 24 influence?  
 25 A. Maybe you know that I start my business with Logovaz

1 just from zero, yes? And without any political  
 2 influence I build it the most, the biggest car dealer  
 3 company in that -- even I start when Soviet Union did  
 4 not collapse -- even in Soviet Union. It means that at  
 5 that time I didn't have any political leverages and any  
 6 political support and nevertheless it's happened.  
 7 **Q.** You didn't think, did you, that Mr Abramovich would be  
 8 able to carry out his project for combining the two  
 9 Siberian oil businesses without political influence, did  
 10 you?  
 11 **A.** I think better to put this question to Abramovich. You  
 12 will have a chance to hear, to understand.  
 13 **Q.** I'm asking you about your opinion and only you can tell  
 14 me that, Mr Berezovsky.  
 15 **A.** He looks like not a person of first level, of  
 16 first-level businessman at that time. It means that  
 17 only the most decisive and the most prepared for new  
 18 reform were able to realise the really big-scale  
 19 business, and unfortunately in Russia at that time there  
 20 were very few of them.  
 21 **Q.** Could somebody please give you bundle H(A)68. I'm going  
 22 to refer to {H(A)68/136}. Do you have page 136 of that  
 23 bundle?  
 24 **A.** Sorry?  
 25 **Q.** You should be looking --

1 **A.** Just a second, I'm sorry. Yes, I have already, I'm  
 2 sorry. Thank you.  
 3 **Q.** This is --  
 4 **MRS JUSTICE GLOSTER:** Does the witness have it on the screen  
 5 as well?  
 6 **THE WITNESS:** Yes, yes. Yes, fine. Thank you very much.  
 7 I forgot that there are two --  
 8 **MRS JUSTICE GLOSTER:** It's up to you whether you wish to  
 9 look at it in hard copy or on the screen.  
 10 **THE WITNESS:** No, thank you very much.  
 11 **MRS JUSTICE GLOSTER:** But it will be on the screen as well.  
 12 **MR SUMPTION:** If I may say this: one of the advantages for  
 13 the witness of looking at the actual document is that if  
 14 he thinks that he ought to look at some other page, he  
 15 can do it without being dependent on me.  
 16 **MRS JUSTICE GLOSTER:** Yes.  
 17 **MR SUMPTION:** Mr Berezovsky, this is an article from  
 18 The Economist, I think printed in their "Industry  
 19 Briefing e-newsletter". It appeared in 2003. I want to  
 20 refer you to the second page in the bundle. About  
 21 two-thirds of the way down the page --  
 22 **A.** So sorry. It starts from 4?  
 23 **Q.** If you look at page 137 of the bundle, which is the  
 24 second page of the article {H(A)68/137}.  
 25 **A.** Yes, I've got it.

1 **Q.** There's a paragraph that begins:  
 2 "For foreigners who do business in Russia..."  
 3 **A.** Yes, yes. It's exactly what I told, yes.  
 4 **Q.** "... Mr Khodorkovsky's arrest is unnerving but it may  
 5 not necessarily change their views; most already know  
 6 that their best protection is still not the law but  
 7 their krysha, or 'roof' -- a well-connected power  
 8 broker. Mr Putin, the best-connected power broker of  
 9 them all, said last week that he would not enter into  
 10 any bargains to limit the Yukos investigation..."  
 11 And so on. I'm not asking you about Yukos or  
 12 Mr Khodorkovsky; I'm asking you whether you agree with  
 13 the statement that the best protection for businessmen  
 14 in Russia is not the law but krysha, a well-connected  
 15 power broker. Do you agree with that statement?  
 16 **A.** Just a second. First of all, let me just think what  
 17 time it's in break; what means journalist which wrote  
 18 this article?  
 19 **Q.** This is an article that appeared in 2003 --  
 20 **A.** Yes.  
 21 **Q.** -- but it's referring to the conditions in the 1990s,  
 22 when Yukos was built up. I'm simply asking for your  
 23 view about whether as a general statement that  
 24 observation is true or not in your opinion.  
 25 **A.** Connected to that time? Connected to time of '90s?

1 **Q.** Yes.  
 2 **A.** I disagree with that.  
 3 **Q.** You disagree with that. Very well.  
 4 **A.** Because -- I am sorry -- I disagree with that, it  
 5 means -- it doesn't mean that there were not exceptions  
 6 or that -- but in general, again, I give you absolutely  
 7 correct my understanding of the level of corruption.  
 8 Today, if to take for ten; and that time, between three  
 9 and four.  
 10 **Q.** I understand. This is in general true but there are  
 11 exceptions?  
 12 **A.** Exceptions, it means that three -- between three/four,  
 13 from ten --  
 14 **Q.** Okay.  
 15 **A.** -- of today.  
 16 **Q.** Have you got your witness statement in front of you,  
 17 Mr Berezovsky? For my next few questions you may find  
 18 it useful to have it.  
 19 **MRS JUSTICE GLOSTER:** The fourth witness statement?  
 20 **MR SUMPTION:** Your fourth witness statement in bundle D2,  
 21 tab 17 {D2/17/193}.  
 22 **A.** I appreciate you that you give me an opportunity to look  
 23 my witness statement because it's much more simple than  
 24 training memory.  
 25 **Q.** Now --

1 A. Just a second. Yes.  
 2 Q. As I understand it, you became close to President  
 3 Yeltsin and his immediate circle in the course of 1994.  
 4 Is that right?  
 5 A. Yes, it was the end of 1993/the beginning of 1994. It's  
 6 correct.  
 7 Q. Now, you say in paragraph 42 of your witness statement  
 8 that you were invited to join the Presidential Tennis  
 9 Club.  
 10 A. 40...?  
 11 Q. 42. You probably remember this without looking at your  
 12 statement, Mr Berezovsky. Do you remember that?  
 13 A. Yes, I remember that. But you propose me to use my  
 14 witness statement: it's the reason why I try to be the  
 15 most correct in understanding what you're asking.  
 16 Q. Now, is it also true that the Presidential Tennis Club  
 17 was "an exclusive enclave for President Yeltsin's  
 18 closest associates", which I think is what you say in  
 19 paragraph 42?  
 20 A. I accept everything except of word "enclave". It means  
 21 that it was somewhere where nobody could go, nobody  
 22 could be invited and so. It was not enclave; it was  
 23 a presidential club. The main purpose was tennis  
 24 because, as you know well, that our President Yeltsin,  
 25 his preference in sport was tennis and I was the first

1 businessman who was invited to this club. Before me,  
 2 only politicians present in this club.  
 3 Q. Right. Well, "enclave" is your word but never mind  
 4 that.  
 5 Can we take it, therefore, if this was a club for  
 6 President Yeltsin's closest associates, that you were  
 7 one of Yeltsin's closest associates in 1994?  
 8 A. Sorry, could you -- just a second. I just read your  
 9 question. (Pause)  
 10 But sorry, nevertheless, could you help me to  
 11 find --  
 12 Q. If you look at paragraph --  
 13 A. Just a second.  
 14 Q. The sixth line down into the paragraph, what you say is  
 15 that this club was "for President Yeltsin's closest  
 16 associates". I suggested to you that, since you had  
 17 joined it, you must have been one of President Yeltsin's  
 18 closest associates.  
 19 A. Just a second. You said that I used the word "enclave",  
 20 not me -- not you. I haven't seen here this word here.  
 21 Q. Sixth line down, first word in the line.  
 22 A. Sorry?  
 23 Q. Sixth line into paragraph 42, first word of the version,  
 24 or the only version, is "enclave".  
 25 A. Yes, I accept that. You're correct.

1 Q. Now, I don't want to get bogged down in words but you  
 2 say that this was a club "for President Yeltsin's  
 3 closest associates", so can we take it that you were one  
 4 of those closest associates?  
 5 A. It's absolutely correct, it's close associates, but it  
 6 was club open according of invitation of president. It  
 7 means the people has -- had invitation(?) there. I want  
 8 just to stress that.  
 9 Q. Did that give you access to President Yeltsin himself?  
 10 A. Yes, definitely.  
 11 Q. Now, in the following paragraph you say that you  
 12 developed a good relationship with President Yeltsin's  
 13 daughter, Tatyana Dyachenko. Is that true?  
 14 A. It is true.  
 15 Q. And also, I think, with her close associate and later  
 16 husband, Mr Valentin Yumashev?  
 17 A. It's true but in opposite order: first I had good  
 18 relations with Mr Yumashev and only after that with  
 19 Mrs Dyachenko.  
 20 Q. Okay. Those were the two people, were they not, who had  
 21 the closest relationship with Boris Yeltsin and the  
 22 greatest influence over him? Would you agree?  
 23 A. They have -- not Tatyana first of all. Definitely he  
 24 had very strong influence to President Yeltsin as far as  
 25 Yumashev is concerned, he also had influence to

1 President Yeltsin. But they were not just those two;  
 2 there were more people who influence strong to  
 3 President Yeltsin.  
 4 Q. Well, I understand that others had influence over him.  
 5 But your view at the time, surely, was that Mr Yumashev  
 6 and Ms Dyachenko were the people with the greatest  
 7 influence over President Yeltsin, wasn't it?  
 8 A. Yes, it came later, because I just want to remind you  
 9 the story how I was introduced to Mr Yumashev and it  
 10 maybe give more understanding what happened.  
 11 I was introduced to Mr Yumashev at 1993 by Mr Aven.  
 12 I don't know, you know, Mr Aven, he's the chairman of  
 13 Alfa Bank. I don't know how he knew him before me; the  
 14 point is that he invited me several times to meet  
 15 Mr Yumashev and I didn't have time to meet you -- to  
 16 meet him, knowing well who he is. But Mr Aven said that  
 17 the point why he want to meet me, I mean Mr Yumashev, to  
 18 organise -- to organise -- how to say? -- to organise  
 19 fund to print book of President Yeltsin. And  
 20 understanding that it's really important for president,  
 21 I decided to meet Yumashev. And it's very important to  
 22 understand the way how I was introduced to Mr Yumashev.  
 23 Q. Mr Berezovsky, I don't want to interrupt you but I'm not  
 24 asking you about your relations with Mr Yumashev at the  
 25 moment. You've already said something about that.

1 I simply want to know your assessment of the influence  
 2 of these two people in 1995.  
 3 What I'm suggesting to you is that Ms Dyachenko and  
 4 Mr Yumashev were the people who had the greatest  
 5 influence over President Yeltsin in 1995. Do you  
 6 disagree with that?  
 7 **A.** No, I agree with that.  
 8 **Q.** You agree?  
 9 **A.** Yes.  
 10 **Q.** Thank you.  
 11 Now, can we take it therefore that in addition to  
 12 your having direct access to President Yeltsin yourself,  
 13 you enjoyed indirect influence over him through  
 14 Ms Dyachenko and Mr Yumashev?  
 15 **A.** I don't understand now what does mean "direct" and  
 16 "indirect". I really -- I really met Yeltsin in tennis  
 17 club occasionally. I don't understand how -- what does  
 18 mean "influence to president" just because I met him, is  
 19 the first point.  
 20 The second point: I didn't use -- I didn't use my  
 21 connection with Yumashev and Dyachenko at the first  
 22 stage our relations, try to convince president to do  
 23 something. Later on definitely, when I decide to move  
 24 myself to politics, definitely I used Mr Yumashev and  
 25 Mrs Dyachenko as a power who could help me to explain my

1 target.  
 2 **Q.** To the president?  
 3 **A.** Correct.  
 4 **Q.** And we're talking there about 1995; you've moved into  
 5 politics by then, haven't you?  
 6 **A.** I moved to politics a little bit earlier. I moved to  
 7 politics in '94. I think the cross-point was -- the  
 8 cross-line was when it was in '94 attempt to kill me and  
 9 I spent ten days in Switzerland doing nothing, only  
 10 thinking what is happening, and it was the time when  
 11 I decide that if I personally, personally me, will not  
 12 participate in politics, it could be very complicated to  
 13 build any business at all in Russia.  
 14 **Q.** Mr Berezovsky, I'm talking about 1995 and I think the  
 15 answer that you gave, namely that you regarded  
 16 Mr Yumashev and Ms Dyachenko as a good route to get your  
 17 views before the president, was true in 1995, wasn't it?  
 18 **A.** No, again I was absolutely correct: I started in '94 and  
 19 it's the reason why I want to stress that. As far as --  
 20 **Q.** Mr Berezovsky, I'm not interested when it started. I'm  
 21 just asking you: in 1995 these two people, Mr Yumashev  
 22 and Ms Dyachenko, were found by you to be a useful means  
 23 of influencing President Yeltsin, were they not?  
 24 **A.** Dyachenko, almost not at all. Yumashev, yes.  
 25 **Q.** Now, ORT, we know, was a company created in 1994 to take

1 over the assets of Ostankino, the Russian State  
 2 broadcasting organisation. I want to ask you some  
 3 questions about that.  
 4 At paragraphs 45 and 46 of your witness statement  
 5 you tell us that the Ostankino was partially privatised,  
 6 I think by a transfer of its assets to ORT, and that you  
 7 and a number of other Russian businessmen acquired the  
 8 whole of the 49 per cent of its shares that were sold  
 9 off by the state. That's correct, isn't it?  
 10 **A.** It's correct.  
 11 **Q.** Now, was it you who put together the consortium of  
 12 Russian businessmen that bought the 49 per cent stake in  
 13 ORT?  
 14 **A.** It's me.  
 15 **Q.** The partial privatisation of the broadcasting business  
 16 was the result of a successful lobbying campaign by you,  
 17 was it not?  
 18 **A.** Definitely.  
 19 **Q.** Definitely?  
 20 **A.** Da.  
 21 **Q.** Now, in your witness statement at paragraph 45  
 22 {D2/17/206} you tell us that you met President Yeltsin  
 23 personally in order to discuss this matter?  
 24 **A.** Just a second. 45?  
 25 **Q.** Paragraph 45:

1 "I was able to persuade Mr Yumashev and General  
 2 Korzhakov, and -- through them -- President Yeltsin with  
 3 whom I met personally to discuss this matter, that the  
 4 state ought to convert Ostankino into a joint stock  
 5 company, retaining 51% of the shares..."  
 6 That's correct, isn't it?  
 7 **A.** Just a second, could you... (Pause)  
 8 It's correct.  
 9 **Q.** Now, that was an example, wasn't it, of your being able,  
 10 through your knowledge of Mr Yumashev and in this  
 11 instance General Korzhakov as well, to get to President  
 12 Yeltsin personally and persuade him that it was a good  
 13 idea partially to privatise Ostankino? That's an  
 14 example of the use of those individuals to influence the  
 15 president, isn't it?  
 16 **A.** Is it correct? It is correct.  
 17 **Q.** Now, was it always understood between you and the  
 18 president that it would be you and your associates  
 19 owning the 49 per cent who were actually going to manage  
 20 and run ORT? Was that the understanding that you  
 21 reached with the president and his circle?  
 22 **A.** Generally, yes, the president understood that, because  
 23 I present him the reason and it is important. Without  
 24 the context of the reason it is useless to discuss what  
 25 happened, yes.

1 The context was very simple. First of all, I want  
 2 that you understand clear: it was not a business because  
 3 ORT central channel had just losses and the debt around  
 4 more than \$200 million. As I told you, and you did not  
 5 like to -- that I return back to '94, the privatisation  
 6 of this 49 per cent happened not in '95, it's happened  
 7 in '94. It's the reason why I all the time I, I'm sorry  
 8 to say, push you to return a little bit back that time  
 9 to create a picture not just a piece of the picture  
 10 which could be wrong.

11 The purpose was very simple. As I told you,  
 12 I really start to think after this event that I was  
 13 almost killed that we should help president to fight  
 14 against of Communists and I was disappointed that many  
 15 people were very disappointed by reform with Yeltsin  
 16 start because many people become poor, as happened in  
 17 the revolution, as you know well. And it's the reason  
 18 why I understood that it's not a business, it seems  
 19 a lot of money to spend, but it helps us to fight  
 20 against of Communists on election '96.

21 **Q.** You thought that ORT was good business as well as  
 22 a source of political influence, didn't you?

23 **A.** No. That time not. Again, I want to stress that up to  
 24 2000, as a business itself, it was not good at all.  
 25 Only at 2000 ORT start to be profitable. But that time,

1 my best -- again, it's very important that you  
 2 understand.

3 I never can make millions, or ten millions, I can  
 4 make just billions, and I explain you why: because all  
 5 the time I thought about how to capitalise the country,  
 6 not the company, yes? Impossible to capitalise  
 7 oilfields or Sibneft without clear understanding that  
 8 political situation is stable. And my point was that  
 9 maybe I was one of the first who recognised that if you  
 10 have political stability, the value of the company will  
 11 increase enormously. And that is the reason why  
 12 I convinced president, through my connections to him, to  
 13 take a decision to privatise ORT. It's correct.

14 **Q.** Mr Berezovsky, for you, in 1994 ORT was not only a first  
 15 step into the mass media, it was also good business; do  
 16 you agree with that statement?

17 **A.** I don't remember that I own any mass media in '94.

18 **Q.** Mr Berezovsky, please focus on my question. Is it true  
 19 to say that for you, in 1994 ORT was not only a first  
 20 step into mass media, it was also good business?

21 **A.** No, definitely ORT was bad business.

22 **Q.** I see. Well, I'm reading from your witness statement;  
 23 you realise that, don't you?

24 **A.** Yes.

25 **Q.** Look at paragraph 47:

1 "For me, ORT was not only a first step into mass  
 2 media, it was also good business."  
 3 Are you saying that statement is wrong?

4 **A.** This statement is correct.

5 **Q.** Okay, thank you.

6 Now, would it be fair to say then that, according to  
 7 your own evidence, you used your influence over  
 8 President Yeltsin and his closest advisers to make  
 9 arrangements that would enable you and your associates  
 10 to do some good business?

11 **A.** Again not. As I told you, and when I said it was a good  
 12 business, I wrote this witness statement today or  
 13 several months -- in May and it means that definitely  
 14 I believe that it is good business, yes, and it become  
 15 good business. But again, I want to stress, to stress  
 16 that it was not business at all.

17 **Q.** In 1995 you were then responsible -- this is a year  
 18 later than the discussions with the president about  
 19 ORT -- for another successful lobbying exercise  
 20 concerning the creation and partial privatisation of  
 21 Sibneft, weren't you?

22 **A.** It is correct.

23 **Q.** Now, I would just like to make sure that I understand  
 24 clearly your evidence about this. After taking over --

25 **A.** Sorry, the paragraph? Paragraph?

1 **Q.** I'll give you a paragraph number in a moment. As  
 2 I understand it -- well, paragraph 48 may help you --

3 **A.** Thank you.

4 **Q.** -- after taking over effective control over ORT, as  
 5 I understand it, you found that you needed \$200 million  
 6 a year in funding to meet its costs. Is that correct?

7 **A.** It's correct.

8 **Q.** And you were therefore looking for another funding  
 9 stream in addition to Logovaz, your principal existing  
 10 business, in order to fund ORT; is that correct?

11 **A.** It is correct.

12 **Q.** You thought that a good place to find that extra funding  
 13 stream would be a large oil company, didn't you?

14 **A.** No. The first step, I funding ORT my own, and I spent  
 15 a lot of money which I made in Logovaz and in other  
 16 businesses connected to Logovaz. And the point is that  
 17 it takes not one year to build a company like ORT. It  
 18 means that -- and market at the time did not develop  
 19 well, and you know well that the main source for mass  
 20 media is advertising and it depends on the level of the  
 21 market.

22 It means that I recognise that in time -- what does  
 23 mean "in time"? Because, as I told you before, I took  
 24 ORT only that time for political reason, understanding  
 25 that in future it will become profitable company all

1 over the world; but that time it was not so. And, as  
 2 I told you at the beginning, that I took the ORT under  
 3 control only because of the reason -- of the reason of  
 4 election campaign '96 and it was exactly the time what  
 5 we need for preparation. And to build a company in  
 6 time, we need additional resources for funding and I was  
 7 looking for that.  
 8 When I met Mr Abramovich in '94, at the end of  
 9 '94/beginning of '95, at that time already I was looking  
 10 for buying oil business and I travel even to the -- to  
 11 Siberia. I just want to stress that I don't want to  
 12 produce impression that I was not interested in business  
 13 at all; I was interested in business and a lot and I --  
 14 but the target that time to make money, the basic target  
 15 for me was to create political stability using my  
 16 opportunity in mass media.  
 17 **Q.** You were interested in acquiring a big oil company  
 18 because of your acquisition of ORT and because a big oil  
 19 company might provide you with the means of funding ORT;  
 20 do you agree?  
 21 **A.** Yes, it's true. But on the other hand I use this  
 22 opportunity as a reason to go to the next step of  
 23 business. And it means that the idea to privatise oil  
 24 company was not just my idea, many people that time --  
 25 not many, but there are people who were looking to

1 privatise oil company, and I was happy to join them and  
 2 at the same time to find the funding for ORT.  
 3 **Q.** When you met Mr Abramovich at the end of 1994 and he, as  
 4 you describe in your witness statement, proposed to you  
 5 a plan for creating a vertically integrated oil company  
 6 in Siberia, the main reason why you were interested in  
 7 that proposal, I suggest, was so that it would provide  
 8 a source of funding for ORT.  
 9 **A.** The main reason, it's correct.  
 10 **Q.** Now --  
 11 **A.** But not only this reason.  
 12 **Q.** In order to achieve Mr Abramovich's project, you had to  
 13 persuade President Yeltsin and his government to abandon  
 14 their current plans to integrate the two Siberian  
 15 businesses, the Omsk refinery and Noyabrskneftegas --  
 16 which I'm probably pronouncing badly -- you had to  
 17 persuade the government, didn't you, to abandon their  
 18 current plans to integrate those two businesses into the  
 19 State oil holding company Rosneft?  
 20 **A.** First of all, it's turned out that my impression, former  
 21 impression, that it was plan of Abramovich was  
 22 completely -- now is completely wrong. As I know from  
 23 the French disclosure, I mean documents in France, it's  
 24 very important to understand that it's till now that  
 25 Abramovich was just middleman, he was not --

1 **Q.** Mr Berezovsky --  
 2 **A.** Just a second.  
 3 **Q.** -- you're answering a completely different question. We  
 4 will come to the question of who had what interest.  
 5 **A.** No, no, no, no. No, you mentioned -- I'm sorry -- you  
 6 mentioned --  
 7 **MRS JUSTICE GLOSTER:** Just a second.  
 8 **THE WITNESS:** Sorry.  
 9 **MRS JUSTICE GLOSTER:** Mr Berezovsky, could you just look at  
 10 the question that Mr Sumption asked you. Read it to  
 11 yourself, if you can stop the computer --  
 12 **THE WITNESS:** Just a second.  
 13 **MRS JUSTICE GLOSTER:** -- and scroll up. Just try and focus  
 14 your answer on the question that's been asked.  
 15 **THE WITNESS:** Yes, my Lady, I focus on that and it's written  
 16 there, at least written.  
 17 May I put down a little bit the screen?  
 18 **MR SUMPTION:** I can try it another way.  
 19 **A.** Just a second, I'm sorry.  
 20 **Q.** Let me ask the question again. Forget the last  
 21 question.  
 22 Look at paragraph 84 of your witness statement,  
 23 please {D2/17/214}.  
 24 **A.** 84?  
 25 **Q.** Yes. In that paragraph you say:

1 "At this time..."  
 2 Talking about 1995.  
 3 "... these assets..."  
 4 That's the refinery and oil producing company in  
 5 Siberia.  
 6 "... had been earmarked by the government for  
 7 consolidation within the state-owned Rosneft."  
 8 **A.** Yes.  
 9 **Q.** "It was clear that, if this plan were to have any hope  
 10 of getting off the ground, I would need to persuade the  
 11 government and the President to remove the entities from  
 12 Rosneft and place them into the government's  
 13 privatisation plans."  
 14 **A.** Yes.  
 15 **Q.** Now, that's true, isn't it?  
 16 **A.** It's true.  
 17 **Q.** Right. Now, when the loans for shares scheme came  
 18 along, you also had to persuade the government, didn't  
 19 you, to include it into that scheme?  
 20 **A.** It's true.  
 21 **Q.** And you discussed these matters, did you not, with  
 22 President Yeltsin personally, among other people?  
 23 **A.** Not at all. I discussed with President Yeltsin  
 24 personally just the point to obtain opportunity to fund  
 25 ORT without any mentioning to president about how to do

1 that.  
 2 **Q.** I see.  
 3 **A.** Good.  
 4 **Q.** Well, we'll come back to that. Let's just establish one  
 5 or two other matters first.  
 6 When the idea of setting up a company, including the  
 7 two Siberian businesses, and detaching them from Rosneft  
 8 was first proposed to the prime minister, who was then  
 9 Mr Chernomyrdin --  
 10 **A.** Correct.  
 11 **Q.** -- he rejected the idea out of hand, didn't he?  
 12 **A.** Yes, as a first step, he rejected the idea, it's true.  
 13 **Q.** So you had to go over the prime minister's head to the  
 14 president himself, didn't you?  
 15 **A.** I had several discussions with prime minister and  
 16 definitely the reason to -- we are not able to --  
 17 Chernomyrdin never took a decision, as I remember,  
 18 without his personal clear understanding that it could  
 19 be effective. It means that I had several discussions  
 20 with president -- with Chernomyrdin because of --  
 21 because we have very good relations and he -- and except  
 22 of that, I had discussion with president. I was -- not  
 23 with president. I had discussion with General  
 24 Khorzhakov, who was the head of protection of president,  
 25 was also influential person, and Yeltsin accept idea to

1 privatise -- to build and privatise the new company.  
 2 **Q.** Right. So the position was Chernomyrdin said no, so you  
 3 went over his head to the president's advisers and the  
 4 decision was then yes?  
 5 **A.** Again, it's not so. I already explain you that  
 6 definitely I try to bring president on my side but,  
 7 again, without Chernomyrdin understanding that it's  
 8 effective, was not possible to convince prime minister  
 9 to do this step. And as done later, it's exactly the  
 10 result: that Sibneft become very effective company as  
 11 far as Rosneft is concerned.  
 12 **Q.** Right. Now, you met President Yeltsin and Mr Yumashev  
 13 together in the spring of 1995 to discuss these matters,  
 14 didn't you?  
 15 **A.** Not this matter. As I told you already, I discussed  
 16 with president how -- that ORT need fund and we  
 17 discussed that I should find the way -- I should find  
 18 the way how to get the fund for ORT. I just want to  
 19 stress again: I did not discuss with president  
 20 creation -- me personally to president -- creation of  
 21 Sibneft.  
 22 **Q.** What you did agree with President Yeltsin, surely, was  
 23 that you would set about creating a business venture  
 24 that would provide funding for ORT?  
 25 **A.** Yes, exactly. I discussed that I should find the way

1 how to create business to funding ORT, it's correct.  
 2 **Q.** Yes. You discussed with the president, didn't you, the  
 3 fact that ORT was loss-making and that funds would have  
 4 to be found to keep its influence high?  
 5 **A.** It's absolutely correct.  
 6 **Q.** Yes. Those funds were going to be found by creating  
 7 a new business venture; I think you agree to that?  
 8 **A.** Not at all. I said that we will -- I'll find -- I will  
 9 try to find opportunity to -- for business and in my  
 10 mind I kept that -- I did not have the time to -- enough  
 11 to invest to ORT to keep it and definitely I was looking  
 12 for new opportunity, having in my mind the oil business.  
 13 **Q.** The result of this was that you and President Yeltsin  
 14 agreed that that would be the right course?  
 15 **A.** The right course? President accept my proposal to find  
 16 the business opportunity, the new business opportunity  
 17 for funding ORT, it's correct.  
 18 **Q.** Now, as I understand it, having discussed matters in  
 19 general terms with the president, you then discussed the  
 20 details of your project with his closest advisers,  
 21 including General Khorzhakov. Is that right?  
 22 **A.** Yes, it's correct.  
 23 **Q.** Now, you understood, didn't you, that General Khorzhakov  
 24 would in turn discuss the details with President  
 25 Yeltsin; that's why you were talking to General

1 Khorzhakov, is it not?  
 2 **A.** You see, I really haven't present at his discussion with  
 3 president and I don't know the terms that they use;  
 4 I know just the result.  
 5 **Q.** Well, what you asked General Khorzhakov to do was to get  
 6 President Yeltsin's approval for the integration of the  
 7 two Siberian businesses into a single company which  
 8 could then be removed from Rosneft and partially  
 9 privatised; you asked him to get President Yeltsin's  
 10 approval for that, didn't you?  
 11 **A.** Definitely not. I explained Khorzhakov the idea of the  
 12 company but I did not convince him the way how he  
 13 present this idea to president. It means --  
 14 **Q.** No, I'm not suggesting that. I'm not suggesting you  
 15 tried to tell him how to get his consent. What you  
 16 asked General Khorzhakov to do was to obtain President  
 17 Yeltsin's approval for the integration of the two  
 18 Siberian businesses into a new company separate from  
 19 Rosneft; you asked him to get the president's approval  
 20 to that, did you not?  
 21 **A.** It is correct.  
 22 **Q.** Thank you. And you say that you knew what the result of  
 23 that was. The result of that was that President Yeltsin  
 24 did approve; is that right?  
 25 **A.** President Yeltsin did approve that.

1 Q. Yes.  
 2 Now, at the same time as your contact with General  
 3 Khorzhakov on this matter you also made use, didn't you,  
 4 of your relationship with Ms Dyachenko and Mr Yumashev  
 5 in order to encourage the president to agree?  
 6 A. Definitely I did not discuss that -- just a second.  
 7 I don't remember, I don't remember that I discussed that  
 8 with Ms Dyachenko, and I discussed that with Mr Yumashev  
 9 definitely.  
 10 Q. Well, you seem to have remembered when you wrote your  
 11 witness statement. What you say at paragraph 119 is:  
 12 "As noted above" --  
 13 A. Just a second.  
 14 Q. Paragraph 119 {D2/17/222}.  
 15 A. Yes.  
 16 Q. "As noted above, I had at this time a close relationship  
 17 with Ms Dyachenko and Mr Yumashev, who were then the  
 18 people with the greatest influence over President  
 19 Yeltsin. Both shared my objective of establishing  
 20 a democratic state in Russia. I have no doubt that this  
 21 relationship was instrumental in gaining President  
 22 Yeltsin's approval for the Sibneft venture."  
 23 That's correct, isn't it?  
 24 A. Yes, correct.  
 25 Q. "I spoke to Ms Dyachenko and explained why I thought

1 a further vertically-integrated oil company should be  
 2 created."  
 3 A. Yes, exactly.  
 4 Q. So, contrary to your answer a moment ago, you did  
 5 discuss this with her, didn't you?  
 6 A. Yes, it's the reason I said I don't remember that  
 7 I discussed. I accept that.  
 8 Q. I see.  
 9 I would like you to turn, if you would, to  
 10 paragraph 111 of your witness statement {D2/17/220}.  
 11 A. Yes.  
 12 Q. What you tell us here is that:  
 13 "The main way [you were] able to persuade President  
 14 Yeltsin and the Government to approve the creation of  
 15 Sibneft was by emphasising the importance of ORT for the  
 16 re-election of President Yeltsin in the forthcoming  
 17 presidential elections, and the need to secure a new  
 18 business venture which could provide the funding to  
 19 support ORT."  
 20 That's correct, isn't it?  
 21 A. It is correct.  
 22 Q. So your argument was: in order to fund ORT and support  
 23 the president's re-election campaign, I need to have  
 24 these two Siberian businesses separated from Rosneft and  
 25 partially privatised so that I can use them as a source

1 of funds for financing ORT's operations. That was the  
 2 argument, wasn't it?  
 3 A. It was the argument.  
 4 Q. And it was the argument that succeeded, wasn't it?  
 5 A. It was succeeded.  
 6 Q. Now, the deal therefore, in summary, that you made with  
 7 Boris Yeltsin was this, wasn't it: "You, Mr President,  
 8 get the support of my television network and I get put  
 9 in a position where I can extract large sums of money  
 10 from these two Siberian businesses"? That's the deal,  
 11 isn't it?  
 12 A. It's correct.  
 13 Q. And that would also serve to increase yet further your  
 14 political influence, wouldn't it?  
 15 A. I don't think so. That time I care not about my  
 16 political influence, as you said; I care just how to win  
 17 election in '96.  
 18 Q. And it would serve to make you richer in the longer  
 19 term, wouldn't it?  
 20 A. As I told you before, I didn't think just in terms of  
 21 only to support -- to create a proper TV company but it  
 22 was the target number one. On the other hand,  
 23 definitely I thought that it's incredible business as  
 24 well.  
 25 Q. Now --

1 A. And I don't think that president, when he, I'm sure,  
 2 discussed that with prime minister, before he took  
 3 a final decision, I have a lot of doubt the president  
 4 thought that it's just a business to fund ORT.  
 5 Definitely president understood well that it's big-scale  
 6 business.  
 7 Q. At the outset of my cross-examination this morning  
 8 I asked you to imagine a businessman approaching an  
 9 elected official who says, "I'm going to support your  
 10 election campaign so please exercise your official  
 11 powers in a way that favours my business interests and  
 12 those of my associates". That's exactly what you did in  
 13 relation to Sibneft in 1995, is it not?  
 14 A. As I told you, my target was to find the way how to make  
 15 ORT effective and it was the way which you mentioned now  
 16 and I confirm that.  
 17 Q. Would it be fair to describe that as a corrupt bargain?  
 18 A. Definitely not.  
 19 Q. Now, you tell us that you also met other senior  
 20 ministers and officials -- I'm looking at paragraph 120  
 21 of your witness statement {D2/17/222} -- and those  
 22 officials included Mr Kokh.  
 23 A. Yes, correct.  
 24 Q. He was the deputy head of the State Property Committee,  
 25 wasn't he?

1 A. Absolutely correct.  
 2 Q. And you discussed the creation of Sibneft with him?  
 3 A. I didn't discuss creation of Sibneft with him;  
 4 I discussed with him privatisation of Sibneft.  
 5 Q. Yes, fair enough. What you discussed was the way in  
 6 which the shares of Sibneft, once it had been created,  
 7 would be handled?  
 8 A. Not at all. I discussed with him how to -- how -- I try  
 9 to explain him -- not explain him -- I tried to -- to  
 10 explain him, yes -- to explain him that he need to  
 11 deliver president decree to privatise Sibneft.  
 12 Q. Yes.  
 13 A. I'm sorry. Sibneft already was created without any  
 14 co-participation, I would like to mention, and the  
 15 president, I don't remember well when president issued  
 16 decree to privatise Sibneft and Kokh all the time  
 17 postponed privatisation itself. I know the reason why  
 18 it happened, so -- and if you are interested I can  
 19 present it to you.  
 20 But the target was not to discuss the condition of  
 21 privatisation and something; the target was just to push  
 22 him to fulfil the decree of president. As you know,  
 23 Sibneft was the last one to privatise. It was  
 24 28 December, a decree of 28 December '95. And as you  
 25 will remember, decree of president of privatisation was

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1 limited in time till 1 January '96. It was only reason  
 2 of my meeting with Mr Kokh.  
 3 Q. Mr Kokh was the official responsible, was he not, for  
 4 preparing the decree governing the auction in  
 5 December 1995 of the right to manage the State's  
 6 51 per cent holding in Sibneft in return for a loan?  
 7 There was a decree that provided for that, wasn't there?  
 8 A. Again, it's absolutely correct. But again, I don't --  
 9 definitely I can -- we have this decree; I don't  
 10 remember details of this decree. But again, my meeting  
 11 with Kokh had just one target. Unfortunately you push  
 12 me to explain why it's happened, so -- and I explain  
 13 you: because my understanding was at that time Kokh was  
 14 very supportive for Onexim Group and later it's find  
 15 confirmation when Mr Chubais, when he was unemployment,  
 16 I'm sorry, he move to this -- he planned to move to this  
 17 group and I knew about strong connection of Mr Kokh with  
 18 that group and his interest to support this group and  
 19 that is the reason why I tried to push him to issue  
 20 decree in time.  
 21 Q. Mr Berezovsky, in the autumn of 1995 did you discuss  
 22 with groups of civil servants the process --  
 23 A. Sorry, sorry?  
 24 Q. Did you discuss with groups of civil servants in the  
 25 autumn of 1995 the terms on which the auction, the loans

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1 for shares auction of December 1995, would be conducted?  
 2 A. I never discussed that.  
 3 Q. Would you look at paragraph 126 of your witness  
 4 statement {D2/17/223}, Mr Berezovsky.  
 5 A. Yes.  
 6 Q. What you say here is that:  
 7 "During this period -- the early autumn of 1995 --  
 8 meetings also took place between representatives of the  
 9 civil servant groups and delegations of the various  
 10 parties interested in the forthcoming auction to discuss  
 11 the terms of the auction... I led the high-level  
 12 discussions on behalf of my group."  
 13 Contrary to what you just said, you did have those  
 14 discussions with civil servants, didn't you?  
 15 A. Yes. Good. In context it's correct. I explain you  
 16 what I mean. I mean that I discuss with -- I discuss  
 17 about their parts which will be include in -- just  
 18 a second.  
 19 Yes, I discuss -- sorry, it's my fault completely.  
 20 I discuss with people from their government who were  
 21 responsible for privatisation, for forming of Sibneft,  
 22 which part of Rosneft will be included in Sibneft.  
 23 Q. You also discussed with them the terms of the auction  
 24 under the loans for shares scheme, didn't you?  
 25 A. I don't remember that I discuss anything concerning

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1 privatisation of Sibneft --  
 2 Q. The terms of the auction.  
 3 A. The terms of the auction. The auction I --  
 4 Q. Did you discuss that?  
 5 A. I don't remember that.  
 6 Q. Well, you did remember when you drafted paragraph 126 of  
 7 your witness statement.  
 8 A. Yes.  
 9 Q. You said that the purpose of these discussions was:  
 10 "... to discuss the terms of the auction [and] the  
 11 documentation which would have to be entered into..."  
 12 A. Just a second. Just a second. (Pause)  
 13 Yes, correct.  
 14 Q. Right. Now, was one of those officials Mr Kokh?  
 15 A. I did not meet Mr Kokh in -- to discuss the terms of  
 16 privatisation. As I told you before, I met Mr Kokh, as  
 17 far as Sibneft privatisation is concerned, just one time  
 18 in December, in the end of December, just to discuss  
 19 with him when they issued their decree before the end of  
 20 the year.  
 21 Q. The decree which provided for the auction and included  
 22 Sibneft in the auction and the loans for shares scheme  
 23 was made on 27 November, wasn't it? You can take that,  
 24 I think, from me.  
 25 A. Yes. Yes, correct.

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1 Q. You actually participated with Mr Kokh in the drafting  
 2 of that decree before 27 November?  
 3 A. Completely wrong.  
 4 Q. Would you look at paragraph 132 of your statement  
 5 {D2/17/224}.  
 6 A. 132?  
 7 Q. Yes.  
 8 A. Yes.  
 9 Q. "I discussed the drafting of this November Decree with  
 10 Mr Kokh, then Deputy Head of the State Property  
 11 Committee. I met him at his office late one night.  
 12 Mr Kokh was a workaholic and I recall working on the  
 13 draft decree with him late into the night."  
 14 A. It's exactly the point what I told you: that I -- decree  
 15 which I tried to push him -- exactly, you're correct,  
 16 absolutely. This meeting happened and it's the meeting  
 17 which I described to you. I tried to push him to put  
 18 privatisation of Sibneft in time and it means that --  
 19 and drafting at this case means they put the date of  
 20 28 December, not later.  
 21 Q. Mr Berezovsky, I suggested to you a moment ago that you  
 22 had participated in the drafting of this decree. You  
 23 said that was completely wrong. Then when it was  
 24 pointed out that that's what you have written in your  
 25 witness statement, you say it's right.

1 Now, what I suggest to you, Mr Berezovsky, is that  
 2 you are giving the evidence which you think will suit  
 3 your case without reference to what you can actually  
 4 remember at all.  
 5 A. I disagree with that and I explain you that the drafting  
 6 means absolutely correct what I said before: that I just  
 7 tried to push Mr Kokh to put in time the issue of  
 8 president decree.  
 9 MRS JUSTICE GLOSTER: Mr Sumption, I'm going to take a break  
 10 for the shorthand writer.  
 11 MR SUMPTION: Yes, I was going to suggest that this would be  
 12 a good time to do that.  
 13 MRS JUSTICE GLOSTER: Would that be a good time?  
 14 MR SUMPTION: Yes, absolutely.  
 15 MRS JUSTICE GLOSTER: Very well. Ten minutes.  
 16 Mr Berezovsky, I'm sure you have been told by your  
 17 counsel --  
 18 THE WITNESS: Yes, I have.  
 19 MRS JUSTICE GLOSTER: -- but during the course of you giving  
 20 your evidence -- that's both cross-examination and  
 21 re-examination -- you mustn't talk to anybody, and  
 22 I mean anybody: press, family, whatever, about your  
 23 evidence or indeed about the case. Do you understand  
 24 that?  
 25 THE WITNESS: I understand that.

1 MRS JUSTICE GLOSTER: Thank you.  
 2 THE WITNESS: Thank you.  
 3 (11.37 am)  
 4 (A short break)  
 5 (11.52 am)  
 6 MRS JUSTICE GLOSTER: Mr Sumption, Mr Rabinowitz, I have to  
 7 rise at 4.00 today. For that reason, I'm going to sit  
 8 again at 1.45; I'm going to have only a 45-minute lunch  
 9 break.  
 10 Yes, Mr Sumption.  
 11 MADAM INTERPRETER (affirmed)  
 12 MR SUMPTION: Mr Berezovsky, I'd like to ask you questions  
 13 about a specific aspect of the loans for shares auction  
 14 which happened in December 1995. I'm going to go back  
 15 and deal with this more fully at a later stage but  
 16 there's just one question I'd like to clear up with this  
 17 one.  
 18 Before the auction there were a number of potential  
 19 bidders, weren't there?  
 20 A. Sorry, I don't see on the screen.  
 21 MRS JUSTICE GLOSTER: Can somebody assist him, please.  
 22 A. Oh, yes, yes. No, no, fine.  
 23 Yes, you're absolutely correct.  
 24 MR SUMPTION: The potential bidders, apart from NFK, which  
 25 was the vehicle company that won, were Menatep,

1 Inkombank and Sameko, weren't they? Those were the  
 2 possible bidders?  
 3 A. Just a second. It is correct.  
 4 Q. Menatep was a bank associated with Mr Khodorkovsky and  
 5 Yukos, wasn't it?  
 6 A. It is correct.  
 7 Q. Did you agree with Mr Khodorkovsky in advance that his  
 8 bid would be made at a slightly lower level than NFK's?  
 9 A. It is correct.  
 10 Q. Now, Inkombank: did your staff point out that there was  
 11 a technical factor that made them ineligible so that  
 12 they were disqualified?  
 13 A. They were disqualified because their documents which  
 14 they prepared were not proper prepared.  
 15 Q. Yes. Was it your staff who pointed that out?  
 16 A. Yes, it's correct.  
 17 Q. Then Sameko; was Sameko persuaded to withdraw its bid at  
 18 the last moment in return for your group paying off part  
 19 of its debts?  
 20 A. It's correct.  
 21 Q. And the people who persuaded them to withdraw included  
 22 Mr Patarkatsishvili and Mr Abramovich, didn't they?  
 23 A. Abramovich did not participate in that.  
 24 Q. I see.  
 25 A. And it's lie in his witness statement. But

1 Patarkatsishvili correctly, he travelled there and he  
 2 persuade him.  
 3 **Q.** So would it be fair to say that the auction was stitched  
 4 up in advance?  
 5 **A.** Not at all. Because, as you know, I had in my pocket  
 6 two proposals which we agreed between Mr Abramovich,  
 7 between Badri and between me for 100.3 million and  
 8 217 million and definitely my decision depends what kind  
 9 of decision will be taken by Sameko. And when they took  
 10 the decision to exchange their participation to covering  
 11 of their debt which they had in front of the bank, they  
 12 took a decision that our proposal for the debt is better  
 13 than proposal of Inkombank because they did not suppose  
 14 to own really Sibneft; they were just company which  
 15 should play their games with parallel with Inkombank  
 16 itself.  
 17 **Q.** Well, Mr Berezovsky, the net result of this process was  
 18 that Inkombank was disqualified and Sameko withdrew, so  
 19 there were only two actual bidders; that's right, isn't  
 20 it?  
 21 **A.** It's correct.  
 22 **Q.** And you had agreed with the other bidder, Menatep, that  
 23 they were going to bid just below you, as you've  
 24 confirmed?  
 25 **A.** It's correct.

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1 **Q.** So it was stitched up, wasn't it? It was impossible for  
 2 any other outcome to occur other than NFK winning?  
 3 **A.** At the last stage it's absolutely correct.  
 4 **Q.** Right.  
 5 Now, in 1997, Mr Berezovsky, you sued the publishers  
 6 of Forbes magazine in the English High Court for libel,  
 7 didn't you?  
 8 **A.** It's correct.  
 9 **Q.** They had published an article about you which you said  
 10 accused you of a number of things including corruption;  
 11 is that right?  
 12 **A.** It's correct.  
 13 **Q.** Now, in their defence, Forbes pleaded justification,  
 14 didn't they? That's to say they said that what they had  
 15 said about you was true.  
 16 **A.** You mean in defence of Forbes, yes? In defence --  
 17 **Q.** Yes. Forbes --  
 18 **A.** No, no, I'm sorry. I'm sorry. My English not so...  
 19 Yes, it's true that they wrote that I corrupted or  
 20 I corrupt others, I don't remember well, and it's true  
 21 that they wrote in the article, it's correct.  
 22 **Q.** Yes.  
 23 Now, I'm going to ask you to look at what was  
 24 alleged in the Forbes action and what you said about it.  
 25 Could you please be given bundle H(A)28. The reference

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1 for the Magnum system is {H(A)28/135}.  
 2 **THE WITNESS:** But I'm sorry, could I put -- my Lady, could  
 3 I put a question to Mr Sumption?  
 4 **MRS JUSTICE GLOSTER:** No, I'm afraid you're there to answer  
 5 the questions. So look at the document and if you still  
 6 have a question --  
 7 **THE WITNESS:** Yes, sorry.  
 8 **MRS JUSTICE GLOSTER:** -- or you don't understand the  
 9 question, then I'll consider the position. But look at  
 10 the document first and listen to the question.  
 11 **THE WITNESS:** Right.  
 12 **MR SUMPTION:** If you've got page 135 open --  
 13 **A.** Just a second. Okay. What is that document?  
 14 **Q.** This is Forbes magazine's defence to your libel action.  
 15 **MRS JUSTICE GLOSTER:** Some other document has come up.  
 16 **MR SUMPTION:** H(A)28/135. No, it's the right document.  
 17 **A.** Page? Sorry, page?  
 18 **Q.** Page 135 just shows you what the document is.  
 19 **A.** Yes, yes, yes. Good.  
 20 **Q.** Okay?  
 21 **A.** Yes.  
 22 **Q.** Now, would you please turn to page 137 {H(A)28/137}.  
 23 **A.** Yes.  
 24 **Q.** And you will see that at paragraph 5 they say:  
 25 "... if and insofar as the words complained of bore

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1 all or any of the following meanings, they are true in  
 2 substance and in fact..."  
 3 **A.** Just a second. Paragraph number 5, yes?  
 4 **Q.** Yes. Let me translate that into English for you,  
 5 Mr Berezovsky.  
 6 **A.** Yes.  
 7 **Q.** What the pleader is saying here is that he is listing  
 8 the facts that they are going to say are true, right?  
 9 **A** is:  
 10 "That Berezovsky is a corrupt and unscrupulous  
 11 businessman who, through corrupt and unscrupulous  
 12 dealings in business and politics (as set out below),  
 13 has amassed a large personal fortune and become one of  
 14 the most powerful men in Russia."  
 15 **A.** Yes.  
 16 **Q.** I'm not asking you whether you agree with that because  
 17 I know what the answer is. But that was what they set  
 18 out to prove, wasn't it, Forbes magazine?  
 19 **A.** They tried to prove that.  
 20 **Q.** Yes.  
 21 **A.** In their defence, correct?  
 22 **Q.** Yes.  
 23 **A.** Mm-hm.  
 24 **Q.** Now, various facts were pleaded in support of that  
 25 allegation and I would like you to turn to page 147 of

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1 the bundle numbering just to see what they were  
 2 {H(A)28/147}.

3 **A.** Yes.

4 **Q.** There's a heading there, "Berezovsky's corrupt  
 5 cultivation of a close relationship with President  
 6 Yeltsin". Do you see?

7 **A.** Just a second.

8 **Q.** Do you see the heading?

9 **A.** On page 147?

10 **Q.** Page 147, there's a heading halfway down the page in  
 11 italics.

12 **A.** Yes, yes. Sorry, sorry. I find it.

13 **Q.** Now, that's the heading which describes the following  
 14 paragraphs.

15 **A.** Yes.

16 **Q.** Now, I would like you to turn to paragraph 5.34 over the  
 17 page.

18 **A.** Yes.

19 **Q.** What they say is that:

20 "In order to increase his influence with Yeltsin,  
 21 Berezovsky gave valuable gifts to Yeltsin's daughter,  
 22 Tatyana Dyachenko..."

23 And they set out the valuable gifts. And at 5.35:

24 "Berezovsky knew that Dyachenko was a very useful  
 25 channel through which to convey information and ideas to

1 Yeltsin. Through Dyachenko, Berezovsky sought to exert  
 2 influence on Yeltsin and to further his own ends."

3 Before I ask you a question about this,  
 4 Mr Berezovsky, I just want to take you through these  
 5 things simply so that you have the whole picture before  
 6 I ask you.

7 **A.** Okay.

8 **Q.** All right? That's what they said about your  
 9 relationship with Ms Dyachenko.

10 If you would then turn at the bottom of the page,  
 11 the same page, to 5.38, you will see "Berezovsky and  
 12 ORT".

13 **A.** Yes.

14 **Q.** "Berezovsky was aware of the power of the mass media, so  
 15 far as politics and business were concerned. His  
 16 interest in taking control over mass media companies was  
 17 in order to use them to pursue political purposes he  
 18 favoured and to defend and further his own business and  
 19 private interests."

20 Then in the next paragraph they say:

21 "Through his close relationship with Yeltsin,  
 22 Berezovsky was able to gain control over ORT. He did so  
 23 corruptly."

24 And they refer to the presidential decree for the  
 25 privatisation of it. And then in (ii) they say:

1 "Berezovsky had lobbied Yeltsin and Korzhakov to  
 2 privatise the channel, promising that it would be a key  
 3 channel in the forthcoming presidential elections...  
 4 Berezovsky suggested that, by placing 49% of the shares  
 5 with politically loyal investors while keeping the  
 6 majority stake of 51% with the government, the channel  
 7 would be financially self sufficient, yet could be  
 8 controlled by the president."

9 Then, if you would look at 5.42, which is on  
 10 page 153 of the bundle {H(A)28/153}.

11 **A.** 5...?

12 **Q.** 153 of the bundle. You find yourself looking at a page  
 13 with a heading at the top of it, "Berezovsky and oil:  
 14 Sibneft".

15 **A.** Sorry, just a second.

16 **Q.** Of course. Right? "Berezovsky and... Sibneft", it  
 17 says, and it refers to the incorporation of Sibneft  
 18 which we've been discussing. Then at 5.42:

19 "Berezovsky and a colleague, Roman Abramovich, had  
 20 lobbied for the creation and privatisation of Sibneft.  
 21 They both (rightly) saw that this would be appear  
 22 opportunity for them to obtain very valuable assets and  
 23 increase their personal fortunes. Berezovsky corruptly  
 24 used his close connection and influence with Yeltsin...  
 25 and his wealth, knowing that the Russian government was

1 in dire financial need, to bring about what he  
 2 wanted..."

3 I wonder if I could ask you to look at the next  
 4 paragraph, 5.43, which refers to the loans for shares  
 5 auction, and at (ii) under that, the document says:

6 "The auctions, which were not conducted in an open  
 7 or fair way, were not designed so as to maximise the  
 8 prices which would be paid for the assets to be sold.  
 9 For example, the exclusion of foreign bidders from  
 10 certain auctions tended to reduce the prices offered by  
 11 bidders and the threshold price for bidders was set  
 12 artificially low. Assets were sold off at a fraction of  
 13 their true value."

14 Then over the page you will see there's an  
 15 allegation at 5.44:

16 "51% of the shares in Sibneft were the subject of  
 17 a 'loans for shares' auction... That auction was  
 18 fixed/corrupt."

19 They then explain in the next four subparagraphs why  
 20 it was fixed and corrupt. They say:

21 "The starting price... was \$100 [million]...  
 22 "Foreign companies were not permitted to bid...  
 23 "Berezovsky's successful bid, through his Oil  
 24 Finance Company ('NFK') was at \$100.3 million, only  
 25 \$0.3 million above the minimum price.

1 "... The Defendants will rely upon Berezovsky's  
 2 close connections with Yeltsin and his support for  
 3 Yeltsin..."  
 4 If you just keep that document open so that you can  
 5 remind yourself of what was said against you when I ask  
 6 you about them.  
 7 A. I remember all this litigations.  
 8 Q. Yes, I understand.  
 9 If I could ask you to leave that bundle open but to  
 10 be given bundle H(A)36. Don't put that away because you  
 11 might need it. H(A)36 --  
 12 A. Am I correct to understand that it's defence of Forbes  
 13 magazine? Correct?  
 14 Q. Yes, that's right.  
 15 A. Good, thank you.  
 16 Q. Yes, that's the defence that -- that's what they say  
 17 they're going to prove against you.  
 18 A. They're not able to prove that. They should -- I should  
 19 go to fight against of him in the court that they  
 20 should -- can prove.  
 21 Q. I understand.  
 22 A. Good.  
 23 Q. I would like you to look at what you said in response to  
 24 that, which is at {H(A)36/143}. I'm showing you 143 so  
 25 that you can see what the document is. It's your reply

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1 to what Forbes have just alleged, right?  
 2 A. Just a second.  
 3 Q. If you look at page 180, you'll see the last page  
 4 {H(A)36/180}.  
 5 A. I'm sorry, it's big document.  
 6 Q. Go straight to the end, if you would. You'll see your  
 7 signature.  
 8 A. I just -- I want to remind the context. It's impossible  
 9 to discuss without context. (Pause)  
 10 How many pages is the document?  
 11 Q. If you go to page 180 of the bundle, you will see the  
 12 last page.  
 13 A. I see.  
 14 Q. That has a statement of truth on it which was signed by  
 15 you, wasn't it?  
 16 A. Yes.  
 17 Q. In June 2001?  
 18 A. Yes.  
 19 Q. Right. Now, the response to the allegation of  
 20 corruption starts at page 153 of the volume, of the  
 21 bundle number {H(A)36/153}.  
 22 A. Yes.  
 23 Q. Do you see that?  
 24 A. Yes.  
 25 Q. There's a heading, "Mr Berezovsky's relationship with

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1 President Yeltsin". Do you see?  
 2 A. Yes, I see.  
 3 Q. Now, would you look at paragraph 4.44 on page 154.  
 4 A. Yes.  
 5 Q. What you say here is:  
 6 "The allegations in paragraphs 5.34, 5.35 and 5.37  
 7 are denied."  
 8 If you just want to remind yourself what those were,  
 9 you will see that they are the allegations about your  
 10 relationship with Ms Dyachenko and the Yeltsin family.  
 11 A. Just a second. Okay. 5.34?  
 12 Q. Yes. I've showed you those. Have a look.  
 13 A. Maybe to make time shorter, you tell what is the  
 14 question and then maybe I turn back to have a look.  
 15 Q. Before I can ask you the question, I need to refer you  
 16 to the passage that I'm going to ask you about. If you  
 17 look at paragraph 5.35 of what Forbes say, the previous  
 18 document I showed you, what Forbes say is that:  
 19 "[You] knew that Dyachenko was a... useful channel  
 20 through which to convey information and ideas to  
 21 Yeltsin. Through Dyachenko, Berezovsky sought to exert  
 22 influence on Yeltsin and to further his own ends."  
 23 Now, that's one of the paragraphs that you deny in  
 24 4.44 of your own document; do you see that?  
 25 A. When it was? It was 19 --

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1 Q. I haven't asked the question yet.  
 2 A. Just a second. Just a second. I signed this  
 3 document -- remind, please. It's '97, yes?  
 4 Q. You signed this document in June 2001.  
 5 A. Yes.  
 6 Q. Right?  
 7 A. It's correct.  
 8 Q. Now, one of the things you've denied, therefore, is  
 9 that:  
 10 "[You] knew that Dyachenko was a very useful channel  
 11 through which to convey information and ideas to  
 12 Yeltsin. Through Dyachenko, Berezovsky sought to exert  
 13 influence on Yeltsin and to further his own ends."  
 14 Now, the fact is you did know at the time that  
 15 Ms Dyachenko was a useful channel through which to feed  
 16 information and ideas to Boris Yeltsin, didn't you?  
 17 A. I knew that she a useful channel.  
 18 Q. Yes. And you did seek to influence Boris Yeltsin  
 19 through her; we've established that this morning?  
 20 A. It is correct.  
 21 Q. Why did you deny it and then sign a statement of truth  
 22 in support of your denial?  
 23 A. It's a good question.  
 24 Q. Thank you.  
 25 **MRS JUSTICE GLOSTER:** Well, could you answer it, please.

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1 A. It just mean that this document was prepared with  
 2 assistance of my lawyers and maybe I didn't read  
 3 attentively the numbers which they mentioned in the  
 4 statement, because it's a fact that I have good  
 5 relations with Dyachenko in past with her and connect  
 6 through her to Yeltsin.  
 7 **MR SUMPTION:** Let's look at another passage in your reply  
 8 then: paragraph 4.46, just over the page from the last  
 9 one.  
 10 A. 4.46?  
 11 Q. Yes, on page 155. Right? What you say here is:  
 12 "The true account of Mr Berezovsky's involvement in  
 13 ORT is as follows: Following the privatisation of  
 14 Channel 4... by Vladimir Gusinsky, Mr Berezovsky had  
 15 discussions with Vladimir Yumashev and subsequently with  
 16 Alexander Khorzhakov, the then Head of the SBP,  
 17 concerning the possibility of privatising Channel 1. He  
 18 did so not for the purpose of making money out of  
 19 Channel 1, but on account of its political importance as  
 20 pleaded above and against the background of the  
 21 forthcoming Parliamentary and Presidential elections: at  
 22 this time the continuation of the reform process, and  
 23 Russia's very economic stability, were in jeopardy. He  
 24 at no time lobbied President Yeltsin personally."  
 25 A. Okay.

1 Q. Now, you did lobby --  
 2 A. President Yeltsin?  
 3 Q. You did lobby President Yeltsin personally, didn't you?  
 4 You've described it in your witness statement in this  
 5 action.  
 6 A. As I told you, I lobby him personally to privatise ORT;  
 7 it's correct.  
 8 Q. Yes. So why did you deny it in this document?  
 9 A. Just a second. (Pause)  
 10 I don't have answer.  
 11 Q. You don't have an answer. If you remembered lobbying  
 12 Boris Yeltsin personally when you wrote your witness  
 13 statement for this action, you must have remembered  
 14 doing so when you signed your statement of truth in  
 15 2001.  
 16 A. Again I --  
 17 Q. Do you have an answer to that?  
 18 A. I again just can to repeat that I remember perfectly my  
 19 meetings with president and it was not so many of them  
 20 and I never discussed with him the way how to do that;  
 21 I just told him that we need privatise ORT and how to do  
 22 that. It was open question. I just state that we need  
 23 a business opportunity for that.  
 24 Q. When you signed the statement of truth in June 2001  
 25 about the document which we've been looking at in your

1 Forbes litigation, you knew that that statement was  
 2 untrue, didn't you?  
 3 A. Definitely not. I didn't know. I just could accept  
 4 that -- because it's absolutely simple exercise what you  
 5 have done now, yes? It just mean that I just was not  
 6 careful when I signed that. It doesn't mean that I am  
 7 not responsible for that, it's wrong, but it means that  
 8 I was not careful. Because, again, it's absolutely  
 9 simple exercise what you were doing now and it's the  
 10 reason why I can't say anything.  
 11 Q. Mr Berezovsky, it suited you in the Forbes action,  
 12 didn't it, to say that you'd never lobbied Boris Yeltsin  
 13 in relation to ORT because Forbes was accusing you of  
 14 corruptly influencing him? Do you agree?  
 15 A. Sorry, what is the question?  
 16 Q. It suited your case in the Forbes action to deny that  
 17 you'd lobbied Boris Yeltsin --  
 18 A. Yes.  
 19 Q. -- because they were accusing you of lobbying him?  
 20 A. They do that.  
 21 Q. Yes. And so it suited your case to say that that was  
 22 wrong?  
 23 A. My case was that there were -- I divide this case for  
 24 several points: the most important for me and less  
 25 important for me. The most important points were Forbes

1 tried to insist that I am a member of gangster and  
 2 so-so, that I was responsible for killing Listyev and  
 3 for some other problems. And this is the basic point --  
 4 points and the other points which you mentioned now are.  
 5 Q. The reason why you said this in this document was that  
 6 you thought that it would help you to win the Forbes  
 7 action and you therefore didn't care that it happened to  
 8 be untrue?  
 9 A. No, I really sued Forbes just because I was sure that  
 10 there are a lot of false information here and, as you  
 11 know, Forbes finally took the position that it was false  
 12 and it means that everything what they put in defence,  
 13 in defence, could say that it's not -- also have a lot  
 14 of doubts what they put in defence. It means that not  
 15 everything what they told in -- what they wrote in the  
 16 article was correct and they accept that.  
 17 Q. It is also untrue, isn't it, looking at the same  
 18 paragraph --  
 19 A. Same -- what do you mean "same"?  
 20 Q. If you look at 4.46 again, one of the other things you  
 21 say was that you did not influence Boris Yeltsin to  
 22 privatise ORT for the purpose of making money but only  
 23 because of its political importance. That's also  
 24 untrue, isn't it? You have told us in your witness  
 25 statement --

1 A. Just a second. Just a second.  
 2 Q. Let me finish.  
 3 A. Sorry.  
 4 Q. You have told us in your witness statement that ORT, as  
 5 you saw it, was good business in the longer term.  
 6 A. Just a second. (Pause)  
 7 I don't think that it's wrong. I explain why:  
 8 because, as I told you before, as I told you before, ORT  
 9 at that time was not a business at all and it's  
 10 privatisation of ORT just to spend money, not to earn  
 11 money.  
 12 Just a second. What is the question? (Pause)  
 13 You are -- yes, it's absolutely correct. It's ORT,  
 14 yes. As far as ORT is concerned, that privatisation --  
 15 that my position was that ORT is not good business.  
 16 It's correct.  
 17 Q. Would you look at page 156 of this reply of yours.  
 18 {H(A)36/156} in your reply in the Forbes action. Right?  
 19 A. Just a second.  
 20 Q. It's the next page.  
 21 A. 156, sorry. Yes.  
 22 Q. Okay?  
 23 A. Yes.  
 24 Q. Do you see a heading two-thirds of the way down the  
 25 page, "Sibneft"?

1 A. Yes.  
 2 Q. Right. Then over the page at 4.55 there's a paragraph  
 3 I would like to ask your comments on. Okay?  
 4 A. Paragraph?  
 5 Q. 4.55 over the page.  
 6 A. Sorry, again? 4.54?  
 7 Q. No, 4.55.  
 8 A. I don't have this on page 156.  
 9 Q. Yes, you will have it -- 157, if you turn the page, you  
 10 will get to it.  
 11 A. Ah, 157, yes, sir.  
 12 Q. Do you see at the top of the page --  
 13 A. Yes, 157, it's fine.  
 14 Q. Now, what that says is:  
 15 "It is admitted and averred that, as alleged...  
 16 Mr Berezovsky and Roman Abramovich lobbied for the  
 17 privatisation of Sibneft and that they saw this as an  
 18 investment opportunity that might (or might not) prove  
 19 profitable. It is admitted and averred also that the  
 20 state wished to maximise revenues out of state property  
 21 for the federal budget, but that the future prospects  
 22 for Sibneft were highly uncertain (owing to many factors  
 23 including decreased domestic demand) and that it was  
 24 impossible to persuade Western investors to invest...  
 25 Otherwise this paragraph is denied."

1 Then you say this:  
 2 "Furthermore, Mr Berezovsky never discussed Sibneft  
 3 (or any other business matter) with Yeltsin and the  
 4 decision to privatise Sibneft although rubber-stamped by  
 5 Yeltsin would have been taken by the state privatisation  
 6 committee."  
 7 Now, it's not true, is it, to say that you never  
 8 discussed Sibneft or any other business matter with  
 9 Yeltsin? You did discuss it, didn't you?  
 10 A. Not -- not at all. I never discussed any other in some  
 11 concrete form. I discussed just to make business and  
 12 I don't discuss any specific opportunity for that. It's  
 13 absolutely correct what is saying here.  
 14 Q. I do not doubt that the discussion was in general terms  
 15 but it was about business, wasn't it?  
 16 A. But I told from the very beginning and it means that  
 17 it's -- it means that it's not what I discussed with  
 18 Yeltsin.  
 19 Q. You discussed with Yeltsin a proposal to identify  
 20 a business which could fund ORT? That's what you say in  
 21 your witness statement here.  
 22 A. "Business matter" it's written here.  
 23 Q. It is not therefore true to say that you "never  
 24 discussed Sibneft (or any other business matter) with  
 25 Yeltsin", is it?

1 A. I already answered to this question. I don't have other  
 2 answer. I told you that I talked to Yeltsin that to  
 3 fund -- that we need to find how to fund ORT and I don't  
 4 discuss about business matter.  
 5 Q. Now, you not only discussed it in general terms with  
 6 President Yeltsin but, as we've found out this morning  
 7 and we've seen in your witness statement, you also  
 8 discussed details with General Khorzhakov, Ms Dyachenko  
 9 and Mr Yumashev so that they could put them before  
 10 President Yeltsin, didn't you?  
 11 A. I discussed it, but -- I discussed it with them.  
 12 Q. Yes. And it's not true that President Yeltsin  
 13 rubber-stamped the decision of the State Privatisation  
 14 Committee, is it? What he did was to make the decision  
 15 as a result of your direct pressure with him and your  
 16 indirect pressure through his advisers?  
 17 A. I just want to tell you, I don't know how -- what is the  
 18 way to take this decision and I don't understand what  
 19 does mean "pressure". I move -- or my way is not to  
 20 make pressure; my way is to persuade and to explain why  
 21 it is important to do. It means that it's completely  
 22 wrong what you put in your question or your statement.  
 23 Q. What you say in your witness statement in this action at  
 24 paragraph 124 {D2/17/223} is that:  
 25 "[You] have no doubt that President Yeltsin" --

1 A. Just a second, okay?  
 2 Q. 124 of your witness statement.  
 3 A. 100...?  
 4 Q. 124. Paragraph 124, not page. Do you see  
 5 paragraph 124?  
 6 A. Yes.  
 7 Q. What you say here is:  
 8 "I have no doubt that President Yeltsin would not  
 9 have made this decree..."  
 10 And that's the presidential decree forming  
 11 Sibneft --  
 12 A. Yes.  
 13 Q. "... if it had not been for my initiative and efforts."  
 14 A. It's correct.  
 15 Q. In other words, he made the decision and it was your  
 16 influence who got him to make it, wasn't it?  
 17 A. Again, definitely. It's my way to reach the target to  
 18 persuade someone to understand what he is doing and  
 19 I was successful to explain that.  
 20 Q. Therefore, when you said in the Forbes action that "the  
 21 decision to privatise Sibneft although rubber-stamped by  
 22 Yeltsin would have been taken by the state privatisation  
 23 committee", you knew perfectly well that that was wrong,  
 24 didn't you?  
 25 A. Again, I don't know the level of his -- how much he was

1 informed in that. But again, I already explain what he  
 2 knew about that. Again, as I told you before, that  
 3 I was not present at his meeting with Yumashev or  
 4 Khorzhakov and others.  
 5 Q. At paragraph 129 of your witness statement in this  
 6 action {D2/17/224} --  
 7 A. Just a second.  
 8 Q. -- what you say is that the state committee approved  
 9 a decision already agreed with Boris Yeltsin and Prime  
 10 Minister Chernomyrdin.  
 11 A. Yes, correct.  
 12 Q. So it wasn't true, was it, that the decision was first  
 13 taken by the State Privatisation Committee and then  
 14 rubber-stamped by Yeltsin; it was taken by Yeltsin and  
 15 then acted on by the state committee, and you knew that,  
 16 didn't you?  
 17 A. I knew just that to privatise it should be Yeltsin  
 18 decision and prime minister decision and only after that  
 19 State Privatisation Committee can propose that for  
 20 privatisation.  
 21 Q. Would you look at paragraph 4.57 of your reply in the  
 22 Forbes action.  
 23 A. 4?  
 24 Q. 4.57.  
 25 A. Just a second.

1 Q. It's on page 157. It's the next paragraph but one after  
 2 the one you last read.  
 3 A. Just a second. What paragraph -- what page number?  
 4 Q. Page number {H(A)36/157}, which is the page you should  
 5 have open because the last bit I asked you to look at  
 6 was... Okay?  
 7 A. Yes.  
 8 Q. You see paragraph 4.57 on that page. Can you see that  
 9 paragraph?  
 10 A. Yes.  
 11 Q. Right. What it says is:  
 12 "It is denied that the 'loans for shares' auction in  
 13 respect of Sibneft was corrupt or 'fixed' or that it was  
 14 not conducted in an open or fair way."  
 15 Then you describe how it happened:  
 16 "In accordance with the loans for shares programme,  
 17 in December 1995... (NFK) -- in which Mr Berezovsky  
 18 had... a substantial interest -- won the auction and  
 19 extended a loan to the state in the sum of  
 20 \$100.3 million in return for the right to manage the  
 21 state's 51% shareholding and the right to sell the  
 22 shares at auction if the state was unable in the time  
 23 stipulated to repay the loan. There was only one  
 24 competitor to NFK, Inkombank, which did not present  
 25 a bid that fulfilled the conditions which the state had

1 stipulated. The state had declared the starting price  
 2 to be \$100 million. The decision to bid \$100.3 million  
 3 was taken by NFK's Board."  
 4 First of all, as you confirmed earlier this morning,  
 5 it's not right, is it, that Inkombank was the only other  
 6 bidder? Inkombank was disqualified but there were two  
 7 other potential bidders: Sameko, which withdrew, and  
 8 Menatep, which made a bid.  
 9 A. What is the point? I didn't catch.  
 10 Q. Right. Well, if you look at back at what you said in  
 11 4.57, what you said in 4.57 was that --  
 12 A. Just -- in 4...?  
 13 Q. 4.57 of your reply.  
 14 A. Yes.  
 15 Q. What you say is that:  
 16 "There was only one competitor to NFK, Inkombank..."  
 17 That is not true, is it, because there was also  
 18 Sameko and Menatep?  
 19 A. It's the reason -- it's exactly what I had in my mind.  
 20 Just a second. (Pause)  
 21 Excuse me, could you repeat again, where is "just  
 22 one competitor"?  
 23 Q. I'm looking at --  
 24 A. Fine, fine, fine, I've got it. It's correct because it  
 25 was real competitor, yes? And as you asked me before

1 about Menatep and I told you that Menatep agreed to  
 2 participate in that and put a bid.  
 3 **Q.** Inkombank was not a real competitor because it was  
 4 disqualified.  
 5 **A.** No, no. We discuss in terms of reality, you are  
 6 correct. Inkombank was a real competitor.  
 7 **Q.** Sameko --  
 8 **A.** A real competitor.  
 9 **Q.** Sameko was a real company and Menatep was a real company  
 10 too, wasn't it?  
 11 **A.** Sameko was also a real competitor. Menatep was not  
 12 a real competitor.  
 13 **Q.** Right.  
 14 **A.** Yes.  
 15 **Q.** But this is all relevant because Forbes have accused you  
 16 of fixing the auction and you did fix it, didn't you?  
 17 Because, looking at the bidders who were not  
 18 disqualified, you made a collusive agreement with one of  
 19 them and bought off the other. We discussed that this  
 20 morning.  
 21 **A.** It's not fixed definitely because I just find the way  
 22 how to present better interest for -- because Sameko in  
 23 reality was fixed by Inkombank, and you know that well,  
 24 and my position was just to persuade them that  
 25 participation is not so important for them like to cover

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1 the debt.  
 2 It means that I don't -- in my terminology, it's not  
 3 fixing, it's just to present, because they were fixed  
 4 themselves, and in my understanding it was just proved  
 5 that all companies manage in the same way: Inkombank had  
 6 the second company and we had the second company. This  
 7 was the rules which exist at the time. It is not  
 8 possible to say that it was fixed because it was a real  
 9 competition.  
 10 **Q.** Forbes had accused you of fixing the auction, by which  
 11 they meant that you arranged things so that the company  
 12 with which you were associated, NFK, was bound to win.  
 13 **A.** Again --  
 14 **Q.** That was true, wasn't it?  
 15 **A.** Not at all. Moreover, (inaudible) Forbes. It's my case  
 16 against Forbes. Forbes present the position of  
 17 (inaudible). This position never was proved. How you  
 18 can say that this is the case? This is not the case.  
 19 **Q.** You made a statement of truth in relation to  
 20 paragraph 4.57, among the other paragraphs --  
 21 **A.** Yes.  
 22 **Q.** -- and it was untrue?  
 23 **A.** No, it's true. It's my understanding what means "fixed"  
 24 and what does not.  
 25 **Q.** What do you think fixing an auction means,

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1 Mr Berezovsky?  
 2 **A.** It means that you don't have any -- fixing means that  
 3 you don't have -- I'll give you a definition now, just  
 4 a second -- that you don't have competition.  
 5 **Q.** Right. Well, you didn't have competition, did you?  
 6 **A.** No, I have competition.  
 7 **Q.** The reason you didn't have competition was that by the  
 8 time the auction actually occurred there was only one  
 9 bidder left, Menatep, and you had agreed with them that  
 10 they were going to bid less than you?  
 11 **A.** If you define competition only as a moment, you are  
 12 correct; but if you describe competition as a process,  
 13 you are not correct.  
 14 **Q.** If you are fairly asking yourself whether you fixed this  
 15 auction, the only honest answer would have been "yes"?  
 16 **A.** Not. Honest answer is "no".  
 17 **Q.** You see, what I'm suggesting to you, Mr Berezovsky, is  
 18 that you are prepared to say, in a document put before  
 19 the English court, whatever you think suits your case,  
 20 whether it's true or false. Do you understand what I'm  
 21 putting to you?  
 22 **A.** I already gave you answer, when you mentioned the points  
 23 which I include in my -- exclude from my witness  
 24 statement and you were absolutely correct that it was  
 25 contradiction with my witness statement, what -- with my

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1 witness statement, I accept that. But this one which  
 2 you mentioned now, I don't accept that.  
 3 **Q.** It's what you're doing in this action too, isn't it?  
 4 You tell the truth when it suits your case but not when  
 5 it doesn't?  
 6 **A.** It's not correct.  
 7 **Q.** In the Forbes action, there was an application to strike  
 8 out your claim on the grounds that you had no sufficient  
 9 reputation in England to protect, do you remember that?  
 10 **A.** Yes.  
 11 **Q.** And you put in written evidence on that application,  
 12 didn't you?  
 13 **A.** Yes.  
 14 **Q.** Do you remember that one of the people who swore an  
 15 affidavit -- put in written evidence, in other words --  
 16 on your behalf was Mr Shvidler?  
 17 **A.** Yes, I remember that.  
 18 **Q.** Did you ask Mr Shvidler to give evidence?  
 19 **A.** Yes, I asked him to give.  
 20 **Q.** Was his affidavit drafted by your lawyers?  
 21 **A.** Yes, Mr Andy Stephenson from -- the name of company --  
 22 **Q.** Carter Ruck?  
 23 **A.** Yes, Carter Ruck.  
 24 **Q.** Right.  
 25 **A.** And his assistant, I think they participate in taking

80

1 this evidence.  
 2 **Q.** And did you read Mr Shvidler's affidavit?  
 3 **A.** Yes, I read.  
 4 **Q.** And were you happy with it?  
 5 **A.** I was very angry with it.  
 6 **Q.** You were very angry with it?  
 7 **A.** Yes.  
 8 **Q.** Why was that?  
 9 **A.** Because Mr -- it's turned out that Mr Shvidler and  
 10 Mr Abramovich, they mislead me when they issue  
 11 Eurobonds.  
 12 **Q.** When they issue...?  
 13 **A.** Eurobonds.  
 14 **Q.** Right.  
 15 **A.** Because, as you remember, there is a -- let's take  
 16 evidence of Mr Shvidler, to discuss better, yes? Could  
 17 you show me the reference?  
 18 **Q.** Well, you'll find it in bundle {H(A)11/132}.  
 19 **A.** Could we have in the same way the Eurobond prospect,  
 20 please?  
 21 **Q.** Yes. Now, before you look through this affidavit,  
 22 I would just like to discover: what do you remember made  
 23 you cross about this affidavit? Just tell us.  
 24 **A.** Because we discuss how to present my position legally  
 25 because, you know, the conflict was that Roman

1 Abramovich and Shvidler as well, all the time they  
 2 insist to distance me from Sibneft, yes? And  
 3 position -- and on the other hand, Forbes insist that  
 4 I had close tie to Sibneft and it was a point of  
 5 dispute, yes?  
 6 Mr Shvidler and Mr Abramovich, they -- when I asked  
 7 to give Mr Shvidler evidence, I want to describe in  
 8 terms which coincide with reality, and he made it saying  
 9 that I -- I don't remember exactly the wording of his  
 10 witness statement, but you -- that I don't have -- that  
 11 I don't have, like, shares under my control and so it --  
 12 in other words, it was written that -- in the way that  
 13 was on the one hand it was true, on the other hand it  
 14 was not create a strong link me to Sibneft.  
 15 And Mr Shvidler accept this position but on the  
 16 other hand he present me Eurobonds certificate where it  
 17 was written that I never had -- in very strong terms,  
 18 that I never had any connection, which definitely could  
 19 be helpful for me for Forbes case but was not true at  
 20 all.  
 21 And it's the reason -- because the first time I have  
 22 seen this paper, it was just when Mr Shvidler gave  
 23 evidence to Forbes magazine and I know that the day  
 24 before yesterday, when you present your skeleton, that  
 25 I confirm the Eurobond prospectus and it was not -- it

1 was not true. I never confirm -- I confirm just in  
 2 verbal way because that time when it happened, it was --  
 3 just a second -- it was '97, yes, it was '97, and I have  
 4 been in position -- it was summer. I don't remember  
 5 well. I had official position as secretary of  
 6 Security -- deputy secretary of Security Council and  
 7 I gave up control over my shares or my interests --  
 8 I don't remember well how to formulate that -- according  
 9 of Russian law, to Mr -- completely to Mr Abramovich at  
 10 that time, yes, and it is the reason why I did not want  
 11 to participate, at least directly, to any activity in  
 12 business.  
 13 And I was informed that Sibneft is preparing to  
 14 issue Eurobonds but -- and Shvidler told me -- I don't  
 15 remember who, Shvidler or Abramovich, they told about  
 16 that. But I never have seen this document and I was  
 17 absolutely surprised when Shvidler showed me this  
 18 document.  
 19 **Q.** When you say "this document", are you referring to the  
 20 Eurobond prospectus?  
 21 **A.** Correct, correct. Correct.  
 22 **Q.** Okay. Well, I'll come to that in due course, although  
 23 I will be suggesting to you that you certainly did see  
 24 it. Never mind.  
 25 Let me ask you to read one paragraph of the

1 affidavit you've got in front of you. Paragraph 1 --  
 2 **A.** Just a second. Shvidler affidavit, yes?  
 3 **Q.** Shvidler's affidavit --  
 4 **A.** Yes.  
 5 **Q.** -- but in your action.  
 6 **A.** Yes.  
 7 **Q.** He introduces himself as the vice president of Sibneft  
 8 and over the page, at the top, he says:  
 9 "Boris Berezovsky was involved in establishing  
 10 Sibneft when it first came into partly private ownership  
 11 in 1996; the company is now entirely privately owned.  
 12 Mr Berezovsky served on Sibneft's Board of Directors  
 13 until October 1996; whilst he no longer has any role in  
 14 the management of the company nor any shareholding, he  
 15 tends still to be publicly identified with the company."  
 16 **A.** Sorry?  
 17 **Q.** Just read the paragraph to yourself.  
 18 **A.** Yes.  
 19 **Q.** Right?  
 20 **A.** Yes.  
 21 **Q.** Now, this was evidence that you put in in your action  
 22 against Forbes.  
 23 **A.** Yes.  
 24 **Q.** Did you consider that paragraph 1 of that affidavit was  
 25 true?

1 A. Yes, it's true.  
 2 Q. Right. So --  
 3 A. Just one second. One second. I'm sorry, just a second.  
 4 (Pause)  
 5 Look, I don't remember exactly the date of my being  
 6 as a director until -- the director of the board.  
 7 I have been, but I don't remember the date -- yes, until  
 8 '96, when I become the deputy secretary of Security  
 9 Council, it's correct. Yes, it's correct. It's  
 10 correct. I agree what's written here.  
 11 Q. Right. So it is true, isn't it --  
 12 A. Yes.  
 13 Q. -- that in 1998, when this affidavit was produced, you  
 14 no longer had any role in the management of the company  
 15 nor any shareholding? That was the truth, wasn't it?  
 16 A. Yes, I didn't have any power in managing of the company  
 17 and I didn't have any shareholding.  
 18 Q. Right. Now, you point out in your witness statement  
 19 that this affidavit was mainly concerned with the  
 20 question whether you had a reputation to protect in  
 21 England. You make that point and you're right; that was  
 22 what this is about.  
 23 A. So sorry, again?  
 24 Q. This evidence was --  
 25 A. Yes, yes.

1 Q. -- designed to show that you had a reputation in  
 2 England?  
 3 A. Correct. Correct.  
 4 Q. Right.  
 5 Now, it's right, isn't it, that a small proportion  
 6 of the shares in Sibneft were traded on the Moscow and  
 7 New York stock exchanges and held by the general public?  
 8 A. I don't remember that.  
 9 Q. Now, what Forbes were saying -- was this not the case --  
 10 was that you had corruptly acquired at least 80 per cent  
 11 of the shares in Sibneft?  
 12 A. 80?  
 13 Q. That was their allegation, which you rejected. Yes?  
 14 A. At least 80?  
 15 Q. Yes, they said at least 80.  
 16 A. Okay.  
 17 Q. If you look at paragraph 3, you will see that  
 18 Mr Shvidler quotes it:  
 19 "It is stated in the article, wrongly, that  
 20 Mr Berezovsky 'has acquired at least 80% of Sibneft, one  
 21 of Russia's largest oil companies'; anyone therefore who  
 22 checks will automatically be able to access the article  
 23 on the Internet."  
 24 Do you see he's quoting what Forbes had said?  
 25 A. Yes.

1 Q. Okay?  
 2 A. Yes.  
 3 Q. Now, would you agree that the importance of  
 4 Mr Shvidler's evidence was this -- just listen carefully  
 5 and then read it on the screen: Mr Shvidler was saying  
 6 that the statement in Forbes that 80 per cent of Sibneft  
 7 was owned by a man who Forbes had described as a corrupt  
 8 gangster and murderer had frightened UK investors, who  
 9 didn't want to be associated with a company connected  
 10 with somebody described in those terms?  
 11 Before you answer, please read the question on the  
 12 screen so that you will understand it.  
 13 A. Just a second. (Pause)  
 14 My understanding was absolutely clear: that because  
 15 of my political involvement, not because of gangster and  
 16 so -- I just want again to repeat you: what later was  
 17 absolutely -- what Forbes said, that it's false, yes?  
 18 And not because of that reason. The reason was just  
 19 one: that my strong political involvement and it could  
 20 damage the company my political position, that's it, my  
 21 political activity.  
 22 Q. Whether you were or were not a shareholder in Sibneft  
 23 was critically important to this point that Mr Shvidler  
 24 was making, wasn't it?  
 25 A. Shvidler and Abramovich insist to distance me as much as

1 possible of direct involvement in shareholding or  
 2 management of Sibneft.  
 3 Q. You say in this action, Mr Berezovsky, that right up to  
 4 2001 you and Mr Patarkatsishvili between you had  
 5 a 50 per cent interest in Sibneft; that's your case in  
 6 this action, isn't it?  
 7 A. It's correct.  
 8 Q. Now, if that is right, then this affidavit was  
 9 thoroughly misleading, wasn't it?  
 10 A. It's a question to Shvidler, not to me.  
 11 Q. No, I'm asking you. If your case in this action is  
 12 right, this was a thoroughly misleading --  
 13 A. No, not at all. It's written that I have "any  
 14 shareholding", it's absolutely correct written here.  
 15 Q. So you thought it was perfectly fair, did you, when the  
 16 issue was whether you were associated with Sibneft, to  
 17 say you had no shareholding even though you thought that  
 18 you actually had an interest in half of Mr Abramovich's  
 19 shares?  
 20 A. Absolutely correct.  
 21 Q. And do you still think that that is a fair way --  
 22 A. It's fair way.  
 23 Q. -- to deal with the truth? You think it's the whole  
 24 truth --  
 25 A. It's fair way.

1 Q. -- and nothing but the truth?  
 2 A. I gave you my answer.  
 3 Q. Do you recall that in July 1997, Mr Berezovsky, you  
 4 completed the return to the presidential administration  
 5 of your income and assets?  
 6 A. Just a second, yes.  
 7 Q. You remember that?  
 8 A. Again, my presentation -- oh, it's good point. Yes,  
 9 I remember that.  
 10 Q. Now, as I understand it --  
 11 A. Could you show this paper, please?  
 12 Q. I will in a minute but perhaps you can just clarify my  
 13 mind on one subject first. Is it right that in 1997  
 14 there was a decree, presidential decree, requiring the  
 15 disclosure of interests by public officials?  
 16 A. You are wrong.  
 17 Q. I'm wrong, am I?  
 18 A. Yes, you are wrong because decree did not give that it's  
 19 your obligation. You may do it voluntarily, as  
 20 I remember.  
 21 Q. I see, it didn't require you to do it. Now, at the  
 22 time, I think, in July 1997, you were deputy secretary  
 23 of the Security Council?  
 24 A. Correct.  
 25 Q. Was that why you filled in this form?

1 A. Again, I just want to stress, again, voluntarily.  
 2 Q. Okay. Would you look at {H(A)06/124}, please. Now,  
 3 this is the English translation and I'm trying to find  
 4 the Russian version but I'm not sure whether there is  
 5 one. I don't believe it's in the bundle. Clearly there  
 6 must have been a Russian original but what you'll see is  
 7 there's a document which in English is headed  
 8 "Certificate", do you see that?  
 9 A. Yes.  
 10 Q. Right. The certificate was executed and completed by  
 11 you and your address is given?  
 12 A. Not by me, by my lawyers.  
 13 Q. Okay, but did you approve it?  
 14 A. To say you true, I don't remember. I'll explain you  
 15 why, just a second. Because now when I -- and  
 16 definitely I was shown this document by my lawyers and  
 17 when I watch this document, first of all, it's not in  
 18 Russian, it's not document which we're able clearly --  
 19 Q. Well, you signed it.  
 20 A. Just a second, just a second. Again, do you see my  
 21 signature?  
 22 Q. We'll find the original.  
 23 A. No, no, again, do you see my signature?  
 24 Q. Mr Berezovsky, look at page 124, it says "Signed  
 25 B Berezovsky".

1 A. Yes, I see that but you don't have my signature here.  
 2 Q. No, we'll find the Russian original.  
 3 A. Okay, good. Good. It's exactly what I was trying to  
 4 do.  
 5 MRS JUSTICE GLOSTER: Can you just answer the questions,  
 6 please, Mr Berezovsky.  
 7 THE WITNESS: I'm sorry, my Lady.  
 8 MRS JUSTICE GLOSTER: It's not a conversation,  
 9 cross-examination, it's a formal process.  
 10 A. I'm sorry.  
 11 First of all, if you look at the page number and  
 12 where is written "Certificate" --  
 13 MR SUMPTION: Yes?  
 14 A. -- and if you look at my birth date, if you -- I know  
 15 that you have great memory, and it doesn't coincide with  
 16 my birthday.  
 17 Q. Yes. 24 January is your birthday?  
 18 A. 23rd.  
 19 Q. Right. So they got your birthday wrong?  
 20 A. It means that it's completely wrong what is written  
 21 here. It means that if even I have seen that and even  
 22 if it's correct translation, it means that I didn't pay  
 23 too much attention because -- but it was prepared  
 24 definitely not by me but my lawyers. It means that on  
 25 the one hand it's not proper paper to discuss because

1 I show you direct mistake, direct mistake. It means  
 2 that I can't guarantee that the rest is correctly  
 3 because it was the basis, the basis -- it's not me, it's  
 4 even not me.  
 5 Q. Would you look at page 127, please {H(A)06/127}. We'll  
 6 get the original of this.  
 7 "I, the undersigned --"  
 8 A. Just a second, 127, yes.  
 9 Q. "I, the undersigned, confirm the trustworthiness and  
 10 completeness of the evidence supplied by myself in the  
 11 Certificate hereby.  
 12 "21 July 1997.  
 13 "Signed by  
 14 "Berezovsky BA."  
 15 A. Again, I think it's impossible to discuss like that  
 16 because, as I just demonstrated, absolutely clear, this  
 17 is not a proper paper and we also try to find out the  
 18 Russian original, we were not successful with that. But  
 19 this paper is not possible to discuss properly. But, on  
 20 the other hand, I don't want to put you in any wrong  
 21 thoughts about that and I just want to tell you that,  
 22 according of the decree, you should show only direct  
 23 owner of shares. What it means? It means, for example,  
 24 when I watch this paper, I did not find -- just  
 25 a second, okay, just a second. I didn't find, for

1 example, here ORT, yes? And you also I think should pay  
 2 attention to that. It's a reason why I was not direct  
 3 owner, the actual holder of ORT.  
 4 Again, my position at witness box is absolutely  
 5 clear, we are not able to talk about this paper because  
 6 I'm not sure that it's proper paper.  
 7 **Q.** Mr Berezovsky, look at the heading "Securities" on  
 8 page 125 {H(A)06/125}.  
 9 **A.** 125.  
 10 **Q.** Yes, "2.2, Securities", it's about a third of the way  
 11 down the page.  
 12 **A.** Just a second.  
 13 **Q.** The document was disclosed by your solicitors,  
 14 Mr Berezovsky. We had understood the translation -- we  
 15 had understood the English version to be uncontentious.  
 16 The Russian is not in the bundle, perhaps I can invite  
 17 Messrs Addleshaws to produce the Russian original from  
 18 which this was derived as soon as may be.  
 19 **A.** Yes.  
 20 **Q.** Now, would you look at the heading "Securities" on  
 21 page 125, Mr Berezovsky.  
 22 **A.** Yes.  
 23 **Q.** Underneath that heading, it says "Shares and other type  
 24 of interest in commercial businesses". Did you have  
 25 shares or any other type of interest in Sibneft?

1 **A.** Again, I have share -- I have interest in Sibneft.  
 2 **Q.** Right. So you did have an interest in Sibneft, you say.  
 3 Where do we find that referred to in the table  
 4 underneath?  
 5 **A.** Mr Sumption, I refuse to discuss this paper until we'll  
 6 have original of this paper.  
 7 My Lady, this is my question. If you insist to  
 8 continue, I will continue.  
 9 **MRS JUSTICE GLOSTER:** Well, I'm going to rise now anyway,  
 10 I'll sit again at 1.45. It would be helpful if the  
 11 original could be available but if it's not we'll have  
 12 to return to it at a later date.  
 13 Very well. I'll sit again at 1.45.  
 14 (1.00 pm)  
 15 (The short adjournment)  
 16 (1.45 am)  
 17 **MRS JUSTICE GLOSTER:** Right, members of the press. Who  
 18 am I addressing? All of you. Of the 50 seats available  
 19 for the press and the public in court, as from tomorrow  
 20 25 of those 50 seats will be allocated to the press and  
 21 the press alone.  
 22 I have considered with the Courts Service staff  
 23 whether it's feasible, as it were, to preallocate seats.  
 24 I've come to the conclusion that it's not feasible to do  
 25 that and that the fairest thing so as to ensure that

1 there are maximum seats available at all times to  
 2 members of the public as well is to allocate seats to  
 3 the press on a first-come first-served basis, so you  
 4 will have your numbered seat for the whole day.  
 5 The method by which it will be done is as follows.  
 6 Seats will be allocated to members of the press upon  
 7 production of their press card, as I said, on  
 8 a first-come first-served basis. There will be 25  
 9 seats. They will be available for collection normally  
 10 from 9 o'clock every morning from outside court, where  
 11 a member of the court staff will give them out to you on  
 12 production of your press card. Tomorrow morning,  
 13 because we're starting at 9 o'clock tomorrow, the press  
 14 tickets will be available as from 8.30 outside court.  
 15 Now, looking at the numbers of members of the press  
 16 available, 25 seats should be ample, given that there  
 17 are 25 other seats available for members of the public  
 18 as well.  
 19 Again, I'm trying to be flexible. If there's a need  
 20 to reconsider, I will do that. But can you liaise, as  
 21 it were, quite closely either with Ms Rollison(?), who  
 22 is the lady standing there, or with Mr Pollen if you  
 23 have a problem.  
 24 **MEMBER OF THE PRESS:** My Lady, we're very grateful. Thank  
 25 you.

1 **MRS JUSTICE GLOSTER:** The other thing is there will be  
 2 a note on the door which directs people who can't get  
 3 into the court to the consultation rooms, where there  
 4 are LiveNote feeds and where there are audio feeds as  
 5 well.  
 6 Now, I hope that will cater for you, obviously not  
 7 today. I'm sorry to see that you're still standing and  
 8 I'm not allowed to say that it's a shame that no  
 9 gentleman has offered you their seat but there we go.  
 10 **MEMBER OF THE PRESS:** I wouldn't expect them to do so.  
 11 **MRS JUSTICE GLOSTER:** Okay. Thank you very much.  
 12 Yes, Mr Sumption.  
 13 **MR SUMPTION:** My Lady, can I tell your Ladyship what we've  
 14 ascertained -- which isn't everything -- about this  
 15 document.  
 16 First of all, there is no Russian version for this  
 17 reason: the document appears to have been faxed, as your  
 18 Ladyship will see from the fax notations at the top of  
 19 the page, to the fax number of Messrs Carter Ruck.  
 20 **MRS JUSTICE GLOSTER:** Yes.  
 21 **MR SUMPTION:** It came from an XTRA Businesses Limited from  
 22 a fax machine in Savile Row, which we believe to be the  
 23 fax machine of the office in Savile Row used by  
 24 Mr Fomichev. So that it seems that what happened was  
 25 that this was faxed to Carter Ruck by Mr Berezovsky's

1 administration, so to speak, because Mr Fomichev at this  
 2 stage was his general financial manager, and that it was  
 3 disclosed in the Forbes litigation, and it has been  
 4 redisclosed by Mr Berezovsky's solicitors in this  
 5 litigation but in what I imagine is the only form in  
 6 which they have it, namely the form in which it was  
 7 faxed to Carter Ruck in 2001.

8 **MRS JUSTICE GLOSTER:** Right. Mr Rabinowitz, that's the  
 9 position, is it?

10 **MR RABINOWITZ:** Certainly as regards which document we have  
 11 in our possession, that is exactly the position,  
 12 my Lady.

13 **MRS JUSTICE GLOSTER:** And you don't have the --

14 **MR RABINOWITZ:** We do not have and, as far as I'm aware,  
 15 have never had the Russian versions.

16 **MRS JUSTICE GLOSTER:** Right, thank you very much.

17 **THE WITNESS:** My Lady, could I just comment a little?

18 **MRS JUSTICE GLOSTER:** Just a second.  
 19 Mr Sumption, proceed on that basis therefore.

20 **MR SUMPTION:** Yes, of course.

21 **MRS JUSTICE GLOSTER:** If there are any further questions you  
 22 wish to ask Mr Berezovsky, no doubt you will do so.

23 **MR SUMPTION:** Yes.

24 **MRS JUSTICE GLOSTER:** Mr Berezovsky?

25 **THE WITNESS:** Yes, I just -- you referred to Savile Row.

1 I just don't remember about office of Ruslan Fomichev  
 2 but to make -- maybe for you it's more clear, we had  
 3 office in Savile Row and maybe it's even passed through  
 4 our office, not Mr Fomichev, just to let you know.  
 5 I don't remember that Mr Fomichev had office on the same  
 6 street.

7 **MRS JUSTICE GLOSTER:** Thank you very much.

8 **THE WITNESS:** Thank you.

9 **MRS JUSTICE GLOSTER:** Mr Sumption.

10 **MR SUMPTION:** At any rate, I imagine you would agree,  
 11 Mr Berezovsky, that if this document is being faxed to  
 12 Carter Ruck, who were your solicitors in the Forbes  
 13 litigation, at the time when the Forbes litigation was  
 14 in process, it's likely to have been sent to them for  
 15 the purposes of your litigation, isn't it?

16 **A.** No doubts.

17 **Q.** Now, I'm sorry that we don't have the original with your  
 18 signatures on, but it's perfectly clear from what we do  
 19 have that the original was signed by you in two places:  
 20 one on page 124 of the bundle and one on page 127. The  
 21 original was originally signed by you in two places.

22 **A.** I can't comment that because I told you I don't  
 23 understand -- I don't understand -- maybe you're  
 24 correct, I don't... But again, what is my principal  
 25 problem? The problem is not to explain you what is

1 written here. The problem is that my birthday is  
 2 written in wrong way and even I signed it. It means  
 3 that not me signed that or I did not see this document  
 4 at all.

5 What very often happened, it's true, here, and my  
 6 position is very clear, when we discussed that, I'll try  
 7 you to present my vision even understanding that it's  
 8 not possible to believe what is written. It's my  
 9 position, yes.

10 **Q.** If this document -- this document would not have been  
 11 sent to your solicitors, Carter Ruck, if it was a bogus  
 12 document, would it?

13 **A.** I don't know.

14 **Q.** Let's just look at what is written on the second page of  
 15 it, on page 125 of the bundle.

16 **A.** Yes.

17 **Q.** Now, the question that I would ask you is this: did you  
 18 have in 1997 shares or any other type of interest in  
 19 Sibneft? I think you say you did?

20 **A.** I had other interest in Sibneft.

21 **Q.** Yes --

22 **A.** And in ORT as well.

23 **Q.** You have not included that in your declaration.

24 **A.** I just want again to stress: this declaration definitely  
 25 prepared not by me. This declaration prepared by my

1 lawyer, if it's -- to take in consideration that it's  
 2 varied, yes? And I definitely am responsible, if  
 3 I signed that, I'm responsible, not my lawyer  
 4 responsible for that, but I just want to tell you to --  
 5 we need to -- because, as I understand, my lawyers were  
 6 professional and -- professional enough, let's say, in  
 7 Moscow at that time.

8 What means "share" and "other type of interest",  
 9 yes? As I understand, the definition is important, and  
 10 without understanding what means this definition in  
 11 Russian, in Russia at that time, yes, we're not able to  
 12 move forward. At least my comment, I comment to say: is  
 13 it direct interest or indirect but nevertheless I'm  
 14 finally beneficial written somewhere? We need to  
 15 understand what it means.

16 Again, I want to stress: I comment that without  
 17 understanding what we're discussing.

18 **Q.** You said at an earlier stage in your cross-examination  
 19 this morning that compliance with these returns was  
 20 voluntarily?

21 **A.** This was voluntarily, yes.

22 **Q.** I see.

23 **A.** As I already called my lawyers again. I didn't remember  
 24 that time.

25 **Q.** Could you please be shown -- you can put away the bundle

1 that you have open in front of you. I imagine you would  
 2 like to make some space on the desk and perhaps --  
 3 **A.** But keep open this page, yes?  
 4 **Q.** No, I'm not going to ask you any more about it.  
 5 **A.** Okay.  
 6 **Q.** What I would like you to look at now is {H(A)20/147}.  
 7 **A.** What is the bundle?  
 8 **Q.** Somebody will just give you the bundle in a moment.  
 9 **A.** I see. And this, I need to keep the other one, this  
 10 H28?  
 11 **Q.** H(C)8 you can put back --  
 12 **A.** No, the old one, H(A)28, do I need to keep this still?  
 13 **Q.** No, you can put that away too.  
 14 **A.** Thank you.  
 15 **Q.** Right. Do you have in front of you H(A)20/147?  
 16 **A.** Yes.  
 17 **Q.** This is the decree in question and --  
 18 **A.** Just a second, I'm sorry.  
 19 My Lady, I'd like to have all the Russian papers in  
 20 Russian and I explain the reason why it's so: because we  
 21 turn out the translation of some documents which were  
 22 served were not correct translated. And it is reason  
 23 why I need to have Russian and then to understand,  
 24 because now we discuss in details and it's necessary for  
 25 me, and I explain you the reason if you want to have

1 more detail.  
 2 **MRS JUSTICE GLOSTER:** We'll see how we go. What will be  
 3 necessary then is for members of your legal team to  
 4 provide the references to the Russian documents because  
 5 it may be the case that this team doesn't have them  
 6 available.  
 7 **MR SUMPTION:** My Lady, in the bundle as it is, this is  
 8 another document that was sent in the same fax, as one  
 9 can see from the top. It's the very same fax that we  
 10 looked at last time. However, being a decree, it is  
 11 clearly available in Russian from some Russian law  
 12 source.  
 13 **A.** Absolutely.  
 14 **Q.** What I will do is I will ask Mr Berezovsky the one  
 15 question that I have about this document and we will  
 16 then make sure that he has available to him the Russian  
 17 text so that he can correct the position if he thinks  
 18 it's wrong.  
 19 **MRS JUSTICE GLOSTER:** Well, perhaps both teams could try and  
 20 make sure they have as soon as possible the Russian  
 21 references because it may be they're not all to hand.  
 22 **MR SUMPTION:** No, I quite understand that. But both sides,  
 23 of course, have expert Russian lawyers and we have  
 24 already put that in train on our side.  
 25 **MRS JUSTICE GLOSTER:** Very well.

1 **MR SUMPTION:** Mr Berezovsky, the short point I want to put  
 2 to you is the end of paragraph 1. Paragraph 1 requires  
 3 individuals employed as civil servants and officials in  
 4 the Russian Federation to do certain things and if you  
 5 look in the final words of that paragraph:  
 6 "Shall submit their tax" --  
 7 **A.** Just a second. The first paragraph, yes?  
 8 **Q.** The first paragraph --  
 9 **A.** Yes.  
 10 **Q.** -- is what civil servants and government officials are  
 11 required to do, and it says at the end:  
 12 "... shall submit their tax returns and reports on  
 13 the property in their ownership... on an annual basis."  
 14 **A.** Just a second. (Pause)  
 15 Mr Sumption, I don't want to argue about judicial  
 16 problems, I just want to tell that I was told by my  
 17 lawyers about that and it's reference -- they take  
 18 responsibility for this, my understanding, and I don't  
 19 want to argue with you.  
 20 **Q.** No, understood. You're not a lawyer and I'm not going  
 21 to press you.  
 22 **A.** Abramovich's lawyer, he will...  
 23 **Q.** But I imagine that your lawyer did not tell you that if  
 24 you decided to complete it, it was okay to do so in  
 25 a misleading fashion? You weren't given that advice,

1 were you?  
 2 **A.** Definitely not.  
 3 **Q.** Well, now I'd like you to look at another document if  
 4 you wouldn't mind: {H(A)07/19}. Somebody will have to  
 5 hand it to you. Put away the file you have in front of  
 6 you.  
 7 **A.** I should keep that?  
 8 **Q.** No, I would put it away if I were you.  
 9 Now, this is a document that you referred to this  
 10 morning when I was asking you about Mr Shvidler's  
 11 affidavit. It's the 1997 floating rate Eurobond  
 12 prospectus.  
 13 **A.** Can you give me time to look through, okay?  
 14 **Q.** Well, Mr Berezovsky, I haven't asked you a question yet;  
 15 I have just told you what the document is.  
 16 **A.** I just want to refresh.  
 17 **Q.** Okay.  
 18 **A.** Thank you. (Pause)  
 19 **MRS JUSTICE GLOSTER:** Mr Berezovsky, you'll be given an  
 20 opportunity to read the passage which Mr Sumption is  
 21 taking you to.  
 22 **THE WITNESS:** Yes, yes.  
 23 **MRS JUSTICE GLOSTER:** We can't, I'm afraid, give you the  
 24 time to read every single document.  
 25 **MR SUMPTION:** Mr Berezovsky, just wait until I --

1 **THE WITNESS:** I'm sorry, my Lady, I've already got it.  
 2 Thank you.  
 3 **MR SUMPTION:** You've obviously anticipated the bit that I am  
 4 going to go to and you're quite right to do that,  
 5 Mr Berezovsky, but there's a few questions I want to ask  
 6 you before we get there.  
 7 You were consulted about this document in advance,  
 8 were you not?  
 9 **A.** Not at all.  
 10 **Q.** Really? Would you like to keep that document open and  
 11 perhaps somebody could give you bundle D1. The  
 12 reference is {D1/09/112}. Do you have that? This is  
 13 Ms Nosova's statement.  
 14 **A.** Yes, yes.  
 15 **Q.** Now, Ms Nosova is a close and trusted assistant of  
 16 yours, is she not?  
 17 **A.** It is correct.  
 18 **Q.** In your office building at Down Street, there is  
 19 a litigation office, isn't there, an office used by  
 20 people who are helping you with this litigation?  
 21 **A.** In which street?  
 22 **Q.** At Down Street you have an office?  
 23 **A.** Yes, yes, I have office on Down Street, 7 Down Street.  
 24 **Q.** That's right. Now, in Down Street, there is an office  
 25 in which people are working on this litigation; isn't

1 that right?  
 2 **A.** Yes, it's correct.  
 3 **Q.** And those people are Ms Nosova, Mr Dubov and  
 4 Mr Glushkov, are they not?  
 5 **A.** Not precisely what you said. Ms Nosova has a room at  
 6 this office and her job is not to help me in litigation;  
 7 she has the other job. As far as Mr Dubov, he also has  
 8 another job. Moreover, not Dubov, not Mrs Nosova, paid  
 9 by me. And as far as Glushkov is concerned, he doesn't  
 10 have space in this office at all.  
 11 **Q.** I see. We'll discuss that with them.  
 12 Could you please turn to page 149 in the bundle,  
 13 which is about three-quarters of the way through this  
 14 witness statement {D1/09/149}.  
 15 **A.** 149?  
 16 **Q.** Yes. Paragraph 197 at the bottom of the page:  
 17 "I was not particularly concerned [she says] about  
 18 the inclusion of this statement in the Offering Circular  
 19 and..."  
 20 Perhaps I should start in the paragraph before.  
 21 "In [preparing the] Offering Circular, I was aware  
 22 of the fact that Mr Abramovich had agreed with Boris  
 23 that there should be a statement in the document  
 24 confirming the agreed public position which they were  
 25 adopting: ie that Boris did not have an interest in the

1 company. This reflected the aims of the 1996 Agreement,  
 2 to distance Boris from the company. I believe it was  
 3 probably also thought that including a statement like  
 4 this would reduce the concerns of investors about  
 5 political risk from Boris's involvement."  
 6 Now, then the previous paragraph you will see --  
 7 **A.** Previous, 196?  
 8 **Q.** What I've just read from is 196.  
 9 **A.** Previous? Oh, you read just now.  
 10 **Q.** Now look back at 195, please.  
 11 **A.** Yes, sorry.  
 12 **Q.** Ms Nosova says:  
 13 "I was not involved in the preparation of this  
 14 Offering Circular, but Boris told me that Mr Abramovich  
 15 consulted with Boris and Badri about it before it was  
 16 published."  
 17 **A.** Yes.  
 18 **Q.** Is that right or wrong?  
 19 **A.** You should put this question to Mrs Nosova and she will  
 20 explain you better.  
 21 **Q.** No, I'm putting it to you, Mr Berezovsky.  
 22 **A.** What is right or what is wrong?  
 23 **Q.** What I'm asking you is: is it true that Mr Abramovich  
 24 consulted you about this circular?  
 25 **A.** Definitely not.

1 **Q.** So Ms Nosova has got this wrong?  
 2 **A.** You put this question to Mrs Nosova.  
 3 **Q.** I'm putting it to you, Mr Berezovsky, I'd like an  
 4 answer.  
 5 **A.** I gave full answer to this question. I can't answer  
 6 instead of Mrs Nosova.  
 7 **Q.** Mr Berezovsky, you saw this --  
 8 **A.** You have to put me direct question: did I consult or  
 9 talk at all with Mr Abramovich? I don't remember talk  
 10 at all maybe, but definitely I did not consult him.  
 11 **Q.** No, he consulted you --  
 12 **A.** Not him, not with Mr Shvidler.  
 13 **Q.** He consulted you about this circular, didn't he?  
 14 **A.** It's impossible.  
 15 **Q.** Why is it impossible?  
 16 **A.** Because I never was involved in so details.  
 17 **Q.** Because you --  
 18 **A.** I never was involved in so details of managing of the  
 19 company Sibneft. Moreover, I just want to remind you  
 20 again what I said before: that at that time I was in  
 21 position of deputy secretary of Security Council and  
 22 I try maximum distance from any involvement in business  
 23 at all.  
 24 But I can't exclude that Mr Abramovich did call me  
 25 and say me that, "We want to raise money on the market

1 through Eurobonds and it's -- what do you think about  
 2 that?" And definitely I can't say that I against to do  
 3 something. But maybe he gave me even more details but  
 4 I never consulted.  
 5 **Q.** Mr Berezovsky, you are aware, I imagine, that when  
 6 securities are sold in western securities markets,  
 7 extremely high standards of accuracy are required?  
 8 **A.** Yes.  
 9 **Q.** You know that, don't you?  
 10 **A.** I hope that it's so.  
 11 **Q.** Yes. And are you also aware that it is normal to  
 12 instruct accountants and lawyers to do due diligence so  
 13 as to ensure that such documents are as accurate as  
 14 possible?  
 15 **A.** Definitely.  
 16 **Q.** Now, Cleary Gottlieb, a New York firm of lawyers, were  
 17 involved in the preparation of this document along with  
 18 Salomon & Co, were they not?  
 19 **A.** I don't know.  
 20 **Q.** There is, as you know, a statement about your connection  
 21 with Sibneft in this document, isn't there?  
 22 **A.** I know that I told you -- I'm sorry. I know that and  
 23 I told you that the first time I have seen that when  
 24 Mr Shvidler prepared the witness statement for Forbes  
 25 magazine and I told you at the beginning that I was

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1 shocked when I have seen this document.  
 2 **Q.** And you approved the bit about you because you  
 3 understood it to be true.  
 4 **A.** If you --  
 5 **Q.** Do you disagree?  
 6 **A.** I disagree completely. I explain you why: because --  
 7 let's -- could you give me back with my witness  
 8 statement -- sorry, Mr Shvidler's statement addressed to  
 9 Forbes magazine?  
 10 **Q.** Well, Mr Berezovsky, I think that without access to  
 11 Mr Shvidler's statement you can answer my question.  
 12 **A.** Mm-hm.  
 13 **Q.** I was putting it to you that you approved the paragraph  
 14 about you in the circular at the time that it was  
 15 prepared.  
 16 **A.** Definitely not.  
 17 **Q.** Right. Now, I'm going to show you what was said about  
 18 you. It's at page 34 of the bundle.  
 19 **A.** 34?  
 20 **Q.** Yes. Same document, just a bit further on.  
 21 **A.** Just a second.  
 22 **MRS JUSTICE GLOSTER:** I'm sorry, Mr Sumption, please may we  
 23 have the --  
 24 **MR SUMPTION:** {H(A)07/34}.  
 25 **MRS JUSTICE GLOSTER:** Thank you.

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1 **THE WITNESS:** Yes.  
 2 **MR SUMPTION:** Have you got that open?  
 3 **A.** Mm-hm.  
 4 **Q.** Now, you will see under the table what is said is this:  
 5 "FNK" --  
 6 **A.** Just a second. 44, yes?  
 7 **Q.** Correct -- no, not 44, 34.  
 8 **A.** 34, sorry.  
 9 **Q.** Page 34.  
 10 **A.** 34. Just a second. Yes.  
 11 **Q.** Under the table you will see a paragraph beginning  
 12 "FNK".  
 13 **A.** Yes.  
 14 **Q.** Right.  
 15 "FNK, SINS, Refine Oil and Runicom... [it says] are  
 16 all privately held companies and have close connections  
 17 with the current management of Sibneft. As such, more  
 18 than 97% of the Company is currently controlled by the  
 19 Company's managers and a small group of private Russian  
 20 investors. An influential Russian figure, Boris  
 21 Berezovsky, who is currently the Deputy Secretary of the  
 22 Security Council of the Russian Federation, served on  
 23 Sibneft's Board of Directors until October 1996 and was  
 24 chairman of NFK when it won the right to manage 51% of  
 25 Sibneft's shares in the loan-for shares programme.

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1 Mr Berezovsky does not own or control, or have any other  
 2 interest in, any shares in Sibneft, directly or  
 3 indirectly. He does, however, maintain a close  
 4 relationship with certain members of the senior  
 5 management and the Board of Directors of the company."  
 6 Now, that was the statement made about you --  
 7 **A.** Yes.  
 8 **Q.** -- and your case in this action is that that statement  
 9 is wrong; is that right?  
 10 **A.** It's absolutely lie what is written here.  
 11 **Q.** Now, could you please take your own witness statement,  
 12 Mr Berezovsky.  
 13 **A.** Sorry?  
 14 **Q.** Would you please take up your -- keep that document  
 15 open, if you wouldn't mind.  
 16 **A.** Yes, open. I keep everything open.  
 17 **Q.** And take your own witness statement --  
 18 **A.** Yes.  
 19 **Q.** -- your fourth witness statement --  
 20 **A.** Yes.  
 21 **Q.** -- and turn to paragraph 196.  
 22 **A.** Yes. 196.  
 23 **Q.** Yes.  
 24 **A.** Yes.  
 25 **Q.** Forgive me, I've given you the wrong reference. You

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1 will have to give me a moment while I chase up the false  
2 reference, Mr Berezovsky. I'm sorry about that.  
3 **A.** No problem. I spend much more time than you finding  
4 something.  
5 **MRS JUSTICE GLOSTER:** Mr Berezovsky, is it easier for you to  
6 read in hard copy or on the screen? I'm just asking as  
7 a matter of general interest.  
8 **THE WITNESS:** I am reading now both. I have hard copy  
9 and -- it's not a problem.  
10 **MRS JUSTICE GLOSTER:** It's helpful to have it on the screen  
11 as well?  
12 **THE WITNESS:** Better, yes, if it's not a problem.  
13 **MRS JUSTICE GLOSTER:** Yes, certainly.  
14 **THE WITNESS:** Thank you. Thank you.  
15 **MR SUMPTION:** I'm sorry, Mr Berezovsky.  
16 **THE WITNESS:** Again, I'm just relaxing, it's nice.  
17 **MRS JUSTICE GLOSTER:** Do you want to come back to the point,  
18 Mr Sumption?  
19 **MR SUMPTION:** No, my Lady, I need to find it now. (Pause)  
20 I think I may have got a reference to Ms Nosova's  
21 statement instead but let's have a look. Yes, it's in  
22 Ms Nosova's statement --  
23 **A.** Just a second.  
24 **Q.** I wonder if you'll take bundle D1, which you may have  
25 put back.

1 **A.** Yes.  
2 **Q.** Ms Nosova was the witness who said you were consulted  
3 about this, or at least you told her that you were  
4 consulted.  
5 **A.** Just a second. Could you give me a reference?  
6 **Q.** Have you got paragraph 195 on page 149 {D1/09/149}?  
7 **A.** Yes, I have 19...  
8 **Q.** I've already taken you to paragraph 195.  
9 **A.** 195, correct.  
10 **Q.** Yes, where Ms Nosova says you told her that you'd been  
11 consulted about this before it was published. Okay?  
12 **A.** Okay.  
13 **Q.** What she says at 197 was:  
14 "I was not particularly concerned about the  
15 inclusion of this statement... I believed that, as  
16 a result of the 1996 Agreement, the statement was  
17 technically correct since Sibneft was held by  
18 Mr Abramovich."  
19 Now, was that your attitude, Mr Berezovsky, that it  
20 was technically correct?  
21 **A.** Again, it's statement of Mrs Nosova but I think that  
22 "technically" -- "technically" -- it means we need to  
23 ask Mrs Nosova what means "technically".  
24 **Q.** Mr Berezovsky, I'm asking you whether it was your  
25 attitude that it was technically correct.

1 **A.** No, no. I can't answer to that without understanding  
2 what Ms Nosova mean when she said "technically correct".  
3 **Q.** I think you can. Was it your understanding that the  
4 statement about you in the 1997 circular was technically  
5 correct? Did you think that?  
6 **A.** No, again, I'm sorry, I'm sorry, I don't try not to  
7 answer; I don't understand what means "technically  
8 correct". It's printed in proper way, the wording: what  
9 does mean "technically correct"?  
10 **MRS JUSTICE GLOSTER:** Mr Berezovsky, forget Ms Nosova's  
11 statement. Did you think what was said in the circular  
12 was correct about --  
13 **A.** In circular, you mean this one (indicates)?  
14 **MRS JUSTICE GLOSTER:** Yes.  
15 **A.** No, it's not correct.  
16 **MR SUMPTION:** Could you please -- again leave the circular  
17 open, would you, and --  
18 **A.** Just I should take circular again, yes?  
19 **Q.** Just leave it open. I'm going to ask you about another  
20 document.  
21 **A.** Okay. And Mrs Nosova, can I take away or --  
22 **Q.** You can put Ms Nosova away.  
23 **A.** Thank you.  
24 **Q.** Sorry, you can put her witness statement away.  
25 **A.** I can't imagine that you have the other sense of that,

1 what is that.  
2 **Q.** Right. I wonder if you could take up bundle  
3 {H(A)95/244}. Just to show you what it is, if you look  
4 at page 239, you will see the beginning of the document.  
5 **A.** 239?  
6 **Q.** 239. That tells you --  
7 **A.** Just a second. What is that? What is this document?  
8 **Q.** I'll tell you if you will listen.  
9 **A.** Yes, sorry.  
10 **Q.** At page 239 you can see that this is Michelle Duncan's  
11 notes of the Tel Aviv meetings with Badri in  
12 November 2007. All right?  
13 **A.** It's written here like that, yes.  
14 **Q.** Yes. Michelle Duncan was a solicitor from Cadwaladers,  
15 your solicitors at the time, wasn't she?  
16 **A.** Yes.  
17 **Q.** You were present at this meeting between Cadwaladers and  
18 Badri, as we can see.  
19 **A.** Yes.  
20 **Q.** Right?  
21 **A.** Correct.  
22 **Q.** And various statements are in fact attributed to you in  
23 it.  
24 **A.** Sorry --  
25 **Q.** The one I'm interested in is page 244. All right?

1 A. But, sorry, the sentence before you said?  
 2 Q. Please turn to page 244.  
 3 A. Yes.  
 4 Q. About six lines down, you will see a heading which says  
 5 "Eurobond Prospectus".  
 6 A. Just a second. From the top, six lines down?  
 7 Q. About. Do you see the heading "Eurobond Prospectus"?  
 8 A. Yes, yes. I have seen this paper, yes.  
 9 Q. Right. Now, in the left-hand margin you will see the  
 10 initials BB, which is you.  
 11 A. Yes, yes.  
 12 Q. And what you are recorded as saying to the solicitors  
 13 is:  
 14 "RA asked me to do this."  
 15 A. Yes.  
 16 Q. "He said we [shouldn't] public[ly mention] that [you]  
 17 are there.  
 18 "If you are ment[i]oned could] reduce value of  
 19 [company]."  
 20 A. Yes.  
 21 Q. That's what you said to Ms Duncan --  
 22 A. No, no, just a second. It's what Michelle Duncan put in  
 23 this paper; it's not what I said to her.  
 24 Q. The reason she put it in the paper, Mr Berezovsky, is  
 25 that you said it.

1 A. I, unfortunately, have examples, and we may discuss it  
 2 later or now, when -- and not one example -- that when  
 3 you -- when the solicitors are making notes, it does not  
 4 mean that they correctly note what you said at the  
 5 meeting.  
 6 Q. Mr Berezovsky, it's quite obvious, isn't it, that you  
 7 told this to Michelle Duncan? It's exactly the same as  
 8 what Ms Nosova says in her witness statement happened.  
 9 A. Again, again, I want to repeat again and again: what  
 10 I present to you is my understanding and my recollection  
 11 of my connection to Mr Abramovich and to Mr Shvidler,  
 12 and again I would like to stress that I never have seen  
 13 this document before witness statement of Mr Shvidler  
 14 which he gave in France.  
 15 Q. Two people have independently said that you were  
 16 consulted about this document by Roman Abramovich:  
 17 Ms Nosova has said so and you confirmed that to  
 18 Ms Michelle Duncan in 2007.  
 19 A. Once more: I did not consult anybody concerning  
 20 Eurobonds certificate.  
 21 **MRS JUSTICE GLOSTER:** Can I be clear, Mr Berezovsky: the  
 22 question that was put to you was that you were consulted  
 23 about this document by Mr Abramovich. It's not that --  
 24 A. Oh yes. Sorry, sorry, sorry, my Lady. It's my... I was  
 25 not consulted by Mr Abramovich, yes? I was informed by

1 Mr Abramovich that this is the certificate to get credit  
 2 on the market for Sibneft company. That's it. And he  
 3 said that, "We worry about that Sibneft strong connect  
 4 to you". I said, "Roman", I don't remember, "Roman",  
 5 I said, I don't remember, "Roman" -- I said that  
 6 I completely share their position to obtain the credit  
 7 and, you know, "My position, it's clear that I am --  
 8 I hold -- you hold my shares, but put in the way which  
 9 you like to put but without damaging me".  
 10 Because, my Lady, if you allow me to compare what  
 11 Mr Shvidler wrote in his witness statement and the paper  
 12 which he supplied to his witness statement, it will be  
 13 completely different what's written in the certificate.  
 14 And this is the point.  
 15 **MRS JUSTICE GLOSTER:** Yes, I see.  
 16 A. Moreover, my Lady, I'm sorry that I maybe take your time  
 17 more, but it's very important that if we refer to this  
 18 certificate, yes, and read this sentence which  
 19 Mr Sumption insists, we see there that it's written that  
 20 I was chairman of NFK, yes?  
 21 **MRS JUSTICE GLOSTER:** Yes.  
 22 A. On the other hand, in his personal witness statement  
 23 which Mr Shvidler signed for the purpose of this trial,  
 24 it's written completely different: it's written that  
 25 I never have been really a chairman of the NFK. And

1 it's exactly the question how it's possible to present  
 2 certificate for obtaining money on the market falsifying  
 3 the reality. This is the question.  
 4 **MRS JUSTICE GLOSTER:** Thank you.  
 5 **MR SUMPTION:** Mr Shvidler in his witness statement was in  
 6 fact talking about Sibneft and not NFK but I don't want  
 7 to get diverted into details that have no bearing on the  
 8 point I'm putting to you, Mr Berezovsky.  
 9 The point I'm putting to you is this: you, at the  
 10 time, were asked about the circular because it contained  
 11 a paragraph about you, and you were consulted about it  
 12 and agreed it. Now, you've denied that and I suggest to  
 13 you that you are deliberately lying about that because  
 14 you can see how damaging the statement is to the case  
 15 that you are making in this action.  
 16 A. Look, Mr Sumption, it's completely opposite. I explain  
 17 you again. You don't want maybe to understand what  
 18 I try to present to you.  
 19 For me it was the best if this certificate in this  
 20 way was presented to Forbes magazine. It stressed that  
 21 I don't have any connection to Sibneft at all and it's  
 22 very -- it could be very useful for me. But I insist  
 23 when I have seen this certificate that Mr Shvidler put  
 24 in his witness statement the reality and not dream, yes?  
 25 And if you see the difference between what is written

1 here and the Shvidler statement to Forbes magazine, you  
 2 will recognise immediately that he is lying.  
 3 **Q.** What Mr Shvidler said in his witness statement in the  
 4 Forbes litigation was that you had no shareholding.  
 5 That is --  
 6 **A.** It's correct.  
 7 **Q.** And that is the point that is being made here but in  
 8 more emphatic terms. What is being said here is that  
 9 you had no shareholding or any other interest.  
 10 **A.** Yes, it's fine. I accept that.  
 11 **Q.** Now, Mr Abramovich did not ask you to agree to that on  
 12 the basis that he shouldn't mention your connection; he  
 13 asked you to agree it full stop, didn't he, and you did?  
 14 **A.** Again, Mr Abramovich/Mr Shvidler never present me this  
 15 document; they just inform me about their certificate  
 16 and they just inform me that, "Boris, we should distance  
 17 from you in this certificate".  
 18 On the other hand, as I told you already, that  
 19 I have seen this certificate the first time in France  
 20 and it would be very useful for me to present exactly  
 21 that wording for Forbes magazine, to show that I don't  
 22 have anything with this company, but I insist to present  
 23 the truth, not what was written there. And I already  
 24 proved you that it's lie here because I have been the  
 25 chairman of Sibneft -- of NFK and Shvidler never

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1 mentioned that I have been chairman of Sibneft in his  
 2 witness statement.  
 3 Moreover, Mr Sumption -- I'm sorry, my Lady --  
 4 **MRS JUSTICE GLOSTER:** No, that's fine, Mr Berezovsky.  
 5 **A.** Because it's very important. It's very important, one  
 6 point more.  
 7 **MRS JUSTICE GLOSTER:** Yes, I've got the point.  
 8 **A.** When I start to investigate this document in details,  
 9 it's written -- but I took your time, I'm sorry, when  
 10 I start to take page by page. Could you find there  
 11 reference to member of the board, to member of the board  
 12 of NFK or Sibneft? I don't remember. Could you find  
 13 this page?  
 14 **MRS JUSTICE GLOSTER:** No, your counsel in re-examination, if  
 15 he thinks it's appropriate --  
 16 **MR SUMPTION:** Mr Berezovsky --  
 17 **MRS JUSTICE GLOSTER:** Just a second, Mr Sumption -- will  
 18 take you back to it. So let Mr Sumption continue,  
 19 please.  
 20 **THE WITNESS:** Okay, sorry.  
 21 **MR SUMPTION:** Right. I imagine you've had enough of that  
 22 document, Mr Berezovsky. Let me show you another one:  
 23 {H(A)12/185}.  
 24 **THE WITNESS:** My Lady? My Lady?  
 25 **MRS JUSTICE GLOSTER:** Yes.

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1 **THE WITNESS:** Could I mention just I think it's important  
 2 for general understanding, it's only the reason why  
 3 I try to put your attention to this document because  
 4 this document is completely falsified. It is important  
 5 to understand. Because when Abramovich mentioned as  
 6 a member of the board, it's written there that he  
 7 graduated from Moscow Road Institute. If you find his  
 8 biography which he presented in front of you in his  
 9 witness statement, nothing mentioned about Institute of  
 10 Roads. And this --  
 11 **MRS JUSTICE GLOSTER:** Mr Berezovsky, can I just say we've  
 12 got a lot to get through of.  
 13 **THE WITNESS:** I see, sorry.  
 14 **MRS JUSTICE GLOSTER:** These are the points that no doubt  
 15 your counsel will be raising with Mr Abramovich in  
 16 cross-examination --  
 17 **THE WITNESS:** Okay, okay. Yes.  
 18 **MRS JUSTICE GLOSTER:** -- if he thinks it's appropriate to do  
 19 so. I don't want to cut you off if you've got something  
 20 but points like that..  
 21 **THE WITNESS:** Sorry, sorry. I just want --  
 22 **MRS JUSTICE GLOSTER:** You say it's a false document because  
 23 there is Mr Abramovich, you say, saying something about  
 24 himself that isn't correct?  
 25 **A.** Absolutely correct.

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1 **MRS JUSTICE GLOSTER:** I see. Thank you.  
 2 **MR SUMPTION:** Now, Mr Berezovsky, perhaps you would take  
 3 {H(A)12/185}.  
 4 **A.** Sorry?  
 5 **Q.** {H(A)12/185} is what I think you've just been given.  
 6 **A.** Yes, sorry.  
 7 **Q.** Now, this is the English version and in my bundle, and  
 8 I hope in yours, there's a yellow bundle behind with  
 9 Russian text in it.  
 10 **A.** Yes.  
 11 **Q.** Okay?  
 12 **A.** Thank you very much.  
 13 **Q.** Now, this is an extract from Kommersant newspaper, which  
 14 is a newspaper that you owned by 1999, wasn't it? Yes?  
 15 **A.** It depends on -- yes, I think so, yes.  
 16 **Q.** Well, you think you owned it?  
 17 **A.** Just a second. What time -- I don't remember when we  
 18 buy Kommersant, when we bought. Just a second.  
 19 **Q.** Well, I thought it was in early 1999. But never mind  
 20 whether you owned it or not; we can check that. Just  
 21 look at the text.  
 22 **A.** Yes.  
 23 **Q.** Reading from the English, about halfway through the  
 24 first paragraph, this is an extract from an interview  
 25 with the newspaper that you gave. Do you see that?

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1 A. Just a second. Yes.  
 2 Q. The interviewer asks you:  
 3 "There are rumours that the main shareholders of  
 4 'Sibneft'... were established with your direct  
 5 participation and that you owned significant stakes in  
 6 these companies. Now 'Sibneft' claims that you are not  
 7 its shareholder neither as an individual, nor as  
 8 a founder of any co-owning companies. Who received the  
 9 shares in 'Sibneft' previously owned by you?"  
 10 Then your answer is as follows:  
 11 "I was participating in setting-up of 'Sibneft' as  
 12 a lobbyist, not being a shareholder of that company.  
 13 I lobbied the idea, the concept of establishment of such  
 14 a company, that I believe is right. In my view  
 15 'Sibneft' is at present one of the best oil companies...  
 16 I am not a member of the board of directors... I was  
 17 never involved in managing this company."  
 18 Now, one of the things you say in that interview --  
 19 A. Yes.  
 20 Q. -- is that you were not a shareholder of that company.  
 21 A. It's correct.  
 22 Q. Sibneft.  
 23 A. It's correct.  
 24 Q. And you weren't, were you?  
 25 A. No, again, my shareholder -- Roman Abramovich was

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1 holding my shares. It means that I was not shareholder.  
 2 Q. The interviewer is interested in establishing your  
 3 connection with the company. You did not say that you  
 4 had an interest in any shares, did you, which is what  
 5 you're saying in this litigation?  
 6 A. If it's written -- if I didn't mention that time that,  
 7 it means that I didn't mention that time that. And what  
 8 does...  
 9 Q. Could we look at {H(A)13/111}, please. You haven't got  
 10 it yet but somebody will give it to you in a minute.  
 11 You can put away H(A)12.  
 12 A. Thank you. And the file with Michelle Duncan, I need to  
 13 keep that still?  
 14 Q. No, you can put that away.  
 15 A. Thank you.  
 16 Q. All you need to have with you now is bundle H(A)13 and  
 17 the bundle with your witness statement in it. Just to  
 18 show you the beginning of this document, the beginning  
 19 of it is page 106 {H(A)13/106}. Look at page 106. You  
 20 need to turn back a few pages, Mr Berezovsky.  
 21 A. Just to make it clear, I want -- because it's two  
 22 specification, yes? One specification, it's in the  
 23 right --  
 24 Q. {H(A)13/106}.  
 25 MRS JUSTICE GLOSTER: So the bottom right-hand corner.

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1 THE WITNESS: Yes. 106, yes?  
 2 MRS JUSTICE GLOSTER: Yes.  
 3 THE WITNESS: Just a second.  
 4 MR SUMPTION: I'm just showing you this so you can see what  
 5 the document is.  
 6 A. Yes.  
 7 Q. Now, this document comes from a book called "The Art of  
 8 the Impossible".  
 9 A. Yes.  
 10 Q. Now, that is a collection of articles and interviews and  
 11 speeches by you, isn't it?  
 12 A. It's correct. Again, I ask you very much: if it's  
 13 something in Russian, I ask you to present me in  
 14 Russian, please.  
 15 Q. Did you write this book in English or in Russian?  
 16 A. No, definitely -- I even did not write this book.  
 17 Q. Well --  
 18 A. As you correctly mentioned before, it's just collection  
 19 of some of my interviews and so different occasions.  
 20 And this -- I'm sorry, put me the question. Could you  
 21 allow me to answer?  
 22 Q. It's a three-volume collection of interviews published  
 23 in English, isn't it, though no doubt the interviews  
 24 were originally given in Russian?  
 25 A. You don't give me to answer unfortunately, my Lady. I'm

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1 not in rush, I'm sorry to say, yes, I don't have any  
 2 commitment. And I just want to mention that this book  
 3 was issued as a collection of my interviews in Russian  
 4 and in English but I think 95 per cent in Russian, maybe  
 5 5 per cent in English, and that was translated into  
 6 English.  
 7 And as far as translation is concerned, I already  
 8 mentioned: if we discuss something in Russian, what is  
 9 possible to obtain in Russian, I ask you very much to  
 10 help me to present the truth here and I need to have it  
 11 in Russian.  
 12 MRS JUSTICE GLOSTER: Just a second, Mr Berezovsky.  
 13 MR SUMPTION: Would you see --  
 14 MRS JUSTICE GLOSTER: No, just a second, Mr Sumption,  
 15 please.  
 16 Was this book published in English?  
 17 A. This book was published in English as well.  
 18 MRS JUSTICE GLOSTER: Okay. Well, in the first instance I'm  
 19 going to permit Mr Sumption to take you to the English  
 20 paragraph, then if you want to look at the Russian  
 21 edition, either what's on the screen can be translated  
 22 to you or alternatively you can have your attention  
 23 directed to the Russian. Okay?  
 24 THE WITNESS: Absolutely, my Lady. Absolutely.  
 25 MRS JUSTICE GLOSTER: Right.

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1 Now, Mr Sumption, please can you ask the question by  
 2 reference to the English paragraph in the first  
 3 instance.  
 4 **MR SUMPTION:** Can I first of all establish from the witness  
 5 whether {H(A)13/106R}, which is the yellow section  
 6 immediately afterwards, is in fact the Russian version?  
 7 **A.** Just a second. We discuss the same thing.  
 8 **Q.** Mr Berezovsky, there is a Russian document immediately  
 9 after this --  
 10 **A.** Ah, I see.  
 11 **Q.** -- which may be a translation --  
 12 **A.** Great. Thank you very much.  
 13 **Q.** -- into Russian of this document, or of the original  
 14 Russian rather.  
 15 **A.** Yes, okay. Fine.  
 16 **Q.** Can you just confirm whether it is or not? My Russian  
 17 isn't good enough for that. Do you see --  
 18 **A.** We'll check it now together.  
 19 **Q.** Right. Do you see 106R?  
 20 **A.** Sorry?  
 21 **Q.** Look at page 106R, the first of the yellow pages. Look  
 22 at the heading on the top and tell me whether this is  
 23 a Russian version of the article that begins at  
 24 page 106.  
 25 **A.** The title is the same.

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1 **Q.** Okay. Well, then can we assume that it is? That may  
 2 solve your problem.  
 3 **A.** Yes.  
 4 **Q.** Right.  
 5 Now, I want to ask you about something which in the  
 6 English version is on page 111. If you look at  
 7 page 110, you'll see a heading:  
 8 "Politics is the best investment."  
 9 Page 110, right?  
 10 **A.** Yes.  
 11 **Q.** Now, would you please find that heading for me in the  
 12 Russian.  
 13 **A.** I'm sorry. Mr Sumption, I ask you very much: I try to  
 14 present my statement in English, you understand my  
 15 English is not sufficient enough to be in hurry at the  
 16 same time and you agree to put correct question, yes,  
 17 and I need to give you correct answers. Don't push me,  
 18 please, okay? Thank you very much.  
 19 **Q.** Mr Berezovsky, it sometimes helps if one is allowed to  
 20 finish explaining where to find the relevant part.  
 21 **MRS JUSTICE GLOSTER:** Right. Can we have the page number in  
 22 English, please, first.  
 23 **MR SUMPTION:** Could you please find -- page 110 is where  
 24 you'll find the English heading.  
 25 **A.** Yes.

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1 **Q.** You'll see a heading, "Politics is the best investment".  
 2 **A.** Yes, I will find that in Russian.  
 3 **Q.** Can you please find that in the Russian text. (Pause)  
 4 **A.** There is not subtitles, I'm sorry.  
 5 **Q.** I wonder if the interpreter could help.  
 6 **A.** No, no, just a second.  
 7 **MR RABINOWITZ:** My Lady, he might try 110R.  
 8 **MRS JUSTICE GLOSTER:** 110R.  
 9 **A.** The same page, yes. Just a second. "Politics is the  
 10 best investment".  
 11 **Q.** Right?  
 12 **A.** Yes, I've got it. Sorry.  
 13 **Q.** In the English, about eight lines down from that  
 14 heading, there's a question from Mr or Ms Gevorkyan  
 15 which begins in the English:  
 16 "Among visible benefits that Berezovsky received..."  
 17 Can you find that, please.  
 18 **A.** Yes, yes.  
 19 **Q.** All right?  
 20 **A.** Yes.  
 21 **Q.** Now, that says:  
 22 "Among visible benefits that Berezovsky received  
 23 from the new government is the return of the Iran oil  
 24 quota to Sibneft. Or was that a gift to Abramovich?  
 25 "I am not a Sibneft [share]holder, and I have said

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1 that many times, although I was lobbying the creation of  
 2 this company, and I have strategic interests within this  
 3 company and in relation to it."  
 4 Again, you explained that your role was in the  
 5 creation of the company and not in relation to the  
 6 holding of its shares, didn't you?  
 7 **A.** I don't see -- just a second.  
 8 It's absolutely correct precisely wording here and  
 9 I don't have any, let's say, anything what worry me that  
 10 I said something wrong here. But I ask you nevertheless  
 11 to understand the context of everything what we're  
 12 discussing. It's my principal political position,  
 13 moreover.  
 14 **Q.** Now, you can put away bundle H(A)13 and I wonder if you  
 15 could be given bundle {H(A)36/187}.  
 16 **A.** This one I put away at all?  
 17 **Q.** Yes, please.  
 18 **A.** Thank you.  
 19 **Q.** Now, this is from the Moscow Times of 28 June 2001.  
 20 That is a newspaper that is published in English, isn't  
 21 it?  
 22 **A.** Just a second. 2000 -- which month?  
 23 **Q.** 28 June 2001.  
 24 **A.** I just want to recollect where I had been that time and  
 25 what is that for me, to comment correctly.

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1 Q. Well, the question I asked you is: can you confirm the  
2 Moscow Times is an English-language newspaper?  
3 A. Moscow Times is English -- yes, because it's now New  
4 Times in Russian, but Moscow Times is English newspaper.  
5 Q. Yes.  
6 Now, this came out on 28 June 2001 and if you look  
7 at the beginning of the article:  
8 "Boris Berezovsky announced Wednesday that he owns  
9 half of Sibneft, backing away from earlier contradictory  
10 statements that he either owns 7 per cent of the No. 6  
11 oil company or no stake at all."  
12 Now, do you remember announcing shortly before  
13 28 June 2001 that you owned half of Sibneft?  
14 A. Again, I'm really -- it's important for me to understand  
15 when it was done this statement -- this interview, I'm  
16 sorry.  
17 Q. Well, it was published on 28 June 2001.  
18 A. It means that the time when I already left Russia and  
19 based already in England, correct, yes.  
20 And, okay, look, if you -- okay, I try to be short:  
21 put the question and I'll answer.  
22 Q. Did you announce shortly before 28 June 2001, the  
23 Wednesday before this was published, that you owned half  
24 of Sibneft?  
25 A. I think that it's absolutely correct what is written

1 here.  
2 Q. And was it right, as the newspaper observes, that that  
3 was contradictory with your earlier statements on the  
4 subject?  
5 A. I think it's absolutely correct, that it's  
6 contradictory.  
7 Q. Yes. You will see a bit further down, three-quarters of  
8 the way down the column --  
9 A. Yes.  
10 Q. -- that:  
11 "Sibneft strongly denied Berezovsky's declaration.  
12 "'Boris Berezovsky does not directly or indirectly  
13 own any stake in Sibneft,' a company spokesman said."  
14 Now, you will agree, I imagine, that you have said  
15 a variety of different things about your interest in  
16 Sibneft; sometimes that you had one, sometimes that you  
17 had a small one, sometimes that you had none at all?  
18 A. You're absolutely correct, and any time I can absolutely  
19 clear explain why it's happened so.  
20 Q. Right.  
21 A. Yes, I can explain.  
22 Q. Very well. Go ahead.  
23 A. Yes, exactly this or because it's mainly controversial  
24 -- contradicted statement, and as far as this is  
25 concerned, I can -- it's the reason why I asked you what

1 time it was written.  
2 It was written -- interview was done when I already  
3 had been in immigration in London, I was looking for  
4 political asylum here, and Roman Abramovich -- and this  
5 is the case -- threat me and I had to sell the company  
6 undervalued and at that time they only start to pay us  
7 what was agreed, Badri and Roman, 1.3. And I made this  
8 statement just because Badri asked me not to present the  
9 position that we are already out of the company because  
10 if we present the position that we're out of the  
11 company, Roman may stop to pay and will have clear,  
12 let's say, reference that we accept this position.  
13 And it means -- and it's important for, I think, our  
14 future days to understand -- that after Roman betrayed  
15 me and after they put in jail my friend Nikolai,  
16 I accept all of them like enemies. It means that, for  
17 me, it already was not lie; it's disinformation, yes?  
18 And you, as a specialist in war, understand excellent  
19 what is the difference between lie and disinformation,  
20 when you understand that in front of you there are  
21 people who want to kill you, who want to squeeze you,  
22 and you are trying to protect you, disinform them.  
23 This is my position. I don't know how, my Lady, you  
24 estimate this position, but it's absolutely clear what  
25 I understand that time.

1 Q. How would it help to prevent people from killing you or  
2 attacking you to say that you owned half of Sibneft?  
3 That's what you said in June.  
4 A. It's funny, okay, but nevertheless I did not -- now  
5 I mentioned only that it's protect -- according to,  
6 again, of Badri understanding -- it's protect us to be  
7 paid after we already agreed to sell our shares to  
8 Roman Abramovich.  
9 Because, as you know, the payment was done not in  
10 the second and if it's June 2001, it means that it's  
11 exactly the time or almost the time when we signed --  
12 agreement was -- when we signed agreement with sheikh  
13 because it was request of Abramovich to do so, it  
14 doesn't matter when it's done, I am sure late on, and we  
15 didn't get -- didn't get money, at least all money; we  
16 got it just at the beginning of 2003.  
17 Q. Mr Berezovsky, almost every statement you've made in  
18 that last answer is untrue. Let me go through them.  
19 First of all, you had signed the Devonia agreement  
20 on 5 June, about three weeks before this, hadn't you?  
21 A. It's correct. It's exactly.  
22 Q. Yes. Now, the Devonia agreement was in fact -- we're  
23 going to have to deal with it, I'm afraid, at some  
24 length in a later stage of your cross-examination -- an  
25 agreement under which you said that you were selling

1 your interest to Devonian, the sheikh's company, wasn't  
 2 it?  
 3 **A.** I don't remember well, but I think we discuss about --  
 4 I don't remember -- we discuss about interest in this  
 5 paper or our shares which Roman was holding. But if you  
 6 show me agreement, I may comment that. But the point  
 7 is -- principal point is that we sold our interest.  
 8 **Q.** The Devonian agreement, Mr Berezovsky, was simply  
 9 a document produced in order to persuade Clydesdale Bank  
 10 to accept your money, wasn't it?  
 11 **A.** I don't know anything about that. I just know that  
 12 Roman want not -- did not want to pay us directly and it  
 13 was not the first time that he already paid dividends,  
 14 as I remember, from Sibneft or from Rusal -- I don't  
 15 remember well -- using the same way. He paid for ORT  
 16 using the same way.  
 17 And as I know, as I know, in spite -- I very  
 18 attentively listened to your skeleton and it really  
 19 produced for me impression that if I really saw, let's  
 20 say, money-laundering professional and so, why, after  
 21 investigation in Switzerland for years, after  
 22 investigation in Holland for years, after investigation  
 23 which I present all my papers in London for  
 24 Pricewaterhouse, I don't have any problem with that  
 25 money, if it's so?

1 **Q.** Mr Berezovsky, the reason why you made this statement --  
 2 we'll come to this in greater detail in due course -- at  
 3 this stage is that you were saying that you owned half  
 4 of Sibneft publicly because that is what you had said to  
 5 Clydesdale Bank?  
 6 **A.** Believe me, at that time I even -- I don't think that  
 7 I knew at that time -- maybe I knew about that but  
 8 I don't have any reason for Clydes Bank because, as  
 9 I know, later on Clydes Bank ask me to move my money to  
 10 another bank but -- and we ask -- and you ask, I think,  
 11 to disclose Clydes Bank the reason, and maybe you  
 12 already got this paper, and I don't have any problem  
 13 with that.  
 14 **Q.** Mr Curtis, who was your solicitor, sent a copy of this  
 15 article to Clydesdale Bank as part of his dossier to  
 16 show that you had an interest in Sibneft.  
 17 **A.** Unfortunately we are not able to ask the reason why  
 18 Mr Curtis said that, but okay. And what? And why it's  
 19 so criminal?  
 20 **Q.** It seems very odd, Mr Berezovsky, that you always denied  
 21 owning any share in Sibneft before 2001. The first time  
 22 that you claim to have owned half of Sibneft in public  
 23 is this document when, on your own case, you had just  
 24 parted with it.  
 25 **A.** Just a second. Let's try to become precise. "Half of

1 Sibneft", it doesn't mean half shares. If it's written  
 2 half shares, I also accept to discuss that. But could  
 3 you point me where it's written "half shares"?  
 4 **Q.** What the paper says is you own half of Sibneft.  
 5 **A.** Ah, it's better.  
 6 **Q.** Now, what I'm putting to you is this, Mr Berezovsky.  
 7 You consistently denied owning Sibneft or any part of  
 8 Sibneft before 2001. The first occasion when you  
 9 publicly say that you own half of Sibneft comes after,  
 10 on your case in this action, you had parted with it.  
 11 **A.** Mr Sumption, I -- we really are preparing to talk long  
 12 time, days. I just want -- my Lady, I just want to take  
 13 three minutes --  
 14 **MRS JUSTICE GLOSTER:** No, could you just answer the  
 15 question, please, Mr Berezovsky. You're not here, I'm  
 16 afraid, to give speeches.  
 17 **THE WITNESS:** Yes, yes.  
 18 **MRS JUSTICE GLOSTER:** Just answer the question, and  
 19 obviously you must have as much time as you want to  
 20 answer the question, but please do that.  
 21 **THE WITNESS:** Okay. Could you put again the question?  
 22 **MR SUMPTION:** What I'm suggesting to you, Mr Berezovsky --  
 23 and the reason I'm suggesting it to you is that this is  
 24 the submission I will be making to her Ladyship in due  
 25 course and I'm giving you an opportunity to say what you

1 want to say about it -- is that you consistently denied  
 2 publicly having any shareholding in Sibneft before 2001.  
 3 The first time that you publicly claimed to have  
 4 a shareholding in Sibneft was after the date when, in  
 5 this action, you claim to have parted with it?  
 6 **A.** Okay. The reason why I publicly didn't present that  
 7 because of my agreement '97 with Roman Abramovich, where  
 8 we agreed that I distance from the company because of my  
 9 political exposure.  
 10 After I left Russia, I didn't have -- and after  
 11 Abramovich threat me, I didn't have any obligation in  
 12 front of Abramovich to keep the position the same. And  
 13 it's reason why I -- because I just took time that  
 14 I didn't remember, did I own it before tell that, but  
 15 you help me really. My position changed publicly just  
 16 because of one reason: Abramovich was not more my  
 17 friend, we become enemy unfortunately, and I didn't have  
 18 any obligations in front of him.  
 19 **MR SUMPTION:** My Lady, I'm going to move to a slightly  
 20 different topic. If your Ladyship was thinking of  
 21 taking a break?  
 22 **MRS JUSTICE GLOSTER:** Very well. I'll take ten minutes,  
 23 Mr Berezovsky.  
 24 **THE WITNESS:** Thank you, my Lady.  
 25 (2.55 pm)

1 (A short break)  
 2 (3.05 pm)  
 3 **MR SUMPTION:** Mr Berezovsky, I want to go back to the  
 4 beginning of the story and ask you some questions about  
 5 the agreement that you say that you made with  
 6 Mr Abramovich in 1995.  
 7 **A.** Do we need that (indicates) more?  
 8 **Q.** You will need your witness statement but you will not  
 9 need, for the moment, anything else. If you want to get  
 10 rid of the purple volume, please do.  
 11 Now, when do you say that you agreed with  
 12 Mr Abramovich and Mr Patarkatsishvili that you would  
 13 share whatever interest was acquired in Sibneft? When  
 14 was that in 1995?  
 15 **A.** It was before presidential decree '95 about creation of  
 16 Sibneft.  
 17 **Q.** That was on 24 August. Can you be a bit more precise?  
 18 How long before?  
 19 **A.** I think we discussed that before, I think -- maybe  
 20 a couple of weeks before that we already find this --  
 21 because, as you know, we discussed long time generally,  
 22 creation and then how to participate, maybe two weeks  
 23 before decree.  
 24 **Q.** Now, you had actually begun to lobby the Russian  
 25 government in support of Mr Abramovich's project much

1 earlier in the year, hadn't you, around February?  
 2 **A.** It was not Abramovich project, as I tried to mention to  
 3 you. It was project of Viktor Gorodilov, general  
 4 manager of Sibneft, who wrote directly precisely.  
 5 **Q.** I'm not asking you about that aspect. I'm interested in  
 6 the date.  
 7 **A.** Yes, but you're putting your question the second time,  
 8 the same story, and I want to be precise with that.  
 9 We start to discuss the project at the end of '94  
 10 and all the time up to decree of president, the creation  
 11 of Sibneft. It's correct.  
 12 **Q.** Now, as I understand it, in February 1995 you were  
 13 involved, you say, in the writing of a letter from  
 14 Mr Gorodilov, Mr Viktor Gorodilov --  
 15 **A.** Correct.  
 16 **Q.** -- who was the general manager of the Noyabrskneftegas  
 17 business in Siberia, wasn't he?  
 18 **A.** Correct.  
 19 **Q.** Now, as I understand it, in February you were involved  
 20 in a letter that he wrote to President Yeltsin with  
 21 a proposal for the privatisation of the company of which  
 22 he was the general manager.  
 23 **A.** It is correct.  
 24 **Q.** Right. You were involved with that because it was an  
 25 early stage of your own lobbying process with the

1 Russian government, wasn't it?  
 2 **A.** It's correct. And thank you very much that you don't  
 3 use "krysha" word; it's lobbying, that's correct.  
 4 **Q.** And by spring 1995, as you tell us in your witness  
 5 statement, you were already discussing the project, or  
 6 discussing matters related to it, with Mr Yeltsin and  
 7 Mr Yumashev; we discussed that this morning.  
 8 **A.** I told precisely that I didn't discuss the project of  
 9 Sibneft with Mr Yeltsin.  
 10 **Q.** The point I'm making is this, Mr Berezovsky: you had  
 11 already started work on this project -- never mind whose  
 12 it was -- within six weeks or so of returning from  
 13 Mr Aven's cruise in the Caribbean, hadn't you?  
 14 **A.** I don't remember, six weeks or -- I think I start  
 15 immediately, even on the boat we start to discuss that.  
 16 **Q.** Okay. So you immediately started to set about trying to  
 17 persuade the Russian government to support this project?  
 18 **A.** First of all I tried to obtain more information about  
 19 what is there and, as I mentioned in my witness  
 20 statement, I met Viktor Gorodilov long time before --  
 21 not long time before -- I met him the first time in '91,  
 22 as I remember, and definitely I knew him and I want to  
 23 understand from the firsthand what it means.  
 24 **Q.** I'm just interested in the dates at the moment,  
 25 Mr Berezovsky.

1 Before you embarked on the process of trying to  
 2 persuade the Russian government to support the project,  
 3 you must have had some sort of understanding with  
 4 Mr Abramovich about the terms on which you were doing  
 5 it?  
 6 **A.** At the beginning, at the beginning, as I told you, the  
 7 first point was to discuss what is there, yes, to create  
 8 the company and only when it become more or less clear  
 9 that it's possible, definitely we start step by step to  
 10 discuss interest in the company which we plan to  
 11 privatise. And moreover that time already, as  
 12 I remember, was a decree of president which allowed to  
 13 privatise oil company.  
 14 **Q.** All I'm suggesting to you, Mr Berezovsky, is that even  
 15 if it wasn't the complete understanding, you must have  
 16 had some kind of understanding with Mr Abramovich right  
 17 at the outset, before you started trying to persuade the  
 18 Russian government to support this project?  
 19 **A.** I don't recollect that because it was absolutely clear  
 20 that to start -- I don't remember exactly when we start  
 21 to discuss this point but definitely not from the  
 22 beginning, it's absolutely clear. Moreover, I made in  
 23 my statement absolutely clear that Mr Aven and  
 24 Mr Fridman came to me asking me to stop my relations  
 25 with Abramovich when they recognised that it could be

1 successful. Because from the beginning, possible to  
 2 discuss, I believe that it's possible, definitely, but  
 3 it's not to believe that we have to share, "You have 50,  
 4 we have 50", it was not at that time.  
 5 **Q.** Could you look at paragraph 95 of your witness  
 6 statement, please.  
 7 **A.** Yes. 95?  
 8 **Q.** Yes.  
 9 **A.** 95, yes?  
 10 **Q.** Yes.  
 11 **A.** Just I want to be sure that it's my witness statement  
 12 because...  
 13 **Q.** Flag 17 is your witness statement.  
 14 **A.** Sorry?  
 15 **Q.** Flag 17 is your witness statement.  
 16 **A.** And page?  
 17 **Q.** Page 216 of the bundle, {D2/17/216}.  
 18 **MRS JUSTICE GLOSTER:** Paragraph 95.  
 19 **THE WITNESS:** 216, yes, sorry.  
 20 **MR SUMPTION:** All right? Now, what you say here is:  
 21 "From early in 1995 when I started working to bring  
 22 about the creation of Sibneft, it was accepted between  
 23 Badri, Mr Abramovich and me that the three of us would  
 24 work together as partners to acquire the company and  
 25 would then be partners in the company once we acquired

1 it."  
 2 Now, what I want to ask you is this. You say that  
 3 "was accepted"; was it actually discussed and agreed  
 4 from early in 1995?  
 5 **A.** Agreed of what: that we will be partners?  
 6 **Q.** What you say here.  
 7 **A.** Yes.  
 8 **Q.** You say this "was accepted" --  
 9 **A.** Yes, yes, I understand.  
 10 **Q.** Let me ask the question, Mr Berezovsky.  
 11 **A.** Sorry.  
 12 **Q.** You say this "was accepted" from early 1995. Was it  
 13 agreed from early 1995?  
 14 **A.** Again, I'm sorry, maybe I don't understand. What was  
 15 agreed? Could you tell me?  
 16 **Q.** Just read paragraph 95 to yourself.  
 17 **A.** Okay, thank you very much. (Pause)  
 18 Yes, it's correct.  
 19 **Q.** Now, when you say that these things were "accepted" from  
 20 early in 1995, are you saying that they were actually  
 21 agreed?  
 22 **A.** Yes, it was agreed.  
 23 **Q.** From early in 1995, you say that?  
 24 **A.** That we start to work to create, it's written to create,  
 25 and then if it will be created, the partner --

1 **Q.** Mr Berezovsky, listen carefully to my question, please.  
 2 Are you saying that it was actually agreed between  
 3 you, Mr Abramovich and Mr Patarkatsishvili from early  
 4 1995 -- and it's the date I'm interested in -- that the  
 5 three of you would work together as partners and would  
 6 be partners in the company once acquired? Are you  
 7 saying that that was actually agreed between you from  
 8 early 1995?  
 9 **A.** Yes, it was agreed. If we will be successful to create  
 10 the company, we'll be partners, and everything was  
 11 connected to create the company who also will be  
 12 partners, with obligations, what it means.  
 13 **Q.** When you say "From early in 1995", that must mean right  
 14 at the beginning in January when you embarked upon this  
 15 course; is that right?  
 16 **A.** I'm sorry, again? May I read the question? (Pause)  
 17 I don't remember it's exactly January, could be  
 18 January but, again, it was agreed that we will work as  
 19 partners to create the company and if it will be  
 20 successful, we'll own the company as partners. It's  
 21 correct.  
 22 **Q.** Do you know when Mr Abramovich first met  
 23 Mr Patarkatsishvili?  
 24 **A.** Very, very, very soon after I returned back from the  
 25 trip because Badri was my -- okay, I don't want to

1 explain. I answered the question. Sorry. Sorry, my  
 2 Lady, that I got a bit..  
 3 **Q.** Mr Abramovich says it was in March; do you agree with  
 4 that or disagree with it or are you neutral?  
 5 **A.** It's complicated. I don't think so because, as I told  
 6 you, Badri was my closest partner and my only one  
 7 closest partner at that time and I paid a lot of  
 8 attention to this project which Abramovich described me  
 9 and it's not natural that it took long -- so long time  
 10 that I wait to present him to Badri. But I can't  
 11 exclude that. I think it's not likely.  
 12 **Q.** Who was present when you agreed that the three of you  
 13 would work together as partners to acquire the company  
 14 and would then be partners in the company once you  
 15 acquired it?  
 16 **A.** I think that only three of us --  
 17 **Q.** Nobody else?  
 18 **A.** I don't recollect. I recollect there's Badri, Roman and  
 19 me.  
 20 **Q.** I'm not asking you for the exact words that were used,  
 21 but can you help us with the gist of them, the substance  
 22 of the words that were used?  
 23 **A.** Which we -- at that case, used in Russia all the time  
 24 that Badri -- first of all, okay, again, I don't  
 25 remember the details; it's a long, long time ago. But

1 my mainly understanding is that when I return back, and  
 2 Badri at that time managed -- we just start to create  
 3 ORT because, as you remember, the decree was issued of  
 4 ORT '94 -- and, my Lady, I am sorry that I will try to  
 5 pay attention to that because I have so-called parallel  
 6 life; this is the problem for me. The problem with  
 7 Sibneft was the beginning and the end of his life, yes?  
 8 And for me it was the other story, in parallel.  
 9 I just give you one example to pay attention to that  
 10 because I can't do it in different way. Sibneft  
 11 unfortunately was in -- not in the number one priority  
 12 for me, and I give you just simple example. On  
 13 12 May '97, when everybody enjoy -- and me as well --  
 14 that we won auction for 51 per cent of Sibneft, that  
 15 day, exactly that day, I have been with Yeltsin to sign  
 16 the peaceful agreement with Chechnya.  
 17 It means I want to stress it was not my life, this  
 18 Sibneft. It was priority, it was important, but it was  
 19 not even the second priority; the second was ORT. And  
 20 I just want to present that it's my truthful position,  
 21 not the other one. I just want...  
 22 **MRS JUSTICE GLOSTER:** Very well. I've got the picture.  
 23 **THE WITNESS:** I'm sorry.  
 24 **MRS JUSTICE GLOSTER:** No, no, I've got the picture. I think  
 25 the question you were being asked was -- well,

1 Mr Sumption, perhaps you can ask the question again.  
 2 **A.** The second was -- I'm sorry, that's my... Okay. I'm  
 3 sorry, Mr Sumption, could you...  
 4 **MR SUMPTION:** What I asked you was whether you could tell us  
 5 not the exact words -- that would be unrealistic -- but  
 6 what was the gist or substance --  
 7 **A.** The substance was --  
 8 **Q.** -- of what was actually said when you agreed?  
 9 **A.** Yes. The substance was I informed that I was excited by  
 10 young, clever man and the idea which he present to build  
 11 the oil company, as far as we had already idea to do  
 12 that but we didn't have power, we don't -- Badri managed  
 13 ORT and I just start to be involved in politics. And  
 14 I was happy that Mr Abramovich initiated, he initiated  
 15 this project in front of me, it's absolutely true, and  
 16 I was happy that he will organise all what can help us  
 17 together to build the project. And the words was very  
 18 simple: "Roman and Badri, I want that we move to this  
 19 project together as a partner to create. Roman will  
 20 take the bottom line, he will stay with the managers and  
 21 I was" -- it's important.  
 22 What most surprised me on the board, as far as  
 23 Abramovich is concerned, that I knew Gorodilov, Viktor,  
 24 before and he had very -- he has; he's still alive, and  
 25 I'm happy with that -- he has very strong character.

1 And when I tried to discuss with him in '91, the first  
 2 time met him, it was very complicated for me to convince  
 3 him to move to privatisation and so on. And when I met  
 4 Abramovich, I was really surprised. Being young, this  
 5 man tell me that he has very good relations with  
 6 Gorodilov, who I know, and that the relations, he  
 7 thinks, allow him to help to convince him to go to  
 8 privatisation.  
 9 This was my surprise, and it's exactly what  
 10 I described to Badri when we met and I think -- and  
 11 Badri was -- at the beginning he didn't understand well  
 12 what is that, but very soon he start to realise and we  
 13 start to meet step by step to think what to do. And it  
 14 is the reason why Mr Abramovich helped me to meet with  
 15 Mr Gorodilov and then Mr Alexeyevich(?), in other words  
 16 all parties which met together finally.  
 17 And that's the reason why I said that Mr Abramovich  
 18 was a middleman. It turned out only later on, when  
 19 Viktor Gorodilov discovered his statement in front of  
 20 Prosecutor Office, he said that, "It was my idea to  
 21 create Sibneft, not Mr Abramovich". He said this  
 22 directly, "It was my idea to create". At that time  
 23 I didn't recognise it, only after, during disclosure,  
 24 I recognised that Abramovich was the middleman between  
 25 me and the second party. But very -- but I don't want

1 to reduce role of Mr Abramovich, but he was not how he  
 2 presented him to myself at that time.  
 3 **MRS JUSTICE GLOSTER:** Yes, I see, thank you.  
 4 **THE WITNESS:** Thank you.  
 5 **MR SUMPTION:** Are you saying that it was your idea to  
 6 amalgamate the two Siberian businesses and not  
 7 Mr Abramovich's?  
 8 **A.** My idea what?  
 9 **Q.** What do you say was your idea in that last answer?  
 10 **A.** Again, I never said that my idea was to create Sibneft.  
 11 To create Sibneft, from the very beginning, came to me  
 12 from Mr Abramovich but presented him that it's his idea,  
 13 but it's turned out that it's not his idea; it's the  
 14 idea of Viktor Gorodilov. And he made it -- he even  
 15 said that Abramovich did not participate in creation of  
 16 Sibneft; it's the vision of Mr Gorodilov. My vision is  
 17 different. Abramovich participate, but as a middleman.  
 18 **Q.** Mr Abramovich brought this plan to you on your cruise in  
 19 the Caribbean in Mr Aven's yacht, didn't he?  
 20 **A.** Just a second. Correct.  
 21 **Q.** Now, your case is that you were entitled to have  
 22 25 per cent of the company as made, the exact proportion  
 23 being agreed, you think, sometime in July and August?  
 24 That's your case, isn't it?  
 25 **A.** Just -- okay, thank you very much. Just I ask you

1 because -- don't push me, please.  
 2 Yes.  
 3 **Q.** What --  
 4 **A.** A little bit still, because me and Badri -- I just want  
 5 to -- for your understanding. Me and Badri, we were  
 6 partners already and with us was Abramovich, that  
 7 Abramovich will own 50 per cent and me and Badri will  
 8 own 50 per cent, but Abramovich knew well that me and  
 9 Badri were equal partners, he knows that well, from the  
 10 beginning when I introduced him to Badri.  
 11 **Q.** There was never any such agreement, was there,  
 12 Mr Berezovsky?  
 13 **A.** Sorry?  
 14 **Q.** There was never any such agreement that you were going  
 15 to share out the company when it was created?  
 16 **A.** I disagree with that. Of '95 it's exactly agreement and  
 17 it was -- it was agreed about several positions. It was  
 18 agreed that if we will be successful in privatisation,  
 19 we'll share it 50/50 between Abramovich on the one hand  
 20 and Badri and me on the other hand; that we -- I put my  
 21 power to lobby it on the political level, Abramovich  
 22 will put his power to integrate everything on the  
 23 ground, and if something will generate by the new  
 24 company -- or not something; whatever we will generate  
 25 by new company, we will share the same proportions.

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1 **Q.** When you agreed, as you claim to have done, that you  
 2 would have 25 per cent of the new company when created,  
 3 what exactly did you think you were going to get  
 4 25 per cent of?  
 5 **A.** Just a second. (Pause)  
 6 I think that, first of all, I own 25 per cent of the  
 7 company, I own 25 per cent of the company; and the  
 8 second, that all benefit which will generated by company  
 9 itself or how -- doesn't how -- doesn't mean how, in  
 10 different ways, through the other companies but  
 11 connected to the resources which Sibneft has, it also  
 12 will be shared in proportion 50/50 with Abramovich and  
 13 Badri and me, and between Badri and me in the same  
 14 proportion: 50/50, 25/25.  
 15 **Q.** You said there were two aspects, I think, in that last  
 16 answer, the first of which was that you were going to  
 17 own 25 per cent.  
 18 **A.** Yes.  
 19 **Q.** Now, was it agreed, therefore, that either you  
 20 personally or some company controlled by you was going  
 21 to be the registered shareholder?  
 22 **A.** Yes, just -- no, not at that way. Not at that way. We  
 23 create -- first of all, we create together the company,  
 24 NFK, because the first step of privatisation was  
 25 auction, shares against of loan(?), and we create NFK in

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1 proportion 50/50: 50 per cent the company which  
 2 presented Mr Abramovich and 50 per cent the company  
 3 which presented our group.  
 4 Moreover, I just want to tell you that -- I just  
 5 remind that my understanding was that Abramovich also  
 6 has some team and some people -- at that time I already  
 7 knew Mr Shvidler -- that he also share with somebody  
 8 from his team. It doesn't...  
 9 What is also important, what I also recollect, that  
 10 at the first stage, when we discussed to share this  
 11 50/50, the initial proposal was that we share it  
 12 one-third, one-third and one-third between Abramovich,  
 13 Badri and me; but Roman -- and it was clear position of  
 14 Badri like that -- but Roman disagreed with that. He  
 15 said, "You work on the top level, I work on this level".  
 16 My position was very simple. I already had this  
 17 experience with Badri, 50/50, and we return back to the  
 18 story: you will recognise that I gave him a lot of my  
 19 assets at that time just to have a generous partner,  
 20 which I can believe. The same happened with Abramovich,  
 21 absolutely. And when Abramovich insist, I said, "Badri,  
 22 no, no, no, let's share. It's enough for us. You will  
 23 have 25, I will 25, and Abramovich too will have  
 24 50 per cent"; how they share, I don't care. And I think  
 25 that it was absolutely generous.

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1 **Q.** In your witness statement you say that it was Badri who  
 2 proposed that the future company should be owned in  
 3 equal shares, two-thirds for --  
 4 **A.** It's Badri.  
 5 **Q.** It's Badri? I see.  
 6 **A.** Just in my witness statement I think it's written Badri  
 7 proposed and Roman disagreed, and I support Roman point  
 8 of view.  
 9 **Q.** Right. Well, which is right: what you say in your  
 10 witness statement or what you've said just in your last  
 11 oral answer?  
 12 **A.** Last answer, I think it's correct.  
 13 **Q.** I see.  
 14 Now, I'm interested in your statement that at some  
 15 stage -- and you say in your witness statement it was  
 16 July or August -- there was an agreement about the  
 17 proportions. I'm going to press you, if you don't  
 18 mind -- actually I'm going to press you even if you  
 19 do -- to tell me exactly what you were going to get  
 20 25 per cent of. Was that agreed?  
 21 **A.** Okay. It's agreed that this is my shares in the company  
 22 and Badri has the same, the same shares, and Roman has  
 23 50 per cent shares himself.  
 24 **Q.** So now, when you say it was agreed that you were going  
 25 to have those proportions of shares in the company, do

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1 I understand that what was agreed was that you were  
 2 going to be shareholders, registered shareholders,  
 3 either of the company itself or of some intermediate  
 4 holding company of yours?  
 5 **A.** Look, it was not agreed that I will be a registered  
 6 shareholder of the company. At that time -- again,  
 7 my Lady, I just want to move a little bit back --  
 8 I spent a lot of time in election campaign of Yeltsin,  
 9 which happened in June, in June 1996, yes, coming here.  
 10 And we prepare, as I told you, my main attention was  
 11 paid to ORT, which we just start to establish in  
 12 parallel with Sibneft, and Badri mainly was involved  
 13 there.  
 14 And Abramovich was looking that we are very -- we  
 15 have very high political profile but it's coming later,  
 16 when we move everything under control of Abramovich  
 17 himself. But we just agreed that it will be proportions  
 18 and like that. And it was absolute regular way that  
 19 time in Russia, because I remember well your speech when  
 20 you said it's "Wild East". It's true, almost, yes; but  
 21 it's not so wild not to understand that there exist  
 22 laws.  
 23 And definitely when we agreed in verbal way, it's no  
 24 doubt that it was obligation of Abramovich and the  
 25 obligation of Badri and the obligation of mine, and

1 I present you our obligations in front of you.  
 2 **Q.** Can you just focus on what was actually agreed when you  
 3 say the proportions were agreed in July or August. Was  
 4 it or was it not agreed, according to your version, that  
 5 each of you would become shareholders in the new  
 6 company --  
 7 **A.** Sorry?  
 8 **Q.** Was it or was it not agreed that each of you would  
 9 become shareholders in the new company, either directly  
 10 or through intermediate holding companies of yours? Was  
 11 that agreed or was it not?  
 12 **A.** My understanding is that it's absolute clear agreed that  
 13 we are shareholder, all of us, of the company, and with  
 14 the right proportion proportionally to our shares.  
 15 **Q.** Understood.  
 16 Now, the next question --  
 17 **MRS JUSTICE GLOSTER:** I'm not sure I understand.  
 18 **MR SUMPTION:** I understand the witness to be saying that  
 19 what was agreed is that they were going to be  
 20 shareholders in the new company.  
 21 **A.** Absolutely correct. We will be shareholders; we. Roman  
 22 will share -- will have 50 per cent shares and me,  
 23 I will have 25 per cent shares, Badri --  
 24 **MRS JUSTICE GLOSTER:** So are you saying that the agreement  
 25 that you reached at this stage -- and we're talking

1 sometime in the period, I think --  
 2 **MR SUMPTION:** July/August.  
 3 **MRS JUSTICE GLOSTER:** -- August, you agreed that you would  
 4 actually become a registered shareholder?  
 5 **A.** No, not at all. That we --  
 6 **MRS JUSTICE GLOSTER:** So you weren't going to be  
 7 a registered shareholder in any company?  
 8 **A.** I have been a registered shareholder in a small piece of  
 9 Sibneft.  
 10 **MRS JUSTICE GLOSTER:** No, no, no, but what was the agreement  
 11 you say you concluded with Mr Abramovich?  
 12 **A.** We concluded that we are shareholder and we didn't  
 13 discuss how it will be registered because that time --  
 14 it was registered later on in proper way in the name of  
 15 Abramovich, when we agreed that he will hold in our  
 16 favour. But at that time we cannot hold shares because  
 17 we were just prepared for auction to manage the company.  
 18 **MRS JUSTICE GLOSTER:** So was there any discussion about  
 19 whether you were going to be a registered shareholder or  
 20 not at that stage?  
 21 **A.** At that stage we didn't discuss about to be registered  
 22 shareholders.  
 23 **MRS JUSTICE GLOSTER:** So you might have been a registered  
 24 shareholder or you might not; either way?  
 25 **A.** Yes, absolutely correct.

1 **MR SUMPTION:** Mr Berezovsky, it's quite a common practice,  
 2 isn't it -- we've seen lots of examples of it -- of  
 3 people who want to become shareholders in a company not  
 4 doing it directly but getting the shares into the name  
 5 of a company that they control? That's a common  
 6 practice, isn't it?  
 7 **A.** What does mean "common"? Yes, it's so, and it's the  
 8 reason why we create a company which own 50 per cent of  
 9 management -- 50 per cent of the bid for management  
 10 control, it's companies -- its name is NFK.  
 11 **Q.** Now, was your agreement that when you say you were going  
 12 to become shareholders, did that mean that you were  
 13 going to become either direct shareholders, if you  
 14 wanted to be, or indirect through various holding  
 15 companies; one or other of those?  
 16 **A.** At that time it was common to have a direct or indirect  
 17 owner in the company which we created.  
 18 **Q.** And under this agreement that you say you made in July  
 19 or August 1995, that would be a choice up to each  
 20 partner, was it?  
 21 **A.** It was choice up to each -- up to each party. And again  
 22 we concentrate at that time, as I mentioned absolutely  
 23 clear, on the auction of 51 per cent, and at that time  
 24 we did not start to -- with their auction to buy the  
 25 shares.

1 And it's absolutely clear that at this first  
 2 stage -- but it's impossible to talk only the first  
 3 stage, the second, the third, like separate stages. At  
 4 the first stage the point was to get under control  
 5 51 per cent of the company. It was clear understanding  
 6 and it's not -- whether it's hypocritical, yes, but it's  
 7 clear understanding, the State was not in power to  
 8 return back their credit. It means that if we win,  
 9 we'll be successful to obtain management control of  
 10 51 per cent; later on we'll obtain the ownership of the  
 11 company.  
 12 **Q.** Well, did you in 1995, then, agree anything at all about  
 13 what would happen much later, when there were shares for  
 14 sale in the actual company? Perhaps you just left that  
 15 over.  
 16 **A.** We discussed that Roman will manage the company and we  
 17 agreed with that and it's up to Roman how will he  
 18 organise that. Again, it's not excuse; I just want to  
 19 stress, it's not excuse. It's just -- it was very  
 20 unusual that from the beginning I trust Roman so much  
 21 that I gave him 50 per cent of the company --  
 22 **Q.** Mr Berezovsky, please read the question on the screen --  
 23 **A.** Sorry.  
 24 **Q.** -- and then carefully answer that question. (Pause)  
 25 Do you understand the question?

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1 **A.** Yes, yes, just a second. Just a second.  
 2 How shares will be splitted between the companies?  
 3 **Q.** No. Let me explain what I'm asking you.  
 4 **A.** Yes.  
 5 **Q.** In 1995 --  
 6 **A.** Yes.  
 7 **Q.** -- did you agree there and then what would happen about  
 8 the shares that might subsequently be sold or did you  
 9 leave that over to be decided later?  
 10 **A.** You mean who will be -- which company will own these  
 11 shares?  
 12 **Q.** No.  
 13 **A.** I mean -- just a second. I just want to understand the  
 14 question. We agreed that management control will be  
 15 50/50; correct?  
 16 **Q.** Yes.  
 17 **A.** This we agree. As far as we agreed to the future that  
 18 we will own the shares 50/50. Let's forget about me and  
 19 Badri; we are the same party. And is it correct your  
 20 question is: did we agree how will be structurised --  
 21 structurised, I would like to mention that -- this 50 --  
 22 the 49 per cent latest shares and then 55 -- 51 which  
 23 will be sold; yes?  
 24 **Q.** Right. Did you make an agreement about what would  
 25 happen to the 49 per cent that was going to be

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1 privatised and then the 51 per cent that would be sold  
 2 if there was a default?  
 3 **A.** This is exactly what I told.  
 4 **Q.** I see.  
 5 **A.** We agreed that we share that 50/50 but we did not agree  
 6 which exact company will own the shares if they will be  
 7 sold. We agreed with Roman -- as again I want to stress  
 8 you -- that Roman take under control everything. He  
 9 insist that he manage the company. It means that he was  
 10 responsible how it should be organised; not me, not  
 11 Badri, Roman. We delegate to him how to do that.  
 12 **Q.** Mr Abramovich was going to manage the company but that  
 13 didn't mean, did it, that he was going to --  
 14 **A.** Correct.  
 15 **Q.** Let me finish -- that didn't mean, did it, that  
 16 Mr Abramovich was going to decide how the shares in the  
 17 company should be held? He was just going to manage the  
 18 company's business.  
 19 **A.** No, no, no. Completely different. My and Badri  
 20 understanding was clear: that Abramovich will manage the  
 21 company and will decide how it will be structurised when  
 22 we will become shareholders. It's up to him completely.  
 23 **Q.** Where do you say that in your witness statement?  
 24 **A.** Just a second. (Pause)  
 25 I don't remember. I remember that we agreed about

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1 conditions of our cooperations and gave Abramovich full  
 2 power -- fine -- and gave Abramovich full power to  
 3 manage himself. "Manage" means, I'm sorry to say, for  
 4 me, not just day-by-day company operation but, as you  
 5 know, it's just the beginning of to create the -- the  
 6 company was not created as a private company. It means  
 7 that Abramovich should think how to structure the  
 8 company which owned the shares of the -- future shares  
 9 of Sibneft. It was not in our responsibility because  
 10 I trust him 100 per cent.  
 11 I just want to refer you to my witness statement  
 12 where finally we agreed with Abramovich --  
 13 **Q.** Well, let me refer you to your witness statement.  
 14 **A.** -- where we already read. I said Abramovich told me,  
 15 "Boris, you may trust -- my interest is your interest,  
 16 my interests are your interests and your interests are  
 17 my interests". This exactly, at that case exactly  
 18 wording, because I really trust Abramovich.  
 19 **Q.** At paragraph 97(d) of your witness statement  
 20 {D2/17/217}, you describe Mr Abramovich's functions in  
 21 this way. You say:  
 22 "Mr Abramovich would be responsible for  
 23 co-ordinating his contacts in the oil sector and with  
 24 the senior management of the companies involved in the  
 25 project... and, if the project succeeded, would recruit

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1 the managing staff and would manage the new company."  
 2 Now, that was all that you agreed with Mr Abramovich  
 3 about what his role would be, wasn't it?  
 4 **A.** Again, I just want to stress again that my clear  
 5 understanding, which maybe you help me just to clarify  
 6 that but nothing more, my clear understanding was that  
 7 we gave up to Abramovich management control on the  
 8 stage -- it's good -- on the stage when company was not  
 9 created as a private company. And Abramovich point was  
 10 to create that as a private -- to create -- to start to  
 11 operate as a company and finally to create this company  
 12 as a private company according of agreement of our  
 13 interests in the company, nothing more, because the  
 14 agreement was done.  
 15 **Q.** Now, Mr Berezovsky, there was no agreement in 1995, was  
 16 there, that Mr Abramovich was going to hold your and  
 17 Mr Patarkatsishvili's shares for you? Not in 1995?  
 18 **A.** Just a second. It was not agreement, you're absolutely  
 19 correct. But agreement was that he organise everything  
 20 and I did not care, which turned out that later on, when  
 21 we start to buy 49 per cent step by step, it turned out  
 22 that mainly Abramovich company own that shares.  
 23 Because, as you understand, 51 per cent still was in  
 24 management control. And only later on I decide,  
 25 according to Abramovich again request, because of my

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1 dangerous political exposure, to give up to him to hold  
 2 that.  
 3 **Q.** Now, you have given evidence that when these proportions  
 4 were agreed, 50/25/25, it was shortly before the  
 5 presidential decree creating Sibneft.  
 6 **A.** Yes, correct.  
 7 **Q.** But I think your evidence is that you knew what was  
 8 going to be in the decree when you made this agreement,  
 9 even though it hadn't been published?  
 10 **A.** Yes, I knew that finally we will buy the company.  
 11 **Q.** Well now, was there any agreement in 1995 that when the  
 12 49 per cent came to be privatised, one of the three of  
 13 you would bid for it?  
 14 **A.** Want to know -- Abramovich should organise everything  
 15 after that.  
 16 **Q.** Mr Berezovsky, you knew when you made this agreement, or  
 17 when you claim to have made it, you knew that  
 18 49 per cent of the company was going to be privatised --  
 19 **A.** Yes.  
 20 **Q.** -- didn't you?  
 21 **A.** Yes, I knew.  
 22 **Q.** Right. Now, that meant that it would be sold by  
 23 auction?  
 24 **A.** Yes.  
 25 **Q.** You knew that too?

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1 **A.** Yes.  
 2 **Q.** Now, did you make an agreement in 1995 that somebody was  
 3 going to make a bid for this?  
 4 **A.** My clear understanding, and it's my agreement, when you  
 5 refer now that it's not written that just management day  
 6 by day but not... for me it's absolutely clear that  
 7 Roman was responsible for everything. It's exactly --  
 8 I'm sorry, I'm sorry, I'm sorry -- it's exactly the  
 9 point. Because I manage just political events and so;  
 10 Badri was completely involved in ORT, which we also just  
 11 start to build; and what Abramovich -- okay, he took  
 12 responsibility for everything, including our interest in  
 13 the company, but how it's organised it's up to him.  
 14 **Q.** Mr Berezovsky, I am not asking you what you thought the  
 15 position would be; I'm asking you what was actually  
 16 agreed.  
 17 **A.** Actually agreed that he is responsible for everything.  
 18 **Q.** Was there an actual agreement in 1995 that somebody  
 19 would bid on behalf of the company? I think your answer  
 20 is "no".  
 21 **A.** He has -- okay, good. Definitely Abramovich will  
 22 organise everything and if he decide that Badri should  
 23 participate or me, and if we have time, I will  
 24 participate to organise that. For example, it was  
 25 organised -- I'm sorry -- when it was auctioned for

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1 51 per cent, the last one, and Roman, as I understand,  
 2 ask Badri to become chairman of the bidding committee,  
 3 again it's already controlled by Roman and it's up to  
 4 his decision how to do that. It's not only our  
 5 decision.  
 6 **Q.** Did you actually agree with Mr Abramovich in 1995 that  
 7 that would happen or is that just your understanding of  
 8 what it implied?  
 9 **A.** No, it's -- definitely it's agreed with Abramovich, you  
 10 see, that he is responsible for everything. It's agreed  
 11 with Abramovich that he is responsible for everything.  
 12 **Q.** Well, Mr Berezovsky, I must put to you that you have  
 13 made that up. It's not what you say at paragraph 97 of  
 14 your witness statement {D2/17/217}.  
 15 **A.** Yes, I see that. It's in front of me, you allow me to  
 16 recollect my memory. But again I tell you that it was  
 17 agreed that Abramovich responsible for everything.  
 18 **Q.** And was "everything" the word used or did you go through  
 19 the things that he was going to be responsible for?  
 20 **A.** Sorry? I responsible for this --  
 21 **Q.** Was there any --  
 22 **A.** I responsible for this witness statement.  
 23 **Q.** Did anyone actually mention the question who was going  
 24 to bid for the 49 per cent? Did anyone mention that in  
 25 terms?

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1 A. Sorry, again, just a second. (Pause)  
 2 No, no. Definitely we know the rules that it will  
 3 be first the auction for management control and then  
 4 through the auction to bid for 49 per cent --  
 5 Q. Yes.  
 6 A. -- but we don't care how it will be organised because it  
 7 should be organised by Abramovich. It was my and his  
 8 understanding and what happened later on is just that:  
 9 that he organised that.  
 10 Q. Mr Berezovsky, let me just try once more.  
 11 When you had this agreement with Mr Patarkatsishvili  
 12 and Mr Abramovich in 1995, did anybody even mention what  
 13 was going to happen about the 49 per cent and who was  
 14 going to bid for it?  
 15 A. Definitely. Definitely again I tell you that it was  
 16 mentioned that Mr Abramovich is responsible for  
 17 everything as far as Sibneft is concerned. This was  
 18 mentioned. What is written here -- I understand your  
 19 point. I clear understand your point. You say, "Boris,  
 20 this is not mentioned, that Abramovich was responsible  
 21 to organise this 49 per cent to obtain". It was agreed  
 22 that Abramovich was responsible for everything.  
 23 Q. Now, so as I understand your evidence, it was up to  
 24 Mr Abramovich to decide whether you bid or not for the  
 25 49 per cent?

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1 A. This is not, because it's absolutely clear that he's  
 2 responsible for everything what's connected to obtain  
 3 the -- to win the shares of Sibneft in our favour.  
 4 Q. Was he entitled, as you understood it, to say, "Well,  
 5 I don't think I will bid for these shares"?  
 6 A. No.  
 7 Q. He wasn't?  
 8 A. He was -- he didn't have any chance to say that.  
 9 Q. He had to bid?  
 10 A. Absolutely.  
 11 Q. Right. Did he have to bid any particular amount?  
 12 A. Any particular shares?  
 13 Q. Supposing he decided, "Well, these shares look too  
 14 expensive, I'm not going to put in a high bid" --  
 15 A. No, no, no, no, no. We didn't discuss with him at all  
 16 that.  
 17 Q. So he had to bid but there was no agreement about how  
 18 much he had to bid?  
 19 A. Absolutely correct, it was under his responsibility.  
 20 If --  
 21 Q. So he could have decided --  
 22 A. Just a second. If -- but again it was understanding,  
 23 because the money for bidding 51 per cent obtained  
 24 mainly by my support and it was clear understand that if  
 25 Abramovich will not have enough money, we're already

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1 partners, he will come to us and say, "Boris, Badri, we  
 2 need money more, we don't have chance to win with money  
 3 which we have". It was absolutely clear because we  
 4 become partners.  
 5 Q. When you say that everything was left to Mr Abramovich,  
 6 does that include the decision as to how much to bid?  
 7 A. Absolutely -- you're absolutely correct.  
 8 Q. So Mr Abramovich, on your version, could have said,  
 9 "Well, I'm not going to bid more than a tiny price for  
 10 these, I know I won't get them if I do, but I'm only  
 11 going to bid a little bit"?  
 12 A. Again, if --  
 13 Q. He could have said that, could he?  
 14 A. -- if Abramovich is not able to put the proper price, he  
 15 will come to me, he know where to take -- where to get  
 16 money, it's me, yes, if he doesn't have enough. And  
 17 I know how to get credit and I know the people who  
 18 believe me and trust me. It was clear understanding  
 19 that, if Abramovich has difficulties, he will come to me  
 20 or to Badri.  
 21 Q. Suppose Mr Abramovich said to himself when the  
 22 49 per cent was being auctioned, "The shares just aren't  
 23 worth this, a proper price is very low so I'm only going  
 24 to put in a tiny bid", was he entitled to do that?  
 25 A. Again Abramovich took all responsibility to obtain

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1 100 per cent. Do you think that I gave this power to  
 2 Abramovich if I have doubt that he's person who capable  
 3 to do that without losing opportunity? It's only the  
 4 reason why I gave him 50 per cent.  
 5 Q. Did you actually agree in 1995 with Mr Abramovich that,  
 6 if he put in a bid in the 49 per cent auctions, you and  
 7 Badri would pay him a proportion of the price? Did you  
 8 agree that?  
 9 A. We never discussed how he will manage the company. We  
 10 just agreed that all expenses, all expenses and all  
 11 profit will be shared in proportion which we are  
 12 discussing.  
 13 Q. Where do you say in your witness statement that there  
 14 was an agreement that all expenses would be shared?  
 15 A. Because the company belonged to us. It means that if  
 16 company have losses it's our losses; if company has  
 17 profit, it's our profit.  
 18 Q. I understand, Mr Berezovsky, that Mr Abramovich was  
 19 going to manage the company but, if Mr Abramovich  
 20 decided that he was going to bid and got some shares as  
 21 a result in the auctions of the 49 per cent, are you  
 22 saying that there was an actual agreement between these  
 23 three people that you would pay Mr Abramovich  
 24 a proportion of what he had spent?  
 25 A. No, it's -- look, it's already company which generate

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1 money, we knew that well. And if Abramovich show that  
 2 there was dividends in 2000, doesn't mean the company  
 3 didn't generate money from the very beginning, because  
 4 you know exactly what happened and you know exactly  
 5 Khordokovsky is in jail now for the same, absolutely  
 6 nothing new, because money Abramovich generated brought  
 7 in Runicom and you know that.  
 8 **Q.** Mr Berezovsky, listen to my question, please. Listen to  
 9 my question. I'm not asking you about 2000, I'm asking  
 10 about 1995.  
 11 **A.** And I give you answer.  
 12 **Q.** No, let me ask it again. In 1995, I want to know what  
 13 was actually agreed which will depend on what was said  
 14 at those meetings.  
 15 **A.** Yes.  
 16 **Q.** Was something said in 1995 between the three of you  
 17 which showed that, if Mr Abramovich bought shares in the  
 18 49 per cent auctions, you and Badri would pay him  
 19 a proportion of the price?  
 20 **A.** Nothing --  
 21 **Q.** Was anything said to that effect?  
 22 **A.** Not at all. Not at all.  
 23 **Q.** So there was no agreement to that effect?  
 24 **A.** Sorry, sorry? What is the question? What is the  
 25 remark? Tell me, please.

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1 **Q.** The question was, was anything said at these meetings,  
 2 when you say you reached agreement, to the effect that  
 3 if Mr Abramovich bought shares in the 49 per cent  
 4 auction --  
 5 **A.** Not Abramovich bought, just a second, not Abramovich  
 6 bought --  
 7 **Q.** Let me finish my question. Was anything said in 1995,  
 8 when you had these meetings, to the effect that if  
 9 Mr Abramovich bought shares in the 49 per cent auctions,  
 10 you and Badri would pay him a proportion of the price?  
 11 **A.** Not Abramovich pay, not Abramovich bought. It means  
 12 that Abramovich bought from our name, do you understand?  
 13 This is the point, because we're already partners.  
 14 **Q.** I'm only interested, when I ask this particular  
 15 question --  
 16 **A.** I am sorry, I am sorry that I am so emotional.  
 17 **Q.** -- I am only interested in the question whether there  
 18 was an agreement about financial contributions to the  
 19 cost of bidding in the 49 per cent auctions? That's all  
 20 I'm asking about.  
 21 **A.** Yes, and I give you clear answer, clear answer.  
 22 **Q.** Was there, Mr Berezovsky, an exchange of words agreeing  
 23 something about that?  
 24 **A.** Agreed, the words is that we are partners and Abramovich  
 25 manage everything. It means that he is responsible to

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1 find the finance, not for himself but for us.  
 2 **Q.** Now, suppose that you decided to bid in the 49 per cent  
 3 auction, were you going to get a contribution from the  
 4 others to what you paid? Was that agreed?  
 5 **A.** I didn't take the role of -- to manage that. Abramovich  
 6 was happy to take that, and when we agreed that he take,  
 7 it means that it's his responsibilities for everything  
 8 concerning the company. And I don't know what I will do  
 9 in his position.  
 10 **Q.** Can you actually remember, Mr Berezovsky, anything about  
 11 this agreement? You've already added a great deal to  
 12 what you say at paragraph 97; can you remember what was  
 13 said?  
 14 **A.** Paragraph number?  
 15 **Q.** 97, it's where you summarise the '95 agreement.  
 16 **A.** But it's written here. It's -- unfortunately it's in  
 17 front of me.  
 18 **Q.** You've added a great deal to it so far in your evidence,  
 19 can you actually remember anything about this supposed  
 20 agreement?  
 21 **A.** Yes, definitely, I told you. I told you how -- that the  
 22 agreement was that my position -- me, I was -- on the  
 23 stage of creation of the company, I should lobbying on  
 24 the top level of the company, I should obtain the --  
 25 Badri and me should obtain the funding of the company.

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1 Badri should organise the connections on the next level  
 2 of businessmen, on the equal level, and Roman was  
 3 responsible to organise the ground for the company. It  
 4 means that he was responsible to convince and to  
 5 accept -- and to explain and to persuade Mr Gorodilov  
 6 and Mr -- Mr Gorodilov and Mr Alexeyevich(?), later  
 7 Potapov, to find the way, to persuade them to  
 8 participate and manage the company, and manage the  
 9 company.  
 10 **Q.** Mr Berezovsky, the truth is you never reached any  
 11 agreement about what could happen in the auctions of the  
 12 49 per cent; you never agreed that there would be a bid;  
 13 you never agreed who would pay if there was a bid; and  
 14 you never agreed who would own the shares if there was  
 15 a bid, did you?  
 16 **A.** Everything completely wrong.  
 17 **MRS JUSTICE GLOSTER:** Is that a convenient moment,  
 18 Mr Sumption?  
 19 **MR SUMPTION:** Yes.  
 20 **MRS JUSTICE GLOSTER:** Very well. Tomorrow morning,  
 21 9 o'clock, please.  
 22 **THE WITNESS:** Thank you.  
 23 **MRS JUSTICE GLOSTER:** An early start. Can I remind you  
 24 again, don't talk about your evidence or the case.  
 25 **THE WITNESS:** Sorry, I didn't ...

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1 **MRS JUSTICE GLOSTER:** Let me remind you again, you are not  
 2 to talk about your evidence.  
 3 **THE WITNESS:** Yes, yes, I know that. Thank you, my Lady.  
 4 **MRS JUSTICE GLOSTER:** Very well. 9 o'clock tomorrow  
 5 morning.  
 6 (4.00 pm)  
 7 (The hearing adjourned until  
 8 Friday, 7 October 2011 at 9.00 am)

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Friday, 7 October 2011

(9.00 am)

MRS JUSTICE GLOSTER: Are all the members of the press happily seated this morning? Fine, thank you.

MADAM INTERPRETER (affirmed)

MR BORIS BEREZOVSKY (continued)

MRS JUSTICE GLOSTER: Mr Berezovsky, you are still on your oath, you appreciate that.

THE WITNESS: Yes, thank you.

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

THE WITNESS: Just, I'm sorry, paper.

MR SUMPTION: Sorry, what is the witness being given?

MR RABINOWITZ: A blank exercise book.

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Mr Berezovsky, yesterday afternoon, just before the end of the court day, you may remember I was asking you questions about what had been agreed in relation to the cash auctions of the 49 per cent. Do you remember that I asked you questions about that?

A. Yes, I remember well.

Q. Yes. And your answer, in very broad summary, was that that was all left to Mr Abramovich.

A. You're correct.

Q. Now, I want to ask you the same questions in relation to the auction of the 51 per cent after the State's

default. You know which auctions I'm talking about?

A. Yes.

Q. Yes.

A. The date of this auction I remember well.

Q. I imagine that your answer in relation to the auction of the 51 per cent that actually occurred in 1997 will be the same: that was left to Mr Abramovich too, was it?

A. It is correct.

Q. So your evidence in relation to the 49 per cent applies equally to the auctions of the shares of the 51 per cent?

A. You're correct.

Q. And likewise I challenged you yesterday and suggested that there had been no agreement in relation to the 49 per cent and I make the same point to you about the 51 per cent.

A. It's absolutely wrong. It was include in agreement between me and Abramovich and Badri that Abramovich, up to the moment of we reach agreement, manage all events which happened with Sibneft and around Sibneft and if he need our help or something, he anytime is able to call us.

Q. Do you say that that was actually said in substance or do you simply say that that was your understanding of the position?

A. It was agreement.

Q. I see. Well, I have challenged your version on that.

I suggest to you that the only understanding in 1995 was that you would act as Mr Abramovich's political patron in return for regular payments and that you would cooperate in the forthcoming loans for shares auction.

A. It's absolutely wrong. As I told you yesterday, I was responsible also for funding everything what we need to privatise Sibneft, and it was several stages included, and I never changed this agreement with Abramovich and, as I understand, Abramovich never changed this agreement with me.

Q. Now, I want to turn briefly to the affairs of ORT. You took over control of ORT I think at the beginning of 1995, didn't you?

A. No, it's wrong. I took over control at the end of '94.

Q. I see. But ORT began operations, didn't it, in April 1995? That's when it started broadcasting in its own name?

A. 1 April 1995.

Q. Yes. Now, when you took over the management of ORT, you discovered, did you not, that its funding needs were greater than you had previously realised?

A. I am sorry?

You are absolutely correct that at the beginning

I understood that we need to have funding for ORT because the money which ORT got from advertising was not enough to do that.

Q. Yes. Now, part of the funding of ORT came from Logovaz, didn't it?

A. It is correct.

Q. But Logovaz was not in a position to provide nearly enough funds to keep ORT going, was it?

A. It is correct and it is the reason why some banks which were part of the deal of privatisation of ORT -- I mean Menatep, I mean Stolichny and others -- they also helped to fund ORT, understanding importance of ORT.

Q. Yes. Now, in the first few months of 1995 you were, as I understand it, scrambling about looking for money to fill the gap in ORT's funding?

A. At the beginning it was not so clear how big is that and at the beginning I had the other most important problem which helped me to organise the finding -- the funding of ORT because -- and it's important from the point what you are discussing to understand that ORT, when we took it, it was State organisation, organised in Soviet manner, without any thinking about market economy.

And we tremendously reduced expenses of ORT in the first several months. We reduced number of employers (sic). We reduce -- we restructure the income to ORT,

what is the most important, because ORT covering 98 per cent of the Russian territory -- covering 98 per cent of Russian audience, and it's -- it was -- on the other hand, just took back compared with NTV, which already operate at that time, and --

MRS JUSTICE GLOSTER: Sorry, I'm not following you. Can you just clarify: when you're talking about 98 per cent, did you increase the coverage or reduce it?

A. No, no. 98 per cent, it's the coverage of ORT of the territory of Russia.

MRS JUSTICE GLOSTER: Yes.

A. And the population -- and the competitor, NTV, they cover just 53 per cent but their profit from advertising which was bigger than profit of ORT. It means that it was disproportion between profit -- a disproportion not in favour of the most popular channel.

MRS JUSTICE GLOSTER: Yes, I see.

A. I made enormous step which was out of understanding of many: I just stop advertising for three months, to destroy completely the market which exist before and to create new market with a reality, reality where ORT is dominating and will get the share coinciding with their proportion -- with the real proportion.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

A. Thank you, my Lady. And it gives completely new sources

for investment for funding ORT and help us a lot. But in spite of help of banks, because I was not alone who share 49 per cent and it's written and it's clear that it was the other banks, the so-called (inaudible) or say me the most influential businessman that time and we share our funding between us.

MRS JUSTICE GLOSTER: Yes.

A. But as far as the other businessmen does not believe so much like me believe in importance of ORT and importance to keep that as a leverage for political elections which were coming, they were not happy to pay so much like I paid.

MRS JUSTICE GLOSTER: Yes, I see.

A. It is the reason why I most strongly start to think how to find funding. This was the big -- the decisive point, me to go to president and to convince him to allow me to find the other source for that.

MRS JUSTICE GLOSTER: Yes, I see.

A. Thank you.

MR SUMPTION: That being Sibneft?

A. Yes, correct.

Q. I think what you've been saying is that Logovaz couldn't supply enough money; your fellow investors in ORT, the other owners of the 49 per cent, weren't very keen on putting up money?

A. Not so. They put money, there were not enough and Menatep personally put, and Smolensky put, and other banks they give money. But nevertheless it was very risky for them because they did not believe so much like me that to win elections and it was the reason they didn't put enough money, it's true.

Q. Yes. But you were disappointed, were you not, in the funds that were put up by your fellow investors?

A. I absolutely agree with you. Again, they didn't believe like me believe that it's important and finally we win competition against of Communist and it is the most important leverage here, what's (inaudible) what's correct, and it means that they were not prepared to take the same risk like me. This is the point.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Now, you say you resorted to banks. As I understand it, your main attempt to get bank finance for ORT concerned a Korean bank or a Korean banking group called Lotto. Is that right?

A. Sorry? No, as far as -- it's not Korean bank. It was Lotto Group in South Korea.

Q. Okay. It wasn't a bank?

A. They have a lot of different structure, including that. And as far as them, as I remember, we discussed with them completely different project; we discussed with

them to build in the Moscow the trade centre. I can't exclude that I discussed with them their participation or the funding of ORT but it's doubtful because they didn't have business connected to mass media.

What I remember well, that I discussed with Rupert Murdoch to his participation in mass media business, including ORT, but I think it's happened later, not that time.

Q. And he said "no" as well, didn't he?

A. Sorry?

Q. He said "no" as well?

A. Not at all. It's completely wrong. As you know, Rupert Murdoch is, for me, great businessman and he was very accurate to decide his steps to Russia. And finally we establish with him just a radio company together, Murdoch and my group, Badri, and Badri was one of the key persons to negotiate and so, and later on Murdoch went to Georgia, again between Badri and me --

Q. I'm not asking you about what happened later.

A. I'm sorry.

Q. Can you just confirm this. As I understand it, after drawing on Logovaz, after drawing on your fellow investors and after drawing on whatever you could borrow, there was still a substantial shortfall on the funding requirements of ORT, was there not?

A. It was not sub -- sorry, my English -- substantial but definitely as long as we try to -- as long as we plan to completely change the company, putting in the modern way, as better I understand that we need funding, and funding which produced by consortium of bankers because they become so -- it's turned out that they were very greedy to invest in that. I tried to find the other source, it's true.

Q. Now, Mr Berezovsky, you tell us in your witness statement that your main reason for taking up Mr Abramovich's project or the project to integrate the two oil companies in Siberia had been that you saw the project as a source of funds for ORT, and I think you confirmed that yesterday.

A. Again I would like to stress: it's not Abramovich project, as we understand, but there --

Q. All right. Forget whose project it was. The Sibneft project.

A. Good, thank you very much. It's correct. And it's absolutely correct that the main reason for me to go to this business and it's initiate in my mind, yes, that I was looking for the funding of ORT. But when the size of business I recognise it's so big -- could be so big, because at that time Sibneft was not profitable, I just want to stress, when we took it -- I nevertheless

understood that it's not only funding of ORT; it's only opening a great opportunity, like everybody who participate in auction, shares against of collateral, understood well that it's enormously profitable business.

Q. Now --

A. Could be.

Q. -- you needed --

A. Sorry?

Q. You have told us that you looked to the Sibneft project to produce funding for ORT. You needed it to do that quickly, didn't you?

A. As you know, definitely, because the opportunity to privatise was framed by decree of president. On the other hand, we were looking for the other opportunity and, as you know well -- maybe it's not written here but you read, I am sure, at least a piece of Russian history at that time -- finally we are in hurry because of elections, and elections should start at -- according of Russian law, in June it was the first round.

Q. June '96?

A. June '96, correct. June '96. And the second round happened at 3 July 1996. As you know, maybe that government organise a special funding for mass media at that time.

MRS JUSTICE GLOSTER: Mr Berezovsky, I don't want to interrupt you and I'm very keen you have all the time to give the evidence you want but it would help me if you could focus on the question a bit more and answer the question.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: The question you were asked was:

"You needed to do that quickly, didn't you?"

You needed the Sibneft project to provide funding for ORT quickly?

A. The answer is yes.

MRS JUSTICE GLOSTER: The question you were asked.

A. The answer is yes.

MRS JUSTICE GLOSTER: Yes, thank you. If you can just remember that --

A. I just want to stress it was important but not critical, because everybody thought finally we will find foundation for ORT, but it was the best opportunity no doubt.

MR SUMPTION: Now, it wasn't going to help you to find funds for ORT quickly to own shares in Sibneft, was it?

A. It's correct to privatise Sibneft.

Q. For you to own the shares in Sibneft or to have an interest in Sibneft, that wasn't going to help you to find funds for ORT quickly, was it?

A. Again, I understand perfectly your question and for me

it was important to put Sibneft under control in the most -- in the way which give me not only short-term funding but long-term funding, and only way was to privatise Sibneft and be shareholder of Sibneft directly or indirectly.

Q. What is the answer to my question, Mr Berezovsky, which is that owning shares in Sibneft or an interest in shares in Sibneft wasn't going to help you to find money to fund ORT quickly, was it?

A. I should... better to understand your question.

(To interpreter) Could you help me?

I think it's opposite. If I would own shares of Sibneft and control all business which is as a result of being shareholder of Sibneft, definitely it's helped me a lot to find money quickly.

Q. You told us a moment ago that Sibneft was unprofitable. So how was it going to help you to own shares or an interest in shares in Sibneft --

A. It's --

Q. -- in order to fund ORT if the company was unprofitable?

A. It's very simple: because the time when State owned Sibneft, Sibneft was not effective. It's happened with all oil company and particularly maybe the best example is Yukos, which increase during the year the potential -- the income to the company not in

100 per cent, not in 200 per cent, in 300 per cent, because the old way of operating was collapse. And it is the reason why finally President Yeltsin, looking forward, took a very principle decision to privatise the most sweet pieces of Soviet economy.

And in very short time -- and everybody understood how to do that and mechanism which Abramovich used that time is absolutely the same mechanism like Khodorkovsky used that time and in very short time all oil companies become super-profitable. And unfortunately Khodorkovsky is in jail for this way, which is surviving his benefit; this is only different. But all company become very quick absolutely profitable.

- Q. Mr Berezovsky, at the time when Mr Abramovich took over the management of Sibneft it was making losses, wasn't it? At the beginning it was making losses?
- A. As far as trade is concerned, I am sure that they made profit. As far as their operational operation they had losses but, as I know, all oil company, the day they put under control, they start to generate money, not as a dividends but as a profit, through failing company.
- Q. Now, Mr Berezovsky, Sibneft was an amalgamation of two previously independent State-owned enterprises, wasn't it?
- A. Just a second.

Q. And they were typical inefficient Soviet-style enterprises, weren't they?

A. Just a second. (Pause)

Two independent State-ownership enterprise, you mean Noyabrskneftegas and Omsk refinery company?

Q. Yes.

A. It's not only that; there was also one institute for research, for search the --

Q. There were some minor subsidiaries as well.

A. Yes.

Q. But they were independent entities which had been old-style Soviet inefficient businesses, weren't they?

A. Yes. Yes, absolutely.

Q. There was first of all a huge job to be done, wasn't there, to integrate these two separate businesses into a single organisation?

A. Not at all. I explain you why: because already that time -- why Gorodilov create idea to create a vertical-integrated company include exactly those two separate entities, separate -- sorry, separate parts, yes, because already it exists that oil from Noyabrskneftegas supply Omsk refinery company and already there is existing company, I forgot how -- what is his name, Omsk -- I don't remember exactly the name, which sold the production of oil refinery company. It's

already everything exist, but it exists as a separate entity -- as separate companies, yes?

And the idea of Gorodilov was absolutely simple; moreover, definitely it was not idea just Gorodilov because all western company were organised like that. And that's all: you put that together, it's immediately become profitable. That's it.

Q. In addition to integrating these two separate businesses into one organisation, it was necessary, was it not, to transform into modern business organisations businesses which had never been exposed to market disciplines in their entire history; that's right, isn't it?

A. You are absolutely correct and moreover I think that -- and I understand maybe that better than anyone because, as I remember, in your skeleton you said that all these people who took under control oil company were industrials, you mean technology. No one more industrials than me because only me had really experienced in Avtovaz, as I told before. Company Logovaz based on the Avtovaz, the largest car manufacturing company in Russia.

And it was very -- I'm sorry to say that it was very funny when they said that Abramovich had experience, Khodorkovsky had experience, but I didn't have experience, only Berezovsky did not experience. It's

the reason why he said, "Oh, Abramovich is so clever guy, he will manage the company". It's completely opposite I'm sorry to say.

- Q. Mr Berezovsky, nevertheless you left the entire management of this company, everything, to Mr Abramovich, as you told us yesterday?
- A. You are absolutely correct and I explain to you perfectly reason why I done that and you understand it well: because my priority was election of president and to move forward in democracy, not just develop Sibneft company, what was dream of Abramovich for all his life.
- Q. Now, Mr Berezovsky, the process of turning Sibneft into a profitable company could not even start until the beginning of 1996, which was when Mr Abramovich took over its management?
- A. Not at all. I explain you why. It was created like one integrated company and sell the production of Omsk refinery, connected to production of oil itself. You immediately become -- you immediately make this profitable because profit made not by company who produce the oil; the profit made when you sell that. And as always they start to use their so-called -- I don't know how -- what is the name, I forgot, but the scheme when they sold oil produced inside of the country to other company with low price which located in the

country, with low price, and then you sold after that abroad with a high profit. It's immediately become profitable. It took very short time for everybody; not just for Sibneft, for all oil company.

Q. I would suggest to you, Mr Berezovsky, that you cannot possibly have thought that Mr Abramovich taking over the control of Sibneft at the beginning of 1996 was going to generate profits to fund ORT in time for the publicity campaign before the elections of June.

A. It's exactly the point what you mentioned in your skeleton --

Q. From Sibneft itself?

A. -- because you really calculate me that as not industrial. Believe me, it's not -- you shouldn't be Seneca philosopher to understand how it works and everybody why it was so -- why -- first of all, it was not so many people who recognise that it's new opportunity but those who recognise, they compete a lot to get opportunity to buy or to privatise oil company. It means that it is completely wrong to think that it took, let's say, years to generate the profit; it took very short time to generate the profit.

Q. The first profit, which was very small, made by Sibneft itself was in 1997, wasn't it? It made losses in 1996?

A. Again, again, it's not so. I don't know exact timing

but I know that Sibneft, like all other oil company which were created at this time, start to generate profit immediately.

Q. Well, I can tell you, Mr Berezovsky, that it did not. Its accounts demonstrate that it made no profits until the 1997 year. Its debts -- were you aware of this, Mr Berezovsky: the debts of the component businesses of Sibneft were just under a billion dollars?

A. Again --

Q. Were you aware of that?

A. I did not aware of that.

Q. Right. Were you aware that Sibneft had no oil trading function for the purposes of marketing its crude oil and products at all?

A. I was aware that we decide to create vertical-integrated technology. It means that oil is producted, oil is going to refinery company and oil is selling, and I knew and Abramovich informed that he has trading company. As you know, Abramovich present himself as a trader. It means that he already have structure to sell oil. It's the reason why Sibneft -- not Sibneft itself, but all integrated company, start to generate a profit almost immediately.

Q. In 1995, Mr Berezovsky, you had absolutely no idea, did you, whether Mr Abramovich was the right man to

transform these State-owned businesses into successful modern businesses or not? You had no idea one way or the other about that, did you?

A. Sorry, may I concentrate on the question. Thank you.

(Pause)

If it wouldn't be so. If it would be like that, definitely I would not decide to take Abramovich as my partner. You see, I just want to tell you, and it's important to understand my answer, it was --

MRS JUSTICE GLOSTER: Sorry, I haven't got your answer.

Just look at the question.

A. Yes.

MRS JUSTICE GLOSTER: Did you have any idea whether Mr Abramovich was the right man to transform the State-owned businesses?

A. Yes. Yes, I had -- I understood that he has --

MRS JUSTICE GLOSTER: You thought he was the right man?

A. He is man who could do that, who can do that, and I explain you why: because any revolution create completely new relations between people because old people are not able already to operate in new reality, new people come, and it's up to you, it's exclusively up to you to have understanding who is who.

For example, when I was in science, it took years to understand who is real science, who is just play role of

the science. But when new reality appeared I didn't know Abramovich, I didn't know Badri well, I didn't know many people. I didn't know Khodorkovsky at all. It took time to understand who is who: who is capable, who is not capable. And it depends only on your intuition to understand: is it correct person or not?

And as I told you from the beginning, when I met Abramovich on the first time on the boat, I was really excited how young man is so clever that he create very complicated condition, very complicated -- able to create relations with very complicated people, that he already trader. I didn't know the size of his business, is it big or is it not.

But everybody were new on the market; you didn't understand who is who. It is only from experience you could recognise what is that. And Abramovich produce impression that he's capable person and later on he really -- he proved that he made the Sibneft very effective company. It's the fact. No one can say that Sibneft was worse than the other company.

MR SUMPTION: Mr Berezovsky, in 1995 you had known

Mr Patarkatsishvili for at least six years, hadn't you?

A. Yes, I knew him from '86/'87, correct.

Q. Yes. More than six years then. You had never heard of Mr Abramovich until you met him at the end of 1994, had

you?

A. I didn't meet him -- I met him the first time, as I told you, on the travelling with Mr Aven and Mr Fridman, who introduced me Mr Abramovich, and it was the end of '94.

Q. I'm asking you whether you had ever heard of him before that and I think the answer is no.

A. Before what?

Q. Before you met him at the end of '94?

A. Never heard before.

Q. Right.

Now, you tell us in your witness statement that you regarded him as a small-scale oil trader who had achieved nothing in business. Was that your view?

A. I don't remember exact words concerning his trade business but I remember well my words that I was impressed of Mr Abramovich.

Q. You tell us in your witness statement at paragraph 81 D2/17/213:

"At that time, he was not someone who had achieved anything in politics or in business, being a small scale oil trader..."

A. It is a fact.

Q. Right. That was your view of him?

A. Yes.

Q. Now, Mr Patarkatsishvili told your solicitors in 2005

that when you introduced Mr Abramovich to Mr Patarkatsishvili you said, "This is a nice boy who wants to discuss commercial projects". Is that what you said?

A. I don't remember well, but I don't have any doubt that the purpose of our meeting with Mr Patarkatsishvili at that time to explain -- to introduce him first of all Abramovich and to explain his idea with the new project.

Q. You did regard Mr Abramovich in 1995, didn't you, as "a nice boy who wanted to discuss commercial projects"?

A. Not only. I said that because of my very short experience with Abramovich and what he convinced to have good relations with very complicated people in oil business, it means that he have capacity.

Q. You told us yesterday that in your view he wasn't even smart. Is that right?

A. It's not so. When I said that -- "smart" has a lot of dimensions. I think that Abramovich really is not smart strategically but as far -- he is genius at least in one point. If he want to convince someone personally, he may serve him so well and you trust him so much that you really believe that he's sincere. He's really -- he's genius. And he really convinced me to think, and long time, that he's like my son. And unfortunately it's a little bit eastern terminology, like brother, son; he

definitely was not my son but except my trust to him was so high. And he's genius at that, no doubt.

Q. Mr Berezovsky, your case is that you wanted to invest money in a business to be run by somebody that you had only just heard of, who you regarded as without experience in big business and who you hardly knew. Is that your case?

A. Definitely it's my case.

Q. Now, I suggest that your only interest in Mr Abramovich in 1995 was that he was a man who needed your political influence and he was prepared to pay for it. That's true, isn't it?

A. It's completely wrong. It's completely wrong. Definitely he need my political influence, no doubt, but not to exchange -- just to pay me some peanuts without understanding which kind of project we are discussing. And it's -- I know that Abramovich change several times his witness statement, trying to present finally that I was just krysha, and it's really very interesting because we should define what means "krysha" before to discuss the reality. But it's absolutely clear that -- what I said before.

Q. You told Mr Abramovich, didn't you, at the beginning of 1995, that you would expect to receive \$30 million a year if you helped him out?

A. I'm sorry, I'm sorry, I don't remember that, that we discussed exact number. It could be that I discuss that we have -- definitely we discussed that we have a big problem as ORT and that's it. But I can't exclude that we need exact money to cover our problem in ORT and it's true that deficit for the year that time I think was around \$30 million. But I can't recollect that I discussed exactly this number but I can't exclude that it's so.

Q. The deficit wasn't \$30 million; it was \$200 million a year.

A. No, deficit -- sorry, deficit which accumulated to this time, what accumulated to this time was \$200 million, even a little bit more. But there -- what we should cover immediately and every year, deficit become less and less.

Q. Well, Ms Nosova tells us that it was \$200 million per year.

A. Again, at the moment when we took ORT -- and this is the point, and this is the point -- when we took ORT, deficit was around \$200 million.

MRS JUSTICE GLOSTER: What, the accumulated deficit or the loss for that year?

A. It's -- this deficit, as I understand, was accumulated just before we took ORT, for which period or time or

not, I don't know. But deficit was definitely much more than \$30 million yearly.

MR SUMPTION: Your own witness statement at paragraph 48

D2/17/207 says:

"The sums involved in the year 1995-6 were in the region of \$200 million."

So just for that year you needed \$200 million; it wasn't the accumulated deficit?

A. No, again, again, I want just to be precise as I can be precise. The deficit which we got at that time was even more a little bit than \$200 million and that time I didn't understand well: it's just deficit, yearly deficit or accumulated. But accumulated, what I understood well, that it was accumulated just the last year, yes? Because it's the reason why finally, and what is explanation to the government, why government is not more able to subsidise ORT.

MRS JUSTICE GLOSTER: I'm still not following. Are you telling me that in '95/'96 the accumulated deficit over a number of years was \$200 million --

A. Not only the number of years --

MRS JUSTICE GLOSTER: No, just a second, let me finish.

A. Sorry.

MRS JUSTICE GLOSTER: Or are you saying that in the year '95 to '96, the loss for that year, never mind the previous

losses, was \$200 million?

A. The last is more correct than I told before.

MR SUMPTION: Right.

Now, I put to you a moment ago --

A. And only why I had doubt about that, because I didn't -- I forgot the time when it was calculated. It was almost a year deficit, you are correct.

MRS JUSTICE GLOSTER: Right, thank you.

MR SUMPTION: Now, I put to you a moment ago that you had said to Mr Abramovich that you would expect \$30 million a year. Do you remember asking Mr Abramovich -- this is early in 1995 -- what his income was and whether he could afford to pay you that sort of money?

A. What is -- yes, as I remember, we never discussed with Abramovich exact number what should be covered to ORT from Sibneft. We didn't discuss that every year I need from Abramovich exact this amount of money because I understood well that, on the one hand, that Sibneft just start to generate money, not Sibneft but through the Sibneft was just start to generate money; on the other hand, for me it's absolutely clear that day by -- that year by year, if we'll continue to reconstruct ORT, the expenses will be less and less, what happened in reality.

Q. Do you remember a meeting with Mr Abramovich in

March 1995 at the Logovaz Club at which you first asked him for a payment?

A. March 1995?

Q. Yes.

A. For a payment before Sibneft was created?

Q. Yes.

A. No, I don't remember that.

Q. He asked you for \$8 million, didn't he?

A. I don't remember.

Q. Sorry, forgive me. You asked him for \$8 million?

A. I asked him to pay \$8 million?

Q. Yes.

A. It's impossible.

Q. And that \$8 million came from Mr Abramovich's Swiss trading company, Runicom SA, didn't it?

A. I don't know anything about this payment.

Q. The person --

A. And it's absolutely impossible idea that I ask Abramovich to pay me money before Sibneft was created.

Q. The person who handled payments to you from Mr Abramovich's Russian trading companies will say that she handled sums paid to you or to your order in 1995 of between \$20 million and \$30 million. Do you deny that?

A. Completely.

Q. Do you remember that in March 1995 Ms Goncharova

delivered \$5 million in dollar bills to you at the Logovaz Club?

- A. Again, look, Mr Sumption, I don't want to play game, I'm sorry, and I want to say you: I never asked Abramovich to pay anything before Sibneft was created. It's absolutely ridiculous. Because I told you that we had a lot of problem, it's true, but we have consortium -- not consortium, at that time I don't know the word, yes? -- but we have banks, the biggest Russian banks were involved in creation of the biggest TV company.

And small Abramovich, poor guy which does not have money, even didn't create still Sibneft, and to ask, "Mr Abramovich, could you please pay me \$5 million?", "I don't have it". How I can ask that? It's only in his dream could be, but he prepare his witness statement.

- Q. You asked him because you had checked at the beginning of 1995 whether he could afford to pay you something like \$30 million and he told you that he could.
- A. I know that Abramovich insist that he was big-scale businessman with 40 million yearly in profit; it's absolutely rubbish. Impossible for his company at that time to generate this profit. It's impossible. If so, if so, why all of us, he, me, we're looking for the money how to buy Sibneft?

If Abramovich generate 40 million, it was not a problem at all to go to Stolichny Bank or to go to Menatep and to travel all over the world, what I was doing, and Abramovich prepare the prospectus for me travel all over the world to find the funding money, if Abramovich generate 40 million, finish the story: Abramovich put this money, why I spend my money -- my time for nothing?

- Q. What did you know, Mr Berezovsky, about what Mr --
- A. \$5 million I ask Abramovich -- sorry.
- Q. Let me finish my question.
- A. Sorry.
- Q. What did you know in 1995 about what Mr Abramovich's trading companies could afford to pay you?
- A. I don't know anything.
- Q. You knew nothing?
- A. I don't know anything that Abramovich must to pay me before Sibneft was created.
- Q. No, that's not my question. My question was this: what did you know in 1995 about the ability of Mr Abramovich's trading companies to pay you money?
- A. Abramovich never mentioned even that his company able to pay anything.
- Q. That is not my question. I am interested in what you knew --

- A. Okay, I didn't know anything.
- Q. Listen, Mr Berezovsky, to the question --
- A. Okay.
- Q. -- and you may find it easier to answer it.
- A. Sorry.
- Q. My question is about what you knew about the financial situation of Mr Abramovich's trading companies because you have just said they couldn't have afforded to pay you significant sums of money. What I would like you to tell us is: what did you know about the financial situation of those companies?
- A. I knew that -- I knew nothing, okay.
- Q. You knew nothing?
- A. I knew nothing. I just could imagine that it was very small company.
- Q. You could imagine that?
- A. Yes. Yes, correct.
- Q. But without any knowledge?
- A. Not -- knowledge was just because definitely I talked to Abramovich and he never said, "Boris, I have amazing company". If he would have that, definitely he inform me.
- Q. Now, we do not have complete records, any more than you do, of these payments, but we do have partial records and I would like you to look at one of those documents

for a moment.

A. Please.

Q. Could you be given bundle H(A)02/124.

Right. This is a --

A. Just a second. Okay.

Q. This is a bank transfer docket which shows a payment by Runicom SA -- which you'll see its name at the top -- to Logovaz on 21 September 1995 for \$4 million. Do you see that?

A. And what is the reason for this payment?

Q. That was what I was going to ask you.

A. You already got an answer.

Q. What is it?

A. What was that? You got an answer: it means that I don't know what is that.

Q. It says "Payment under settlement agreement". Tell us about that settlement agreement.

A. Ah, settlement agreement. I don't have any idea but I --

Q. You don't have any idea.

A. Just a second. If it's important for you, my Lady, I can speculate about that.

Q. I'm not asking you to speculate.

A. For example -- just a second. For example, Avtovaz -- Logovaz was a big -- was maybe at that time the largest

car dealer in Russia and many company, including oil company, bought a lot of cars from our company. And I can imagine -- I don't know that, but if you ask me to think a little bit about that, I can imagine -- that it's not exception that maybe Roman oil company bought cars for the employers (sic) and then it was payment.

But again, it's just speculation, nothing more, because it's not my point at all to look through these documents.

Mr Sumption, I understand that you don't like that, but nevertheless please really concentrate a little bit. I have parallel life and this is completely second story, out of my -- out of my understanding, out of my thinking. I give up --

MRS JUSTICE GLOSTER: Just a second. You'll do yourself more justice if you keep the answer short.

A. Sorry.

MRS JUSTICE GLOSTER: You're saying, "I didn't look at these documents, I had a business to run" --

A. Okay. Okay, my Lady, I try to do it in this way.

MRS JUSTICE GLOSTER: Okay. Just answer this question for me. Your speculation is this related to some payment for motor cars?

A. For example. Could be, yes. One of the thousand opportunity; others, I don't know.

MRS JUSTICE GLOSTER: Okay. Yes, Mr Sumption.

MR SUMPTION: Are you suggesting that Mr Abramovich's Swiss trading company may have bought \$4 million worth of motor cars from the Logovaz dealerships?

A. He could pay this through Swiss company but the car -- I don't believe that Avtovaz car, which are not so good, Abramovich bought for Switzerland. I think that he bought it for those people who supply him oil or something else in Soviet -- in Russia. Definitely he did not plan to put these not-so-good-quality car to Swiss. And it's absolutely clear that if Swiss pay for that, it doesn't mean that this car export to Switzerland.

Q. Mr Berezovsky, you told us a moment ago that at the time you didn't concern yourself with such trivial matters as payment information. Is that right?

A. That payment information?

Q. Did you concern yourself in 1995 with the details of payments that were made to companies associated with you?

A. You're absolutely correct.

Q. So you got other people to do that?

A. Absolutely correct.

Q. Right. So if people who were concerned with these payments and actually administered them on the Runicom

side say that you received \$20 million to \$30 million in 1995, you have no knowledge which enables you to contradict them, do you?

A. Sooner yes than no, because I think that I would be informed about that.

Q. Why do you think that?

A. Why I could be informed about that? Because I'm sure that Badri, who was responsible for that, would be very surprised that Abramovich has a great capacity now already to generate money.

Q. Would you have a look, please, at H(A)03/1.

A. H(A)...?

Q. Somebody will bring that to you. You'll need to wait until someone brings you the document. H(A)03/1.

This is another docket, also Runicom SA --

A. Yes.

Q. -- recording a payment to a company called Atrium under intercompany arrangements with Logovaz.

A. Hmm.

Q. That was also a bill, wasn't it --

A. It looks like.

Q. -- which you asked that Runicom should pay?

A. Me ask? Is it written somewhere that I asked to pay that?

Q. I'm asking you whether that is the explanation of the

payment of \$1 million.

A. I don't know. I never ask.

Q. Because you had actually no knowledge at all of the flow of funds into your account?

A. It's correct.

Q. Now --

A. Not "not at all", but mainly it was -- if it's not something important. Definitely sometimes I was informed that we have this -- for example, for example, I worry a lot about the charity which I created in Russia and later on create charity -- later on create foundation in United States. As far as Russia is concerned, it was trying to support Russian culture, which exist until now, even though I am abroad, they still did not destroy that, even Putin.

And definitely I care -- when they need money, I asked Badri, I never asked Roman -- or not never; mainly, let's say, I asked Badri to pay money to cover some expenses. Sometimes I asked Roman to cover expenses. But, as I understand, that time, at the beginning of our relations, really only Badri was feedback between -- as far as payment is concerned -- between me and Roman if we need.

Q. Now, the truth is, Mr Berezovsky, that you received substantial sums of money from Mr Abramovich's companies

in 1995, before Sibneft was even created, and before control over it was acquired. That is the truth, isn't it?

A. I give you my explanation, I think, my Lady. I told that I can't exclude any way of payment of Mr Abramovich, including his payment to us for some service from us or some sold -- or something like car we can sold to him. But I completely refuse that I knew anything about that we ask Abramovich to pay money before creation of Sibneft.

Q. Is it your evidence, Mr Berezovsky, that it was Mr Abramovich who insisted that the agreement you claim to have made in 1995 should not be written down?

A. I never insist that.

Q. Sorry?

A. I don't remember that I insist that this dogovor shouldn't be written down, as I understand. It was a verbal agreement but here I would like to stress and yesterday we in details tried to understand what was the sense of this agreement.

Q. Well, Mr Berezovsky, let me ask you it this way: was there any discussion between you and Mr Abramovich about whether your agreement in 1995 should be written down?

A. I don't remember that we discussed that because that was absolutely regular way that time to have verbal

agreement between parties. What I remember well: that later on, in '96, Abramovich insist that we would not have anything in written. This I remember well.

Q. Would you look at your witness statement, please.

I wonder if you could look at page 217 of the bundle in your witness statement -- sorry, you don't have it this morning.

A. No, I just -- it's over here.

Q. Have you got your witness statement?

A. They will bring.

Q. Okay. Right. Now, just to get the context, would you turn to page 217 of the bundle, please D2/17/217.

A. 217, yes.

Q. Now, this is a part of your witness statement where you're talking about the 1995 agreement, isn't it?

A. Yes.

Q. If you turn to paragraph 106 D2/17/219, you give evidence about the matter which you said a moment ago you couldn't remember being discussed at all.

A. Yes.

Q. What you say is:

"... Mr Abramovich insisted that our agreement should not be written down."

Now, is that something that you remember, as you suggest in your witness statement, or is it something

that you can't remember, as you said a minute ago?

A. Just a second. (Pause)

Yes, I really did remember because I all the time mix the situation before -- just a second. It's 1995 agreement; correct?

Q. Yes.

A. Before and after my political -- my political exposure, because in 1995 I had political exposure, not so harmful like it's happened in '96 and it means that in my memory I can't remember well and it's the reason why I said absolutely precisely that Abramovich insist not to have any agreement strongly in '96, when I went to presidential election campaign.

Q. So is your evidence now that he didn't insist in 1995, he insisted in 1996?

A. No, it's written in my witness statement that he insist from the beginning, yes, and my impression is not so strong because that time I haven't seen real arguments for that and it's the reason that my memory recollect that, okay, he insist without very specific reason for that. In '96 it was absolutely clear that it's specific reason of that and it means that my memory recollect like that.

And I just want to stress again that this document is very complicated to comment when it's the extraction

of some -- my recollection, yes? Because recollection is a long time ago: it's '96/'95. My clear understanding was that finally Abramovich insist that it wouldn't be written agreement and to distance as far as possible from me.

But what is written here is absolutely correct.

I agree with you that it's not completely different what I said just now; but again, it's my recollection.

Q. At the beginning of that long answer you suggested that your memory was not as clear as your witness statement. Do you regard your witness statement as the truth, the whole truth and nothing but the truth, Mr Berezovsky?

A. Yes, yes, and I just want again to confirm that it's absolutely truth, only truth and -- but on the other hand you should clear understand that --

Q. Would you look --

A. Just a second. You didn't give me to answer.

On the other hand you should clear understand that it's my memory, yes? And I exactly have in my memory very clear the final result what was happened in '93 -- '95/'96, when I start to strong to be involved in politics and took a great risk to go to election campaign, being on the first line.

It's the reason why, yes, I agree that you are correct; but again, it's -- you're correct, let's say,

formally, no doubt, but as a reality you are not correct.

Q. Well, as I understand your answer -- and I'm just putting it back to you so that you can make sure that I've not misunderstood it -- you're now saying that it was in '96 that Mr Abramovich insisted that it shouldn't be written down. Is that right?

A. In '96 he propose to distance me as far as possible. This was just the beginning of my distance how Abramovich was looking for.

Q. Mr Berezovsky, just listen to my question.

A. Yes.

Q. I'm not asking you about distancing; I'm asking you about discussions, if there were any, about whether this agreement should be written down.

Is it your evidence that it was in 1996 that Mr Abramovich insisted that your agreement should not be written down?

A. I confirm what written is my witness statement.

Q. What is the answer to my question? Is it '95 or '96?

A. In '95 Abramovich start to present this idea and in '96 --

Q. Which idea?

A. That I shouldn't be visible too much and I shouldn't write -- shouldn't sign -- it should not be in written

form. I didn't pay attention at that time too much.

I pay attention too much that when we distance in '96.

Q. You see, paragraph 106 of your witness statement is quite clearly directed to 1995, isn't it?

A. Yes.

Q. Because you talk about what might happen in the event --

A. Yes.

Q. -- that President Yeltsin lost his re-election bid and the Communists returned to power.

What you say is that Mr Abramovich was suggesting it shouldn't be written down in case the Communists got to power. Is that your evidence?

A. No, it's absolutely correct. But again, my recollection -- again, I present here my recollection. I present here my recollection.

Q. I see.

A. My recollection of more than ten years' events. And my clear recollection of to distance from Abramovich definitely connect to the election campaign, which start from the -- I would like to say -- from 1 January 1996. It was -- but previous, before then, it also was not simple situation and my memory is not sufficient enough.

I just confirm -- again, confirm what written here in my witness statement: that really I recollect Abramovich start to prepare to distance me not -- in the

second, yes, before elections. But time ago and I don't see that I gave you wrong answer.

I just want to stress that I didn't recollect when you put me that it was happened even before. But again, when I prepare this witness statement, I try to recollect the events which happened 15 years ago.

Q. Mr Berezovsky, the policy of the Communists in 1995 and 1996 was to renationalise all the key industries that had been privatised or partially privatised, wasn't it?

A. It's correct, but understand that Communists are so powerful came later.

Q. Yes. But that was their policy?

A. Yes, definitely.

Q. Right. Now, if the Communists were returning to power, they were going to stop further sales of State assets and reverse the ones that had already happened whether you were publicly associated with the company or not, weren't they?

A. Definitely -- finally, yes, but who will be the first -- look, it's interesting question, I'm sorry, it's interesting question, because there were many businessmen who think that they will make a deal with Communists. I'll give you example, not to be just...

When finally we agreed in Davos, it was very beginning '96 with all principal the most powerful

businessmen to be together against of Communist. It's turned out that time that they already start to pay money not only in Yeltsin support but also to support Communists. And it was important for me that I even could not imagine that time, it's a reason that my worry, my personal worry in '95 was not so much like happened later, and it is reason why I finally took a decision to distance from my business, like Abramovich proposed.

And my recollection, when I give you answer -- wrong answer to your question, was not recollection that already that time I was so -- feel myself so much involved in fighting, yes, and -- but again, I confirm everything what written in my statement, witness statement.

Q. It would have made no sense for Mr Abramovich to insist that the agreement should not be written down in case the Communists came to power because the Communists were going to renationalise privatised or partially privatised state assets whether they were associated with you or your agreement was written down or not; that's the truth of the matter, isn't it?

A. May I try to better understand your question, to try to give short answer.

(To interpreter) Could you help me, please? (Pause)

I -- no, as I told you before, as I told before, many businessmen think in different way, think in different way, and there were -- again, we should calculate two players: those who believe that Communists will take power, yes, and those who did not believe that Communists will take power. Those who at that time did not believe that Communists will take power were less than those who believed that Communists will take power, yes?

In front of those who believe more that Yeltsin will continue his power, the proportion of them were less than opposite. And even those who were very rich and believed that Yeltsin -- not believed that Yeltsin can win, even those pay money to Communists and pay money to Yeltsin election campaign.

And definitely Abramovich, like majority, worry that Communists could take power. Just again, I just recollect clearly that we finally agreed to make this distancing only in '96 but again --

MRS JUSTICE GLOSTER: I'm going to stop you, Mr Berezovsky.

THE WITNESS: Sorry.

MRS JUSTICE GLOSTER: I'm trying to help you, you understand.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Scroll back and look at the question

because you're not actually answering the question. The question that Mr Sumption put to you -- if somebody could scroll the screen back for me, please.

MR SUMPTION: Shall I read it out again?

MRS JUSTICE GLOSTER: Well, he may like to look at it on the screen.

MR SUMPTION: Can you see it on the screen?

MRS JUSTICE GLOSTER: [Draft] page 42, line 4. It's quite a long question.

THE WITNESS: Is it possible, Mr Sumption, just to make it a little bit shorter? Then I also try to give you a short answer.

MRS JUSTICE GLOSTER: Yes, put it again, Mr Sumption, a bit more shortly if you can, please.

MR SUMPTION: Mr Berezovsky, it would have made no sense for Mr Abramovich to insist that the agreement shouldn't have been written down because if the Communists came to power, Sibneft was going to be renationalised anyway?

A. No, no, I understand. No, it was the reason, it was the reason, because even those -- it's exactly what I tried to explain -- even those who think that Communists will take power, among them were people who believe that Communists will stay -- will leave the company with them. It's the reason why I try to explain you, my Lady, that even Khodorkovsky, even other, they pay

Communist money during election campaign thinking that if they will take power, they nevertheless will not renationalise.

MRS JUSTICE GLOSTER: Let me ask you this: what was the point of not having the agreement between you and Mr Abramovich written down or not written down if the Communists, if they came into power, were going to renationalise anyway? What difference did it make whether the agreement was written down? Because --

A. No, no, if they will not -- if they even start to renational -- two points again.

Let's suppose Communists will take power and they will not start to -- there were people who think that Communists will not start to renationalise and it's means that for Abramovich's reason that I'm in political battle and he will be one of them who will not be -- who will not be renationalised.

MRS JUSTICE GLOSTER: So you're saying if you were seen to be associated with it, which might be the case if the agreement was written down, the Communists, if they came into power, would be more likely to nationalise?

A. Absolutely correct. My Lady, it's absolutely correct. It's exactly what I tried to explain.

MR SUMPTION: But, Mr Berezovsky, everybody knew that you were connected with the company, NFK, that had acquired

the right to manage Sibneft. Everybody knew that, didn't they?

A. Yes. Mr Sumption, again, not everything is absolutely logical, we should understand, and my behaviour --

Q. I am beginning to understand that.

A. -- also was not very logical sometimes. I tried -- because the situation changed so much and if to explain every second of the changes, of quick changes of political situation, it's very complicated to understand.

The point is that Abramovich really worry that my political exposure, and I believe that he think like that, he wants to distance me. I accept that. I accept that because he managed the company, not me managed the company. He is the person who is responsible to survive with the company.

Q. You can put away any bundle that you've got other than your witness statement. I would like you to be given, please, J2/2.23/275. He should keep his witness statement. If that's D2, he should hang on to it.

A. Thank you.

Q. Now, this is your second witness statement that you've got open in front of you, isn't it?

A. It's written here.

Q. This is a witness statement that you made for the

summary judgment proceedings in the Commercial Court and the Court of Appeal last year?

A. Mm-hm.

Q. Do you remember that?

A. Okay, I don't remember but we'll try together to reconstruct that.

Q. Right.

A. Again, it's in Commercial Court?

Q. Well, do you remember that Mr Abramovich asked for summary judgment against you in the Commercial Court? It was in fact in 2009.

A. It's strike-out or what is that?

Q. Yes, well, strike-out would be another word for it. Do you remember?

A. No, I don't remember, but I will --

Q. You don't remember there being any summary judgment proceedings?

A. Okay. Again, I don't remember but I will remember. You help me to remind.

Q. Okay.

A. It was -- again, it was second witness statement of -- during strike-out or later on?

Q. It was during the strike-out.

A. And it's the last one?

Q. Yes, because your -- well, there was a third witness

statement but it's the second one I'm asking you about.

It was a statement that you made on 17 July 2009.

A. Just a second. 2009?

Q. 2009.

A. Just a second.

Q. 17 July.

A. Just a second. Mm-hm.

Q. Would you please turn to page 281 of the bundle,  
paragraph 31 J2/2.23/281.

A. Yes.

Q. Would you read paragraph 31 to yourself. It is your  
account of the 1995 agreement, or part of it.

A. Sorry? 31?

Q. Yes. Just read paragraph 31 to yourself, would you?

A. And then we'll continue, yes?

Q. Then I'll ask you a question.

A. Thank you. (a) and (b), yes?

Q. I would like you to read what comes before (a) as well?

A. No, but altogether?

Q. The whole of paragraph 31.

A. (a) and (b) full, yes. I'm sorry. (Pause)

Yes, okay, I read it.

Q. This is your explanation in 2009 of why the agreement  
was written down.

A. Yes.

Q. But it doesn't mention, does it, that Mr Abramovich had insisted that it shouldn't be?

A. I don't see here that.

Q. When you explained in 2009 why the agreement had not been written down, you didn't mention any demand by Mr Abramovich that it shouldn't be written down, did you?

A. Mr Sumption, I want just to stress again, the last witness statement I gave in May 2011, yes? This statement made in June 2009. I am a person who have memory mainly reflected to the emotional events in my life.

I really try to do my best to present my understanding -- not my understanding, my feelings, yes? -- and the main feelings is that I trust Abramovich, we agreed how we'll share our interests, and now you try to say that my trust to him is describing in different -- or a little bit -- or different, it's up to you -- different way, nothing changed.

I really was under strong political pressure, I really understood the dangers of what we are doing and I try to protect my interests, I try to protect interests of Abramovich because it's straight with two roads: if I will not sign, it's make my position weaker in my relations with Abramovich, if he is not person to

whom I trust; on the other hand, if I will not have this document, it help me really, if something political happened in opposite case what I am doing, it help me to be more protected.

It means that I all the time was in controversial understanding -- under controversial conclusion and it's only the reason why my memory work like that. Some points are absolutely clear for me how it was, some points definitely it's not so clear. But what is the most important, I never change my understanding what is the basis of our relations.

Q. Did you have a clear recollection of what was agreed in 1995 or was it not so clear?

A. Concerning of what? Concerning of how we share the company? Concerning how we will create the company? Yesterday, you spent a lot of time and I tried to do my best to explain you that on the other hand we -- how we decide to create the company and what was the component of the functions of this decision and how was finally we plan to form our interest in the company.

Q. Look again, please, at the paragraph that you've just read.

A. Yes.

Q. You wrote:

"... I have a clear recollection of what was

agreed."

That's part of your explanation of why you haven't written the agreement down.

- A. Yes, you're absolutely correct, I have a clear recollection. When we return with you together to the point of December, if we can keep in December 2000, you clearly recognise how my recollections and Roman's recollections at the same event change many, many times. The point -- but various principal owners(?) have been meeting or not in December in Cap d'Antibes.

But this is a different story, which is my relationship with Roman. It's completely a different story. And my recollection definitely in many points is absolutely correct. But sometimes I don't remember really -- at that time when I wrote the -- July 2009, my recollection was so; later on it's changed. Not to the opposite, I don't want to say to the opposite, and I never change my trust to Abramovich until he betrayed me, but you will see how Abramovich and me, it's together because it's not happened yesterday, Mr Sumption.

- Q. Mr Berezovsky, the first time that you ever alleged that Mr Abramovich had told you not to write down the agreement was in May of this year, when you made that allegation in your reply --

- A. Yes.

Q. -- a few days before serving your fourth witness statement.

A. Yes, yes.

Q. That's the first time you ever made that allegation, isn't it?

A. Yes.

Q. You agree?

A. Just a second. (Pause)

In this recollection of 2009, it's recollection that it will not be written and it's recollection I never changed, that we didn't have written agreement. But how it's happened, how it's happened, yes, that recollection 2009 was that we did not -- in 2000 that Abramovich -- in 2009 -- just a second.

... that he did not insist, in 2011 I had impression that he insist, and -- but again, we discuss the same point, I'm sorry to say: that it was oral agreement and we understood well that it's agreement; not just shake hands, that's it. And because that time it's for us absolutely usual the way to make a deal.

I just give you example. I'm sorry, if you allow me or you think this is not a point, I will not present this example.

MRS JUSTICE GLOSTER: Well, you've given an example already, haven't you, about other people entering into oral

agreements?

A. Yes.

MRS JUSTICE GLOSTER: In paragraph 32 you've given an example.

A. Thank you, my Lady.

MR SUMPTION: Equally there are many cases, are there not, where you have entered into written agreements for joint ventures? Anros, ORT, Logovaz: you went into written agreements for all of those, didn't you?

A. You're correct and I explained yesterday why I didn't have written agreement with Badri and with Roman. It's the same story: too many coming together to do, too complicated to make agreement, and what's the most important is absolutely trust to persons, to Badri and to Roman. No one in my life were like them, who I trust like myself. No one.

Q. The reason why you never mentioned Mr Abramovich insisting on it not being written down until May of this year is that you've made this story up in May of this year or shortly before; that's right, isn't it?

A. It's not correct at all. I didn't make story up. I tried to recollect more and more what is very complicated for me. And it does not mean that I recollect everything what I present in my witness statement; it could be another recollection -- and I'm

sorry that I refer again to example.

The most complicated example from both sides is December 2000 and when we return back, my Lady, I'm sure you will recognise how it's complicated, looking even not 2009 -- '99 but even in 2000 to recollect what's happened.

Q. Mr Berezovsky, the reason that this agreement wasn't written down was that there was no way you were going to record in writing an agreement to sell your influence over President Yeltsin for money; that's right, isn't it?

A. Mr Sumption, I am sure -- I am sure -- that you will not have any doubts personally that it's not so. I am maybe sometimes looking very naive but I'm not naive so much, like you try to insist, that I just for Roman, who I knew shortly time, as you insist and it's true, organising billions business, just taking, "Roman, please, could you cover my expenses on ORT?" No one in Russia, no one in the business world never believe you, never, never, never.

Q. Did you really expect that if there was a dispute between you and Mr Abramovich over your performance of your functions under this agreement, it might actually be referred to a court in Russia? Is that what you expected to happen?

A. I tell you to refer again to you. You told that Russia at that time was Wild East; it's correct and not correct. Nevertheless we have the time when the form of law stopped the work and the new world didn't start to work properly. But it doesn't mean that we didn't believe that if something happened, we can go to the court.

And to prove the proportion between shake hand and court was completely different like in this country. This country, even you shake hand, it's like to be in court. In Russia it's not so like to be in court but we definitely understand that I can go to court. I can go to court and try to prove my agreement. It's absolutely obvious.

On the other hand, we prefer to exclude that. It is reason why I was looking: who is Mr Abramovich? Can I trust him? Here I make a deal with people who I don't know at all because I'm sure 100 per cent that I'm protected by the court. It's not simple, I had some stories here, I even lost some cases with crooks, but I was satisfied because crooks operate in frame of law, I can't do anything.

MRS JUSTICE GLOSTER: So you're saying you trusted Mr Abramovich?

A. Definitely. This is basis of our relations. But the

question was different, my Lady, as I understand: but did you believe that Abramovich -- if Abramovich betrayed you, you can go to court just because you shake hand and made agreement? My answer: yes.

MR SUMPTION: Your deal, your understanding with Mr Abramovich -- we're going to have to differ about what the understanding was -- but your understanding was intended to be binding between you in honour; it was never intended to be binding in law, was it?

A. Definitely not.

MR SUMPTION: It wasn't the kind of agreement --

A. And what happened today, it's today in this court, completely opposite. Definitely I was not able now to go to Russia and it's one of the reasons why I left Russia, because I recognised that in Russia the laws are not sufficient enough to protect. I was granted political asylum and I left Russia just because, if I can prove -- I have the same court in Russia to prove that I'm innocent, I never leave Russia.

This is the problem. But the law will not -- now it's even worse because court under control of political powers. At that time court was not so much controlled by politicians, like now, and I believe definitely was start just to build the court system, the proper court system, but it's exist not like now.

MR SUMPTION: My Lady, I don't know what your Ladyship --

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Yes, very well.

MR SUMPTION: Does your Ladyship intend to take two breaks  
in the course of the morning or one?

MRS JUSTICE GLOSTER: I was really going to be guided by the  
transcript writers. I was going to hope just to take  
two.

MR SUMPTION: To take two?

MRS JUSTICE GLOSTER: To take two.

MR SUMPTION: Yes, I don't think anybody would be suggesting  
more than two, but more than one anyway.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Can we short that out with the shorthand  
writers during the present break.

MRS JUSTICE GLOSTER: Well, perhaps the parties could sort  
that out with the shorthand writers.

Very well, I'll take ten minutes now.

(10.35 am)

(A short break)

(10.45 am)

MR SUMPTION: My Lady, the shorthand writers have suggested  
that they would like a break at 11.50 and that that  
would be enough. I've consulted the translators, who

are happy with that also.

MRS JUSTICE GLOSTER: Right. Very well. Well, round about 11.50 then, depending on whether you've reached a suitable break.

MR SUMPTION: Mr Berezovsky, I want to turn to the various auctions.

In December 1995 NFK won the loans for shares contract at the auction in that month, didn't they?

A. Sorry, in which month?

Q. In December 1995 NFK succeeded in the loans for shares auction, the auction of the right to manage the State's 51 per cent shareholding?

A. In December 19 --

Q. Well, I can tell you it was December '95.

A. Yes, in December -- just, I'm sorry, Mr Sumption, I need to refer back. Just a second. In December '95, 28 December, it was signed by privatisation committee the auction -- yes, December '99 (sic), correct. Sorry, sorry.

Q. Thank you.

Now, you accept, do you not, that NFK were a company owned 50 per cent by Mr Abramovich's company Vektor-A and 50 per cent by Consolidated Bank?

A. Yes, except that it's presented interest of Abramovich -- I don't know how much percentage

Mr Abramovich own in Vektor, I don't know that; and I know that we were presented by Obedinyonniy Bank, which present my group.

Q. Consolidated Bank was -- and I'm using its English name --

A. Yes, it's Obedinyonniy Bank in Russian.

Q. That is the Russian translation.

Now, Consolidated Bank was a bank associated, as I understand it, with the Logovaz Group.

A. You're absolutely correct.

Q. You never owned Consolidated Bank, did you?

A. As I remember, I had shares in this bank, definitely not -- as I remember, not a lot, but --

Q. Not a lot?

A. -- but I fully control this bank.

Q. Yes. I understand, Mr Berezovsky, that you had management control over the bank, but you only had a relatively small shareholding in it; that's true, isn't it?

A. It's absolutely true and it's exactly again the way how that time everything was operated. That everybody understood that I create this bank, I have management control, it means that I put manager to whom I trust; but how it's split inside of the bank the shares, it doesn't so much value that time.

- Q. Yes. Well, through various intermediate holding companies you owned, at the most, 13.7 per cent of Consolidated Bank. Would you accept that?
- A. I don't remember. I can't exclude that.
- Q. Right. Now, that gave you, didn't it, an indirect interest of about 8.5 per cent in NFK, you personally?
- A. That gave me 50 per cent with Badri interest in FNK (sic), if we correctly --
- Q. Sorry, forgive me, I got the maths wrong. Can I put that question to you again.
- It gave you a 6.85 per cent indirect interest in NFK, just under 7 per cent?
- A. It means even you reading attentively don't know well how much per cent but it really doesn't matter. It's also like with Abramovich my relations. There were people who trust me, there were people to whom I trust. And formally you are absolutely correct, if the calculate numbers, but the reality was completely different: I fully control 50 per cent of FNK (sic) together with Badri.
- Q. Now, could you please be given bundle H(A)18/198.
- A. The rest I can remove?
- Q. You can certainly -- I'd keep your witness statement but you can get rid of everything else.
- A. Thank you. The last witness statement, yes?

Q. Yes, your witness statement for this trial.

A. Thank you.

Q. Bundle J2, I think it is, can go.

Have you got H(A)18/198? Do you have that open?

A. Yes.

Q. Now, if you look at the yellow pages --

A. Yes, in Russian.

Q. -- immediately afterwards, you'll find the Russian version, which you might prefer to look at.

A. Yes, thank you. Thank you.

Q. I'm going to refer to the English version. This is an interview republished in your book "The Art of the Impossible" with the Moscow paper Vedomosti in March 2000.

A. March -- just a second. May I just again for myself return back.

Q. 26 March 2000.

A. Just a second. 26 March, it means that I'm still in Russia, yes.

What I should have a look?

Q. Just look at the first page of the English, please, which is probably somewhere around the first half of the page of Russian.

A. Mm-hm.

Q. Now, in the English, you are asked, and it's the second

question asked by the correspondent:

"And what is your percent[age] of Sibneft stock?"

Do you see that?

A. Yes.

Q. Your answer is:

"Sibneft shares are owned by some LogoVAZ structures, and the property structure of Sibneft is not yet final."

And the correspondent says --

A. Just a second. It's March 2000: again, it's connected to the time what -- it's not referring -- I don't want -- it's not referring to the former time, it's just -- we discuss about this time, the time of interview, yes?

Q. Yes.

A. Thank you.

Q. The correspondent then says:

"Approximately?"

And you say:

"I think, approximately 7%. But I should say that I have not been directly involved in Sibneft business since 1996, and this is the truth. This does not mean that I gave my shares away to somebody. I gave them to a trust, and they are very well managed."

Now, the shares that you claim to own at that stage

are approximately 7 per cent.

A. Just a second, may I have a look in Russian. (Pause)

Yes.

Q. Now, you seem to be saying there that you own 7 per cent through structures connected with Logovaz.

THE WITNESS: Mr Sumption, if you don't mind, if you don't mind, before you put the question, I just want to pay attention, my Lady, to the next question and the answer to the next question.

MRS JUSTICE GLOSTER: Well, just read it to yourself and then Mr Sumption will ask the question.

A. Yes, I just put attention that (inaudible). It's correct because we discuss here about share and it's turn out -- I just want to stress you, Mr Sumption: absolutely occasionally, I don't know how it's happened, when Abramovich cleared a space, presenting that everything is under his personal shareholding, he forgot about PK -- I forgot this -- PK-Trast, which own a little bit, but naturally own. And you now refer, when you turn back finally what is the real percentage, it's really around 6 -- 7 per cent left under control of Logovaz structures, which one of them is Obedinyonniy Bank.

Yes, sorry.

MR SUMPTION: Exactly.

Now, when you refer to that 7 per cent, what you are referring to there is the proportion that you indirectly owned of NFK through Consolidated Bank, isn't it?

A. It's precise calculation -- not precise, more or less precise calculation -- of my direct -- indirect, let's say, owner in shares of -- of what we discussing now? -- Sibneft, sorry.

Q. Well, what you had 7 per cent of, through Logovaz, was NFK, the successful bidder in the loans for shares auction; isn't that right?

A. NFK, I don't know, or N -- just a second, Mr Sumption. I can miss PK-Trast, which was created and officially own some percentage, and PK-Trast appeared during not shares instead of loan but it's appeared when it was bid for buying 49 -- one of the portions which was buying as the 49 per cent, at the second stage. It means that --

Q. Mr Berezovsky, PK-Trast had nothing whatever to do with Logovaz, did it?

A. I don't know.

Q. It didn't.

A. I don't remember.

Q. I see.

A. Mr Sumption, believe me, I don't pay attention how it was structured by Mr Abramovich. I'm sorry.

Q. I will have to ask you about PK-Trast in a moment but

that arose later.

What I'm asking you now is this: when in this interview you referred to yourself as having a 7 per cent share in Sibneft, what you were actually referring to was the indirectly held 7 per cent that you had in NFK which had won the loan for shares auction through -- that was a --

- A. I don't know that. My recollection was in 2006 it's exactly the reason, in 2000, it's exactly the reason why I ask you. I don't remember how -- when I learn the case, I prepare the papers, I recognise that we have somehow 7 per cent. At that time I don't know it was director of Logovaz or it was -- and it's mentioned in NFK we have this 7 per cent or we have this 7 per cent as our percentage in PK-Trast. Nothing more.

And this interview to journalist, which interesting, generally my interest Logovaz because, for me, Logovaz and Obedinyonniy Bank, Consolidated Bank, is almost the same and I'm absolutely clear in my next answer that -- but the next answer is absolutely correct as well that we have interest more than 7 per cent but it's owned not by me; through another structure, through Mr Abramovich I think mean. I don't see any -- okay. Okay, sorry.

- Q. Mr Berezovsky, the only interest connected with Sibneft which you held through a Logovaz structure was the

interest in NFK that you held through Consolidated Bank, which was Logovaz's bank?

A. Mr Sumption, I gave my answer: I don't remember that. I don't remember how we own NFK. I know that our interest in it -- sorry, sorry, sorry, sorry -- our interest in NFK, as you mention correctly, was presented by Obedinyonniy Bank, yes. And it means that in NFK I own, I don't know -- if we calculate, how much is that?

Q. It has always been your view, has it not, that because of Consolidated Bank's 50 per cent interest in NFK, you had a 50 per cent interest in Sibneft? That's what you've always thought, isn't it?

A. Definitely not. Definitely not. Because I understood well that when we present Consolidated Bank, I knew well that their shares structure is different from my real control and I already mentioned you it's just -- the opposite: it just show how that time business was organised, and organised like in the way how I organised with Abramovich just shaking hand or we create some structure where people had formally some shares but in reality was different. They also hold shares in my favour; that's it.

Q. Now --

A. Nothing different even compared was Abramovich, in

general I mean, in general, in general understanding how business that time was organised.

Q. In June of this year, 2011, did you --

A. 2011?

Q. Yes, this year -- did you give evidence by video-link from London to an investigating judge in the District Court of Marseilles?

A. You're absolutely correct.

Q. Now, that was disclosed to us earlier this week.

A. Yes.

Q. I want to ask you to look at the records of that evidence. They're in H(C) --

A. Could I close this?

Q. Yes, you can. Indeed, it can be taken away from you. Could the witness please be given H(C)8/162.

This is not a question; it's a statement which is intended to help you understand what this document is, okay?

A. Yes.

Q. This is a record of evidence that was given under the procedure for international cooperation between courts in different countries.

A. Yes.

Q. It was given in the course of a criminal investigation by the Marseilles judge into allegations of

money-laundering, forgery and theft against you and a gentleman called Jean-Louis Bordes.

A. Yes.

Q. Okay? The investigation relates to the source of the funds with which you bought your property at Cap d'Antibes.

A. Yes.

Q. That's all familiar to you, isn't it?

A. I am well familiar with this investigation and with my cross-exam through video-link from London to Marseilles.

Q. Now, Monsieur Bordes, was he an estate agent who acted for you in relation to the purchase of your property at Cap d'Antibes?

A. It's correct.

Q. Now, if you look at 162 in the English version -- and there is a French version before it but you're probably more comfortable with the English than the French?

A. Before you start with that, I have one question: this is what's signed by my lawyers or it's just transcript which was done in France?

Q. I'm about to suggest to you what it is, Mr Berezovsky. If you look at --

A. No, no, no, no, no, I'm sorry --

MRS JUSTICE GLOSTER: No, just a second, Mr Berezovsky.

Mr Sumption is going to identify with you what he thinks

the document is, so you'll have an opportunity to make any point you want to make. But just let's look at the document first and let Mr Sumption ask the question.

THE WITNESS: Yes, sorry.

MR SUMPTION: Look at page 162. You'll see that it is the court greffier in France, his summary of your evidence, and at the very bottom you will see a note by you and you can find your signature on it and a note in English in your handwriting on page 151 H(C)8/151.

You might find it helpful to look at 151 because that's by you in English.

A. 151?

Q. Yes. It's the original French version but with an English note at the bottom of the first page.

A. Which page?

Q. 151.

A. Yes.

Q. Okay. Now, do you see the manuscript note at the bottom of the page? Yes?

A. My signature, I see that.

Q. It's your signature and I think you actually wrote out the text too, didn't you?

A. Just a second. No, no, just a second. Can you allow me to...

Q. Well, you must be able to recognise your handwriting,

Mr Berezovsky?

A. No, it's not my hand, definitely.

Q. It's not your handwriting?

A. No, it's not my hand.

Q. I see. But you presumably read it before signing this document?

A. Just a second, it's the reason I want to have a look, because my signature is here but it's not my hand, and I want to read that.

Q. Okay, just read the note. It's typed out at page 162.

A. I'm sorry. Give me please time to read that.

When it was written -- where is it written?

Q. Would you like me to read it out to you?

MRS JUSTICE GLOSTER: Mr Sumption, read it into the record please.

MR SUMPTION: The note says:

"The French juges" --

A. Where is that? It's in the page --

Q. The bottom of page 151 --

A. 161?

Q. -- in handwriting and the bottom of page 162 in typescript.

A. Yes, yes, that's exactly my question. Yes, thank you.

Q. What it says is this:

"The French juges d'instruction have kindly agreed

to place into the file as part of my proces-verbal the note recorded in English by my English lawyers; subject to that more full record, I sign this note."

THE WITNESS: Hmm. Can I put the question?

MRS JUSTICE GLOSTER: No, let Mr Sumption put the question.

THE WITNESS: Sorry.

MR SUMPTION: What I suggest is this. It shouldn't be controversial. The court clerk had drawn up in French a summary of your evidence --

A. Hmm.

Q. -- and you signed that summary as being correct, but subject to the English record prepared by your lawyers being included in the file so that there was a fuller record in English as well? Is that right?

A. This exactly the point which I tried to explain what I was explained by my lawyers, yes? I was explained that a French transcript was very different compared with what we're discussing and this is the reason why my lawyers present the English transcript or English correction, I don't know that well, which I can use -- which is possible to use only as a reference to reality.

Moreover, I remember well when we finished the cross-exam it was done in very short time the transcript and my lawyer insist that it does -- we can accept that but only after we correct that.

Q. Yes.

A. This is the point.

Q. So the point was you were happier with your own lawyers' transcript of what was said than with the greffier's summary, so you wanted to make sure your lawyers' version was on the file?

A. It's correct.

Q. Now, your lawyers' version will be found at page 173 H(C)8/173.

A. And, as I understand, it was agreed with French. It's not just my...

Q. Yes. Yes, absolutely.

A. 173?

Q. Yes, 173 you'll find the first page of your lawyers' note of what you said to the French judge.

A. Yes.

Q. Now, I would like you to turn into that document a bit and go to page 181 H(C)8/181.

Now, you're being asked --

A. Just a second. What is the -- where is the question?

Q. Now, would you like to read to yourself --

A. Yes.

Q. Do you see a paragraph that begins about ten lines up from the bottom of the page with the words --

A. Ten lines --

Q. Let me finish, please -- with the words:

"So in your written answers you justified..."

Do you see that paragraph?

A. It's exactly what I want to ask, try to find.

Q. Now, I would like you to read from there --

A. Yes.

Q. -- until halfway down the following page, where there's a break in the page and the next paragraph begins:

"But the second reason..."

I don't want to stop you reading around that but that's the bit I want you to concentrate on.

A. Fine, I find the paragraph. I need just a little bit more time than you because my English is not so perfect like yours. (Pause)

MRS JUSTICE GLOSTER: Just to page 182, is it, you want him to read?

MR SUMPTION: Yes, halfway through page 182.

A. Okay, now I understand. Okay.

Q. This is a transcript of evidence you gave in English, isn't it?

A. I gave my evidence in English.

Q. Yes. Now, this is an observation I make for the benefit of my Lady, though you may find it interesting just to pay attention.

A. Yes.

Q. The paragraph that begins, "So in your written answers you justified the funds used for the acquisition of these properties and you said they were the profits due to you through your involvement in Sibneft", I'm not taking a point on the way that's expressed because in fact it is not a correct summary of the answer you gave.

In case anyone should think it is, if your Ladyship, just for the transcript, were in due course -- not now -- to turn to the written answers referred to at page 134, answer 4 H(C)8/134 --

A. Sorry?

Q. I'm not asking you to do this --

A. Sorry.

Q. -- because I'm going to ask you about another aspect of this. You will find that what Mr Berezovsky actually said was that they were profits due to him through his interest in Sibneft. So that's not a point I'm taking.

MRS JUSTICE GLOSTER: No, fine.

MR SUMPTION: Mr Berezovsky, I want to turn to the point I am taking. You will see that you're being asked here about the 1996 agreement.

A. Yes.

Q. Which is the agreement when you say it was agreed to conceal your interest in Sibneft; okay?

A. Just a second.

- Q. That's what you're being asked about?
- A. Just -- now I return back to the question, step by step.
- (Pause)
- Yes.
- Q. Right. Now, if you now look at the chunk of text on page 182 which begins, "First, RA asked me not to make any papers which demonstrate[d] my ownership in Sibneft", we've been through that. In the following paragraph you say this --
- A. In the following --yes, sorry.
- Q. "Nevertheless, it's wrong to say [that] I did not have any papers showing my involvement in Sibneft. We presented in the hearing in the London court the papers which demonstrate that from the very beginning we owned 51% of the company, 50-50 with [Roman Abramovich]. I represented my interest with BP by [the] so-called Consolidated Bank. It is clear evidence that I was formally [a] shareholder of Sibneft."
- A. Just a second.
- Q. That's what you said.
- A. Just a second. Yes.
- Q. Now, that is a reference, is it not, to the 50/50 share that Consolidated Bank had in NFK --
- A. Yes.
- Q. -- which managed 51 per cent of the shares of Sibneft?

- A. Yes, I absolutely agree with you that it's not correct what it's saying here because my understanding --
- I don't know, I may refer to this point, but it's exact translation and I hope my lawyers -- this is translation of my lawyers; correct? This is translation --
- Q. No, it's not a translation. This is either a transcript or an extremely full note of what you were saying in English.
- A. No, no, no, just a second. It's not so. It's again the point -- I'm sorry. It's exactly the point because I was informed by lawyers that translation of what was saying in Le Bourget is not what I said directly in Le Bourget because it was mistaken by French. And it's the reason why I ask you what is this paper: this is final paper which was agreed with French or it's just paper was translated what was written in French? This is the point.
- Q. No, Mr Berezovsky. What you are looking at is --
- A. I --
- MRS JUSTICE GLOSTER: You've asked what you're looking at --
- THE WITNESS: I'm sorry, my Lady.
- MRS JUSTICE GLOSTER: -- and Mr Sumption is about to tell you and he'll take you to the document.
- MR SUMPTION: What you are looking at, Mr Berezovsky, is a note made by your English lawyers of the evidence that

you gave to the French judge.

A. Who signed this?

Q. Do you accept that?

A. Who signed it?

Q. This is the note that you refer to in the note that you wrote in manuscript --

A. No, who signed from English side, from my lawyer? Who signed that?

Q. Nobody signed it, Mr Berezovsky.

A. Ah, okay.

Q. It was prepared by your lawyers as a record of what you had said to the French judge and you signed a document saying that you --

A. No, no, no, no, no.

Q. -- were prepared to sign the French version subject to the lawyers' --

A. No, no, no, no, no, no, no. It's again, again please, this is the final document which signed by my lawyers after correction? This is the question. Because I was told clearly before this hearing that there is a problem with the French document, which was made like transcript of our conversation, yes, and they were mistaken a lot. I don't know, maybe it's not mistake.

MRS JUSTICE GLOSTER: Okay. Well, there must be a clear record. Mr Rabinowitz, can you help on this?

First of all, before you start, was this video interview conducted exclusively in English or in English and French?

MR RABINOWITZ: Apparently in English, French and Russian.

Can I just try and help both Mr Sumption and the witness with what this is. This is the final version of a note which was taken by Mr Berezovsky's English solicitors --

MRS JUSTICE GLOSTER: Addleshaws?

MR RABINOWITZ: Addleshaws -- and it is this note that was the subject of the reservation signed by Mr Berezovsky on the French document.

MRS JUSTICE GLOSTER: And was this based on a transcript?

MR RABINOWITZ: No.

MRS JUSTICE GLOSTER: There was no transcript of the --

MR RABINOWITZ: The closest one gets to a transcript, I think, is the document that Mr Sumption showed your Ladyship in French.

MR SUMPTION: Well, no, that's not --

MR RABINOWITZ: Sorry, there wasn't --

MR SUMPTION: The document in French is a summary which is much briefer. The document in French is the document that begins at page 151. That is the greffier's summary.

As the note signed by Mr Berezovsky records -- and

I don't think there's any significant difference between the parties on this -- there was unhappiness about the French summary, which was thought not to be sufficiently full or accurate. Therefore, Mr Berezovsky signed a statement to the effect that he was content to sign the French summary by the greffier but only on terms that his English lawyers' much fuller version should be attached to it and put into the file.

MRS JUSTICE GLOSTER: Mr Rabinowitz, was that the correct procedure? I mean, it must be a matter of record, this.

MR RABINOWITZ: I'm sorry, my Lady, I was just checking --

MR SUMPTION: It's effectively recorded in the manuscript note on page 151.

MR RABINOWITZ: My Lady, that is my understanding as well.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: Mr Berezovsky, what you are looking at at page 182 is part of the final version, as Mr Rabinowitz has told us --

A. It's exactly what I want to understand for myself.

Q. -- of the note that your English lawyers took of what you told the French judge, right?

A. Mm-hm.

Q. Now, I think you've accepted that when you refer to papers which demonstrate that you owned 51 per cent of Sibneft 50/50 with Mr Abramovich, what you are referring

to there is the 50 per cent interest which Consolidated Bank held in NFK, which in turn had the right to manage the 51 per cent interest in Sibneft?

A. Mr Sumption, you're absolutely correct.

Q. Thank you.

A. I just want to say that it does not mean -- and I signed that, you are correct, I responsible for that. The truth is what I present you when I said and we clear understand that I really share 51 per cent, not an ownership like -- ownership of Sibneft, ownership of NFK at that time. It could be, it could be that it's -- because I didn't remember well and you're absolutely correct that it could be -- what is written here does not coincide what I told you, my participation in NFK.

Q. You see, Mr Berezovsky, you're making here to the French judge much the same point as you made in the interview that I showed you before.

The point that I'm putting to you is this: you have always regarded the 50 per cent interest that Consolidated Bank held in NFK as tantamount to an ownership interest in Sibneft, haven't you?

A. Definitely not. I explained you big difference between what means 7 per cent, what means 51 per cent of the management in NFK and how we agreed with Mr Abramovich.

I absolutely agree with you that what is written

here is not correct, I mean the French document. The problem is that -- I don't want to refer to the problem. You are correct with that but I'm correct what I said before, my Lady.

- Q. Why did you say this to the French judge only four months ago?
- A. Again, I was not accurate because still in my head it absolutely hell with the what is NFK, what it means later on when it was privatised. Again, it's my fault, I don't want to say you that you are wrong. You are correct.
- Q. You accept now, as I understand it, that neither you nor Roman Abramovich obtained any ownership interest in Sibneft shares as a result of the loans for shares auction?
- A. Not -- you are completely wrong. We discussed now about NFK in French documents and here it's completely -- just a second, may I read again?
- Q. No, I'm not putting to you the French document now.
- A. No, no, no, I mean that definitely everything is like presented before. We own 50/50 interest of 1 per cent -- 50/50 interest of 1 per cent in NFK and later on, after auctions of -- for 49 per cent and later on for 51 per cent of NFK, which was transformed to the other company, we own the same, 50/50.

How it was organised? It's that story. But reality is so what I said and I said absolutely correctly, even in French documents, that I'm owner, owner, owner of 50 per cent of Sibneft through Roman Abramovich. Abramovich is holding my shares; this is the point.

- Q. Mr Berezovsky, do you accept that NFK never owned any shares in Sibneft?
- A. Yes, NFK just manage 51 shares of Sibneft.
- Q. Yes. Now, you took a considerable interest, did you not, in the loans for shares auction; you personally?
- A. What does mean my "personally"?
- Q. You were very busy in relation to the loans for shares auction of 28 December?
- A. Absolutely, absolutely. I personally present all our group on the auction in Moscow -- again, I forgot exact date of the auction but just a second, it was -- ah, no, it was 29 -- 28 December 2000 -- sorry, 2000 -- '95. Sorry, '95.
- Q. It was 28 December 1995.
- A. Yes.
- Q. And you were personally extremely interested in that auction and you worked hard about it?
- A. Absolutely correct. Excuse me, can I leave it in front of me?
- Q. Sorry?

A. This I can leave --

Q. You can put away the H(C) bundle now, yes.

A. Thank you.

Q. And so did Mr Patarkatsishvili: he also worked hard on it, didn't he?

A. Yes, definitely.

MRS JUSTICE GLOSTER: The assistant will take it away.

THE WITNESS: Sorry?

MRS JUSTICE GLOSTER: The solicitor will take it away.

THE WITNESS: Thank you very much.

MR SUMPTION: Now, the cost to NFK of the loans for shares auction was that they had bid \$100.3 million as the amount that they agreed to lend to the Russian State; that's right, isn't it?

A. No, Russian State put 100.

Q. The Russian State said the minimum bid was 100?

A. Correct.

Q. And the successful bid by NFK was \$100.3 million?

A. You're correct.

Q. So that was the amount that NFK and SBS, which was acting with it, had to lend to the Russian State?

A. It is correct.

Q. Now, of that sum of \$100.3 million, \$3 million -- is this right -- was the advance deposit paid by NFK before the auction?

A. I don't know anything about that.

Q. And that, I suggest, was borrowed by NFK from the Russian Industrial Bank. Do you know about that?

A. No, Mr Sumption, I don't know about -- or not don't know; I don't remember anything about \$3 million because I care about \$100 million. It's, I'm sorry, an excuse but I really didn't think about \$3 million at all. And -- okay, sorry.

Q. If you can't answer the question, fine.

Now, the remaining money advanced to the State was \$97.3 million, which was advanced by SBS Bank, the bank that was associated with NFK in this bid; do you agree with that?

A. I disagree. I explain you why: because I talked with Mr Smolensky not about \$97.5 million and if you open the French file you will see the same of Mr Smolensky's statement to general prosecutor office when they cross-examined him because of French -- because of Russian prosecutor office want to present additional paper that I'm criminal in France, yes? And it's written -- it is a question of Mr Smolensky, who is the head and founder of the bank which Mr Sumption is discussing, and his evidence is absolutely clear: he said that, "I gave Berezovsky under his personal name \$100 million".

And I'm sorry to say, Mr Sumption, I didn't know anything about \$3 million or don't remember about \$3 million, but I remember well about \$100 million.

Q. Okay. \$100 million or \$100.3 million was the total amount of the loan?

A. \$100 million was amount of the loan for this auction. For this auction, I mean '95 -- December '95. As I know well, I establish business relations with this bank. And, my Lady, it's absolutely important to understand why I went to this bank, exactly to this bank, not the other one.

Q. That's not what I'm asking you about, Mr Berezovsky.

A. Okay. It's not only. And then when Roman Abramovich, who we delegate to manage everything -- that we discussed yesterday -- and when he tried to obtain money again for bidding, all the time, all the time the SBS-Agro Bank was involved in that.

Q. Right. Now, do you remember that under the rules for this loans for shares auction, bidders had to put up a deposit, a cash deposit --

A. I don't remember that at all.

Q. Right. Let me tell you that they did and it was \$3 million.

A. Okay, fine. I don't remember that.

Q. Fine. I'm just --

A. Because, as I told you, \$3 million very different from \$100 million.

Q. Quite. Do you remember that \$97 million -- or, to be exact, \$97.3 million -- was advanced by SBS Bank to the State under the loans for shares auction?

A. I don't remember that at all. As I told you, I discuss about \$100 million. All -- Mr Sumption, just a second. It's important not to mislead anybody.

My function, as you remember, in the agreement '95 was not to care about \$3 million; my care was to find the funding. It's my obligation when we create agreement, agreement '95. And now we start to discuss: did I realise this agreement? And you just confirming that I realised at least the first point to agree it about the loan for the shares, the money bidding for the shares.

Q. Mr Berezovsky, did you realise in December 1995 that most of the money that was being lent to the Russian State was actually being advanced by SBS Bank?

A. Definitely. It was my agreement with Mr Smolensky that he will help us to organise this money for the bidding, \$100 million. I never discussed with him \$97 million.

Q. Now, under the rules of this auction, bidders had to have a bank associated with them, didn't they?

A. What does it mean, "associated with them"?

Q. They had to bid in conjunction with a bank which would undertake to lend the money?

A. It's correct.

Q. Yes. Now, SBS Bank therefore lent this money and it took security for the money, didn't it?

A. Again, may I tell you what we have done. When I --

MRS JUSTICE GLOSTER: No, just answer the question. Did SBS --

A. As I know, SBS took security from Menatep.

MR SUMPTION: It took a number of different forms of security. It took a guarantee from Menatep --

A. Okay.

Q. -- yes? That was part of an arrangement that you'd made with Menatep --

A. Correct.

Q. -- under which you guaranteed their bid and they guaranteed yours.

A. Correct.

Q. Right? Which I say "you", in fact it was SBS who guaranteed it, wasn't it?

A. It was done by me.

Q. Now, SBS took, therefore, a guarantee from Menatep but they also took, didn't they, cash deposits as security?

A. I didn't know anything. I just learned that when I start to investigate my case. And, as I know,

Mr Abramovich insist that he gave his personal money through Runicom to guarantee. I think it's completely wrong because Abramovich didn't have money at all this amount that time.

He just used -- and moreover it was -- important -- it was finally money of Sibneft because Abramovich -- and I am not specialist in this financial scheme and we have specialist, and Natalia Nosova is one of them, who knows well how it was organised. I don't want to say that it was trick but it was kind of trick because it was not money of Abramovich Runicom company because Abramovich at that time already start to trade oil, as I told you when Mr Sumption asked me how it was possible to generate money because Sibneft just started. Abramovich -- and Abramovich definitely will explain it better.

But I want to stress it was not money of Abramovich and Runicom money. The only reason guarantee was guarantee from Menatep and also was done by me because my relations with Khodorkovsky. And I told you, my Lady, yesterday that it was just shake hands. And if Menatep put not 100.3 but 100.4, they win the bid. It again was just verbal agreement, just agreement with people who knows each other well, nothing more. It's not money of Abramovich.

- Q. Mr Berezovsky, I thought we'd established this morning that you had no knowledge of how much Runicom could afford because you didn't know anything about its finances.
- A. You are correct. But on the other hand I was not without eyes and without ears and I knew that -- I know well what Smolensky told me: that he organised that just because I asked him to do.
- Q. Right.
- A. And he told me clearly that it's not money of Abramovich, it's money of the bank. Moreover, you know well that using that, later Smolensky asked Sibneft to put money and to put on bank account all operations or partly operations of Sibneft. It was the payment, in my also clear understanding of our discussion with Smolensky, that later on, because he made me this favour, he will be -- he will use money of Sibneft to operate with them, what happened.
- Q. Mr Berezovsky, I'm going to describe in stages how SBS was secured and I want you at each stage to say whether you agree, whether you disagree or whether you do not know one way or the other.
- A. I give you answer: I don't know.
- Q. Well, you don't know what the question is.
- A. Yes, don't spend the time: I don't know.

Q. You're saying in advance that you won't know the answer to any of the questions I have to ask you?

A. No, no, I don't know how it was organised.

Q. Right. Well, let me put this to you.

There were two cash deposits which SBS took: it took \$80 million deposits cash deposits from the two Siberian companies themselves. Do you agree or not agree or do you not know?

A. I don't know that at all.

Q. Right. And it took a deposit of \$17.3 million from Runicom: do you agree or disagree or not know?

A. I don't know that at all.

Q. Thank you.

Now, that is the evidence that Mr Abramovich and Mr Shvidler will give and you are not, on your answers, able to contradict that, are you?

A. If I don't know, I'm not able to contradict. I know the other story which was presented my financial adviser and financial -- financial adviser, Natalia Nosova, and her level is much higher than level of people who present you this information.

Q. Now, in your witness statement you say that you gave a guarantee to SBS Bank.

A. My personal guarantee.

Q. Well, what you gave them was that you gave a personal

assurance by word of mouth to Mr Smolensky that they would be paid?

A. Yes, I shake him hand and he said, "Boris, you are person who I trust".

Q. You never gave --

A. The same happened with Menatep, I would like to mention to you.

Q. You never gave a written guarantee, did you?

A. A real guarantee? A real guarantee?

Q. No, no. You never gave a written guarantee to SBS Bank?

A. I never gave written guarantee.

Q. You never gave them a legally binding guarantee; you simply did it on trust?

A. Absolutely correct.

Q. Right. Now, that assurance, you never were called upon to pay up on that assurance, were you? Nobody ever asked you to pay up?

A. Nobody asked me to pay because it was agreed that Sibneft later would return money back.

Q. Right.

Now, do you claim to have contributed any money of your own to the cost of lending \$100.3 million to the Russian State?

A. I don't have any personal direct investment. But what is important, my Lady, to understand: that as we agreed,

and it was one of the reasons why Smolensky shake hand, that I finance ORT myself. It means that in spite of the -- part of our consortium of bank who took obligation to finance ORT in front of president, they never put money themselves. Sometimes they give me credit but I should return this credit back: it's happened with Smolensky, it's happened with Menatep. And it means that Smolensky trust me, that I have reputation as person who deliver his obligation on the one hand.

And on the other hand, how to calculate? Maybe invest even at the time already \$20 million from which Smolensky should invest himself in ORT. But I didn't put any one penny personally to this exactly 100 but it's the other story.

Q. Right. Now, let's turn to the three cash auctions which happened in 1995 and 1996 for the 49 per cent.

Now, those were auctions in which actual shares in Sibneft were being sold, weren't they?

A. You are correct.

Q. The first of them happened in December 1995, at about the same time as the loan for shares auction?

A. The first auction happened December...?

Q. '95. The result was actually announced in January.

A. Just a second. The first auction happened before

51 per cent was given to -- as a collateral?

Q. Well, before the loans for -- the loans for shares auction was on 28 December.

A. '95?

Q. '95. Also in late '95 -- I don't think the exact date matters -- there was the first of three auctions of the 49 per cent that was being privatised.

A. First of all, I have different impression: that the State start to sell shares only after their collateral auction. Can you please check it?

Q. That's probably right. Let's assume it is.

A. No, no, no, it's important, because now you just try to present me that the first auction to sell was organised before auction of --

Q. No, Mr Berezovsky, I've not suggested that to you.

A. Just a second. Just a second.

Q. Mr Berezovsky --

MRS JUSTICE GLOSTER: Hang on. Don't let's have a debate about what question --

MR SUMPTION: I'm not asking him about the exact date. About the time --

A. No, no, just a second. Mr Sumption, can you allow me please to read what you said now. (Pause)

It's absolutely wrong. No one auction for 39 per cent (sic). It's written:

"Also in [the] late '95..."

It could be later than 28. It could be later than 28; I don't think so. It means that the first auction -- and you will find that's clear now -- happened not in '95 to sell. This is important.

MRS JUSTICE GLOSTER: Right. Well, it must be a matter of record.

MR SUMPTION: It is a matter of record.

MRS JUSTICE GLOSTER: So can we just have the dates read into the record. There can't be any dispute about these. There must be a record.

MR SUMPTION: The evidence is given by Mr Gorodilov and the evidence is that the sale actually occurred in November 1995, therefore before the loans for shares auction. But the question I am proposing to ask Mr Berezovsky has nothing to do with the date.

MRS JUSTICE GLOSTER: Right. Well, ask the question again.

MR SUMPTION: It doesn't matter when this happened.

There was a first auction of the 49 per cent, which related to 15 per cent of the Sibneft shares, didn't it?

A. Sorry, again?

Q. Do you agree that there were three auctions?

A. Yes.

Q. Do you agree that the first of the three auctions related to 15 per cent of Sibneft?

- A. I don't know. I don't know. I was not responsible for that. But what I know well: that all payment were done with support of SBS-Agro, who is the bank of Smolensky, including this sale and including participation in 51 per cent.
- Q. Do you agree that at the first auction, 12.22 per cent of Sibneft's shares --
- A. When this happened? Please tell me.
- Q. It was in November 1995 but I'm not asking you about the date.
- A. Yes.
- Q. At the first auction, whenever it happened, the result was that 12.22 per cent of Sibneft's shares were acquired by Mr Abramovich's company, Runicom?
- A. I agree with that.
- Q. Right. Neither you nor Mr Patarkatsishvili had anything to do with that purchase of 12.22 per cent, did you?
- A. I don't know that. As I understand, it's also done with support of SBS-Agro. Is it so or not?
- Q. I'm asking what you had to do with it.
- A. I agreed with SBS-Agro -- again, two points.

First of all, Abramovich is responsible for everything, including auction, including everything. I responsible for money if he need money. If he doesn't need money, he is doing himself. When he said, "Boris,

we need money for share against of auction", I obtained this money; or the way how I obtained that, this is the point.

And I just tell you, Mr Sumption, that Abramovich present me the presentation for Sibneft all over the world, in English written, this is Sibneft to Berezovsky, and I travelled all over the world to obtain money. Did he ask me or not about this exactly?

I don't remember. I just want to tell you that it was his responsibility. When he ask me, I deliver that.

Q. Mr Berezovsky, did you or did you not have anything to do personally with the first auction of the 49 per cent?

A. I agreed with Mr Smolensky to help us. I don't --

Q. You had nothing to do with it?

A. I am sorry, I'll answer. I don't remember.

Q. You don't remember?

A. Yes.

Q. Do you remember whether Mr Patarkatsishvili had anything to do with the first auction out of the 49 per cent?

A. I remember that Mr Abramovich informed day by day to Mr Patarkatsishvili what was happening around auctions.

Q. So is it your evidence that you can't remember whether you were involved in the arrangements for participating in the first auction?

A. As I told you before, involvement of Patarkatsishvili

means my involvement as well.

Q. So is it your evidence that you can't remember whether you were involved in the first of these auctions?

A. It's absolutely correct.

Q. Right. In your witness statement --

A. I mean directly. Did I talk about that to Abramovich or not? Again, I want just to stress again, if Abramovich need money, he ask me to do. I don't remember did he ask me or not.

Q. In your witness statement, paragraph 156 D2/17/229 -- it should be in front of you. In your witness statement --

A. Just a second. Yes.

Q. "I was not involved in the arrangements for participating in these auctions but knew they were taking place."

A. I just want to stress you, Mr Sumption, that at that time Sibneft already generated money. This time when Sibneft generated money, it means that money, Sibneft were involved in that. It's my company, it's my company, like a company of Abramovich, and I want to stress that. It means my money were involved in that.

Q. Are you suggesting that Sibneft produced money for the first of these auctions?

A. I think so. Definitely.

- Q. But that was in 1995, Mr Berezovsky.
- A. Yes, this was in 1995. As you told me -- asked me before, how it was possible to pay money even when company -- if company was just created and so-so? It means that company was created already in November '95.
- Q. But, Mr Berezovsky, you hadn't got control of Sibneft until after 28 December. How could they possibly --
- A. What does mean -- it's a question to Abramovich. It's exactly what I told you, because Abramovich at that time was already trader, trade, and he accept -- as I told before, Mr Sumption, that it was splitted several parties and it was the reason of vertical-integrated technology and Abramovich from the beginning, from the beginning of creation even I think -- before beginning of Sibneft, before creation of Sibneft, he already used this scheme to generate money from the oil of Sibneft and definitely he increased this opportunity after Sibneft -- after Sibneft was formally formed.
- Q. How could he have done that when he didn't have any control over Sibneft, Mr Berezovsky?
- A. No, it's wrong. Abramovich said in his -- all the time and all the time present his position that he control Mr Gorodilov decisions, he control Mr Litskevich decision, in his witness statement, and it's the only reason why he become my partner.

- Q. Well, I will leave Mr Abramovich to deal with that but he did not in fact say anything of the sort in his witness statement.
- A. Okay, okay, okay. We'll leave it to Mr Abramovich.
- Q. Let me refer you to your witness statement, Mr Berezovsky.
- A. Yes.
- Q. Is it true that you were not involved in the arrangements for participating in these auctions? And that refers to the three cash auctions of the 49 per cent.
- A. I was not involved in these three auctions but because of one reason, and it's not correct just to put the point here: because Abramovich functions would delivered that, not my functions, after agreement in '95.
- Q. You weren't even consulted, were you, about --
- A. If Abramovich need --
- Q. Let me finish the question. You weren't even consulted about the three auctions of the 49 per cent, were you?
- A. Mr Sumption, it's serious story. I gave up everything to Abramovich with one reason: don't spend my time for nothing. I was involved with much more important deal than Sibneft and I want to understand clear.

For me, the most important deal was to win election '96. For me, the most important was ORT, believe me.

If not ORT, Badri manage Sibneft, not Abramovich, because I trust him much more. Or Nikolai Glushkov, who already passed through Avtovaz as deputy general manager of Avtovaz, the biggest car manufacturing company in Russia.

Could you believe that I say, "Mr Abramovich, young boy, fantastic boy, manage please enormous business"? Only because I had the other priority, Mr Sumption.

Q. So is the answer to my question: no, you were not consulted about the three cash auctions of the 49 per cent?

A. I don't consult Mr Abramovich at all.

MRS JUSTICE GLOSTER: I'm going to take a break there, Mr Sumption.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Ten minutes.

(11.53 am)

(A short break)

(12.05 pm)

MR SUMPTION: May I, for the benefit of your Ladyship and the transcript, just record the dates of the first auction.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: The first auction opened for the receipt of bids on 1 November 1995 and closed on 1 December of that

year. The best places to find that in due course are paragraph 23 of Mr Gorodilov's witness statement, bundle E2, flag 4 E2/04/9, and the report of the audit commission into the conduct of these auctions, the Russian State audit commission, the reference to which is H(A)09/33 at paragraph 2.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, I think we can -- at least I hope we can shorten matters, Mr Berezovsky.

Would you please look at paragraph 156 of your witness statement. I'm going to read out a single sentence in it and ask you whether it is true or false.

A. Mm-hm.

Q. The sentence reads:

"I do not recall being consulted on the bidding process or on the structures behind it."

Is that true?

A. It's true.

Q. Thank you.

Now, if you had agreed with Mr Abramovich that you were going to have a 50 per cent interest with Mr Patarkatsishvili in whatever shares Mr Abramovich might buy, you would have taken a considerable interest in the three cash auctions of the 49 per cent. But you didn't, did you?

- A. No, I had inconsiderable interest but this interest should be presented by Abramovich according of our agreement, Mr Sumption.
- Q. If you had been promised an interest in these shares, you would have wanted to make sure in advance that Mr Abramovich took part and that he bid a serious price, and you would have discussed that with him, wouldn't you?
- A. I did not discuss at all that with him.
- Q. No, and that was because you didn't have the least interest in what happened to the shares that were being sold in the 49 per cent auctions?
- A. Again, Mr Sumption, once, once and once more again, I have a principle agreement with Mr Abramovich after he took by his initiative responsibility to manage everything what concerning Sibneft creation and privatisation. If Abramovich had any question to do that, he should refer to me. And I give you exact example how it works, okay?

I didn't pay any interest to the first auction, to the second, to the third, as far as money is concerned. When it happened, it was out of my interest. But when Abramovich said, "We need \$100 million" -- and even later, I would like to remind you, Mr Sumption, that you mentioned now -- I was responsible for that because our

agreement was written clear: I responsible for funding but Abramovich responsible to manage.

It means what it means: that I don't initiate, "Roman, do you like money? Do you want money? Do you have enough money?" It's exactly I want to forget about this headache. But if Abramovich asking to me to help, this is my response and only this my response. In opposite case, I manage the company, not Abramovich manage the company. Why need Abramovich if I need to think what we need to do and how to do that?

Well, Abramovich said, "Boris, we need money", and I said, "Okay, fine". He gave me prospectus, which you have, Mr Sumption, which written Runicom to Boris Berezovsky in English what is Sibneft and Boris -- Boris Berezovsky, I'm sorry to say that I refer to me in this way; it's not correct I understand -- and I start to travel all over the world, including Soros, including Deutsche Bank, including German banks, including Japanese, including Japan, including -- you are correct, now I remind -- including Korea, South Korea, trying to find funds.

No one give me even one dollar and Mr Soros told, "Boris, you are crazy. Next day Communists will take power, they take everything from you. Take your family and leave Russia, you have already enough money". This

is the situation. When Abramovich -- it's absolutely clear from our agreement it's not my initiation to ask what you need. His initiation should be, "What I need..." and I deliver that. This is the point.

MRS JUSTICE GLOSTER: Right. I've got the point, thank you.

THE WITNESS: Thank you, my Lady.

MRS JUSTICE GLOSTER: Mr Sumption.

MR SUMPTION: Mr Berezovsky, that answer, when you referred to the \$100 million, you were referring to the amount that had to be put up to lend to the Russian State in the loans for shares auction, weren't you?

A. Yes, it's correct.

Q. Right. Now, I am actually asking you about the separate auctions for the sale of the 49 per cent that was being privatised, right?

What I suggested to you is that if you had agreed with Mr Abramovich that you and Mr Patarkatsishvili were going to have a half interest in shares that he bought, you would have taken a serious interest in the three cash auctions for the 49 per cent, and you didn't.

A. Mr Sumption, I even gave explanation why I didn't pay, not serious, any interest to that: because Abramovich was responsible for that; and the second, it was not my number one priority. I had much more important priority at that time. For Abramovich, as I told you yesterday,

Sibneft is only dream and project of his life, nothing more. For me, it's different.

- Q. Now, in relation to the three auctions of the 49 per cent, Mr Abramovich never did come to you and say, "I need money", did he?
- A. For three auctions, never.
- Q. Right.
- A. For 51 per cent to management company, definitely he can do that.
- Q. Well, I'm not talking about the loans for shares auction. In relation --
- A. I don't remember any time that he asked me money for these biddings.
- Q. And you never paid any money for the shares that were sold in the three cash auctions for the 49 per cent, did you?
- A. Why I should pay -- I'm sorry, Mr Sumption, give me please to finish -- if he doesn't ask me?

My understanding was that he generate money from Sibneft, which belonged to me, to Badri and to him somehow, or at least belong oil which they produced to sell on the market, and this generate money for this auction. I didn't know that exactly, yes? But I was not asked to give any money. Why I should initiate, "Roman, do you need some money?" He never asked me and

I was happy.

Q. I just want to ascertain the facts, Mr Berezovsky.

A. Sorry?

Q. I want to ascertain the facts. You didn't contribute any money, did you, for any of these auctions?

MRS JUSTICE GLOSTER: Do you agree?

A. I don't know, it's my answer, because Sibneft generate money. If Sibneft did not put this money to the auction, it means I did not. If Sibneft --

MRS JUSTICE GLOSTER: Are you saying that Sibneft gave capital or dividend money?

A. Sibneft trade oil -- again, what they do we know now well, and again I'm sorry to say Khodorkovsky in jail because of that. Abramovich is still here, and me as well. They sold with a low price oil which Sibneft produce inside of the country with a low price. Then they export --

MRS JUSTICE GLOSTER: Oh, they take the profit out of --

A. Absolutely correct.

MRS JUSTICE GLOSTER: Okay. So you're saying that some of that profit money was paid to acquire the shares?

A. Absolutely. My Lady, it's absolutely correct. It means that it's my money as well.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Mr Berezovsky, you did not put up any further

money out of your own pocket for any of these auctions, did you?

A. No.

Q. Right. So far as you know, neither did Mr Patarkatsishvili?

A. I never heard about that.

Q. Now, you have no knowledge, do you, of how the shares that were bought in the three cash auctions of the 49 per cent were paid for, do you, except that you didn't pay for them?

A. Again, I didn't know at all because Abramovich never ask me how he obtained the money. He never -- on the other hand, Abramovich never ask me to obtain the money except of what we discussed already, 51 per cent.

Q. Now, in each case -- is this right -- the shares on offer in the three auctions of the 49 per cent were acquired by Mr Abramovich's companies, weren't they?

A. Again, as you remember our agreement, our agreement -- I would like to stress again -- '95, everything what generate Sibneft and everything what generate connected to Sibneft, from the Sibneft activity, belong to us together. It means it's my money as well which Abramovich kept in Runicom.

Q. Do you agree that in each of these three auctions for the 49 per cent, the shares purchased were bought by

Mr Abramovich's companies? Is that correct or is it not?

- A. Again, I don't know. I think you're absolutely correct. But money in this company belonged to me as well as Abramovich.

Mr Sumption, and I want again to stress one important point: even though this money, my Lady, was generated also because of SBS-Agro support, because they need the credit to do this operation, as I know from witness statement made by Mr Gorodilov, it means that even in this case, generating money which officially belonged to Roman Abramovich, they used support of SBS-Agro to make this operation. Again, they used my personal relations with Smolensky and his agreement to help me -- because he knew me, not Mr Abramovich -- to do that.

- Q. Now, in May 1997, after the state had defaulted on the loan, the 51 per cent was sold in a further auction, wasn't it?

- A. Yes, I remember the date, as I told you yesterday: it was 12 December -- 12 May '97. But I remember not auction; I remember the disagreement with Chechnya, as I told before.

- Q. Right. The same thing happened in that auction, did it not? The successful bidder was FNK -- not to be

confused with NFK --

A. Yes.

Q. The successful bidder was FNK and that was a company controlled by Mr Abramovich, wasn't it?

A. As you remember, Mr Sumption, it was agreed between Abramovich and me and Badri that it transfer from NFK to FNK because of -- to distance our participation in Sibneft because of complication of the political situation. It means that you are correct, absolutely, that the company formally belonged to Abramovich and it was our goodwill, because of our agreement with Abramovich, to transfer what was NFK to FNK.

Q. Mr Berezovsky, there was no agreement to transfer anything from NFK to FNK, was there?

A. It's absolutely wrong.

Q. Would you like to point us to your witness statement --

A. Just a second. It was agreement '96 between me and Abramovich that we distance. It means that was not formal agreement that we transfer that to that, to the company, but was agreement that we distance that. It means that everything what was not structured properly at the beginning, when we just start to make Sibneft under control, now will be controlled only under Abramovich roof. This is roof, this is correct, what -- for this situation.

Q. Mr Berezovsky, your evidence about the 1996 agreement is that it was an agreement to conceal your interest in Sibneft.

A. Could you allow me to open this page or not?

Q. You can open any page you like. What do you want to look at?

A. About '96 agreement.

Q. You'll find it at paragraph 174 of your witness statement D2/17/234.

A. 174?

Q. Yes.

A. Yes. What do you refer to?

Q. Sorry, that's the agreement with Badri, forgive me.

A. Yes, it is agreement with Badri, it's correct.

Q. It's 165 onwards D2/17/232.

A. 165, yes.

Q. Okay?

A. Yes.

Q. Now, what do you say was transferred from NFK to FNK?

A. Yes. You know how, when you have agreement, you have the sense of agreement and technology of agreement, yes? To realise. The sense, target, and how to reach this target. Here we fix what we need to reach. And how? It's already by Abramovich. I trust him because of agreement of '95: it means that he is the host how to do

that, not me.

- Q. What do you say was transferred from NFK to FNK?
- A. It's exactly because -- when I said to transfer, I even start to think what to transfer. I think the management control at the beginning transferred to the other company and that this company when they bid I think -- I don't remember -- would transfer management control.
- Q. What do you say was actually agreed about a transfer from NFK to FNK?
- A. That NFK -- that FNK will be 100 per cent Roman company, not already with share 50/50, and it will be transformation from company which owned 50/50 between me and Badri to Roman to protect us better.
- Q. NFK was only the manager of the State's 51 per cent holding, wasn't it?
- A. NFK, the first one, you mean?
- Q. Yes.
- A. Yes, NFK just manage. And it's supposed that the new company will not only manage, will also take formal share control over that.
- Q. Once the 51 per cent holding of the State had been sold to private investors, NFK had no further function at all, did it?
- A. I don't know. Ask, please, Abramovich which function this company has. I don't know. I give up everything

to Abramovich.

Moreover, Mr Sumption it's very important that you initially refer me to the paragraph 174 saying that agreement with the Badri '96 because it's absolutely coincide, my Lady, with the same point.

At the same time, because of Abramovich -- and Abramovich insist, and I think he was correct, that I distance from the business. At the same time I tried to distance from the business not only from Abramovich, he was not exception; I tried to distance also from Badri in the same way. Not maybe the same way, but it's the same.

And Mr Sumption I think not occasionally miss my agreement with Abramovich to distance and my agreement with Badri to distance because it was the same story.

Q. Now, you do not claim, do you, to have had any interest in FNK?

A. FNK?

Q. The second company.

A. My interest was preserved by Mr Abramovich.

Q. You don't claim to have had any interest in it, do you?

A. Interest, definitely. Interest means that Abramovich hold my shares and pay me my interest as dividends or profit from our activity. It depends in general what sense means "interest". Sometimes interest means

shareholding; sometimes interest means just result of the activity of the company.

Q. Would it be fair to say that you had no ties or links with FNK?

A. If they pay me money, if not links, it's so; but they pay me money, it means that they have link, that the stream of money which they pay me...

Q. Would you look please in bundle H(A)06 at 113 H(A)06/113, which is --

A. H?

Q. You haven't got it yet but somebody is about to give it to you. H(A)06/113.

Now, this is a -- I'm afraid we don't have a Russian original for this, so far as I'm aware, but this is a -- I don't think there is a Russian. This is a Reuters text service.

A. Reuters?

Q. Yes.

"Boris Berezovsky, the business magnate who holds a senior Kremlin security post, denied on Tuesday that he had any links to the mystery buyer of a majority stake in Russia's seventh biggest oil producer, Sibneft. 'I have no ties to FNK,' Berezovsky told Reuters when asked if [FNK], which acquired 51 per cent of Sibneft at an auction on Monday, was linked to [NFK], which

organised the tender and is part of Berezovsky's diversified business empire."

Did you say that?

A. I can't exclude that I say that. I don't remember but I can't exclude. The reason again very --

Q. Was it true?

A. It's true according of our agreement with Mr Abramovich.

Q. Sorry?

A. It's true according to agreement with Mr Abramovich.

Q. So it was true, wasn't it, that you had no ties to FNK?

A. I don't have any official ties to FNK, it means that that's true.

Q. You had no connection at all with the company, did you?

A. I don't have any official connections to FNK, true.

Q. Did you pay any money out of your own pocket towards the cost of acquiring that 51 per cent in May 1997?

A. Definitely, because money which we paid for NFK finally, when we return back to Mr Smolensky, the money which we paid for NFK, definitely it's money which belong to me and Abramovich as it's money generated by our company, with the share Badri and me and Abramovich, Badri and me 50, and Abramovich 50. Definitely it's my money.

MRS JUSTICE GLOSTER: This is because you say the money for the purchase of the 49 per cent came --

A. No, not all -- now we discuss, my Lady, about

51 per cent.

MRS JUSTICE GLOSTER: 51.

A. Yes.

MRS JUSTICE GLOSTER: So are you saying the money for the 51 per cent as well came out of Sibneft profits?

A. Correct.

MR SUMPTION: You're not suggesting that the money to buy the 51 per cent came out of FNK, are you? It came out of Sibneft profits is your suggestion?

A. It came from profit which generate Sibneft and the company linked to here like Runicom.

Q. Right. Well, we will come to that in due course.

A. In due course?

Q. Later on we will come to that question.

A. Oh, I see.

Q. Now, what I suggest to you is that the reason why you were extremely interested in the cash for sales auction for the management rights but not at all interested in the sales of either the 49 per cent or the 51 per cent was that you were only interested in getting management control over Sibneft, not in owning it at all?

A. Mr Sumption, I present many, many times that if I -- I am sorry, my Lady, for this wording. If I am really -- if you look -- if I really look like completely crazy compared with other businessmen at that

time, and it's not so, unfortunately for Mr Abramovich, yes? I was not crazy at that time.

And who lose opportunity which created yourself mainly? And even Abramovich did not refuse that I was the key person who help, who (inaudible) to create Sibneft and to privatise Sibneft. Who, Mr Sumption, could imagine that this man just voluntarily say, "Roman, you're nice guy, now you own everything. It's all your shares, just give me peanuts; if even not peanuts, at least to invest ORT"? Mr Sumption, I propose you, it doesn't work.

Q. The point is, Mr Berezovsky, that Mr Abramovich had paid for these shares, had he not, and you had not paid for them?

A. I paid, as I explain you. I paid my money. Again, it's my money which Sibneft generate, directly or indirectly. It's my money, my and Badri money.

Q. Sibneft didn't make a single penny of profits in 1996, did it?

A. Mr Sumption, I explain you again and I agree again -- explain to you again: they use all company, all oil company, the same way. Company itself was not profitable but they make money trading oil abroad and selling for the other price. Nothing changed that time.

Q. You have no knowledge, do you, of what the trading terms

were between Sibneft and those to whom it sold export oil? You have no personal knowledge of that at all, do you?

A. About how they deal -- how the -- what is technology of this deal?

Q. No. As I understand it, the last answer that you gave was talking about transfer pricing. Right?

A. It's different terminology. Some use transfer pricing, some use different pricing, but I learned that only after. I didn't know these words before.

Q. You still have not got the faintest idea, have you, of what the terms of trading were between Sibneft and those to whom it sold oil?

A. Mr Sumption, I am sorry for this example. When I present my PhD, I try to explain it to my mum -- she doesn't have this education like me -- because the sense of the problem I understand well, anyone in the world. I heard by TV that you have the greatest mind in England, I accept that; but believe me this is not your level, a little bit less, to understand what means to get profit from abroad when you sell in the country.

Q. Do you actually know anything about the terms of trade between Sibneft and those to whom it sold oil?

A. I don't know anything about the terms. I know how it was done.

Q. How do you know how it was done?

A. Because it was common knowledge. Every oil company, they have done the same, and Khodorkovsky is in jail because of that.

Q. You don't know at all?

A. It's common knowledge for everybody who knew a little bit. How I knew about the car production in terms of a sale in Avtovaz when I was not -- when Nikolai Glushkov managed that? But I knew how they generate money abroad, I knew it well. They sold car for dented(?) price to Peru and some other country and sold for the real price and generate money for KGB and Communist party. It's known, it's common knowledge.

Q. You say that other companies engaged in transfer pricing and therefore you assume that Sibneft did, but you don't know at all, do you?

A. Mr Sumption, I knew that at all. Excellent. I knew -- I don't know any details but I knew the construction. It's very simple and you know that.

MR RABINOWITZ: Can I ask my learned friend, if he's going to put the question, to make clear whether it's his case that there wasn't transfer pricing of this sort.

MR SUMPTION: It is my case that there was no transfer pricing if --

THE WITNESS: It's the reason why I said --

MRS JUSTICE GLOSTER: No, Mr Berezovsky, please --

THE WITNESS: Excuse me.

MR SUMPTION: It is my case that --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

THE WITNESS: I'm sorry, my Lady, I will not be more.

MRS JUSTICE GLOSTER: Please let him put the question, or in this case state his case. Mr Sumption, please make sure that you don't ask the question until Mr Berezovsky has finished his answer.

THE WITNESS: I am sorry, my Lady.

MR SUMPTION: I am simply seeking to answer my learned friend Mr Rabinowitz's question which was addressed to me.

It is my case that if by transfer pricing one means, as we understand, sales at an artificially low value for the purpose of transferring profit out of Sibneft into other entities controlled by Mr Abramovich, that proposition is denied. That I understand to be what my learned friend alleges but it is not correct.

MR RABINOWITZ: Just to make clear that it's not what I allege but we'll come back to it in due course.

MR SUMPTION: Now, Mr Berezovsky, I dare say you're not in a position to help us with precise knowledge on this. As I understand from the answers that you have been giving, you say that because other companies engaged in

artificial pricing, you assume that Sibneft did as well?

A. Mr Sumption, first of all I want to mention that I said transferring price or any other name, I don't know, to be correct -- to correct. But I knew that the way how -- that all oil company operate in the same manner: to sell with low price inside and to get profit abroad by selling abroad. This is the general idea.

Q. But you have no knowledge of the internal business affairs of Sibneft because you left that to Mr Abramovich --

A. You are correct.

Q. Right.

Now, I want to ask you, please, about your evidence concerning the 1996 agreement. Now --

A. This one -- may I leave this paper?

Q. You can put away everything on your desk apart from your witness statement.

Now, I would like you to be given, please,

K2/04/16.

A. D2?

Q. No, no, no. You haven't got it yet, Mr Berezovsky.

A. Sorry.

Q. K2/04/16.

A. This page, yes?

Q. Okay?

A. What is that?

Q. Right.

Now, do you remember that when this action began, your case was that each of the three of you, Mr Abramovich, Mr Patarkatsishvili and yourself, held personally, through your own companies, their proportions of the shares which had been acquired in Sibneft? Do you remember that that was your case?

A. Yes.

Q. And that was wrong, wasn't it?

A. What is wrong?

Q. Well, if you've got K2, flag 4 open, let me show you specifically: paragraph 36, please, on page 26 K2/04/26. This document, let me tell you what it is --

A. Just a second, please. It's K2/04?

Q. K2, flag 4.

A. The page?

Q. It starts on page 16 and I want you to look at page 26 but let me tell you first what it is.

A. Yes.

Q. This is particulars of claim telling us what your case was --

A. Mm-hm.

Q. -- which was served by Cadwaladers, your then

solicitors, in January 2008. You can see your signature signing a statement of truth on page 64.

A. Yes.

Q. Right?

A. Yes.

Q. Now, if you look at paragraph 36, you say:

"Initially, Mr Berezovsky and Mr Patarkatsishvili legally owned or controlled companies which controlled and legally owned their proportions of the Sibneft shares."

Now, I think that your current evidence is that that was wrong, isn't it?

A. It's wrong from the beginning that initially -- no.

It's -- okay. Generally it's not correct, let's say so. But what is true that we own small shares directly as P&K-Trast -- which I didn't know, to say you true, I didn't know how it was organised -- and we control through NFK 50 per cent of NFK.

And what is not correct here, that we legally own the proportion. If to think in terms "legally own", for me it means that as far Mr Abramovich hold my shares at his hand, it was just because of agreement -- which we understand is absolutely legal agreement -- to keep my shares at his hand.

But if to read that directly, I agree with you that

it's not accurate written here. Nothing more. Not accurate.

- Q. The respect in which it's not accurate is that the shares acquired in Sibneft in the cash auctions of the 49 per cent and in the default auction of the 51 per cent, those shares had, as I think you've accepted, always been held by companies owned and controlled by Mr Abramovich?
- A. As you know, not 49 per cent, as it turned out, because again it was exist some P&K-Trast who belong to me, owned by me and Badri. It means that it's not correct to say that all -- but again, it's happened occasionally. It's not because I really planned to do that; again, because only Abramovich decide how it should be structurised.
- Q. Mr Berezovsky, you keep referring to PK-Trast. PK-Trast was a company which had an indirect interest in some of the shares bought in September 1996. Are you aware of that?
- A. Could be. No, I -- could be. Because I told you I don't know even how it's happened because it's structurised by Abramovich and from there, as you told -- as you have told correctly, that even in '95, Abramovich said that we don't need to have written contract, yes? And how it's happened, I don't know;

maybe just mistake of Abramovich people to do that. But I never insist to have anything in PK-Trast.

Q. Well, Mr Berezovsky, I don't want to waste time asking you questions about PK-Trast if the reality --

A. No, you put me question and I gave you answer.

Q. I don't want to waste time asking questions about PK-Trast if your position is that you don't really know about it. Is that your position: you don't really know about PK-Trast?

A. At that time I didn't know that, definitely.

Q. Now, your original case was that at some time between April and June 1996 --

A. Just -- April and June...?

Q. 1996 -- the three of you made a further agreement that the shares held by your companies and Mr Patarkatsishvili's companies --

A. Mm-hm.

Q. -- would be transferred over to Mr Abramovich's companies. That was your original case, wasn't it?

A. Shares -- but I don't remember the date. I'm -- we had shares except of -- we don't have shares. We have shares which were hold by Mr Abramovich, yes, and now we want to put all our shares under his personal control, including the shares of 51 per cent which later we'll get as a result of the bid for the -- for this

51 per cent, correct.

- Q. Well now, if you look at paragraphs 36 and 37 of this pleading --
- A. Yes.
- Q. -- what you are saying, and what you signed a statement to say was true, is that originally the shares in Sibneft were owned by companies which were controlled and legally owned by you and Mr Patarkatsishvili; and then in 1996 -- see paragraph 37 --
- A. Yes.
- Q. -- it was agreed that the shares would be transferred to companies controlled by Mr Abramovich.
- A. And shares... (Pause)
- Q. Read paragraph 36.
- A. Just -- yes, I start to read. It's 37, yes?
- Q. Read 36, please.
- A. Ah, okay. Sorry. From the beginning, yes?
- Q. Yes. (Pause)
- A. Okay, more or less. Okay. I'm listening to you, Mr Sumption.
- Q. So your original case was that originally you held these Sibneft shares through your own companies and then Mr Abramovich proposed that they should all be transferred to his companies and that was agreed. That was your original case?

A. Mr Sumption, definitely as far as wording is concerned, it's not accurate here. I signed that, I agree with that, no problem at all. I just present, my Lady, my understanding of reality what was happening in that time. Definitely later on I find out unfortunately some misunderstanding, in spite of I signed -- definitely I signed that. But it's not my witness statement, in which also I have sometimes, even now, problems.

But the sense is absolutely clear, no doubts with that, whatever wording you put in this sense. The sense of '95 we already discussed and the sense of '96 is also clear. We transfer under Roman control, under Roman -- we will use trust, even here we use trust, because at that time I didn't understand what mean "trust" -- but under Roman control all our shares. And the transformation which is described here means that what we -- before control as a management control, 51 per cent, between me and Roman, 50/50, now will be as a shareholding control by Roman. But his company, not our more.

Again, I think it's important for understanding that it's not lie, this is not trick, because I have done at the same time exactly that with Badri, with my former partner, and it's written absolutely perfect here in the paragraph 36. Just because, as you correctly said, it

was April-June in '96. It means everybody was sure that Communists will take power, everybody, and we try to distance as much as possible.

And even thinking that it could be trick from Roman side, what Badri all the time thinking that Roman will trick and so, but I think it's useful for all of us. It's useful for Roman, it's useful for us, for us to protect more, because Roman really -- as we discussed before, when I proposed him, "Roman, let's share ORT as well 50/50, because we become 50/50 partners", and Roman refused that because he was maybe more wise than me understanding that it's political very dangerous at that time to be involved in that.

- Q. What is clearly not correct, Mr Berezovsky, is your statement that there was an agreement to transfer Sibneft shares from companies controlled by you to companies controlled by Mr Abramovich. That's not correct, is it, because they've always been controlled by Mr Abramovich?
- A. "Controlled", what does mean "controlled"? It's our shares, which don't nobody care how it was structured because Abramovich structure that. I trust him. And now he decide, because we now start to discuss already the 51 per cent of the shares, which is controlling, yes, and what was under management control before, and

now should be controlled as an owner, and we agreed that Abramovich will control -- will be under his company, which company belong, 50 per cent -- 100 per cent to him will be under control because to distance -- the distance. I don't understand what is illogical here.

Q. Mr Berezovsky, in April to June 1996 the position was that the only Sibneft shares owned by anybody other than the State were the 12.22 per cent of shares that Mr Abramovich had bought in the first cash auction.

A. Abramovich bought it for us together.

Q. All right.

Now, you are saying here, in paragraphs 36 and 37(a), that in April to June 1996 Mr Abramovich proposed that the shares should be transferred from companies controlled by you to companies controlled by him and that was agreed.

Now, I'm going to ask you a very simple question. Was it agreed in 1996 that Sibneft shares should be transferred from companies controlled by you to companies controlled by Mr Abramovich? Was that agreed, yes or no?

A. It was agreed, absolutely correctly, but I didn't know how much shares and where I control directly. This is the point. And you're absolutely correct, it was agreed that our shares will be transferred to Abramovich

control, but at that time I even didn't know how much at that time would have been under my personal control.

- Q. How could they be transferred to Mr Abramovich's companies when they had always been in the name of Mr Abramovich's companies?
- A. Look, Mr Sumption, first of all, it was in front -- it was in front of their shareholding -- their auction, 51 per cent. The second, as we know, I think it's occasionally some shares were under my control. It's PK-Trast and so. It means that everything what -- and I didn't know how Abramovich organised the structuring of this 49 per cent. I thought that maybe -- I thought that maybe he organised from the beginning in proper way, 50/50. I did not know that. It's the reason why I said: okay, fine, everything what belong, what is indirect my control will be in your direct control. That's it.
- Q. Mr Berezovsky, I think you've confirmed that you know nothing about PK-Trast.
- A. Okay.
- Q. In fact PK-Trast owned no shares in anything until September of this year. I'm talking about an earlier stage. All right?
- A. Okay. Mr Sumption, I can't add anything. I'm sorry to say that.

- Q. Now, the question I asked you was how could shares be transferred from your companies to Mr Abramovich's companies if Mr Abramovich's companies had always had them?
- A. Mr Sumption, I don't have answer to this question because I did not -- I was not aware which shares are under my control, under control of Abramovich. It's turned out that Abramovich was not made a proper partner from the beginning, because if we agreed what we agreed in '95, at least he should think what happened if I will die, yes, and how to do that. On the other hand I also should think what happened if Abramovich die, if I gave him so much power, but maybe that time we were not supposed to die so quick.
- Q. Now, we were told by your solicitors, Cadwaladers, that what you say in this paragraph about the transfer taking place represented the gist of the words used at this 1996 agreement. Clearly that was rubbish, wasn't it?
- A. I don't know about your talking with my solicitors, I think it's not correct to refer to that.
- Q. Well, they wrote to us giving us what's called further information which is details about these allegations.
- A. Could you show me that, that I can comment that.
- Q. Yes, of course. If you would like to take bundle A2, flag 8, page 19 A2/08/19. Page 19 of the bundle.

Perhaps the witness could be helped to find page 19.

A. Sorry, all the time I'm missing. Yes, sorry.

Q. You will see there's a heading in bold type, "Requests 8, 9, 10..." et cetera, in the middle of the page.

A. Just... Yes.

Q. And this is giving us further information about what you said in paragraph 37, among other places, okay?

A. Mr Sumption, just again, I return back. This is the letter which was addressed my company which was at my interest, yes?

Q. This is addressed by your solicitors to my client's solicitors.

A. And when it was?

Q. It was written to them in May 2008 and it was about the pleading we have just been looking at.

A. Just a second, May 2000 -- yes, thank you.

Q. What you say about paragraph 37 among others is that:

"All of the pleaded agreements were made --"

A. In paragraph?

Q. If you look halfway down, this is further information about paragraphs 33, 34 and 37.

A. Good, good. Now I've got it.

Q. I've just shown you paragraph 37. What they say is that:

"All of the pleaded agreements were made in the

course of meetings at the Moscow offices of Logovaz... Russian was spoken, and the words pleaded are the gist of what was said. To the best of Mr Berezovsky's recollection, only he, Mr Patarkatsishvili and Mr Abramovich were present."

A. Mm-hm.

Q. Now, that must have been information that you provided to Cadwaladers?

A. Mr Sumption, it's Cadwalader understanding and, as you know, they are professional company, they made in my favour what they can make. I don't want to say that they are wrong but it was a lot of misunderstanding, nevertheless. I don't want to take a base for my explanation but nevertheless what I -- we start, as I understand, still from the paragraph number 36 about transformation of my shares or my interests for whatever to Roman Abramovich, again, and I told you, Mr Sumption, I can't add anything. I can't comment why Addleshaw -- why Cad...

MRS JUSTICE GLOSTER: Cadwalader.

A. Cadwalader, I'm sorry. Cadwalader present that.

Definitely because they talk to me, definitely it was their understanding. I just want to stress that not only me, your client also change -- asked to put some changes, and I understand that because it's long time

ago and we try to -- first of all, to remember the sense and then we go even more wordings that, it's complicated.

It's the reason why, my Lady, I just want to present the real sense what's happened. The wording is important, I understand, because we are in the court, not just shake hands and my Lady agree that I'm correct, yes? The problem is that it's really complicated and it's reason why all the time try to base on the sense of what was happening.

MR SUMPTION: Is there anything in the paragraph which begins "All of the pleaded agreements", that I've just referred you to, that you think is wrong?

A. I don't understand, I'm sorry to say. I'll try. Give me more time, please. What is the question? Just a second.

Q. Do you see the paragraph --

A. Yes, yes.

Q. -- beginning "All of the pleaded agreements"? That's what your solicitors said. Is there anything in that paragraph that you think is wrong?

A. I don't understand what is wrong. Explain me again, please.

Q. That's what I'm asking you. Is there anything wrong with this paragraph? (Pause)

- A. Mr Sumption, I don't want to look stupid. I don't understand what we're discussing now.
- Q. All I want you to tell us -- this is information that is being given by Cadwaladers about your case and all I'm asking you is, is there anything in it that's wrong? Is there anything that you would disagree with in this statement of your case?
- A. This statement you mean (indicates)?
- Q. No, no. Look at the paragraph which begins "All of the pleaded agreements". That says --
- MR RABINOWITZ: With respect to Mr Sumption, he does need to look at both --
- MR SUMPTION: I would like my learned friend to let me ask this question, it's a very simple question.
- That says --
- A. It's the reference to this (indicates), yes, it's the reference to that? This exactly what I want to understand.
- Q. It's a reference to paragraph 37 of the earlier pleading which says that there was an agreement that a transfer would take place.
- A. Now, I understand. I'm sorry.
- My Lady, I really didn't understand what is --
- MRS JUSTICE GLOSTER: Mr Berezovsky, to be fair to yourself, I think you're being asked two questions. The first

question is, is there anything that is specifically said in the paragraph we're looking at, "All of the pleaded agreements" --

A. Mean that (indicates)? The other one?

MRS JUSTICE GLOSTER: No, in the letter, in the letter. But I think you're also being asked by Mr Sumption whether what was said in paragraph 37 was indeed the gist of what was said at the meeting?

A. Paragraph number 37?

MRS JUSTICE GLOSTER: Yes, number 37.

A. Yes, yes.

MRS JUSTICE GLOSTER: So just look and see the statements in the letter first of all, in the paragraph starting, "All of the pleaded agreements were made in the course of meetings" --

A. Yes. Now I understand, my Lady.

MRS JUSTICE GLOSTER: -- at that address. Is that correct?

A. Now I understand finally the question.

MRS JUSTICE GLOSTER: I think you're being asked to check two things: one, that what is said in this paragraph is right and, secondly, the statement that --

A. Yes, yes, now I understand.

MRS JUSTICE GLOSTER: -- the words pleaded in paragraph 37 do correctly represent the gist, that's to say the thrust --

A. Absolutely clear.

MRS JUSTICE GLOSTER: -- the summary of what was said?

MR RABINOWITZ: Can my Lady also make sure that the witness knows what is being referred to by "pleaded agreements". I think that's where he's getting a little bit confused. It's the pleading or the agreements and I think that's...

A. And, as I understand, we now discuss about paragraph 37, "pleaded agreement"? Is it correct or not?

MR SUMPTION: It's the 1996 agreement.

A. No, the agreement -- '96 agreement is absolutely clear --

Q. Mr Berezovsky, can I try to simplify this so far as I can. In this pleading, the one that you have in bundle K2, you say that it was agreed in 1996 that there would be a transfer of Sibneft shares from companies controlled by you to companies controlled by Mr Abramovich.

A. Yes.

Q. Now, the question I'm asking you is this, was that the gist of the words used in the 1996 agreement?

A. In 1990 (sic) agreement was used the words-- in 1995 agreement was used the words --

Q. No, '96 agreement.

A. Ah, '96, yes, that all -- just give me please to

remind -- that all shares, all interests except of --  
that all shares which we have and -- now, finally,  
I start to understand the point, I'm sorry to say.

In '95 agreement was told that the -- we need to  
start to understand what was saying, just understanding  
what was the target. The target was to distance. It  
means that the shares which we have in 49, in  
49 per cent, that time it will have that 49 per cent,  
and the opportunity -- I just trying to transfer it --  
opportunity which we'll get when 51 per cent control  
will transfer -- not control only management control but  
will be shared, yes, will get shares for that, will  
transform to Roman Abramovich, this is correct.

MRS JUSTICE GLOSTER: Is that a convenient moment,  
Mr Sumption, or do you want to continue this line and,  
if so, how long are you going to be?

MR SUMPTION: I think probably it's as inconvenient a moment  
as any other is going to be.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: We'll have to continue this discussion to some  
extent on Monday morning.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: My Lady, I have to tell your Ladyship that,  
for reasons that your Ladyship will understand, progress  
has not been rapid.

MRS JUSTICE GLOSTER: Yes. I wasn't going to ask you about the timetable until some time in the middle of next week.

MR SUMPTION: Well, it looks as if we will need at least the whole of next week.

MRS JUSTICE GLOSTER: Well, we can deal with timetabling issues on Monday perhaps, if necessary.

Mr Rabinowitz and Mr Sumption, are you content to start at 10.15 on Monday or do you want to start earlier? I think there's a limit to the length of a court day for everybody, but if you wish to start earlier, obviously I'll consider that. It's a long day for a witness.

MR RABINOWITZ: As your Ladyship says, it is a long day for a witness who is not as young as he once was. It will be the third day. I'm in your Ladyship's hands, I understand my learned friend --

MR SUMPTION: I'm not pressing for a longer day than 10.15.

MRS JUSTICE GLOSTER: I think 10.15 is useful with the shorthand writers --

MR SUMPTION: Exactly. It is the case that it is a little less exhausting for a witness when he has a break in the middle of the morning, but I don't think it would be right for me to press for an earlier start if Mr Rabinowitz feels that's unfair on his witness.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: I think 10.15.

MRS JUSTICE GLOSTER: Okay. If you want to start at 10.00, I'm happy to start at 10.00.

MR RABINOWITZ: The witness has a lot of cross-examination, my learned friend says the whole week. To start earlier than that would become oppressive.

MRS JUSTICE GLOSTER: Mr Berezovsky, please do not discuss your evidence over the weekend.

THE WITNESS: Definitely.

My Lady, I just have one question if you don't mind.

MRS JUSTICE GLOSTER: Yes. Please.

THE WITNESS: I didn't recognise still now how long I will be in witness box. I like to be in witness box, but I just want to understand how much energy I should keep approximately.

MRS JUSTICE GLOSTER: Yes. Part of the problem, and I'm not saying this in any way critically, but part of the problem is that you tend to give quite a long answer rather than focusing on the question. It will speed things up, so you won't be in the witness box so long, if, as it were, you can answer the questions --

THE WITNESS: My Lady, thank you very much for your reference to that.

MRS JUSTICE GLOSTER: It looks at the moment -- I don't know

what the original estimate was because I don't have  
the --

MR SUMPTION: The original estimate was that Mr Berezovsky  
would be completed by the end of Thursday and, of  
course, your Ladyship is not sitting on Friday next.  
I think it is now very likely that his cross-examination  
will extend, I hope not too long, into the following  
week starting Monday, the 17th.

MRS JUSTICE GLOSTER: So you've only got four days next week  
because I can't sit --

THE WITNESS: Thank you, my Lady.

MR SUMPTION: But there may well be further  
cross-examination the week after.

THE WITNESS: No, no, it's fine. It's fine.

MRS JUSTICE GLOSTER: Very well.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: 10.15 on Monday.

(1.06 pm)

(The hearing adjourned until  
Monday, 10 October 2011 at 10.15 am)

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    (continued)

Monday, 10 October 2011

(10.15 am)

MR BORIS BEREZOVSKY (continued)

MRS JUSTICE GLOSTER: Members of the press, I'm told that there is now a video feed in the consultation rooms, as well as an audio feed and a LiveNote feed, so if there aren't adequate chairs for you in court, you can watch the evidence being given live on the video in the consultation rooms.

Good morning, Mr Berezovsky. You're still on your oath. You don't need to stand up, thank you.

Yes, Mr Sumption.

MR SUMPTION: My Lady, can I just mention one thing for the record. I told your Ladyship on Friday that the dates of the first cash auction were -- the auction was open between 1 November and 1 December; if I can just correct that slightly. That was the original date decreed for the auction --

MRS JUSTICE GLOSTER: Mr Sumption, will you just bear with me because I had a note of it and I would just like to find the note.

Yes, give me the revised date.

MR SUMPTION: That came from Mr Gorodilov's witness statement. In fact on 27 November the period of closure of the auction was adjourned to 4 January and in fact

the --

MRS JUSTICE GLOSTER: 4 January 1996?

MR SUMPTION: Yes. And the bid made by Mr Abramovich's companies was lodged towards the end of the extended period so that ultimately it was later than originally envisaged.

MRS JUSTICE GLOSTER: Yes, thank you.

THE WITNESS: I'm sorry, could I put a question, my Lady?

MRS JUSTICE GLOSTER: Yes.

THE WITNESS: I just want also to understand better because I also tried to investigate, it was a strange a little bit that it was before: it means you confirmed that it had happened after --

MRS JUSTICE GLOSTER: Sorry, I can't hear you.

THE WITNESS: I'm sorry, my Lady. Does it mean we confirm now together that it happened after auction of December 1998? Sorry, December 19 --

MR SUMPTION: '98, yes.

THE WITNESS: December --

MR SUMPTION: '95.

THE WITNESS: -- '95, yes?

MR SUMPTION: Yes, that is correct.

THE WITNESS: Thank you very much.

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Mr Berezovsky, when we ended on Friday I was asking about what you have called the 1996 agreement. Do you remember that? That's what I was asking you about.

A. Yes. 1996 agreement with Mr Abramovich, yes?

Q. Yes.

A. Thank you.

Q. Now, I had pointed out to you that when this action began in 2007 you said that your Sibneft shares were originally registered in the names of your companies and your case was that in 1996 it was agreed to transfer them to Mr Abramovich's companies so as to be secretly held for you. That was your original case, was it not?

A. Can you show me, please, what is --

Q. No, I just want to ask you to remember.

A. Okay, okay.

Q. Do you remember that that was your original case?

I showed you the documents on Friday.

A. My original case is that from the very beginning, according of agreement with Mr Abramovich '95, he will hold my shares and -- 50/50 between me and Badri, my partner Badri, and we share the profit between us 50/50 and we -- all the interest which will come later we'll share 50/50, interest will come from Sibneft activity, and no one able to -- no one able to sell any interest

without confirmation of other side. This is agreement of '95 and agreement of '96 --

Q. Mr Berezovsky, you're answering about 20 questions that I didn't ask you.

A. Sorry.

Q. I am interested in the question what your original case was about who held the shares.

Turn to bundle K2, which somebody will now hand to you. Bundle K2/04/26, paragraph 36.

A. Just a second. Please, just to make sure, so I am sure that -- this is not my witness statement, this is --

Q. No, it's not. This is your original pleading, which you signed as a true document on page 40.

A. Yes. What is the page number?

Q. Page 26.

A. Yes.

Q. Right. Do you see paragraph 36?

A. Yes.

Q. I'm going to read out the first sentence:

"Initially, Mr Berezovsky and Mr Patarkatsishvili legally owned or controlled companies which controlled and legally owned their proportions of the Sibneft shares."

Was that your original case or was it not?

A. It's my pleading, I agree, I signed that, and this

pleading was prepared by my lawyers and it's how they recognised it. I don't want to say, my Lady, that it's not my signature here; it's my signature here. But, again, it was how my lawyers understood that and they present it to me.

Q. And your case was that in 1996 it was agreed to transfer your shares out of companies owned and controlled by you and into companies owned and controlled by Mr Abramovich; that was your case, wasn't it?

A. It's not so. Again, my case was --

Q. First of all I'm asking you whether that was your case; not whether it was true.

A. No, it's not my case.

MR RABINOWITZ: I think he needs to specify "pleaded case".

A. Correct.

MR RABINOWITZ: Given he's speaking to someone whose natural language is not English, although ordinarily Mr Sumption is very clear to an English speaker, to a Russian speaker there may be occasional misunderstandings.

MRS JUSTICE GLOSTER: Mr Berezovsky, the point Mr Sumption is making to you is that was the case that was being put in your pleaded statement of case.

A. This was the case what was put in my pleaded statement, correct.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Right. And it remained the case that was put in your pleaded statement, did it not, until the strike-out application was heard in the spring of 2009?

A. Can we have a look at this, at the pleading 1995? As I remember, at my first witness statement it was clarified completely correctly what my case is.

Q. You are right, and that was because -- it was in fact your second witness statement but your first substantial one -- your second witness statement where you corrected this was produced for the strike-out proceedings, wasn't it?

A. My first and the second witness statement were produced for the strike-out, correct.

Q. Now, can we look at the current version of what you are saying about the 1996 agreement. Okay?

A. Sorry, again, where have to look?

Q. I would like you to turn to your fourth witness statement at paragraph 165. It's in bundle D2/17/232.

A. Paragraph number?

Q. 165. Now, in paragraphs 165 and 166, if you've got that open --

A. Yes, I have it.

Q. -- you say that the 1996 agreement was made because Mr Abramovich was concerned that Sibneft would be damaged as a result of your controversial political role

and Mr Patarkatsishvili's position as chairman of ORT. That's a summary, I think, of what you are saying at paragraph 165 and 166.

A. I don't want to read because I remember more or less, not -- yes.

Q. Yes. But that's a fair summary, isn't it?

A. But nevertheless it's definitely the reason why Abramovich continue to insist on the -- that on the one hand it will not be in written form but on the other hand we should be more and more protected because of my political exposure, particularly in front of election campaign of Yeltsin where played the key role '96. It's correct.

Q. So your evidence is that Mr Abramovich wanted to distance both you and Mr Patarkatsishvili from the company?

A. You are correct.

Q. Now, all this, as I understand your evidence, was because of the prospect of a Communist victory in the 1996 elections. Is that right?

A. You are correct.

Q. Now, did you seriously think that if the Communists won the 1996 elections, Sibneft would be able to do a deal with them to avoid the renationalisation of the 15 per cent that had already been sold of Sibneft? Did

you seriously think that?

- A. My thought is not that I think seriously like that but I just give you example that many businessmen, including Khodorkovsky, including other, they play both game: they pay Communists before elections and they pay Yeltsin before elections. And I have no doubt that Abramovich think in the same way.

As far as me is concerned, I just want to max -- to minimise risk because maybe these people are correct and maybe Communist will continue to privatise. I did not believe, me personally, but I did not lose anything to take this position.

- Q. You had no idea whether Mr Abramovich thought in that way or not, did you?
- A. No, I just know that Abramovich didn't think anything because -- anything strongly because he just start to be involved in understanding of political situation. And on the other hand, as a regular person at that time -- I mean not being experienced in politics -- he think definitely that Communists will take power but on the other hand maybe they continue to -- they continue privatisation. It's not unique point of view.
- Q. Did you seriously think that a party which fought the election on a programme of renationalisation was going to continue with the sales of the 85 per cent of Sibneft

that the State still owned?

- A. We know a lot of examples when party decree before elections one position and after elections change position completely, 100 per cent.
- Q. That was not at all likely, was it, whether you were a shareholder or not?
- A. It's absolutely correct. It's not high probability but why I should reduce probability to zero if I have chance to reduce the risk and nevertheless to have profit from the company, which could be, with very low probability, will not be privatised? Why not do so? I don't understand.
- Q. It was already well-known, wasn't it, that you were involved closely with Sibneft?
- A. Yes, it was common knowledge.
- Q. Yes. So having you as an undisclosed shareholder wasn't going to make much difference, was it?
- A. No, again, nobody knows, again, Mr Sumption, how Communist will play game after they will elect. I have vision that they will play dirty game; the other have vision that they continue maybe reforms because they already start to feel better. And if you know, Mr Sumption, well that in Davos, which happened exactly before elections '96, Zyuganov play fantastic role: he try to convince western investors that he is nice guy,

he will continue reform, and I would like to stress you, Mr Sumption, that many on the west believe in that, as far as some in Russia believe in that.

It doesn't matter what was my belief, I just want to reduce risk, and if there is any opportunity that Communist will not continue -- will continue some kind of reforms, I want to, formally at least, to be distanced from that.

Q. As I understand it, you say that this concern to distance you and Mr Patarkatsishvili from Sibneft continued even after the Communists lost the elections?

A. Mr Sumption, it's not black and white, and even after Communists won election I was --

Q. No, lost the election.

A. After Communists lost the election. They so much insist that they will take power that I lost my line. After Communists lost elections, I knew well that it doesn't mean that they don't have a lot of supporters inside of society, even inside of the government, even -- and moreover inside of still efforts being of KGB officers.

No one can exclude that the pressure will be continued on me as, I'm sorry to say -- I don't want to up higher my role in elections but I was one of the key persons in elections and I didn't have doubts that as far I will distance from my assets, more probability

that I will keep opportunity to be -- to have money generated the company which I created.

- Q. In September 1996, two months after the second round of the elections, you became a member of the board of directors of Sibneft. That seems a funny way of publicly distancing yourself from the company.
- A. Mr Sumption, as you know from my witness statements, it was decision which I have done not just because I think that it's good decision, because of two controversial position: on the one hand, Roman Abramovich; on the other hand of Badri. And if my personal choice, I would not do that, if my personal choice; but I have a partner, as you know, Badri Patarkatsishvili, and we have been partner 50/50, and Badri insist that I took this position.

Moreover, I would like to say you that the argument was very special. He said, "Boris, everybody knows that you are person who create Sibneft and you're close to Sibneft", yes? "And moreover, nobody has any doubts that you own at least big stake of Sibneft and there is a common situation when people who are in the board are not owners. It means that if you become a member of the board, it could be that you have link to Sibneft but maybe as not an ownership", yes?

This is position which had logic. Again, my

position was more likely not to join, yes? But it was already dispute between Roman Abramovich and between Badri and finally I took position of Badri. And as you -- sorry.

Q. How was becoming a director of Sibneft going to divert attention from the fact that, as you say, you owned some shares in it?

A. It's exactly what I tried to explain before: because that was common that member of director -- member of the board were not shareholders.

Q. Members of the board were, in many companies, shareholders.

A. You're correct. Were and not. It is not absolutely clear that if you are a member of the board, you are shareholder. According of my experience, at least on the west and later in Russia, there were many occasions when member of the board are not shareholders.

Moreover, it stressed the independency of the executive power and power who -- I mean the management -- and power who create the law or the way how company should operate.

Q. Well, let's look at what you say was agreed in response to this so-called problem. You say that because of these concerns, Mr Abramovich proposed, in your words, that:

"... from now on he, or his companies, should own all of the Sibneft shares."

I'm looking at paragraph 166.

A. Sorry, one second. Just a second, may I read.

Yes.

Q. What you say --

A. Yes, it's absolutely correct because, as you know, on the stage of agreement '95, when we just create the company, yes, and start to own the company, it was done in not so structured way because for me I didn't know how much Badri and me we own shares -- it's turned out that we own just part of PK-Trast, yes? -- how much Abramovich own. And we decide in the future, particularly in the coming auction for 51 per cent to own, we decide that from this time we structure that everything will be under Abramovich ownership.

Q. How could Mr Abramovich have proposed that from now on he or his companies should own all of the Sibneft shares if his companies already owned all of the Sibneft shares that had been acquired?

A. First of all, it's not so, as you know well. But just simple example: the PK-Trast -- but it's occasional example, it's not my personal creation that I create -- the situation on PK-Trast own part already existing shares.

But we now are discussing about future privatisation 51 per cent. This is the most important stake and this stake allowed to control the company, really control the company through shareholding. And it was the principal decision that Abramovich at that time did not own 51 per cent. Abramovich and his company owned less than 49 per cent, as I told you before. It means that the solution to put under ownership of Abramovich and -- ownership of Abramovich everything was the principal solution, which is very different what we discussed before.

Q. Mr Berezovsky, if Mr Abramovich's companies already were the registered shareholders of the only 12 per cent that had so far been acquired, what was the point of his saying that from now on they should be owned by his companies? Because it already happened.

A. You see, I don't even at that time know how much Abramovich really owned because, as I told you, we agreed that Abramovich manage everything and last time we spent a lot of time, I tried to prove you that "manage" means manage not just day-by-day company but manage all the process of privatisation as well. If he need my help, I am open to help him, and when he ask me help, I am open to help him; but the point is he very rare asked me to help.

But the point is that we again are discussing to formalise our relations of ownership and I accept the position of Abramovich that it's a lot of risk and I will reduce risk if I will put under Abramovich ownership everything. Moreover, it just demonstrate exactly my position towards to Abramovich: that I trust him, trust him 200 per cent that time.

Q. Now, PK-Trast, which you mentioned, only acquired shares in September 1996; that's correct, isn't it?

A. I don't remember at all.

Q. Well, let me tell you --

A. At that time I don't remember.

Q. -- that that's when it was.

PK-Trast was a company which you were publicly named as a co-founder of, was it not?

A. You see, Mr Sumption, believe me --

Q. Was it or not?

A. What is not what?

Q. You were publicly named as a co-founder of PK-Trast?

A. Publicly known, but I didn't know that.

Q. The rest of the public was aware of this but you were sublimely ignorant of it; is that correct?

A. Absolutely correct, because I don't pay any attention at that time how Abramovich is structurising. I trust him. I have much more important, as I understand -- and even

now -- problems to solve.

Q. Yes. Well, if your evidence is that you were trying to distance yourself or that Mr Abramovich was trying to distance you from Sibneft, it seems pretty odd to publicly name you as the co-founder of a company that then buys some shares in Sibneft.

A. Again, Mr Sumption, I want again to stress you that I really did not pay any attention how Abramovich structurise the company. It was his responsibility. If he think that it's better I will be visible, I will be visible. If Abramovich will tell me, "Boris, we should rewrite shares which I hold in your favour under your name", I will do that because it's -- again, Mr Sumption, we agreed with Abramovich; he managed everything. I trust him. It's his -- I don't want to break his responsibility. He took this response.

Q. Now, you also say that in 1995 it was agreed that the profits of Sibneft would be shared between you, Mr Abramovich and Mr Patarkatsishvili?

A. Not Sibneft. It will be shared profit of Sibneft everything which lead to Sibneft generation.

Q. We'll come to the question what it was a share of in a moment. But you say that in 1995 it was agreed that some profits -- we'll discuss later which profits -- would be shared between you, Mr Abramovich and

Mr Patarkatsishvili?

A. It's correct.

Q. Right. And you say that in 1996 it was agreed that the three of you would continue to share profits?

A. It's correct.

Q. So what do you say was the difference that the 1996 agreement made?

A. What is difference?

Q. What's the difference on profit-sharing?

A. The difference is very simple. The difference is first of all we accept that Abramovich will put under his personal -- under his name the company which own the shares of Sibneft.

By the way, I never have seen that, in spite of we ask Mr Abramovich to disclose how he want -- he never present us any papers at all. It means that his position today, like me, he never will be shown officially at least to us that he's owner. It's the first point.

The second point, we agreed what is the most important for me at that time: that by the first request Abramovich will rewrite our shares to our name.

Q. Well, can I repeat my question, Mr Berezovsky.

A. What was not agreed in '95 -- sorry -- what was not agreed in '95.

Q. My question concerned profit-sharing and what I asked you was this: since, according to you, it had been agreed to share profits in 1995, what difference did the 1996 agreement make to your arrangements about profit-sharing?

A. I don't see any difference between '95 and '96 agreement as far as sharing of the profit.

Q. Well, precisely. So in fact the 1996 agreement made no difference either to the holding of your shares or to the distribution of profits, according to your evidence?

A. Not -- just now I mentioned you the difference, and big difference, because when in '95 we structure ownership, it was done by just -- in rush, let's say, the first one.

The second point: we did not discuss that everything will be under Mr Abramovich control.

And the third point, as I mentioned to you now: that by the first our -- we didn't discuss that in '95 and we discussed that in '96 but the first our request, Abramovich will rewrite our shares under our personal name.

Q. You see, Mr Berezovsky, when you started this action you said that your companies owned the shares in Sibneft and so you invented the 1996 agreement to explain how they came later to be owned by Mr Abramovich's companies;

that's right, isn't it?

- A. Mr Sumption, we just now -- you start from the pleading. I am responsible for my signature, I don't refuse that, but my position never changed as a fact. And how my lawyers present this position, how they change the position but not the facts which are present, yes, I never change the facts, and it's already the other story.

Again, my first witness statement is absolutely correct as far as my ownership or Abramovich hold that and all the rest. I never changed the facts.

- Q. One of the facts that you asserted in your original pleading was that it had been agreed in 1996 to transfer the shares from Mr Abramovich's companies to yours --

- A. From Abramovich to mine?

- Q. Yes.

- A. Yes.

- Q. -- and that was wrong, wasn't it?

- A. Why it's wrong? We agreed that if --

- Q. Sorry, from yours to Mr Abramovich's companies.

- A. That's exactly my question. I'm sorry.

- Q. Forgive me.

- A. Look, again, it's like written in the pleading. I don't want, again, to argue against of that; I just present my position and our agreement with Abramovich.

But it's important to stress -- and, my Lady, I want again to stress -- that the biggest stake that time, until the privatisation, until bid for 51 per cent, was under just management control of two companies: mine and Abramovich. That's it. And when we're looking to the future that time to structure correctly, we accept the basic point that Abramovich will own under his name the decisive share interest, 51 per cent. This is the point.

- Q. Under your current case, as set out in your witness statement, the 1996 agreement achieved absolutely nothing, did it?
- A. I don't understand even the question.
- Q. It made no difference to the arrangements that you describe in 1995?
- A. I just spent with you a lot of time now that I tried to explain you the difference. If you don't accept my words, it's not my point. I just, I think, absolutely logically and absolutely clear explain my position.
- Q. In her witness statement Ms Nosova refers to something which she calls "kinut". I'm probably mispronouncing it. Do you know what I'm talking about?
- A. You're almost correct to pronounce that.
- Q. Thank you.
- A. It's not good word.

- Q. Tell us what "kinut" is.
- A. It's what Abramovich has done. This mean kinut, yes?  
It's exactly what he have done. If someone take obligations and the other one trust him and later on, based on this trust, the person lead the victim to the way when he plan to kinut, yes, and to trick him. It means that if someone take one obligation and then done himself, without any consulting with the party with whom he agreed, the decision which damage his partner.
- Q. What Ms Nosova says is that she was concerned that Mr Abramovich might simply deny that you and Mr Patarkatsishvili had any interest and she said that that, namely denying that a concealed party has any interest, is a well-known phenomenon in Russia which is called kinut.
- A. Mrs Nosova is absolutely correct. Unfortunately it's well-known example not in Russia '90s but even more known now. And definitely Mrs Nosova, being my -- a close part of my team, and Mrs Nosova worry all the time about me. And Mrs Nosova -- again, maybe it's important, maybe it's not important -- she's very pessimistic, I'm very optimistic, and Mrs Nosova all the time underestimate the good in people, I overestimate. It means that Mrs Nosova, unfortunately -- unfortunately -- almost all the time is correct. But

it's my vision of the world and it's her vision of the world. And the world is unfortunately likely more the Mrs Nosova understanding, not me.

Q. What this means, Mr Berezovsky, is that if you allow someone else to hold your assets in their own name, you need to protect yourself with a written record, don't you?

A. It's not so. I already discussed with you example that it's not my exceptional understanding of Abramovich and Badri as well; I had also nothing -- almost nothing written with Badri. But as far as I gave you example, and you already confirmed that you remember this example, my relations with Khodorkovsky when organising the bid, just shaking hands, and Abramovich -- and for Khodorkovsky was nothing to win this bid, nothing, and he did not that -- he did not do that.

Q. The difference with Badri was that, except on one occasion in 2004, you owned companies jointly with Badri, didn't you?

A. Definitely not, even the time which you are discussing, '96. And if you have seen my witness statement, it's at the same time I distance from Badri as well because it's -- definitely I was exposed, I had very exposed position, and if you read my witness statement you will find simple that after the paragraph distance from

Abramovich, it's paragraph distancing from Badri. It's absolutely the same story.

Q. At the time when you say you made the 1995 agreement, you had only known Mr Abramovich for a bit more than six months and were only involved with him in a single piece of business; that is right, isn't it?

A. You're absolutely correct.

Q. If you had agreed either in 1995 or in 1996 that he was going to hold a stake for you, you would have made absolutely sure that there was a written record of it, wouldn't you?

A. Mr Sumption, it's my personal problem. I knew Putin ten years and I made a crucial mistake in his understanding and it's my personal problem that I don't understand people well but I believe that I understand well. This is a problem, true. And I trust Abramovich, as I said, in a little bit eastern manner, like to son, a lot of years, and he betrayed me. Okay, it's reality. What to do? It's not his fault, it's my fault that I trust him. It's not his fault. He is like he is then and now. It's no problem with him; it's problem with me, with my trust.

Q. And this story about Mr Abramovich trying to distance you from Sibneft is completely untrue, isn't it? You tried to emphasise your connections with the company?

- A. It's 100 per cent true.
- Q. Let's just look at the way in which these agreements that you refer to in your evidence were performed.
- A. Where?
- Q. Before I do that, may I just take you up on one point which you mentioned a bit earlier in your evidence today and that is your suggestion that it was part of the 1995 agreement that the three of you would not sell out of Sibneft without the consent of the others. Do you remember giving evidence on that point?
- A. It's '95 agreement, it's correct.
- Q. Now, what was the point of agreeing in 1995 that none of you would sell out of Sibneft without the consent of the others before Sibneft had even been created and before you knew whether it was going to be privatised?
- A. It's clear that we -- as you know, we start to discuss about how we structurise our relations of ownership, we start just before, I think two weeks of '95, August decree of president, of creation Sibneft, when it's become already absolutely clear that we'll reach at least the first part -- we'll pass at least half of the way, the company will be created, and it was the time to structurise our relations.

Again, it didn't happen in one day; we discussed that long time. "Long" means months, half a year maybe.

But the finalisation of our understanding happened before it was decreed to create Sibneft and we understood that the next stage will be privatisation.

- Q. Are you seriously saying that it was agreed that you could never exit from Sibneft without Mr Abramovich's consent in any circumstances? Is that your case?
- A. Nobody can tell me that I broke my obligations in front of partners and I was sure that Abramovich will follow the same way.
- Q. Are you saying that it was agreed that you could never exit Sibneft, whatever the circumstances, without Mr Abramovich's consent?
- A. 100 per cent.
- Q. You've made that up, haven't you, Mr Berezovsky?
- A. What is "made up"? (Consults interpreter)
- Again it's your vision. My understanding is that moreover no one -- I want to stress -- no one might give you example of my behaviour like that as a partner.
- Q. Can you help us on why that suggestion has never been included in your pleadings?
- A. Mr Sumption, I want just to stress again -- and I know that we'll return many times back to pleadings, to notes of lawyers, and we have in front a big discussion about that -- I just want again to stress you: first of all I am not an idiot. It means that when we -- I gave so

much power to Mr Abramovich, how you think it's possible not to discuss at least to fix that, because we didn't have written agreement, that we fix that, that definitely no one can leave the other without agreement of the others? And if you want to leave, at least you should propose -- the first right proposal should be to your partner. Moreover, it does not mean that partner should deliver obligation to buy because maybe at that time he's not able to buy.

You remember maybe well in Le Bourget, in Le Bourget transcript, that Abramovich said, understanding that we are already squeezed completely, that he -- if we didn't accept his way, that he is not prepared to put on our shares to invest and the way he propose to us to buy his shares. It was -- do you think at that time it was gentle or correct proposal, knowing well that we are not able to do that that time? I am not like Abramovich; I never do that.

Q. Mr Berezovsky, when you started this action in June 2007 you had been planning it for at least three years, hadn't you?

A. I did not plan it. I start to discuss that seriously in -- as you remember, my -- not even three years, I think, and now I understand, I plan it for '97, I start to plan it at 2001, not to plan but took

a decision.

Maybe you remember in my witness statement that when Badri -- when finally we decide to start to negotiate with Mr Abramovich to sell Sibneft and Badri plan to travel to Abramovich, to meet him in Munich -- later on it's turned out that it was Koln(?) not Munich, but in the same time -- I said, "Badri, we don't have choice, but one day we will be in position to go to the court and to prove what happened". It means that I planned not from 2004/2005 but earlier; but not planned, I took decision.

But I start to act at 2005, it's correct, with Mr Andy Stephenson visited Badri in Georgia and talked to him about my decision to start to act.

- Q. Mr Berezovsky, having thought about this action, you say, for seven years and having planned it for two years, why did you not refer in any of your pleadings to this agreement not to be able to exit without the other's consent?
- A. Mr Sumption, as I told you -- and I want, my Lady, to say in front of you -- I'm responsible what I sign but I'm responsible only what my lawyers propose me after they talked to me. And there are a lot of correction, I would like to say, in future happened because I think it's not very simple even for my lawyers to understand

all the story what happened, yes? And when they put me correct questions, you never find that I made something different what later on came out to my witness statement, yes? It means that -- or even, I think, the pleadings.

If I put direct question, my answer was -- were all the time absolutely coincide with the question, yes? But there were many questions which my lawyers did not put to me and it is reason why they interpret them in their way.

MRS JUSTICE GLOSTER: Are you saying you didn't bother to check your pleaded case?

A. No, I checked it, it's correct.

MRS JUSTICE GLOSTER: I'm not talking about the witness statement; I'm talking about the pleaded statement of case.

A. It's absolutely correct, I checked the pleaded statement as well because I put my signature.

MRS JUSTICE GLOSTER: Yes.

A. Not attentively, it's the other story. I'm responsible for that. But on the other hand I am responsible first of all for the facts which I present to my lawyers, and the facts were so; and when they put me question which they think it's important question, definitely I gave my answer and I never changed my answer to that.

MR SUMPTION: Mr Berezovsky, I want to turn to the subject of profit-sharing. Would you please take your witness statement and turn to paragraph 169 D2/17/233.

I think it's in front of you. Do you have paragraph 169 there?

A. Yes, I have it.

Q. What you say here is that -- you're talking about the 1996 agreement here and you say that:

"As part of our agreeing to what [Mr Abramovich] was suggesting, [he] told us that he would continue to pay us the share of profits we would otherwise have received in respect of our share of Sibneft and that he would, upon request, transfer to us shares in Sibneft equivalent to our 50% interest."

Now, I'm interested in the bit of that statement that concerns profit-sharing. Do I understand you to say that what Mr Abramovich was telling you was that you would receive profits in respect of your share of Sibneft?

A. That I receive all profit which generate Sibneft as a company; doesn't matter connected to shares or profit generated in the other place. As we talked last time, Sibneft at the beginning generate profit, as many oil company, in the trading company which belonged to Abramovich. It means that Abramovich had obligation to

pay me any profit which Sibneft generate itself.

I didn't have even one share in Runicom, which was trading company and which obtained the main profit of Sibneft, but it does not mean that Abramovich don't have obligation to pay me my -- as we -- my proportion generated by his trading company.

Q. Mr Berezovsky, are you saying --

A. And -- I'm sorry, just a second. I'm sorry that I interrupted.

And moreover, it's written here clear and it's wording, because not a lot I remember in wording, and he said, "Boris, you should clear understand that your interest -- my interest is your interest, your interest is my interest". This is the point. This is the key words which characterise our relations.

Q. Mr Berezovsky, are you saying that it was agreed between you and Mr Abramovich that you would receive profits made by any company other than Sibneft?

A. Me, Mr Abramovich and Badri, three of us. Three of us agreed that any profit which initially generate by Sibneft, which base of the profit is Sibneft, will be shared 50/50. It's absolutely correct.

Q. Now, you have just suggested, in the answer that you last gave, that the profits generated by Sibneft ended up with Runicom. That's what I understood you to

suggest.

A. "Ended up"? (Consults interpreter)

Sibneft itself that time did not generate the profit. Sibneft that time generate oil and refinery of oil and sell it to Runicom and then Runicom generate the profit because Sibneft -- it was exactly what happened in Soviet Union when Sibneft was vertical-integrated company: one company produce oil, the second company refinery oil, the third company sell oil. The company which produce oil didn't get anything because they just produce oil; that's it. It's expensive, it's not a profit. The company that refine it, they also don't produce the profit: they produce the product which is profitable. And then only on the last stage it was -- the company who sell all that, this company generate the profit.

It's happened at the beginning that all oil company tricked. What does mean "tricked"? They sell oil and product which produced refinery company with low price, then sell this -- produced price, then sell it to another Russian company and companies sold abroad and after that it generated profit. It's what Abramovich has done and all other oil company have done.

Q. How do you know that that was how it was done? What's your source of information?

A. I know that just because of Khodorkovsky in prison and I need to learn why they put him in prison and when I start to learn why they put him in prison, I learned that all oil companies were structured like that, without any exception. I learned that not that time, believe me.

Q. Would you please take bundle H(A)98, page 98.

H(A)98/98.

A. Can I take away my witness statement to put there, yes?

Q. Leave it on the desk, if you would.

A. Okay.

Q. But you can take everything else away apart from bundle H(A)98. This is part of your cross-examination by Mr Swainston in the North Shore litigation in the Chancery Division.

A. Mm-hm.

Q. At page 62, the top right-hand block of text -- not of the bundle. Do you see there this is four pages in one?

A. Right, sorry, yes.

Q. If you look at the top-right page, you are being asked about the transmission of money to Switzerland, where Runicom was incorporated and carried on business.

A. This --

Q. I'm just showing you the context.

MRS JUSTICE GLOSTER: Mr Sumption, are we on page 62 or

page 63?

MR SUMPTION: Well, I'm starting at page 62 in the  
manuscript just to show the witness the context.

THE WITNESS: 62 start from there -- from the top?

MR SUMPTION: I'm sorry, I'm looking -- you're quite right,  
Mr Berezovsky, the numbers are at the bottom. So if you  
start at 63 in the manuscript, you will see that  
there's --

MRS JUSTICE GLOSTER: Line?

MR SUMPTION: -- a question at line 21:

"Question: You're aware that much dealing of  
Russian oil is done out of Switzerland, are you?

"Answer: I don't.

"Question: Doesn't that go back to your earliest  
association with Sibneft? Wasn't its oil dealt with in  
Switzerland?

"Answer: I never managed Sibneft. Abramovich  
managed Sibneft, and Mr Shvidler. I never managed  
Sibneft, not Badri or me. From the very beginning we  
decided that Sibneft would be managed by Abramovich team  
and I don't know anything about oil trade.

"Question: Are you honestly telling the court that  
a businessman of your sophistication, whose interests  
have included huge oil interests, doesn't know --

"Answer: Absolutely.

"Question: -- that oil business is done out of Switzerland?"

Mr Berezovsky, you knew absolutely nothing about the relationship between Sibneft and Runicom SA, did you?

A. Mr Sumption, now what happened with Yukos knows even children in Russia because Khodorkovsky was accused that he stolen his net(?) from his company and it's exactly the way how it is. It means that definitely I don't know anything except of what children know in Russia about oil trade; but what children knows, I know well.

Q. What you're saying is that because you think Mr Khodorkovsky did that, it must have been done by Sibneft too; that's about the size of it, isn't it?

A. No, moreover, when Khodorkovsky was accusing that, it was a big public discussion in Russia about oil companies, and no one oil company refused that they use the same way like Khodorkovsky use and it become common knowledge in Russia.

And, you know, what I now present you, this trick, this trick, you don't need to have special knowledge what means oil trade and so; it's very simple. And again I just want to stress you, I got this knowledge just from Khodorkovsky case. Believe me, I never knew how Abramovich operate and how he generate; I didn't pay any attention. But as only I start to understand

a little bit of Khodorkovsky case, I immediately recognise what happened, that this happened not with Yukos but with Sibneft and all other company which operate on the market.

Q. Sibneft was a public company, wasn't it? Its shares were traded on stock exchanges?

A. It's not possible to say that it's really public company, as I understand again. I don't know details, I just was -- I just know that the main stake belong to private people, I mean Abramovich and me and Badri, but the small part of shares, it's around 10 per cent, so is on the market somewhere. I also didn't pay attention how it's operating.

Q. Well, they were listed on the Moscow and New York stock exchanges, weren't they?

A. Could be.

Q. Now, you also were aware, presumably, that its accounts were audited by an international firm of auditors?

A. Mr Sumption, believe me, definitely, logically, I can find out that, but I never pay attention who audit the company and how it's happened. Again, Mr Sumption, I understand your point perfectly. But believe me, I didn't pay any attention at all.

I had much more important problem to solve, believe me. To say to people -- I don't want to present me as

a hero, but unfortunately you push me again and again to stress: this is not the point, Sibneft, for me at all, as only I trust Abramovich and gave up to him to manage, to do everything. I forgot about this point at all.

I forgot.

Q. Now, you accept, as I understand it, that you received large sums of money from Mr Abramovich's companies from 1996 onwards.

A. Not from Abramovich company. This company belonged to us, me as well. It's not money of Abramovich; it's my money.

Q. The money that you were actually paid came from Mr Abramovich's companies, not from Sibneft?

A. Not from; through. This is correct.

Q. But you accept, as I understand it, that you received large sums of money? We'll talk about the precise source later.

A. Yes, I received substantial amount of money.

Q. And you also accept, I think, that large payments were made not just to you but at your direction to third parties?

A. Definitely ORT, for example.

Q. Sorry?

A. Definitely ORT, for example.

Q. Right.

A. ORT, because I subsidised ORT.

Q. Yes, quite.

Now, after the presidential elections of 1996, would you agree that your demands for money from Mr Abramovich became progressively larger?

A. It's complicated to say. I don't know because I -- Abramovich pay my profit, part of the profit which belonged to me, and this profit I spend on the one hand to my personal expenses -- I bought a chateau in France, I bought a yacht at that time in France as well, I bought the second house in France -- but I think the main expenses were not private expenses, my personal expenses; I think the main expenses I spent for different political reasons.

First of all, ORT took a lot of money and I tried to expand my position in mass media and I bought several newspapers; and on the other hand, in '92 I created the first charity in Russia to support culture, so-called Triumph, which exist still now and this year will celebrate 20 years in coming here -- 2012 will see 20 years of this charity, which is the most important private charity to support Russia, it's common knowledge, and even Putin did not -- even Putin still allow me to pay for this charity. I don't want to say that we spend a lot of money, we spent around 60 million

all these years for this charity, but it's also money.

And it means that I didn't calculate how much I spent in '96, '97, '98; I had enough not to calculate precisely because Sibneft generate enough money for my private life and for my political activity.

MR RABINOWITZ: My Lady, before my learned friend continues, I've just been handed a note to say that, as we understand it, my learned friend's question related to Mr Berezovsky demanding money. That was translated for him, as we understand it, as his "needs" rather than his "demands", and that may account for the slight disconnect between what was asked and the answer.

MRS JUSTICE GLOSTER: Yes. Mr Sumption, can you please, as it were, de-link the questions so we have first question: was it your demand, or were you demanding; and second, the extent of it.

THE WITNESS: I am sorry, my Lady. It's the reason why I ask translator to help me and I was --

MRS JUSTICE GLOSTER: Yes. Do you accept that you demanded money?

MR SUMPTION: No, that Mr Abramovich demanded -- yes, sorry.

A. Ah. No, no, it was not -- look, I never -- again, mainly money -- for our money, Badri and my money, Badri was responsible. It means that I understood the difficulties which company at that time had because we

just start to build the company.

MRS JUSTICE GLOSTER: How did you go about asking  
Mr Abramovich for money?

A. Sometimes directly asking him to --

MRS JUSTICE GLOSTER: You asking him?

A. Yes, sometimes directly through Abramovich and sometimes  
indirectness of Mr Badri.

MRS JUSTICE GLOSTER: I see.

MR SUMPTION: Would it be fair to say that between 1996 and  
2000 almost all of your personal expenses were funded by  
that method?

A. I think so. Not funded, it's not Mr Abramovich  
foundation; it's my money which I got as money which he  
agreed to pay me being -- having 25 per cent of shares.

Q. Now, you say that these payments represented your share  
of Sibneft's profits. How do you know that?

A. I don't know that at all. Mr Abramovich told me that he  
has obligations to hold my shares and to pay me  
according of profit which these shares generate finally.

Q. What steps --

A. I didn't have any idea how much company generate and so.  
Again, mainly -- not mainly -- Badri was responsible to  
cooperate with Abramovich for checking how is everything  
going and time to time Badri put me that, "Boris,  
everything is going well".

The best example, Mr Sumption, the best example, which is absolutely visible for you, my Lady, and for everybody, is our meeting in Le Bourget. It's absolutely clear that Abramovich came there to report Badri and me what is happening. And at the same time it's absolutely clear that I just keep silence; just Badri and Roman are discussing what is happening. It doesn't mean that I don't pay attention at all but it's exactly the type of how our relations was agreed and was understood by us.

Q. Did you ever ask Mr Abramovich for information about the profits that Sibneft was generating?

A. I don't remember that. It could be. But what is absolutely -- I recollect absolutely clear that Badri time to time informed me about the profit which company generate.

And again I want to refer you to meeting in Le Bourget, which absolutely clear that Abramovich report Badri and me which kind of profit Sibneft generate now, which kind of money relations we have, how much he paid already, how much he has obligation to pay and what can -- what happen in future, because of new tax policy and so-so, and how much we are going to get in future.

And as I remember Le Bourget transcript, I have

asked, "Roman" --

MRS JUSTICE GLOSTER: Don't let's go into that. I'm sure you'll be taken to that in due course --

A. Okay.

MRS JUSTICE GLOSTER: -- because your counsel have commented on the Le Bourget transcript.

A. I see.

MRS JUSTICE GLOSTER: My question for you is this: was there any formal or informal process whereby Badri or you, or staff on your behalf, would audit the profits that were being generated by Sibneft?

A. I don't know anything about formal process. I just know about regular meetings Badri with Roman and maybe with Shvidler as well, as I understand, when they present him report what happened in the company.

MRS JUSTICE GLOSTER: Right, thank you.

A. And that is as money is concerned.

MR SUMPTION: What steps did you understand that

Mr Patarkatsishvili had taken to ascertain what were the profits of Sibneft?

A. I don't have any idea. I don't have any idea. I think as we agreed in our agreement as we agreed in '95, we trust Abramovich and we didn't have time to manage the company and to send audit and so. It's not -- already not trust at that time in our understanding.

As I told you, I was involved with politics, Badri involved in ORT manage, and it's the reason why we trust Abramovich what he present. Time to time, I don't think on the regular ways -- I mean, "regular", it means that once per month we have meeting three of us together and Abramovich and Shvidler report us what is happening; it did not happen, definitely.

But, as I understand, Badri was satisfied of reports of Abramovich and Shvidler, and me as well. If Badri was satisfied, I think it's fine.

Q. If you and Mr Patarkatsishvili really thought you were entitled to 50 per cent of Sibneft's profits, you would have been extremely interested in finding out in great detail how large those profits were, wouldn't you?

A. Definitely not. Mr Sumption, I want to stress again, Sibneft was periphery of my attention and not even the second priority. I told you yesterday or day before -- sorry, yesterday it was Sunday. I told the other one, not about this point, about articles were published in newspapers. I told you that my priority number one was politics and priority number two was ORT as a leverage for political reforms.

My major point was not to increase capitalisation of Sibneft; my main point was to increase capitalisation of the country, and it's allowed to capitalise Sibneft.

This is the point.

Q. In fact you had no interest at all in discovering what Sibneft's profits were, did you?

A. I was completely satisfied what Abramovich was doing. I was completely satisfied that I was able to cover all my political needs and all my private life and I was -- but it based only on one point: my trust to Mr Abramovich, my real trust to Mr Abramovich, and my understanding that Badri has big experience as businessman, much bigger than me, at least in this type of operation. I did not pay any attention at all of numbers which Sibneft gave mainly to Badri and sometimes to me to explain which kind of profit we have.

But, again, Mr Sumption, I don't want -- why you are not prepared to accept the point of Le Bourget meeting? It's absolutely clear our relations there. It's not what I need to prove by wording; it's approved by our conversation, which Abramovich finally accept it happened in Le Bourget. It's clear -- moreover, almost all answers which you put to me -- all questions which you put to me have answer if you read really Le Bourget conversation. It's answer to all almost your questions there.

Q. Mr Berezovsky, you know perfectly well I don't accept any of what you say about Le Bourget but we'll come to

that in due course.

A. Mm-hm.

Q. Since this stream of money was covering virtually all your personal expenses in this period, it can't possibly have been at the periphery of your attention.

A. It was at periphery of my attention.

Q. The reason why you had no interest in discovering what Sibneft's profits were was that you knew perfectly well that the payments that you were receiving had nothing at all to do with Sibneft's profits, didn't you?

A. Mr Sumption, this is the case, I understand it well, that I should prove that I create Sibneft, that I own Sibneft, that I have 55 per cent of Sibneft. I understand well. But I wanted to stress, my Lady, again, nothing wrong in all my answers which Mr Sumption put to me and it's the reason why I understanding that Abramovich is a truthful partner at that time.

Again to refer to Le Bourget, Mr Sumption, I want to stress you again one very important point: Abramovich told during the conversation at Le Bourget, "But I explain journalist that Boris trust me". He said himself in Le Bourget -- at Le Bourget meeting that, "Boris trust me". Not only he was sure that I trust him; that he was sure that he said the third party that I trust him. The third party will believe that it's

correct. This demonstrate our relations.

MR SUMPTION: My Lady, I'm going on to a similar but slightly different subject. Would you like to take the break?

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.20 am)

(A short break)

(11.35 am)

MR SUMPTION: Mr Berezovsky, Ms Goncharova, the accountant at Abramovich's Russian trading company Petroltrans, says in her witness statement that she handled payments that were made to you through Mr Abramovich's Russian trading companies and she has given in her witness statement estimates year by year of the accounts that you received.

Now, I'm going to tell you what those estimates are and I'm then going to ask you to look at what I say on the screen and tell my Lady whether you agree with them. Her estimates are: \$80-85 million in 1996; \$50 million a year in 1997, 1998 and 1999; and then \$70-80 million in 2000; a total of about \$300 million over those four years.

Now, do you agree with those estimates?

A. I can't agree, can't disagree. Personally I didn't calculate that and only person who calculated that was

Badri, and you know that my agreement -- my agreement with Badri was different from agreement with Abramovich and difference was that Badri was completely responsible how to pay, where to pay and when to pay for our joint -- for our joint expenses. It means that I can't confirm, I can't refuse; I just don't know at all.

Q. Well, a large part of this expenditure was the result of your personally making demands of Mr Abramovich, wasn't it?

A. First of all, now I understand better what means "demands". It's not demands; it's obligation to Abramovich to pay me profit which generate our company. I never try to convince Abramovich to do something what could be damaging for the company and later on definitely I will give you example of that.

As far as my personal expenses is concerned, what I remember, the biggest expenses which I made, it's investing to the property on the south of France.

Q. I'm going to ask you about that in a few minutes.

MRS JUSTICE GLOSTER: Mr Sumption, can I be clear: are you putting those figures on the basis that those were paid to Mr Berezovsky or to Mr Berezovsky and Mr Badri?

MR SUMPTION: They are paid to Mr Berezovsky or at his direction, according to Ms Goncharova's witness statement. Generally, if I can just -- I don't think

this is controversial -- they were generally paid to the nominated accounts of companies and therefore it was not possible to know exactly what happened to them once they got there.

A. It's exactly my point. It's exactly my point.

Q. Yes.

A. It's not possible to -- I at least don't understand how it was pleaded and who --

MRS JUSTICE GLOSTER: As between you and Mr Patarkatsishvili?

A. Correct. Correct.

MR SUMPTION: That is our understanding also.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, could you please take bundle H(C)8, which will be handed to you in a moment.

A. Can I take H(A)98?

Q. Yes, you can put that away.

A. Thank you.

Q. Now, in the bundle you've just been handed, I would like you to turn to page 173 H(C)8/173, which is the note of your evidence to the French investigating magistrate on the money-laundering issue that we discussed on Friday.

A. This issue was confirmed by my lawyers. Yes, you are very correct, yes.

Q. That's right. That's the note of the evidence which you gave by video-link to the French investigating magistrate in Marseilles.

A. Yes.

Q. Would you please turn on in this document to page 182 H(C)8/182.

A. Yes. 82(sic), yes.

Q. Now, in the middle of this page you're answering questions arising from your suggestion that these payments that you used to buy your property in France were part of the profit share that you were entitled to in Sibneft. That's the subject matter that's being discussed. In the middle of the long answer in the middle of the page you say:

"Nevertheless, it's wrong to say I did not have any papers showing my involvement in Sibneft. We presented in the hearing in the London court the papers which demonstrate that from the very beginning we owned 51%..."

I referred you to that, you may remember, on Friday.

I then want you to turn on to page 184 -- sorry, would you, just before doing that, look at the top of page 182. You say:

"RA accepts that he paid me 2.4 [billion dollars]."

Do you see at the top of page 182?

A. 1...?

Q. Top of page 182.

A. Ah, again 182, yes.

Q. "RA accepts that he paid me 2.4 [billion dollars]."

A. Yes, yes, yes. Yes.

Q. Where does that come from?

A. I think that it was my impression of calculation because -- calculation of the -- what was presented already for this hearing -- "for this hearing" I mean the preparation for this hearing -- that all to all -- I didn't remember well the number -- that all to all it was paid \$2.4 billion, I can't say it was Badri and me together or me personally, but that we were paid 2.4. It was reflected in my mind as a number which was calculated as preparation to this trial.

Q. Well now, would you turn on two pages to page 184, please H(C)8/184.

A. Yes.

Q. Right at the top of page 184 you'll see that the French magistrate is asking you:

"Can I just make sure that I asked correctly, you say that the funds used for the Chateau came from your interest in Sibneft, from your joint venture with [Badri] and the repayment of a loan from Jetchkov."

You say:

"No, the main source came from Runicom."

Right?

A. Yes.

Q. Then a bit lower down the page, when you're expanding on that, there's a paragraph beginning, "I want to stress again". Do you see that?

A. Paragraph which?

Q. The paragraph beginning, further down that page, "I want to stress again".

A. Just a second. Yes, yes, I'm sorry.

Q. You say:

"I want to stress again. I was responsible to negotiate with RA for the main payment of my profit in Sibneft. RA paid my money from Sibneft to purchase for [the chateau] and, as I understand it, he did it through Runicom as his straight company. I never was a shareholder of Runicom."

And so on. What negotiations are you referring to when you talk about negotiating with RA for the payment of your profit in Sibneft?

A. It means that when I decide to buy chateau, and knowing well that Mr Abramovich know what we are discussing because he spent a lot of time with me in chateau and I discuss with him that I decide -- no, this about chateau, sorry. I'm sorry. This about chateau because

then there was other building. Yes.

I talk to him that I want to buy this property and I ask him, "Do we have money now to buy that enough?" Because, as you remember maybe, that when I bought later on -- it was in short period I bought several properties in England -- I asked Mr Deripaska, because we had a lot of expenses including my personal expenses to buy, I asked Mr Deripaska to give me debt for \$13 million, but we'll return later on. It means that I inform Badri and Roman -- and, as I recollect now, I talk directly to Roman that I want to buy that.

- Q. Now, you didn't ask Mr Abramovich whether you had the money to buy the chateau, did you? You told him you were buying the chateau and you demanded that he should pay it?
- A. Mr Sumption, from the very beginning our relations with Abramovich I described correctly. I can't demand, I can't to press, I can't do anything. It was our joint business. I could not press him if I understand that it damage our business. I just could present him my vision and I gave you absolutely correct example.

When I decide to buy property in England and we didn't enough cash money, I asked Deripaska to help me. Later on we returned him this money because I care about the company but through eyes of Abramovich. If

Abramovich told me, "Boris, we are not able now to pay", it means we are not able now to pay and I need to go somewhere if I want to buy and ask someone to buy. This is the point.

Q. Would you turn on to page 188, please, of this note H(C)8/188.

A. Yes.

Q. The third question up from the bottom of this page you will see that the French judge, there's a paragraph beginning, "Maitre Temime has given me a document..." Do you see that?

A. Just a second. 188?

Q. 188.

A. Yes, yes, yes.

Q. Do you see that question?

A. Yes.

Q. Now, was Maitre Temime the lawyer acting for you in the French criminal investigation?

A. Yes, yes, I remember.

Q. Right. Now, the investigating magistrate says:

"Maitre Temime has given me a document which said that apart from paying you for lobbying, he also paid for a number of... expenses and they were dealt with by Shvidler."

And you say:

"I want to explain the difference between what RA says and what I say. I insist I am shareholder, he explains that this is only for service. As far as my knowledge of Shvidler is concerned, I know he is a minority partner of RA. I never made any agreements with Shvidler..."

Then the judge returns:

"Once again according to documents from Maitre Temime. There were payments of 80 [million dollars] in 96, 50 [million] in 1997, and 50 [million] in 1998."

Okay?

A. Just a second. It's payment for what?

Q. Well, I'm just asking you to look at those figures.

A. Yes.

Q. Maitre Temime has handed to the French judge a document or some documents which show, apparently, that there were payments of \$80 million in '96, \$50 million in '97 and \$50 million in '98?

A. Payments to whom? To me or --

Q. To you.

A. Is it... I don't understand.

Q. Well, look over the page.

A. It doesn't matter. Okay, okay.

Q. "As far as these documents are concerned, my understanding is absolutely clear that it is payment for

my interest in Sibneft."

A. Yes.

Q. Okay?

A. Yes.

Q. So your lawyer is saying to the French judge that those payments were received by you.

A. Yes.

MR RABINOWITZ: Just so I can help my learned friend, the documents are in fact Mr Abramovich's --

MR SUMPTION: No, I don't want Mr Rabinowitz, please, to assist me. I'd like the assistance of the witness.

MR RABINOWITZ: The problem is he's putting it on a false basis.

MR SUMPTION: No, I am not.

MRS JUSTICE GLOSTER: Mr Rabinowitz, which question are you saying is on a false basis? Just give me the page number and the line.

MR RABINOWITZ: It relates to what Maitre Temime is producing to show these payments.

MR SUMPTION: That's exactly what I wish to ask the witness.

MRS JUSTICE GLOSTER: Well, just a second, Mr Sumption.

Which question are you saying is on a false premise?

MR RABINOWITZ: My Lady, I don't have it on my screen. I'll just have to try and find it.

MRS JUSTICE GLOSTER: Well, I don't want to waste time.

Mr Sumption, put the question again.

MR SUMPTION: Mr Berezovsky, what were the documents which your lawyer gave the judge which showed that you had received payments of these amounts?

A. I don't know. I don't remember at least. At least I don't remember. At least.

Q. Well, you described them over the page as being payments for your interest in Sibneft, so you must have had some idea what documents he was talking about.

A. Again, maybe I had that time some idea; now I don't have any idea because, as I told you before, I didn't care of that.

Q. You didn't...?

A. I didn't care of that. I didn't care of that.

Q. Well, you must have cared about it when you were being asked questions by a French investigating magistrate in a rather serious criminal investigation?

A. Yes, correct, and I gave him the general picture which is absolutely correctly what -- absolutely correctly with -- for better understanding of French judge say:

"I want to explain the difference between what [Roman Abramovich] says and what I say. I insist I am shareholder, he explains that this is only for service. As far as my knowledge of Shvidler is concerned, I know he is a minority partner of RA."

As I, again, had in my mind.

"I never made any agreements with Shvidler at all."

I just raise that I am shareholder, not -- not through Roman Abramovich. If he put me the question direct shareholder or indirect shareholder, definitely I give correct answer. I don't have anything to hide. But he already -- we are already in England; I should not follow advice of Roman Abramovich to be not visible, yes?

What is not correct here?

- Q. Mr Berezovsky, I am interested in the amounts. Do you see? \$80 million in '96, \$50 million in '97 and \$50 million in '98.
- A. I don't know what is that.
- Q. Right. At any rate, when you were asked about those figures by the French investigating magistrate --
- A. Yes.
- Q. -- you did not suggest that they were wrong, did you?
- A. I did not suggest because I didn't know that. How am I suggest that they are wrong if I don't know that? I just told you that there were substantial amount of money which Abramovich paid me. I never calculate that, this is the point. Badri calculate that, this is the point. I can't give answer.
- Q. You could have said to the French investigating

magistrate, "I don't know what the correct figures are".  
In fact what you said was that those figures were  
payments for your interest in Sibneft.

A. Definitely it's figures for my interest of Sibneft  
because I don't have another payment except of interest  
in Sibneft, but I don't know amount.

Q. Now, in addition to the \$300 million which Ms Goncharova  
handed, which corresponds very closely to the figures  
which your lawyer gave the French judge, you received,  
did you not, further amounts handled by people other  
than Ms Goncharova; in particular, amounts derived from  
Runicom?

A. Just a second. (Pause)

I don't understand, what does mean the "other" --  
Goncharova is not Runicom, I don't understand.

Q. No, she's not.

A. Ah, okay.

Q. What I'm suggesting to you is that in addition to the  
\$300 million that you received over that four-year  
period through the Russian trading companies handled by  
Ms Goncharova, you also received further sums from other  
companies outside Russia including Runicom.

Do you accept that or not?

A. I can't exclude that because, again, everything was  
operated by Abramovich as far as Sibneft is concerned.

That's it. I just want to stress that Sibneft was not only one -- the main, definitely, not Sibneft and everything connected to Sibneft was the main source of my money, maybe 95 or maybe 99 per cent, I don't know that well, but it's mentioned here that it also was payment of ORT, yes, some small amount of money.

I also can't exclude that because, as I told you before, I propose Abramovich to share ORT so-called business, because it was not business at that time; become business finally, yes, as I predict. But it could be that some payment was done by ORT as our profit in ORT that time. And it's written here.

But again, Mr Sumption, definitely it's absolutely your choice to believe me or not believe me. Believe me, I didn't know exact numbers, \$90 million, \$80 million and so, and I even don't know how it was spent because Badri was responsible for that.

I know that just I bought chateau, it's true; I bought Clocher, it's true; I bought some property in England, it's also true.

- Q. Your lawyer would not have given figures to a French investigating judge on a serious investigation of money-laundering without being entirely satisfied that they were correct, as you saw it?
- A. Again, my lawyer -- I can't recollect that my lawyer any

time present me these numbers. I can't recollect that.

- Q. Could you please take bundle H(A)08/140. You haven't got it yet but you're about to be given it.
- A. But importance is that, again, to French lawyer, as you correctly said, it was the criminal investigation.
- I confirm the same story: that it's my money, came from Sibneft finally, yes? This is important.
- Q. Right. Would you please look at H(A)08/140. This is a document which I think it follows from your earlier evidence you never studied at the time but there are points that I want to give you a chance to comment on.
- A. Just a second, yes. May I have a look.
- Q. Right?
- A. This is Siberian Oil Company consolidated financial statements; correct?
- Q. That's right, for 1996.
- A. In 19...?
- Q. '96.
- A. Yes, 1996. Yes.
- Q. Okay?
- A. Yes.
- Q. Now, would you please turn on to page 142 H(A)08/142.
- A. 142, yes.
- Q. This is the profit and loss account for 1995 and '96 showing that the net loss made by Sibneft was

\$206 million in 1995 and \$2.346 million in 1996. Do you see that?

A. 2-point -- just a second. In 9 --

Q. Three items from the bottom of the table on page 142, "Net loss".

A. Yes, 206, I see that. And the second loss is which one?

Q. Well, '96 is the left-hand column.

A. Yes, yes, yes, yes, '96, and the losses are 2,000, yes?

Q. Well, these are thousands, so that's actually \$2.346 million.

A. Yes, okay. Good.

Q. Right.

A. Good, definitely.

Q. Now, if you look on the previous page, you'll see that these accounts were audited by Arthur Andersen, and look at the second paragraph.

A. Yes.

Q. They were audited by Arthur Andersen:

"... in accordance with generally accepted auditing standards in the United States."

A. Okay.

Q. Do you see that?

A. Yes, okay.

Q. Now, it's right, isn't it, that Sibneft was one of the first major Russian companies to have its accounts

audited in accordance with general accounting standards applicable in the west?

A. Yes.

Q. Would you please now look at page 163 H(A)/163 --

A. Yes.

Q. -- where you'll see that no dividends were declared --

A. Where is that, dividends?

Q. Bottom of 163.

A. Yes, I see that.

Q. No dividends were declared in that year?

A. Just a second. Yes.

Q. And finally I would like you to look at page 165

H(A)/165, where there's a heading just below halfway down the page, "Related Party Transactions".

A. Yes.

Q. "For the period from inception (September 30, 1995) to December 31, 1996, approximately 15% of sales were made to a shareholder who principally exports refined product. As of December 31, 1996, the Group had outstanding receivables from the shareholding totalling \$45 million, representing amounts outstanding through normal trading practices."

Will you take it from me, please, that that shareholder was Runicom, which had bought shares in the first of the cash auctions.

A. Shares -- again, the question?

Q. I haven't asked the question yet. I'm just referring you to these items.

A. Yes, yes.

Q. Now, do you say that these statements of Sibneft's profits were in any way inaccurate?

A. I don't know at all.

Q. You don't know. So the answer is you don't say that they're inaccurate; you don't know one way or the other?

A. I don't know. I haven't seen anytime, any, ever, this statement that I can't discuss that. I can't explain why it's written in this way and not the other way.

I just explain you my understanding how they generate the profit and is that statement correct. I give you example. You said: is that because of this importance of audience? I demonstrate you that second day the document Eurobonds which Sibneft presented to Eurobond committee which completely falsified, yes? And how to -- how can I responsible what documents Sibneft presented to this audit(?) committee? How they put there that Abramovich has education when they don't have education? How they put that? It's completely wrong confirmation which Sibneft supply the institution of Euro. This is the point. And I'm not sure that this case is the same. How I can be responsible for that

document?

MRS JUSTICE GLOSTER: Sorry --

A. Sorry.

MRS JUSTICE GLOSTER: -- are you saying these accounts are inaccurate?

A. No, I say just that I don't know on which base it's produced, which kind of information Sibneft supplied.

MRS JUSTICE GLOSTER: So you don't know the basis upon which the accounts are corrected?

A. Correct. Correct. Absolutely correct. And I gave example when Sibneft supply wrong information. It's the reason why I have a lot of doubts that conclusion is correct. This is the point.

MR SUMPTION: It's the job of an auditor, isn't it, to check that information given by the management of a company is right? Do you agree?

A. It's their job and -- well, again, an example when the job they deliver not a proper way because they gave their fund -- they give -- they pay for Eurobonds but the information which was presented there was wrong.

Q. Now, you've referred to the Eurobonds circular, which is at H(A)07/19. Perhaps you could be given that.

A. Yes.

Q. Perhaps you would turn to page 79 of the bundle numbering H(A)07/79. Page 79.

A. Yes.

Q. Right. Now, this is headed "Crude Oil Marketing". Do you see?

A. Yes.

Q. What it says, and it's referring to the 1996 year, and I'm looking at the third paragraph below the heading --

A. Mm-hm.

Q. "In 1996, Sibneft exported 23.1% of its crude oil production, or 4.3 million tonnes. In 1996, all exports were to countries outside the [Russian Federation]. Starting in May 1996, the company used Runicom Ltd and its affiliate Runicom SA, a Swiss trader of crude oil and refined oil products, as its exclusive export agents, paying them a commission; since March 1997 these two entities have purchased outright all of Sibneft's exports. In 1996, sales commissions for the Runicom entities averages \$0.35 per barrel, or approximately 2% of the total sales price. Since March 1997, no commission has been paid and the Runicom entities have paid market prices for their purchases."

So the point being made there is that up to March 1996, Runicom paid market prices for crude oil less a commission of about 2 per cent. Do you have any reason to regard that statement as inaccurate?

A. I don't know anything; I can't comment that.

Mr Sumption, again, you now push me to the profession which I don't have. I don't know. You ask me, "Can I believe to this paper?" I said you, "No". I explain you why: because I find, being not professional, some absolutely falsified facts which include in this document. And you know that if I find at least one very visible fact --

- Q. What fact do you say is false in this document?
- A. That Abramovich has education.
- Q. That Abramovich has education?
- A. Correct.
- Q. So because you think that Mr Abramovich is uneducated and this document says he's educated, you don't accept what the auditors say about the accounts they have audited; is that your evidence?
- A. At least it means at least that auditors are not careful enough even to recognise this point.
- Q. Now, when it turns to refined products which are dealt with on the following page, page 80 H(A)07/80, in broad summary what is said here is that market prices are paid for refined products sold through Runicom. Do you have any reason to dispute that?
- A. I don't have any reason to dispute that. It's not my knowledge; it's not my profession. But I can't just to close eyes and thinking that it's professional company

who have done that. This company, absolutely correct, it's saying what is written here. If I wouldn't have examples of that, that they accept some false information as the basis for calculation, it's correct, it's less doubts.

Also doubts because we know that Pricewaterhouse, for example, took back release of audit of Menatep -- of Yukos -- I'm sorry, my Lady -- when Yukos was under pressure and Pricewaterhouse, the world-famous company, said, "Oh, sorry, we make mistake", yes? Because Putin decide that Khodorkovsky is criminal and even first-class audit company absolutely betrayed the profession.

- Q. In 1996, Mr Berezovsky, you received about \$80 million from Mr Abramovich and his companies, according to the figures given by Ms Goncharova in her witness statement and by Maitre Temime to the Marseilles judge. That was a year in which there were no Sibneft profits, wasn't it?
- A. Again, I don't know. Sibneft itself definitely didn't have profit, it's absolutely correct; but how Abramovich generate the profit, it's not my point.
- Q. It's obvious, isn't it, that the money you received in 1996 cannot have represented Sibneft profits because in that year there weren't any?

- A. Mr Sumption, we go circle and circle again. I'm happy to spend time like that because it's the same question, the same answer, but the answer will be the same. Abramovich will generate money not through Sibneft profit. Sibneft at that time was not profitable company.
- Q. Now, in 1997 Sibneft made a profit of \$68 million, according to its accounts, and it declared no dividend. Do you accept that that is what the accounts show?
- A. If it's written here, the accounts show exactly this number which you mentioned. If you give me opportunity to open that, I will see. But it's -- again, it's very for me nothing in terms of our discussion, in terms of the point which you try to raise, how I got \$80 million if Abramovich -- if Sibneft was not profitable. I explain how: they generated by trade. It's my guess.
- Q. Now, let's look at what you received in 1997. According to Ms Goncharova, she handled on behalf of Petroltrans and the Russian trading companies about \$50 million of payments to you or at your direction in that year and that corresponds to the figure that your lawyer gave to the French investigating magistrate. Do you follow me?
- A. I follow you.
- Q. In addition to that \$50 million, about \$20 million was paid between March and October 1997 by Mr Abramovich's

Swiss trading company, Runicom, to a company of yours called Comodo; do you accept that?

- A. I don't remember that. How I can accept what I don't understand and don't remember?

If there is a paper which Mr Abramovich -- Mrs Goncharova, Mr Abramovich's employer (sic) present, first of all I don't know the value of these papers, I never check the value of these papers, and I can't base my answer and just take as a truth what it was presented.

But, again, our understanding is that the amount of money which is mentioned here could be paid me; I can't tell that because, again, Badri was responsible.

I don't want to say that Badri is not alive and it's the reason it's fine all the time to refer to Badri; but on the other hand I really don't know, I really don't know what amount of money was paid.

And if Ms Goncharova present this payment, it should be checked. I can't accept it's just for the words of Mrs Goncharova, who present interests of Mr Abramovich.

- Q. The \$20 million that I've been referring to was not handled by Ms Goncharova; it was handled by Runicom and it was paid to a company of yours called Comodo in order to fund the purchase and restoration and furnishing of your property in the south of France. Do you recall

that?

A. I don't recall that. I can't exclude that, but I can't recall that because -- and moreover, I have a little bit doubts about that because we buy chateau in '96 or '97, I don't remember well, and we never change furniture there. The furniture like it is because it is furniture of 100 years ago and we try to keep like it was 100 years ago. It means that I don't remember anything -- I can just say that we are not able to spend for furniture this amount of money.

Q. Would you please have a look at -- you can put away the document you've got in front of you, apart from your witness statement. I would like you to be given instead bundle --

A. And this one, and the H(A)08 also?

Q. Yes, you can put away -- well, keep H(A)08, if you would.

A. Keep?

Q. Yes, keep it, H(A)08 -- sorry, H(C)8, forgive me.

A. Sorry. This H(A)08 I can return, yes?

Q. Do you accept that Comodo was a company of yours which was used to hold and manage the properties that you acquired at Cap d'Antibes?

A. I don't. I can't. I don't remember because again, I'm sorry, again it was not structurised by me. It was

structured everything by -- as I remember again -- by Mr Hans-Peter Jenni and Mr Bordes, who sold me this property. It means that I don't remember the name.

Again, I can't exclude that, Mr Sumption, to be very precise.

Q. Mr Berezovsky, I'm a bit puzzled by this because these are the very transactions that the French investigating magistrate was looking at --

A. Yes.

Q. -- and which you answered questions about only four months ago.

A. Yes.

Q. In the written answers --

A. Sorry, Mr Sumption, if it's so, could we open again the questioning and mention this company? Is it possible?

Q. Of course. If you look in bundle H(C)8, at page 131 -- perhaps you should look first at 127 which is the first page of the document H(C)8/127. On page 127, if you look at the heading at the top --

A. 127. What is that?

Q. You will see that these are your answers to questions that were put to you by the French investigatory magistrate.

A. Yes, I see.

Q. Right?

A. Yes.

Q. And if you turn to page 131 H(C)8/131, you are asked what you can tell the judge in France about a number of companies. If you look --

A. Just a second. Where is that?

Q. If you look down the bottom of the page 131, about three inches from the bottom you will see a heading that says:

"SIFI Sarl, OVACO AG [and] COMODO LIMITED."

A. Fantastic, yes. It's written here, it's so.

Q. "These companies were used to hold and manage the properties acquired at Cap d'Antibes: namely the Chateau and the Clocher de la Garoupe."

Then at the bottom of the page:

"I was the ultimate beneficial owner of Comodo Limited until mid 2007..."

Now, I take it, since that's what you told the French investigating magistrate, that it's true?

A. Yes, it's true. It's that -- and I correctly answered you -- I don't remember that. Definitely before the questioning I was refreshed which company I'm beneficial owner. But for that time definitely I forgot completely that.

Q. Would you now put away bundle H(C)8 and take bundle E3. Now, I would like you to look, please, at bundle E3, which you're about to be given, at flag 10, which is

Mr Shvidler's statement, and paragraph 126, which has a table E3/10/37.

A. Just a second. 126?

Q. Yes. I don't think that these figures are controversial, but you can tell us if they are, because they are substantially the same as the figures produced by your witness Mr Jenni in his witness statement. All right?

A. Yes. No, again, you ask me confirmation; I should have a look at least.

Q. Yes. Looking at this table, this is a table showing loans from Abramovich companies to Comodo; do you see?

A. Yes.

Q. And, at approximately 6 French francs to the US dollar, this adds up to about \$20 million.

A. Just a second.

Q. I'm not going to ask you to do the maths; we can all do that for ourselves in due course if there's a dispute about it.

Do you accept that you received, by way ostensibly of loan through Comodo, these sums?

A. I think it's -- if it's this information, I don't have chance to check this information. Unfortunately we were able to prove Mr Shvidler is not correct in many times. But nevertheless, okay, let's suppose it's so.

Q. Okay. Well now, all of this money was used, wasn't it, was spent on acquiring and doing work or filling up your property in France?

A. Mr Sumption, I don't remember. Mr Sumption, believe me, I don't remember what happened in ten years ago, even more. How this money was spent, I don't remember.

Q. Now, the amounts that you received --

A. And moreover, I never even have seen that because I was not responsible for that. I told you, it's again not the reason, my Lady, that I want to push everything what is the facts, yes? This amount of money. I don't want to produce impression that I'm just hiding -- don't know anything. But it's really I don't know. It was my job. It was a company who operated by the other people and who got money and spent money.

Q. Well, it was operated --

A. And moreover, to getting money and to spend money was not -- at this, it was not my responsibility.

Q. Mr Jenni's evidence in this action is that although these were on the face of it loans, they were never intended to be repaid and were never in fact repaid; they were outright payments therefore. Do you recall that?

A. No, not at all. I don't remember that. I don't -- not remember, I don't know even that, because again it was

not my responsibility. I was not involved in that at all.

- Q. Now, you do accept, however, I think, that all of your expenditure on your south of France properties was paid by Mr Abramovich's companies, don't you?
- A. Again, through Mr Abramovich company but not -- I am not sure that all -- as I gave you example before, I remember that also we got payment, and you read that, also from ORT. But no doubts that 95 per cent of my expenses in France were paid through my interest in Sibneft; maybe later on of my interest of Rusal. But I don't know that, I don't remember.
- Q. Now, at any rate, you agree that the great majority of what you spent on your French properties came from Mr Abramovich's companies?
- A. Through Mr Abramovich companies, correct.
- Q. Okay. Now, what was the system by which you decided how much was to be paid through Runicom and Comodo?
- A. I don't know. The system was the same. Badri mainly was responsible to connection to Abramovich; it doesn't mean that sometimes I referred Abramovich directly and Abramovich present his understanding, "Are we able to spend now this money or not"? If we're able to spend money, he paid me. If we were not able to spend this money because he want to buy, let's say, the other

companies -- Sibneft was developing at that time and, as you know, my Lady, we bought a lot of companies which were -- which become business of Sibneft. Moreover, we bought even company which didn't relate directly to Sibneft, for example gold company, for example food production company.

And Abramovich was responsible to say me, to tell me, "Boris, we don't have money now. You need to find another way to do that". And I gave you clear example when Abramovich told me that and I went to Deripaska and Deripaska gave me loan for \$13 million.

- Q. Let's treat this particular expenditure on your property in the south of France as an example. The system was this, wasn't it: whenever your agent, Monsieur Bordes, wanted more money, Mr Jenni's office -- he was your Swiss lawyer -- would pass the demand on to Mr Shvidler and ask him to pay it? That was the system, wasn't it?
- A. I don't know, but I am not able not to trust you. If this was the system, this was the system; I just was not aware how it works, this system, and how they organised that.
- Q. You weren't aware of that; is that your evidence? You weren't aware of the system?
- A. I don't know how payment was done and how they organise because there were several company. As I know,

Mr Bordes, as I told you, he not just help me to buy the property; he also manage the property.

Q. Yes.

A. It means that he was responsible for month-to-month expenses and he knew that the source of this money is my business, business in Sibneft.

Q. And when you need --

A. And Mr Jenni, as I told you, he is my Swiss -- he is Swiss lawyer and he help us to create the company -- to have a partner of Andre & Cie from Switzerland and he was responsible to organise financing of the property as well.

Q. Do you accept that when Mr Bordes wanted more money for your French property, he approached Mr Jenni's office and got them to ask Mr Shvidler for it?

A. I don't know, and moreover I have a lot of doubts. I explain you why: because without Badri approval, because without Badri involvement, I have a lot of doubts that it's possible to do that.

Q. Do you accept that when --

A. Because, as I understand, Mr Shvidler understood who is Badri in our relation but he doesn't understand who is Mr Bordes, who is able to ask him to pay money.

Q. Yes, but he did understand who Mr Stiefel, Mr Jenni's assistant, was, didn't he?

A. Mr...?

Q. Mr Jenni's assistant was called Mr Stiefel and it was his job in Mr Jenni's office to ring up Mr Shvidler and say, "We need more money".

A. I'm sure that it doesn't work like that at all. It means that first of all they should agree it with Badri because, again, Badri was the person who present all my, let's say, money interests -- I mean money calculation interests -- in my relations with Roman Abramovich.

Q. Mr Berezovsky, it's just not true that the dealings on your French property were all handled by Badri. They were handled by you, weren't they?

A. Again, it was not handled by me. Again, I just -- I own that, and according of recommendation of Mr Bordes and Mr Jenni we create a structure which are able to support this property, because it's cost a lot, as I understand, several millions yearly. It means that we should organise in proper way to financing that.

And according of French law, which very different from this country, yes, it's a lot of tax problems there and so. And as I understand, they were professional to organise that. It's not organised by me; I just follow the way how they organise that. And I am sure that impossible for Hans-Peter Jenni or Mr Bordes to ask Shvidler directly, "You should pay that and that";

definitely it was Badri involved in that.

Q. Mr Berezovsky, do you remember that there were occasions when Mr Shvidler wouldn't pay? Do you remember that?

And Mr Jenni told you that there was a problem because Mr Shvidler wouldn't pay; do you remember that?

A. I don't remember that. I can't exclude that definitely, as I told you already before, I gave you example, clear example, and sometimes they didn't have enough money to pay for my personal expenses and I can't exclude that. I don't remember definitely that but I can't exclude that, that Shvidler can say, "We don't have money".

But again, more than 100 per cent, I am sure that it was not me involvement; it was Badri involvement in that.

Q. Mr Jenni, when Mr Shvidler refused to pay, Mr Jenni would speak to you personally and would ask you to sort it out. You --

A. It could -- it could be --

Q. Let me finish.

A. Sorry.

Q. You then rang Mr Abramovich and said, "Mr Shvidler isn't paying my money; make sure, please, that he does"?

A. I can't exclude that. It could be like that.

Q. That's what Mr Jenni says in his witness statement.

A. Okay. Fine. I didn't read Mr Jenni's statement. It

could be like that, but what is wrong with that? What is wrong compared with I present to you my position?

Q. Nothing wrong with that at all, Mr Berezovsky.

A. Great.

Q. The point that I'm making to you is that this was a demand-led system, wasn't it?

A. Definitely not.

Q. The amount that you got depended first of all on your demands and secondly on a process of continuous negotiation with Mr Shvidler and Mr Abramovich?

A. Mr Sumption, it's absolutely wrong conclusion.

Q. Now, if the \$20 million, roughly speaking, that you got from Runicom in 1997 represented the profits attributable to your 25 per cent of the shares of Sibneft, then the total amount of Sibneft profits would have had to be over \$80 million, wouldn't it?

A. I don't conclude that.

Q. If we add in --

A. I explain you again, Mr Sumption, very simple, and it's only correct point. Abramovich managed the company. If I ask money, he pay me money. If he was not able to pay, he inform me, "Boris, we don't have", this is the point, or inform Badri that we don't have money. Mainly Badri, sometimes me.

And again, definitely I try to recollect maybe the

other examples when Abramovich said that we are not able to pay for something. I give just the most recollected example: that when I want to buy property here because my second family moved here, to London, and they need to buy house, and I asked Roman, "Are we able to buy? Are we able to pay?" He said, "Boris, we don't have money now". I said, "Fine, no problem", and I went to Deripaska and I asked, "Oleg, could you help me?" And he said, "I help you". This is the point.

Q. The amount --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

Can you just explain this to me, Mr Berezovsky. If you were getting paid out of the gross revenues of Sibneft as opposed to the declared profit, how did you calculate or estimate whether you and Mr Abramovich were getting equally 50 per cent of the gross revenues or the net profit?

A. I didn't calculate it. I just know that Abramovich understand our relations and Badri understand our relations and if you -- and Abramovich, I trust him that he equal share profit generated Sibneft directly or indirectly between us. That's it. And sometimes --

MRS JUSTICE GLOSTER: But what was the method of working out what, as between the two of you, were the profits of Sibneft?

A. Sorry, my Lady, again?

MRS JUSTICE GLOSTER: Let me put the question again. If the deal was, as you say --

A. Yes.

MRS JUSTICE GLOSTER: -- that you and Badri on the one side and Mr Abramovich on the other were going to share the profits generated by Sibneft 50/50 --

A. Correct. Sibneft or the company which connected to Sibneft.

MRS JUSTICE GLOSTER: Yes -- what was the method for working out whether each side was in fact getting the 50 per cent?

A. It means that it's Abramovich and Badri, they understood how much we're able to -- how much company generate generally and when we put request to pay some amount of money for something, for my private expenses or for my personal -- let's say ORT, doesn't matter -- all the time Badri told me, "Boris, we have enough money for that", or, "We don't have enough money for that".

And it's --

MRS JUSTICE GLOSTER: Yes, but my question to you, if you'll forgive me --

A. So sorry.

MRS JUSTICE GLOSTER: -- and if you don't know, just say, how as between you and Badri on the one hand and

Mr Abramovich on the other did you work out what each of you were entitled to? 50 per cent of what: gross revenues, net profits, net net profits?

A. As I understand, all profit which company is able this year or this month to split with this -- between owners.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

A. Thank you.

MR SUMPTION: I wonder if you could be given --

A. My Lady, the best example -- again, I'm sorry that I refer again -- is what happened at Le Bourget. It's exactly they calculate how much we have, how much is already expenses between us spent and how much, for example, Roman should pay us more as our part of our deal.

MRS JUSTICE GLOSTER: I see. Thank you.

MR SUMPTION: What you were discussing at Le Bourget was in fact how much was still due to you of a sum which Mr Abramovich had already, three months before that meeting, agreed to pay you; namely \$305 million. That's what you were discussing at Le Bourget.

A. Mr Sumption, in Le Bourget, Badri, in my presence, tried to create a balance between what Abramovich already paid, what he should paid and what is the prediction for the next year because of tax changes in Russian government policy, and nothing more. Again, and it's

absolutely clear that it's dividends or profit which we discussed from Sibneft and from Rusal.

But, as you promise me, we return back to Le Bourget transcript and we will, I hope, also create position that you will not have any doubts that it's confirmed absolutely clear that we own Sibneft, that we own Rusal and we got money generated these companies, directly or indirectly.

Q. Now, Ms Nosova tells us what she understood the system to be, and I want to ask you to look at what she says.

A. Mm-hm.

Q. It's in bundle D1/09, page 150 D1/09/150.

A. Sorry, D1?

Q. Flag 9, page 150. Have you got --

A. 150, I have it.

Q. Paragraph 203, right at the bottom of that page. Do you have paragraph 203?

A. Yes, I try to read that.

Q. "My understanding was that the way Boris received this money was very ad hoc."

A. What means "ad hoc"?

Q. That means that it wasn't planned in advance --

A. Oh, I see.

Q. -- it was simply arranged from time to time.

A. Yes. Mm-hm.

Q. "There was no single arrangement by which he would always receive money. Rather, he..."

And this is you, Mr Berezovsky.

"... would identify some personal asset which needed to be paid for and would inform Badri or Mr Abramovich or his team what it was and who the money needed to be paid to, and they would arrange it. This could, for example, be jewellery for Elena Gorbunova, for real estate, or whatever."

A. Yes.

Q. That is a correct description, isn't it, of how this worked?

A. This is partially correct description but it doesn't mean --

Q. It's not partially correct --

A. Sorry -- but it doesn't mean that it's incorrectly what I said before: that Badri and Roman calculate the balance all the time. This is the point, and this is a key point.

Q. That paragraph isn't partially correct; it's completely correct, isn't it?

A. Again, I gave you answer.

Q. Now, the huge sums that you received in 1997, at least \$70 million on the material that we've got, were larger than the entire profits of Sibneft for that year,

weren't they?

A. Which Sibneft show up.

Q. Yes. And you have no reason, as you've told us, for saying that what Sibneft was showing as its profit was not its profit?

A. I already explain you that the profit which Sibneft show up was done in the way, in the usual way like it was, let's say, it was acceptable at that time. It means that nobody can say, except of Mr Abramovich and Shvidler, what the real profit was because the profit generate not directly as dividends. As I understand, dividends were introduced to share only when we already almost left the company, Badri and me, when we were squeezed to leave the company. Only after that they start to share profit in the way of dividends.

It's just one more confirmation that our presence when we have been there, it was in interest of Abramovich -- it's not direct, indirect statement, indirect my understanding -- was not reasonable for him to show the real profit of the company.

Q. Mr Berezovsky, it was not acceptable at the time, was it, when you had a public company, with members of the public holding about 10 per cent of the shares, for some shareholders to strip off assets from the company without having dividends while the rest of them had to

content themselves with the zero dividends that the company was declaring? That wasn't acceptable --

A. Mr Sumption --

Q. That wasn't acceptable, was it?

A. It is not acceptable at all. But it's not my deal to manage the company; it's what Abramovich has done. And if it's wrong, it's Abramovich mistake, not my mistake.

Q. And it wasn't acceptable either, was it, to present your audited accounts on the basis of US GAAP which were false? That wasn't acceptable either, is it?

A. It's question not to me; it's question to Abramovich what they present.

Q. You said that the method which you thought was being applied was acceptable in the mid-'90s. I have put it to you that it was not, and I don't think you think it is.

A. No, again, I describe you the method which company use to obtain the profit directly or indirectly and the way was absolutely the same for all the company. I never calculate numbers and my relations was absolutely simple: I made request directly to Abramovich or Shvidler or indirectly through Badri. If Abramovich was able to pay, calculating what is our interest, Badri and me together, he paid that. If he was not able to do, he said, "Boris, we don't have money now to spend because

we invest it to buy something or because company didn't generate this money".

I never demand Abramovich to do that, never, because it was responsibility of Abramovich, 100 per cent, to manage the company and I'm not crazy to destroy my company just thinking to buy another house, yes?

I understood priority. If we don't have money, we don't have money. If we have money, I want to spend this money how I like to do.

- Q. If you didn't have money because Mr Shvidler didn't think that he could properly provide it for you, your response was to ring up Mr Abramovich and say, "Pay", wasn't it?
- A. Not. Not so.
- Q. In 1998, Sibneft made a profit of \$36 million. It retained that for reinvestment and declared no dividend.
- A. Mm-hm.
- Q. You received, on Ms Goncharova's estimates and on the figure that you gave to the French judge or your lawyer gave to the French judge, \$50 million in that year, one and a half times the entire profits of Sibneft, didn't you?
- A. It could be. Again, I'm not responsible -- I can't recollect the numbers, but it could be. And the way -- and the reason why it could be I'll also explain: it's

the same way when company present itself as a company with not dividends at all and generate dividends in another way. And unfortunately -- I don't know how to say that -- it was the regular way of almost all oil company. I don't know really exception.

At least, again, this question was investigated in details in Khodorkovsky case, in details. Even on the level of Strasbourg it was investigated and Strasbourg gave negative conclusion that it looks like fraud, it's true. But I just want to stress it's not my point. Maybe now finally, after this hearing, it will be another hearing what Abramovich have done as a manager of the company and maybe something crime was there.

But it's not a point to discuss today because it's absolutely clear and I give absolutely truthful answer my understanding how generate money, and maybe even squeezing interest of the other shareholders.

Q. Mr Berezovsky, are you suggesting that you were paid during the 1990s by methods which looked like fraud?

A. I didn't have any idea that time how Abramovich paid. Moreover, I start to think about that when Khodorkovsky -- when they put Khodorkovsky in jail and start to investigate the method how company were paid.

Mr Sumption, again and again, I don't want -- I'm sorry that I'm a little bit maybe not correctly in my

voice. Mr Sumption, I want just to stress again and again, I wasn't responsible at all how Abramovich managed the company, how he generate profit, how he organised the payment. I just -- it was my clear understanding that we share 50/50 and if Abramovich paid this enormous amount of money through the company to me -- no doubts, believe me, Abramovich is not a person who doesn't care about himself -- it means that Abramovich got the same, at least the same amount of money if just because -- belongs to me.

MRS JUSTICE GLOSTER: How are the payments characterised in the accounts, or don't you know? The payments to you or at your direction.

A. I don't know how it was characterised. I am sure that Abramovich did not show that it's dividends because it was not dividends definitely. Dividends --

MRS JUSTICE GLOSTER: It would have been expensed, would it? Or you're speculating?

A. I don't know.

MR SUMPTION: Mr Abramovich was paying you these sums in excess of the profits of Sibneft because that is what you were demanding for your political services in Russia; is that right?

A. Mr Sumption, I provide my political service in Russia not for Sibneft; I provide my political service in

Russia for all Russian businessmen without any exception. When I went as deputy secretary of security counsel trying to stop the war in Chechnya, I understand well that if I will do that, it capitalise the country, not only Sibneft. I never have done any exception for Sibneft being on the position of serving State.

- Q. The first year in which Sibneft made profits greater than the amount that you and Badri received was 1999, and the same was true in 2000. Do you accept that?
- A. I don't know, because I didn't see the numbers of Sibneft generally.
- Q. Well, let's look at the picture in 2000. The audited accounts for 2000 -- you can take this from me -- showed a profit in that year of \$675 million.
- A. Just a second. Could you refer to the --
- Q. Do you want to put that away? You're very welcome to. That's Mr Shvidler's statement: you can put that away.
- A. And the other bundle which you...?
- Q. I want to look at the picture in 2000. I'm not going to show you another set of accounts because I imagine your answer will be the same: you don't know. But let me tell you that the audited financial statements of Sibneft in 2000 showed a profit of \$675 million, by far the largest that the company had ever made. And the dividend for the first time was declared in that year,

which was paid in November 2000, of \$50 million.

A. November 2000?

Q. Now, I want to ask you, against that background, about your receipts in 2000.

What I suggest is that in 2000 your demands considerably increased. Would you accept that?

A. Mr Sumption, again -- Mr Sumption, don't put me in front of my Lady as a person who just repeating and repeating the same point that I was not aware in my own how it was paid and so in position that I create impression in front of my Lady that I just was pushed out. It's true because we -- Mr Sumption give me the same and the same question and I understand now the reason: because he want to produce impression that I don't want to answer to this question. But the question is the same, nothing new.

MRS JUSTICE GLOSTER: Right. Well, I know you disagree that you were demanding money.

A. Definitely.

MRS JUSTICE GLOSTER: You say you were entitled to your share.

A. Absolutely correct.

MRS JUSTICE GLOSTER: So don't let's get hung up on the use of his word "demand". But he's putting to you now the position in relation to 2000 and I'm going to allow him

to ask that question.

A. Yes, yes.

MR SUMPTION: Do you accept that in the course of 2000, your demands for money increased?

A. I don't accept "demands".

MRS JUSTICE GLOSTER: Well, let's use a neutral word: "request".

A. No, it was -- again, my Lady, it was not a request; it was obligation of Abramovich to share with me.

MRS JUSTICE GLOSTER: Yes I know you say that. We're just now looking at the amounts you get paid and how -- the money doesn't come to you automatically; you generate some sort of request for payment, presumably?

A. Yes, I just -- mainly the way was as I described before. I told Badri, "Badri, we need that and that", for reason of ORT or for reason of charity or for personal reason to buy jewellery to Elena, yes? And Badri calculate with Roman what is opportunity to pay or not. That's it.

MRS JUSTICE GLOSTER: What Mr Sumption is asking you about is how your need for money in 2000 was dealt with, okay? He's using the word "demand" but I appreciate that you dispute that, so I'm suggesting perhaps a more neutral word, but you don't like "request" either. So let's address the question on the basis that Mr Sumption is

asking you about how your need for funding was satisfied in 2000.

A. No, 2000, first of all, 2000 was the year when I left Russia.

MRS JUSTICE GLOSTER: Yes.

A. And I left Russia in October 2000. And as now Mr Sumption present that the first dividends were paid when I already left Russia, is it correct, in November 2000?

MR SUMPTION: No, I'm asking you about the --

A. No, no, no, just to clear --

Q. I'm asking you about the entire year, not just after but before you left Russia.

A. As I can recollect, that time when we start to be squeezed Roman stopped to pay at all and it was one of the points which Badri later on discussed with him. I don't remember at which time Roman stopped to pay us dividends already but it's simple to understand when it's happened. And again, I don't remember how much money we got in 2000 altogether.

Is it the answer to the question, my Lady, or not?

Q. Do you agree --

A. Is it the answer --

MRS JUSTICE GLOSTER: No, no, thank you, you've answered my question. I'm saying just deal with the questions that

are being put by Mr Sumption on the basis that I understand that you dispute the word "demand" every time he puts it to you.

A. Correct. Correct.

MR SUMPTION: Do you agree that your desires for money in 2000 increased by comparison with earlier years?

A. I can't say that because as far as 2000, the beginning, as I understand, was election campaign of president and we agreed with Abramovich to pay 25, 25, altogether 50 million, to support this campaign. Definitely ORT in election campaign need more money than in regular days, it's true, but it's happened already in March 2000, Putin was elected. And I don't see that at that time we need more money than before, in spite of I decide to move to France at that time and definitely start to think what happened then.

And then, as you know, we had a meeting with Mr Abramovich in Le Bourget, it was exactly 2000, in December, and nothing happened unusual during this meeting. I did not tell, "Roman, now I immediately need more money"; I just told that we have new situation now and we need to calculate how much we're able to obtain through our business in Sibneft. That's it.

Q. Well, let me give you an example in which you were personally involved. At the Dorchester Hotel meeting

in March, Mr Deripaska pressed you for repayment of a loan of \$16 million that he had made to you. Do you remember that?

- A. I remember that perfectly. And first of all, it was not 16 and 13, and I want you try to ask your assistant to give you exact number: it was \$13 million. Deripaska did not press me, it's not correct --

MRS JUSTICE GLOSTER: Sorry, 13 million or 30?

- A. 1-3. Not 1-6, 1-3, yes?

MR SUMPTION: You say it was 13. Do you agree that Mr Deripaska pressed you for its repayment?

- A. No, again, I continue to answer. Give me, please, opportunity to answer. I remember your question.

And Deripaska never press me and Deripaska just remind that I have this debt and I was very surprised, and I remember, because I thought that it's already repaid because Badri knew about that debt and that debt, as I understand, based on some collateral which were given to Deripaska, I don't remember which one. And it was just -- when Deripaska remind me that, I really -- my first reaction was that it surprised me because I thought it's already paid because I have done this debt in 1997 I think, like that, and I had obligation to pay him not for long term, yes?

And I just said Roman, who present at the same

meeting in Dorchester Hotel, to pay this debt if we have money and I know well that already months later or a little bit -- around that time the debt was returned to Deripaska.

- Q. Exactly, Mr Berezovsky. You were presented with Mr Deripaska asking for his debt to be repaid and you immediately returned to Mr Abramovich and said, "Please pay him"?
- A. It's correct.
- Q. Right. And that was how the system worked: you identified a need of yours, you turned to Mr Abramovich --
- A. Absolutely.
- Q. -- and you said, "Please pay this debt"?
- A. Yes, and Abramovich said, "Boris, we have money to pay". It's correct.
- Q. He paid it for you, didn't it?
- A. Not he paid for me. He paid my money to him because I thought that's already paid. And when Deripaska said that it was not paid, I said it's wrong, because I didn't ask before. And as far as we had money, Abramovich paid next month. What is wrong with that?
- Q. In the autumn of 2000, when you had fallen out with Mr Putin but before you had left Russia, you got Mr Patarkatsishvili to ask Mr Abramovich for what you

called a financial cushion?

A. Financial...?

Q. You asked for a large additional payment because you thought you might have to leave Russia?

A. Mr Sumption, it's absolutely speculation. Believe me that at that time I still trust that Abramovich is proper partner and money which we were able to have as a profit of Sibneft and the company connected to Sibneft was more than enough to stay for thousand years in London, not thinking how to pay -- how to obtain this money.

It's absolutely incorrect to say that I had so-called -- there was a pillow -- a cushion, I'm sorry, to be sure that I able to stay in London or abroad. It's absolutely wrong. Pillow I need for the other purpose: to sleep well, that's it.

Q. Mr Patarkatsishvili negotiated on your behalf and his own an additional payment of \$305 million to be paid by the end of the year, didn't he?

A. If you refer to -- if you refer to Courcheval -- if you refer to Le Bourget, Le Bourget discussion is completely wrong. It's just obligation of Roman Abramovich, who didn't cover still his obligation to pay us profit generated Sibneft at that time, I think; Sibneft or Rusal, I don't remember. It was not special request of

Mr Patarkatsishvili because we left Russia.

Again and again I want to stress you: at that time, in my mind, Abramovich was proper partner. It means that I was able to -- not to ask a special help, exception.

Q. Whatever the reason for paying it, the payment of that sum was specifically negotiated by Mr Patarkatsishvili on his and your behalf with Mr Abramovich, wasn't it?

A. It's completely wrong. We discuss in Le Bourget the obligation of Abramovich to pay our profit of Sibneft, nothing more.

MR SUMPTION: My Lady, the next document I want to refer to is a spreadsheet which is only really easily consulted actually on the screen using the Excel software.

I wonder if Mr Berezovsky could have the assistance of somebody who can operate the Excel system for him.

MRS JUSTICE GLOSTER: Yes, certainly.

MR SUMPTION: Now, this is a document, Mr Berezovsky, which is referred to in my client's evidence as the "bolshoi" balance, the big balance.

A. It's reference of whom?

Q. What?

A. Reference of whom? Who has done that?

Q. This is a document that was prepared by accounting staff, supervised by Ms Panchenko on the instructions of

Mr Shvidler. One of these documents was produced, although not necessarily in exactly the same form, each year from 1999 onwards but we do not have the corresponding spreadsheet for 1999. Now, that's what it is.

MRS JUSTICE GLOSTER: Can you give me the reference?

MR SUMPTION: The reference in the bundle is H(A)40 --

MRS JUSTICE GLOSTER: H(A), not RA?

MR SUMPTION: No, H(A)40 2000 BB.

MRS JUSTICE GLOSTER: Will I get the Excel spreadsheet if I do that or do I have to get the one that's on the screen?

MR SUMPTION: I think it's not accessed through the Magnum system, it's accessed directly through -- on your Ladyship's desktop you will find an "Excel spreadsheets" folder.

MRS JUSTICE GLOSTER: Yes, I have that.

MR SUMPTION: If your Ladyship clicks on that, you will come up with the --

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: At the bottom of the screen, could you please click on the tab which says "2000 total cash incl monthly". Would you go to the extreme left, so using the sliding bar, you will see that there are various sections. Can we go right up to the top as well,

please.

MRS JUSTICE GLOSTER: Just a second, Mr Sumption, I'm going to need a more specific reference in "Excel spreadsheets".

MR SUMPTION: Does your Ladyship have the spreadsheet open?

MRS JUSTICE GLOSTER: No, I'm being told I can't access it. Could somebody give me the actual --

MR SUMPTION: Somebody, I think, is volunteering to assist.

MRS JUSTICE GLOSTER: Thank you very much. I've gone into the Excel spreadsheet file but I think it's important I have it up. (Pause)

Right, Mr Sumption, I'm there.

MR SUMPTION: Right. Now, your Ladyship has clicked on the tab "2000 total cash incl monthly".

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: The first two sections of this table show cash flows through Sibneft which is coded "BS" and aluminium assets which is coded "BAL". Now, those aren't profits, they're gross cash flows, positive and negative. Now, if on the same table you go down right to the bottom end, the last three sections, you'll see that the last section is headed "ORT" and the two previous ones are headed "PRB" and "PRBR".

A. Just a second. "ORT", could you find me that?

Q. All right?

A. ORT, yes.

Q. Now, the "PRB" section shows month by month the amounts paid to you and entities associated with you and the "PRBR" section gives the corresponding information about Mr Patarkatsishvili.

A. P -- thank you. Yes.

Q. Do you see the "PRB" section --

A. Yes.

Q. -- which starts at line 84 and then the "PRBR" section, which is Mr Patarkatsishvili, which starts at line 89. I see in the Russian version there may be a different... Can you see that there are "PRB" totals month by month?

A. Yes.

Q. And "PRBR" totals month by month?

A. Yes, I see.

Q. Now, if you slide to the right-hand end of that table, you'll see the totals and they should show that you received \$461.3 million in 2000 and that Mr Patarkatsishvili received \$28.8 million in the same period?

A. Yes.

Q. In round figures, a total of 490 million between you?

A. Yes.

Q. Do you accept that you received \$490 million between you and Mr Patarkatsishvili in the year 2000?

- A. It means -- the question is that is it correct to say that this money belonged to us together, correct?
- Q. I'm asking you whether you received it, between you and Mr Patarkatsishvili.
- A. I accept that the number which is written here, which is written here, is written by the commercial department for Abramovich. I can't accept that because I didn't check that but let's suppose that it's correct number, and it means that Badri and me together, we got this number and some 460 written to my name and 25 -- 28 written to Badri name. I accept that.

MR SUMPTION: My Lady, can I just finish this document before your Ladyship breaks?

MRS JUSTICE GLOSTER: Yes, certainly. Do.

MR SUMPTION: Now, if you would click on the tab at the bottom labelled "FOM", which stands for Fomichev, your financial manager, you'll see the same figure of 490 million has been broken down?

A. Mm-hm.

Q. Under the "PRB" section, the one that relates to you, you'll see that payments -- there's a heading for cash payments in rubles, then payments to various third parties, like Camros, TWC, Metrascop, et cetera, and then cash payments in dollars out, "Cash out" at the bottom of that section, do you see?

A. Yes.

Q. Then there's a heading "Set off against Al", set off against aluminium --

A. Yes.

Q. -- and if you look against "May" you will see that that is Mr Abramovich paying the 16.271 million due to Mr Deripaska in accordance with your request, shall we call it, at the Dorchester Hotel meeting?

A. Yes.

Q. Now, if you look at the monthly breakdown, which we'll need you to look at as it slides across, you'll see that there is a very large increase in the scale of payments being made to you from October onwards. Look at the monthly totals and you'll see that in the last three months of the year, there's a very considerable increase in the amounts that you receive.

A. Okay.

Q. That is because it was in October of that year or thereabouts that Mr Patarkatsishvili negotiated the additional payment of 305 million with Mr Abramovich. Do you agree?

A. No, I don't agree. I agree only what we discuss in Le Bourget and it's absolutely clear, we didn't ask any additional payment. It means that it was what Abramovich should cover as our profit generated the

company, nothing more. No one discussion to pay something because we have political difficulties. Again, my Lady, I want to stress, we have absolutely enough from our business in Sibneft and Rusal, nothing more. I never ask Abramovich and I don't remember that Badri ask him to pay something additional because we left Russia.

- Q. Well, Mr Abramovich's evidence is that it was because you were about to leave Russia, but never mind what it was for, he negotiated an additional payment of that amount, didn't he?
- A. I remember only his negotiation in Le Bourget. It was clear figure which were paid as our profit from Sibneft and Rusal, nothing more.
- Q. Do you see there's a heading "Tiberius, Pennand", which is where most of the additional payments are going to in the last three months of the year. On the right-hand side you'll see that -- it's line 8 in the version I've got. Do you see Tiberius, Pennand received a total of \$237 million?
- A. Yes.
- Q. Now, Pennand was a company owned by you, wasn't it?
- A. Again, I don't remember. I can't exclude that at all.
- Q. Well, Pennand Inc was a company owned by you which had been set up for you in October, hadn't it, by an asset

manager called Valmet?

A. I remember just that Valmet, with Valmet, we start to discuss but it's happened at the beginning of 2000, correct, we start to discuss the structure to make transparent our participation in Sibneft and Rusal assets, and I can't exclude that the Valmet, it's Mr --

Q. Samuelson.

A. No, no, Mr -- who owned -- Valmet it's not Mr -- Samuelson, yes. Mr Samuelson.

Q. Valmet was run by Mr Samuelson.

A. It's Mr Samuelson who we asked to create the structures.

Q. Valmet set up two trusts for you and Mr Patarkatsishvili in October?

A. Correct.

Q. One was -- well, two trust companies.

A. Yes.

Q. One was Pennand Inc which was your company and the other was Tiberius Limited, a Gibraltarian company, which was Mr Patarkatsishvili's company?

A. It could be.

Q. Both of those companies opened accounts in October 2000 with the Abu Dhabi Commercial Bank, didn't they?

A. I can't exclude that.

MRS JUSTICE GLOSTER: Choose your moment, Mr Sumption, won't you?

MR SUMPTION: Those accounts were specifically opened in order to receive the \$305 million promised by Mr Abramovich to Mr Patarkatsishvili in about October. Do you agree with that?

A. I don't remember that at all. I remember correctly the meeting in Le Bourget and they discussed the amount, 300, exactly, 305 million which is a payment for our profit -- as our profit from Sibneft and Rusal. This is correct and it's absolutely clear from our conversation in Le Bourget that this debt of Abramovich, not our demand, not our request, it's debt of Mr Abramovich to pay us. That's it.

MR SUMPTION: My Lady, that would be a convenient moment.

MRS JUSTICE GLOSTER: Very well. I'll sit again at 2.05.

(1.05 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Mr Berezovsky, the spreadsheet we've been looking at showed that between you, you and Mr Patarkatsishvili received about \$490 million in the year 2000. Now, is it really your suggestion that that amount represented Sibneft profits?

A. My suggestion is that it present Sibneft profit and I think Rusal as well, because Rusal, as I understand,

also start generate money and it's the reason why the number could be increased. Again, I don't know details how it was organised. But what is clear from Le Bourget meeting that Rusal discussed as well that it was not payment just, when they discussed \$350 million and so, it was not just payment for Sibneft profit generated but at the time Rusal as well.

It means that the increasing of amount of money after we marriage(?) with the other company, Deripaska SibAl, after we obtained, after we bought the aluminium assets, it could be increasing of amount of money which we got.

- Q. Well, the reference to Rusal, I mean, first of all, Rusal had not actually been incorporated yet; it was incorporated three weeks after the Le Bourget meeting, on Christmas Day 2000, wasn't it?
- A. Formally, yes. But as you clear -- I would like to stress -- clear understand from the discussion in Le Bourget, it's under discussion also the amount of money which should be paid by Rusal because the company which -- aluminium company which we include in Rusal never stop to operate and never stop to generate money. It means that in spite of the -- and moreover, even if Rusal was fixed a little bit later, we already had assets, our assets, which belonged to our group, and

these assets definitely generate money itself.

- Q. The point is this, isn't it, Mr Berezovsky: that when Mr Abramovich agreed with Mr Patarkatsishvili the payment of the extra \$305 million, he told him that \$30 million of that would have to come from his aluminium assets? That's right, isn't it?
- A. You mean from whom, Abramovich assets? It's wrong. It's our assets which belong us together and it just comes from what I told you: that Rusal already start to generate money and explanation of Abramovich was this part came from Sibneft profit and this part came from Rusal profit. It means that my guess that Rusal start to already generate money and we already start to get this money is absolutely correct.
- Q. Would you please take bundle R(F)4/281. Sorry, I said 281; in fact I'd like you to turn to -- yes, R(F)4/28/1, right at the beginning of the bundle.
- A. I'm sorry, I don't have that.
- Q. You're about to be passed it. I'm giving the page reference for the benefit of those who are helping you from behind.
- A. Thank you very much.
- Q. Now, what you are looking at, if you have got the first page open, is the report on your tax affairs which was commissioned by you from Pricewaterhouse in order to

show to the United Kingdom Inland Revenue, right?

A. Yes.

Q. I'd like you to turn there to page 131 in the bundle numbering on the bottom left RF4/28/131.

A. Page 100...?

Q. 131 in the numbering that appears on the bottom left.

A. Yes.

Q. Okay?

A. Yes.

Q. Now, this is a report which was compiled from information provided by you and your staff, wasn't it?

A. Personally I just had, I think, one or two times meeting with represent of Pricewaterhouse. When I came -- start to base in United Kingdom, definitely I was looking -- I tried to understand the tax policy here and that's reason why I met them. I never discussed with them details; I just explain him -- explain the company, which kind of assets I own and what is the situation there. That's it.

I never have seen this report. It doesn't mean that we are not able to discuss it, definitely we will discuss, but just inform you that I gave absolutely truthful statement to Pricewaterhouse about the sources of my money.

Q. The person who was involved in greatest detail with the

preparation of this report on your side was Mr Fomichev, was it not?

A. Fomichev, at the beginning he was the person who mainly was involved in all my financial, let's say, activities or financial understanding. Just later on Natalia Nosova came to London and changed him this position. But it depends what time we are discussing now.

Q. Well now, would you look at paragraph 15.3.

A. Just a second. May I put you question? When it was done?

Q. When was this report done?

A. Yes.

Q. This report was prepared -- I think it was finalised in 2010.

A. 2010, it means --

Q. So clearly finalised some time after you broke up with Mr Fomichev.

A. No, it means that I think that mainly who know much better about that, it's Natalia Nosova; because, as I told you, my financial activity here, Natalia Nosova took step by step in her hands just, I think, 2003/2004 she already mainly start to operate.

As far as Ruslan Fomichev, I broke my relations with him much earlier than 2010.

Q. Yes. Now, would you look at paragraph 15.3, please.

A. 15.3. Just a second.

Q. "PE" --

A. Just a second. 15...?

Q. 15.3.

A. Sorry.

Q. It's on the page that I was showing you.

A. Yes. Yes, I've got it.

Q. Now, PE is -- that's you, isn't it? It stands for  
"Platon Elenin", which was your alias?

A. Yes, it's true, I took the other name here.  
Platon Elenin, it's correct.

Q. "PE's share of profits in Sibneft were paid to vehicles  
controlled by him through a vehicle associated with RA,  
Runicom Limited, in the form of loans or promissory  
notes. Payments were made in this form in order to  
disguise PE's interests and for Russian tax purposes."

The route is then discussed. The paragraph goes on:

"Profits were paid to PE entities associated with PE  
until 1999, when PE and BP..."

That's Badri.

"... established a vehicle to invest in France,  
Comodo Ltd, a company registered in the Cayman Islands."

Now, that's not strictly right, is it, because it  
was in 1997 that Comodo was --

A. I don't remember, sorry. I don't remember that.

Q. The sentence which follows says this:

"Payments of 100 [million francs] and £4.35 [million] were made between October 1997 and June 1999. We are not aware that any further profits of Sibneft were paid to PE or to BB until the disposal of promissory notes described below."

A. Yes.

Q. Now, the reference to "the promissory notes described below" is to the promissory notes referred to at paragraph 5.15 over the page.

A. Mm-hm.

Q. Could you look at that, please.

A. Yes.

Q. That deals with the payments made to Tiberius and Pennand in 2000 that we've already discussed.

A. Yes.

Q. Okay?

A. Yes.

Q. Now, your accountants, therefore, are telling the Inland Revenue that the only Sibneft profits that you have received were the payment to France, in fact we know that that was in 1997, that was the 100 million francs and £4.35 million, and the Tiberius/Pennand payments in late 2000.

A. Mm-hm.

- Q. That's what they're saying.
- A. Yes.
- Q. And was that true?
- A. I don't know. I don't know. It's my financial adviser who absolutely professional, I mean Natalia Nosova, and I think that the Pricewaterhouse is also absolutely professional company. I have nothing to hide, I'm absolutely open, and I don't know at which stage is that and what is going now. At least at nowadays I don't have any problem with tax. I never tried to hide something and we know the result: I am still free, I am not in prison, they trust what we are presenting them. I don't have any notes that we made something wrong.
- Q. Mr Berezovsky, I'm not trying to suggest that you have deceived the taxman; I'm interested in matters that are relevant to this dispute. What I'm asking you to comment on is the fact that your accountants have said that the only Sibneft profits that you received were the payments of 100 million francs and £4.35 million, which were the payments made in 1997 for your property in France, and the payments made in 2000 to Tiberius and Pennand.
- A. Mr Sumption, I just want to repeat again: I am not able to comment what present my financial officers. I just want to tell that I'm sure that they're completely

professional and I don't know this presentation, why it's happened in this way. I don't think that they made any mistakes. I think that they continue in cooperation with Pricewaterhouse and until now we don't have any problem with that.

When you put me exact extract and try to -- and asking me to comment the relation with Pricewaterhouse and was I correct or not, impossible to comment in this way. I just present you my clear understanding what I know, and my knowledge is you calculate this -- show these numbers which we have seen all together and it's clear that -- I think that that number is more or less correct because you said this confirmed even by my lawyers, but I don't have explanation of that.

And it's impossible to say if it's written here, one of that is wrong. I don't think so. Moreover, I am sure that they're professional.

Q. Now, a third element of the agreement that you say was made in 1995 was that you say that it was agreed that any future business which any of the parties -- any of the three of you -- might have were also to be shared in some proportions.

A. Not in some proportions; in the same proportions.

Q. Okay. Let's look at what you say in the pleadings. Can you please be given bundle A1.

- A. Can I return back this?
- Q. What have you got in front of you?
- A. Yes. I can --
- Q. What is it?
- A. It is --
- Q. You can put the tax report away.
- A. Yes.
- Q. Yes, absolutely.
- A. Thank you.
- Q. If you've got bundle A1 and would care to turn to flag 2 at page 3 A1/02/3 --
- A. It's my --
- Q. -- you'll see what this document is: it's the re-amended particulars of claim, the current version. Okay?
- A. I'm sorry, Mr Sumption, I need to understand what is that. This is particulars of claim made when?
- Q. This is the one that is up to date now. It was made on various dates with various amendments over a considerable period of time. But this is what we are given now to show what your present case is, okay?
- A. No, no, I understand. I just ask when this particulars of claim was signed -- when it was signed and who signed --
- Q. In this particular form it was in July of this year and that is when you appear to have signed it; see page 34.

But in fact parts of it have appeared in earlier versions.

A. Yes, I see. I see. Yes, okay.

Q. Now, would you please turn to paragraph C34, which is on page 11 A1/02/11.

A. Yes.

Q. Okay? Now, this is where you say what the terms of the 1995 agreements were --

A. Yes.

Q. -- and I've already cross-examined you about items 1 and it. I now want to look at item 3, where you say it was also agreed in 1995 that:

"... any future business... they acquired, whether or not related to Sibneft, would be shared between them in the following proportions..."

50% Abramovich, 50% Berezovsky, 50%

Patarkatsishvili.

A. Yes.

Q. Do you see -- sorry, 50% between Berezovsky --

A. Between Badri and me, yes.

Q. Yes, okay.

Now, is that account of what was agreed in 1995 correct according to your evidence?

A. Yes, it's correct.

Q. I see. Just leave that open, would you, and take your

witness statement, paragraph 104. It's on page 218 of the bundle D2/17/218.

A. Just a second. My witness statement, yes.

Q. Right?

A. Yes.

Q. What you say here is:

"During the discussions..."

And this is also about the 1995 agreement.

A. Yes.

Q. "During the discussions with Mr Abramovich, we also agreed that there would be a right for each side to share in future business ventures in the same manner: 50% Badri and me, and 50% Mr Abramovich. I proposed this condition so as to avoid potential conflicts of interest that might otherwise have produced counter-productive tensions... The idea was not to create an obligation to invest. Rather, if either side identified a new business opportunity it should be offered to the others and each side, Mr Abramovich or Badri and I, would have a right of first refusal to take part in the venture on the same 50:50 basis on which we were partners in Sibneft."

A. It's correct.

Q. Well, you have described two things which are correct which are different. In your pleading you say that the

agreement was that future businesses, whether or not related to Sibneft, would be shared 50/25/25 --

A. Just a second --

Q. -- and in your witness statement you say that this was simply a right of first refusal. Which is correct?

A. I think that according to my understanding, and that understanding never changed, the correct is, let's say -- okay, may I give you example to understand better, if you want to understand, yes?

As far as Badri is concerned, we have difference exactly, it was one point what was different with Badri: with Badri also share 50/50, yes, 25/25? But we agreed that we invest together, it does not matter what happened, all the time. We -- I didn't have obligation to propose Badri the first refusal right, yes? We -- Badri operate and we just have several exception, I would like to stress, when it was not like that.

As far as Abramovich is concerned, it's absolutely correct that it was a right to refusal. It means that any business which I think could be opportunity, I must to propose Abramovich and Abramovich can right to refuse that. And the best example is Rusal. Rusal we propose Abramovich, he told me, "I need to think about that", and after a short time, a week or less, he returned and said, "Boris, we like this business, we go together".

This is the description what was reality, how it works.

On the other hand, as far as, for example, mass media opportunity, I propose Abramovich to participate even from the beginning, to share even ORT together, and Abramovich refuse that. Okay, it's his right. It's his position. It means that I just describe how I understand it works.

Q. Mr Berezovsky, as I understand it from the further information that was served on us, what you say at paragraph C34 is the gist of the words used when you made this oral agreement in 1995.

A. May I read? It's C32; correct?

Q. No, it's 34.

A. C34?

Q. C34.

A. Just a second.

Q. I understand your case to be that this was the gist of the words used.

A. Okay. May I read, yes?

Q. Yes.

A. Thank you. (Pause)

Okay, Mr Sumption --

Q. Could the interpreter also help by giving you the Russian equivalent of "the gist of the words used", just so that there's no room for confusion about that.

A. May I tell: I didn't have any knowledge about what is written here as a law. I just understood absolutely precisely that this is important part of our agreement, that I -- if we don't want -- if we want to be guaranteed that no one partner damage the other partner, it will be organised like that because it's common understanding for all businessmen. If you create new business, you are not allowed your partner to go out and if we -- until we able to agree that if we create new opportunity, you may share that and you have first right of refusal.

But how it's formulated in Russian law, I didn't know at all that time.

Q. I'm not asking you about Russian law or any law. I'm asking you for your recollection of what was agreed orally between you and the other two in 1995.

A. I --

Q. Let me finish.

A. Sorry.

Q. Was 34(3) the gist of the words that were used when you had this conversation with the other two in 1995?

A. I may tell what I recollect, what conversation connecting to this point, exactly what I recollect: that we agreed that if we will get one of the sides decide to invest to some new opportunity, the side who decide to

invest should make proposal to the other side as a first right -- as a first right hand to participate in that; and if the other side will decide not to participate, I am free to make proposal to some other one.

It means that our agreement does not have obligation of the other side to invest in any case. That's it. This is the sense of our agreement. As I told you, we very precisely -- I mean Badri and me -- follow this agreement.

Q. That's not what you said in paragraph C34(3), was it? It doesn't say anything about right of first refusal, no obligation to invest.

A. Sorry, again, Mr Sumption --

Q. You're saying this is a partnership.

A. No, no. Just a second, Mr Sumption. Let's -- about terminology, let's discuss about terminology. Now I describe you the sense.

The sense, I never changed my mind where the sense is concerned. The sense is absolutely clear. I have obligation in front of me, Badri and me, we have obligation in front of me for Abramovich and Mr Abramovich had same obligation in front of us.

If we had any proposal to invest, we should first of all to go to Mr Abramovich, say, "Mr Abramovich, we got this opportunity and we propose you to join to us at the

same condition", because the terms and conditions of cooperation we agreed before, 50/50 everything; and if Mr Abramovich accept our proposal, we invest together through our dividends or through our profit generated everything connected to Sibneft.

That's it. This is my understanding.

- Q. Now, in 1995, when you claim to have entered into this agreement, you have told us that you regarded Mr Abramovich as a minor oil trader with no real business track record. That was your view of Mr Abramovich in 1995, wasn't it?
- A. Yes, Abramovich didn't have any powerful name in oil trade or special and I told you that the main reason why I accept to cooperate with Abramovich, because I was surprised how he is perfect in cooperation with very complicated people. My impression was about his cooperation with Mr Gorodilov Viktor, that's it, because I knew this person, I knew how complicated he is, and I was surprised that Abramovich, being so young, create so fundamental relations with this gentleman.
- Q. Are you seriously trying to say that Mr Abramovich in 1995 was given an absolute right to have 50 per cent of any future business opportunity that might come your or Badri's way? Is that your evidence?
- A. It's absolutely correct. Everything what's generated by

Sibneft profit. And, as I told you already and I gave my witness statement, that everybody round me, Badri first of all, Natalie Nosova, who is sitting, and my wife Elena, everybody was surprised that I, from the first, from the very short knowledge of Abramovich, proposed him -- proposed that. Because Badri proposed different. I want to stress, Mr Sumption, that it was my proposal, not Abramovich proposal. It was my proposal. Because Badri proposal was to share one-third, one-third, one-third, and it's also -- it also looks like absolutely perfect.

But understanding that it's a great business, understanding that Abramovich produced to me great impression and I think that it's absolutely -- if I want to build long-term relations with this person, I am not greedy; 25 per cent of Sibneft is more than enough. And it's the reason why I took this decision.

Moreover, Mr Sumption, I tell you a little bit later Abramovich learn a little bit about my way of making business and if you remember, when we made marriage, my Lady, with Deripaska and he came with -- I forgot the name -- SibAl company, he had just -- his assets were just half of assets which we bought from -- company was our aluminium assets which we just recently bought, and Abramovich came to us already with proposal to give

Deripaska 50 per cent and I was surprised why he said 50 per cent Deripaska if he has just half what we have. And Abramovich explained exactly, like I explained long time ago to him, that if we want to have proper partner which will be happy, which never trick you, you should pay respect to him. And it's exactly what I was doing at that time.

Again, Mr Sumption, you're absolutely correct, it surprised everybody around me. But I think that if we create so strategic important business, if Abramovich take opportunity to manage them, he should pay respect me forever and it's the reason why I was so, so shocked when I recognised that he had tricked me.

MRS JUSTICE GLOSTER: Right. Mr Berezovsky, I'm going to cut you off a bit because you're going on a bit.

THE WITNESS: So sorry, my Lady.

MRS JUSTICE GLOSTER: Could I just ask you this: when you say in your witness statement at paragraph 104?

A. 1...?

MRS JUSTICE GLOSTER: Paragraph 104 of your witness statement --

A. Just a second.

MRS JUSTICE GLOSTER: -- which Mr Sumption has just been asking you about.

A. Yes. Yes, yes.

MRS JUSTICE GLOSTER: What were the terms of the right of first refusal? Was there an agreement that if you wanted to go into the new venture, you had to put up 50 per cent of the capital for it as well?

A. Yes, absolutely. It means that we should put --

MRS JUSTICE GLOSTER: Match the capital that the other party was putting in?

A. Absolutely correct. Absolutely correct.

MR SUMPTION: Was that actually agreed? Do you say that was agreed?

A. Absolutely correct. It was agreed that we invest 50/50, definitely.

MR SUMPTION: Right. So that's something we should add to your witness statement, is it?

A. Thank you very much, but it was absolutely clear because we share the profit 50/50 and if we go to new business we should share 50/50 our investment.

Q. Now, Mr Berezovsky, if you are right about this, it would mean that you would be a minority holder or might be a minority holder of any future business enterprise that you might decide upon. Do you follow me?

A. I don't understand why.

Q. Okay. Let me explain. According to you, Mr Abramovich had a right to a 50 per cent participation, if he wanted to take it up, in any future business opportunity that

you or Badri might identify.

- A. 50 -- whatever we obtain together, it's correct.
- Q. Right. Now, that meant, if he said, "Yes, I'll take that up", that you, Mr Berezovsky, would only have 25 per cent?
- A. 25 per cent me, 25 per cent Badri and 50 per cent Abramovich: the same conditions like we agreed as far as Sibneft is concerned. It's correct.
- Q. So you say that you were agreeing to give Mr Abramovich an absolute right to 50 per cent of any business opportunity that you might subsequently light upon and to reduce your own holding to 25 per cent?
- A. Why my own holding? I said that we and Badri one part, Abramovich is the other part, and we go at the same proportions as we go to Sibneft. Why I should reduce that? I don't understand. Where's the logic?
- Q. But what you say about your partnership with Badri was that you each had half. So effectively you were agreeing that you, personally, would only have 25 per cent of your own future business opportunities; that's what you're saying.
- A. Yes, it's correct. Together with Badri we have 50.
- Q. And indeed it must have been obvious to you that Badri, like you, was mortal and might die?
- A. I don't want to return to this point. You're absolutely

correct but we discussed in absolutely opposite way with Badri. Badri was ten years younger than me and one day -- and it's happened already in this country, after Litvinenko, Alexander Litvinenko was poisoned and died, he was my close friend, and I start maybe the first time to think that I could maybe also be, let's say, seriously damaged. It was not the first -- it was plot here to kill me, not Litvinenko and it was officially registered by British intelligence service and announced publicly, but nevertheless I didn't think that it's so close. When Litvinenko died, I realised it's really very close.

And I told to Badri, "Badri, look, I have a lot of wishes", and I told Badri, "Badri, look, if I die, that, that and that". I understand the formality, a lot of issues, but it's necessary not only to write; it's necessary to act. And when I start to discuss with him, Badri told me, "Boris, stop, stop, stop, but I will die first", because I have so big family and so many children that Badri refused the idea that he stay alone in front of my problems.

It means that you're absolutely correct, Mr Sumption, that I should think about that, but I did not think so much about that.

Q. I thought the effect of the answer that you've just

given was that you must have done because you feared that you were going to be killed?

A. Mr Sumption, I gave you answer. My way of understanding my life and understanding the dangers which I am, unfortunately it's too much, it's true. But believe me that I did not calculate in terms that Abramovich will die and they finish the story and what happened then, because I thought that Abramovich in many case is a truthful partner and he knows what problem I could face. It turned out that it's not, but at that time I didn't think about that.

Q. Mr Berezovsky, you couldn't possibly have agreed to give Mr Abramovich a share in any of your future businesses that was twice as large as yours?

A. No, Mr Sumption, moreover, I not only plan it from the very beginning; I even demonstrate that when I propose Abramovich to share ORT 50/50, the TV channel company. When Abramovich refused to participate in payment in ORT because I thought that it's clear that as far as it was the best argument in front of president that to obtain any business opportunity to funding ORT, and Abramovich refused that. It was his choice and I can't say anything.

Q. A large part of your reason, according to your evidence, for saying that 50 per cent of Sibneft should go to

Abramovich was that he was actually going to be managing the company. Do you agree?

A. It was other reason, because my reason in front of Badri, I said, "Badri, they will manage the company, it means that they should pay also for management, they should be loyal partners for us because they manage, they may calculate like they are, and if you want Abramovich will be happy with that, we give him 50 per cent; the rest is enough for us".

Q. But as I understand it --

A. This is my philosophy.

Q. As I understand it, what you are now saying was agreed in relation to future ventures was that Mr Abramovich would be entitled to a 50 per cent interest even if he wasn't managing the future business opportunity.

A. You're absolutely correct, and what happened as a result exactly this story, when Abramovich insist to manage it himself, and months later he gave up it to Deripaska. It really surprised me.

Q. But if there were some future business opportunity that you or Badri had identified in which Mr Abramovich had no expertise and no experience and no interest and was not going to be managing, as I understand what you're saying, he was still going to get 50 per cent?

A. You're absolutely correct, and moreover I even didn't

think about that at the time when I agreed to reduce the conflict of interest. We should share everything 50/50.

Q. This part of your evidence and pleading, Mr Berezovsky, has been invented by you in order to help you with the claim that we haven't yet come to, to Rusal, hasn't it?

A. I don't understand.

Q. You made it up --

A. Just a second.

Q. -- in order to help you to establish an interest in Rusal?

A. No, I just gave you example. I gave you example that it's happened when I got proposal to buy these aluminium assets, according of our agreement '95 with Abramovich, I came first of all -- definitely we discussed that -- with Badri and then we agreed that we go to Abramovich to propose him to participate in that.

Q. Now, I want, before coming on to your intimidation allegations, to deal with a number of relatively minor points.

First of all, you say in your witness statement that you told Mr Abramovich that you and Badri were in partnership on a 50/50 basis at some time in 1995.

A. Yes, from the very beginning when I return back from the cruise from the Caribbean and when I introduce them to each other, from the very beginning I -- moreover,

I think -- moreover, I don't remember well but I think that already being on the boat, I told -- I discussed with Abramovich how I close with Badri because it's well-known story, my relations with Badri.

Q. Mr Abramovich's evidence is that he could see by simple observation when he was introduced to Badri in March 1995 that he was a close business associate of yours, and that was confirmed over the following months and years, but he never knew what the terms of your arrangements with Badri were and had no reason to enquire. What do you say about that?

A. It's absolutely wrong. It's all wrong because my relations with Badri and my participation 50/50 in everything was common knowledge for business community and we were not -- and we were very visible in business community already at that time, I mean in '95, when I introduced directly Abramovich to Badri.

Moreover, I tell you my recollection now is that Abramovich knew well that Badri is my partner even when we had been on the boat because all people who present to me, Mr Abramovich -- I mean, Mr Aven, who invite us together, and first time when I met Mr Abramovich on the boat, Mr Fridman -- they knew well my relations with Badri.

Q. In the Chancery proceedings, Mr Berezovsky, your case is

that you didn't become Badri's partner until August 1995. So you can't possibly have said that to Mr Abramovich right at the outset.

- A. We discuss the point how it's happened that we become partners with Badri. My partnership with Badri on the basis of 50/50 happened when we moved to ORT. And it's absolutely wrong to say that it's happened just on the late or middle '95 because ORT story was a special story when people who work in Logovaz split in two camps: those who want to go to ORT and those who refuse to buy ORT because it was too dangerous.

And Badri made a choice in my favour and it's the reason why I become -- I propose Badri to become my partner on the condition like Abramovich, because Badri didn't have a lot of assets at that time and a lot of shares in the company, and I split with him 50/50. It was always the same like with Abramovich, but long-term already agreed before with Badri.

- Q. Now, Mr Berezovsky, one of your other business partners, indeed possibly your closest business partner of all, was Mr Glushkov in the 1990s, wasn't it?
- A. Yes, it's correct. But, as you remember maybe, that in '92 Glushkov left Logovaz, giving me all his shares for nothing, and joined Avtovaz.
- Q. Yes. But you were a joint venture partner with

Mr Glushkov in, for example, Andava in Switzerland, weren't you?

- A. What do you mean "joint venture"? We had absolutely clear structured Switzerland company with the shares in the company.
- Q. Yes, and you and Mr Glushkov were in that business together, weren't you?
- A. Yes, we have been together. It's correct.
- Q. When did you first tell Mr Glushkov that you were in a 50/50 partnership with Mr Patarkatsishvili?
- A. I don't remember that well. As I told you, Mr Glushkov made the other choice. Mr Glushkov decide to go to Avtovaz in '92 and after that my very close relations with Glushkov changed and, as you know, after that Glushkov never returned back to Logovaz. He made his personal choice in favour of Aeroflot and after Avtovaz he moved his activity to Aeroflot.
- Q. Andava was a company that you owned together with Mr Glushkov well after 1992, wasn't it?
- A. This company was created Glushkov and me and I don't remember, maybe some other parties, and this company was created to generate -- to find the funding on the west to create a common (inaudible) company, which I start to develop Andava, you're absolutely -- Ava, sorry. Ava. It's the reason why it's the name Andava. You're

absolutely correct.

- Q. Now, Mr Glushkov tells us that he didn't learn about your arrangements with Mr Patarkatsishvili until after he came to England in 2006.
- A. It's exactly what I told. I don't remember how we discussed that with Mr Glushkov. It's the reason -- because he -- we split with him and he start to make his different business. And it could be that Glushkov didn't know that but Abramovich was informed about that because we planned to have joint business -- I mean Abramovich, Patarkatsishvili and me -- and Glushkov that time already left business which were owned -- which were managed together.
- Q. So it's not in fact correct, is it, to say that your relations with Mr Patarkatsishvili were well known? One of your closest friends and business partners, Mr Glushkov, didn't know until five years ago.
- A. Mr Sumption, it's absolutely perfect known fact in business community who, let's say, operate that time in -- maybe mainly in Moscow, yes? But I would like to stress you again that Mr Glushkov split with me and he was not more involved in business which I pay at least a little bit attention.

It means that Mr Glushkov generally is very special person, and you will definitely recognise that when you

question Mr Glushkov. I don't know anyone in the world who, just for nothing, gave me, present me his shares when he left Logovaz, the company which we created together.

Q. No, he presented them to you -- I think you've got the date wrong, Mr Berezovsky. He presented you his shares in 1997 --

A. Yes, 1997.

Q. -- not when he left Logovaz in '92?

A. No, not when he left Logovaz, it's correct wording. After he left Logovaz, it's correct wording. But definitely he gave me his shares later.

But again, it's very special man, it's very special, incredibly truthful and you will see that. But it's absolutely true that I did meet Glushkov a lot after he left Logovaz and then it was his choice and he joined finally Aeroflot, in spite of he refused the first time proposal to become -- to took a position there, first deputy of general manager of Aeroflot.

Q. Right. Can I turn, please, to your political position in Russia in the last two or three years of the 1990s.

Now, I think it's your case that you were a man of very great political influence throughout the period '95 to 2000. That's right, isn't it? That's what you say.

A. Yes, that's what I say.

- Q. Now, there was, however, a time, wasn't there, during the premiership of Mr Primakov in 1998 and 1999, when you experienced some political difficulties?
- A. All the time I had a lot of political difficulties, not just in time of Primakov.
- Q. Mr Primakov was a former member of the Soviet Politburo, wasn't he, whose political views were very different from yours?
- A. Who was?
- Q. Mr Primakov.
- A. Yes, yes. Mr Primakov, former member of the Soviet Politburo. Is it true? I don't remember that he was member of Politburo. Maybe.
- Q. His political views were very different from yours, weren't they? You didn't see eye to eye with Mr Primakov, did you?
- A. Primakov is a member of Russian Academy -- of Soviet Union Academy of Science, and I also member of Russian Academy of Science, and I knew him well in Soviet time. And I met him not once, because this Academy of Science of Soviet Union was very, as you told, enclave organisation because it was just 800 selected people from all Soviet Union, the best scientists which were elected to Academy of Science of USSR, and I was one of them on the position of correspondent member. It means

that it's less position than academic, and Mr Primakov was academic but I knew him well.

Q. Are you trying to suggest that you were friendly with Mr Primakov during 1998 and 1999?

A. You know, it could be funny but it's correct.

Q. Really?

A. Yes, because --

Q. What you say in your --

A. Just a second, may I tell you? Because it was -- I was one who discussed with President Yeltsin when we faced a crisis in '98, it was intersection of political crisis and economic crisis. Everybody knew that Primakov was left wing, that Primakov close to Communist, he already was not Communist but he close to Communist, and on the other hand we didn't have choice at that time because we should reduce political and economic crisis together at the same moment.

And I was the person, personally, I was the person who communicate to Primakov, who talk to Primakov, asking him to accept the proposal of president to become prime minister. As soon as he become prime minister, we become enemies. But what is important, that at that time I didn't understand that he immediately start to move left. On the other hand he was very helpful that time, Mr Sumption, because he was the person who solved

the crisis.

MRS JUSTICE GLOSTER: This was the financial crisis?

A. Financial and political crisis, because many people in Duma, in Parliament, were hate Yeltsin and they also -- they even tried to impeach him, yes? And Primakov was the person between Democrat and Communist, he was at that time very correct person, and it's the reason that I was not enemy with him. When he become to this position and fight against of business, then we become enemies; it's correct.

MR SUMPTION: By early 1999 you describe in your witness statement how you became one of Mr Primakov's main targets.

A. You're absolutely correct. As I told you, in short time we become enemies.

Q. Yes. And he got you dismissed as the CIS executive secretary?

A. You're absolutely correct.

Q. Now --

A. Not "he got"; he got president, he convinced president to dismiss.

Q. Okay. He got Boris Yeltsin to dismiss you?

A. Yes, correct.

Q. Now, as a result of your falling out with Mr Primakov, you found yourself at the receiving end of police raids

and criminal investigations, did you not?

A. Yes, it's true. But, as I remember, criminal investigation as far as Aeroflot is concerned start even before Primakov took power.

Q. Yes. Well, they had been on and off, hadn't they, these investigations?

A. Yes, yes, many times. Putting off, then putting on; it's the same story.

Q. In January 1999, after you'd fallen out with Mr Primakov, the public prosecutor reopened the investigation into allegations that you and Mr Glushkov had defrauded Aeroflot?

A. Yes, it's correct.

Q. On 26 April, were you interviewed by a special investigator from the public prosecutor's office --

A. Yes.

Q. -- and charged with currency violations and money-laundering?

A. Yes, it's correct.

Q. 26 April 1999.

A. I don't remember exact the date which you said but I think it's correct.

Q. On 12 May 1999 Mr Primakov was dismissed as prime minister by President Yeltsin, wasn't he?

A. It's correct.

Q. It was widely reported at the time that you were a significant factor in the dismissal of Mr Primakov; is that correct?

A. It's absolutely correct.

Q. Is the position this: that on about 28 April, a day or two after you had been charged with currency violation and money-laundering, you went to see Mr Yumashev about it?

A. Not at all. And if you also -- if you really want to understand what happened, the same day when I was questioned by the general prosecutor office, I went out of the office and it was a lot of mass media, yes, and I made interview and I directly said that it's Primakov who try to squeeze business and so-so, like that. And when I returned back to my office in Logovaz Club, I got a call from former prime minister, Mr Chernomyrdin. He said, "Boris, are you free now?" I said, "Yes, I'm free". He said, "Could you come to meet Primakov", at that time prime minister, "because he disagree what you said in your interview".

And I jumped to the car. In half an hour I have been in White House and I -- there was Mr Chernomyrdin who were waiting for me and we together went to Primakov office and Primakov said that, "Boris, you are absolutely wrong, I never tried to convince general

prosecutor to open the case and so-so". But I present him paper which was with me in my pocket, when he by hand wrote message to general prosecutor to open the case against of me, against of the company, okay? It was completely illegal because he didn't have power to influence to another branch of power what I said to him, and after that definitely we become absolutely enemies.

And I report definitely that to all my close circle, including Mr Yumashev, that Primakov doesn't pay attention even to the law, which we just tried to establish was the beginning, and it's one of the reasons and I'm happy that I was so influential to dismiss Primakov, to help dismiss Primakov at that time.

Q. Did you or did you not, at the end of April 1999, go to Mr Yumashev and try to persuade him to get the president to sack Primakov?

A. I can't exclude that.

Q. Well, you say you can't exclude it, but in your asylum application you positively asserted that you had done that.

A. Fantastic. It means that it's -- my asylum application was done long time, it means that I was absolutely correct that I -- I can't exclude, it means that I don't remember, but now you remind me.

Q. Right. So you did remember when you prepared your

asylum application that you had been to see Mr Yumashev and you say that your concerns about Mr Primakov had some impact because about two weeks later, on 12 May, Primakov was dismissed by the president?

- A. Again, I don't refuse that. You just asked me exact what happened '98 and you refer me back to my political asylum statement, which was given 2000 -- I don't remember -- 3, 2002. I just don't remember that, but it's absolutely logical. And it's the reason why I answer that I can't exclude that, because it's my way.
- Q. In the light of the witness's answer we don't need to turn this up but for your Ladyship's reference and the transcript that is at bundle R(E)1/01/1, is the document and this is at R(E)1/01/36 and 37, paragraph 82 of the document.
- A. Mr Sumption, my Lady, if you allow me to make this point more clear, I just --

MRS JUSTICE GLOSTER: Yes, go on.

- A. Two minutes. Because, as I understand, the idea of Mr Sumption is that because I afraid to be arrested, yes, in fraud and something, and I decide to influence to fire Primakov.

I just give you an example: when in 2000 I was already not in good relations with our president, new president, I mean Putin, I was voluntarily decide to

leave Parliament, as a member of the Parliament, in spite of I have immunity as a deputy. It means that I don't afraid Primakov, believe me, it's not the reason why I tried to convince president to fire him, because I recognise that he's really dangerous not for me personally, for the country, and it was only reason why I try to convince president to make this step. This is the point.

MR SUMPTION: Now, this incident was a particular display of your political influence, wasn't it? It demonstrated quite how influential and powerful you were at that stage?

A. I think it demonstrate what we discussed from the beginning: that I have power to persuade people and to explain the others what from my point is correct and to build logic and -- under that. This is only. Influential, you may "influential" to bribing people, yes? You're also influential, yes? It's not bribe. It's my belief what I were doing and it's influence to people definitely.

Q. Would it be fair to say that in the period of a year after May 1999, you were at the height of your political influence in Russia?

A. You were...?

Q. That your political influence in Russia was at its

highest point during the period after the dismissal of Primakov in May 1999?

A. I can't say that. It's not my estimation should be done. I just was happy that president took this decision because not only me who help him to take this decision, it will be finally to say, but Mr Putin as well help president to take this decision because, as you know well, the two main targets of Primakov at that time were Putin, as the head of FSB, and me as well. Putin as the head of FSB because Primakov want to put his person to this position. It's reason why exactly at that time we become very close with Putin.

Q. Now, Mr Putin took over as acting president at the very end of 1999, didn't he?

A. Acting president, yes. It was 31 -- 1 January, I would like to say.

Q. 1 January, right.

A. Yes.

Q. Was that because of Boris Yeltsin's illness?

A. Yes.

Q. And your relations with Mr Putin, as I understand it, were initially very good, were they not, at first?

A. They were very good because I knew Putin from '91 and we cooperate -- he was not my close friend but we had very good relations.

- Q. And you supported his election campaign, didn't you?
- A. Mainly I supported the Parliament election campaign because it was decisive point in '99. But as well I supported his election campaign as a president but it was already game over because after Yedinstvo, the new political power, won Parliament election, no doubt that who is in the chair of prime minister will win election and at that time in chair of prime minister was Putin.
- Q. Yes. Well, you supported his election campaign with both money and broadcasting support, didn't you?
- A. You're correct.
- Q. It wasn't until the summer of 2000, when your media started criticising Putin's policies and competence, that your influence in government declined?
- A. No, it's not so. You said my media: yes, that time I control ORT, the most influential channel, and newspaper Kommersant and other TV channel. But conflict with president -- with Putin started before. And as far as Chechnya, the second war of Chechnya is concerned, ORT and Kommersant criticised Putin even before he become president, even when he has been just prime minister.
- MR SUMPTION: My Lady, I'm going to turn to the question of intimidation and your Ladyship may find that a convenient point to break.

MRS JUSTICE GLOSTER: Yes, very well. Ten minutes,  
Mr Berezovsky.

THE WITNESS: Thank you.

(3.08 pm)

(A short break)

(3.18 pm)

MR SUMPTION: Mr Berezovsky, I want to ask you some  
questions about your case in relation to intimidation  
leading to the sale of ORT. I'm going to deal with  
Sibneft later.

In your witness statement starting at paragraph 310,  
if you want to remind yourself of what's in your witness  
statement --

A. I don't remember coincidence with the number and what  
is written.

Q. I'm just trying to help you by telling you whereabouts  
you deal in your witness statement with this subject.

A. Thank you.

Q. 310 and following.

A. Just a second, I'm sorry.

Q. In this part of your witness statement you describe  
meetings which you and Mr Patarkatsishvili had with --

A. Sorry. It's unfortunately different -- it's wrong.

Q. D2/17/263.

MRS JUSTICE GLOSTER: Paragraph 310.

MR SUMPTION: I'm not going to ask you about specific bits of it but I want you to have it open.

A. Yes, yes.

Q. Okay.

Now, in this part of your witness statement, you are describing meetings which you and Mr Patarkatsishvili --

A. Yes.

Q. -- had with President Putin's chief of staff, Mr Voloshin, and then with President Putin himself, at which you say they threatened you --

A. It's completely wrong. I have been alone; Mr Patarkatsishvili have not been.

Q. Yes, I know, but Mr Patarkatsishvili had other meetings which he told you about.

A. Correct.

Q. I understand that. Now, the meeting which you had with Mr Voloshin, as I understand it, that was at your request; see paragraph 310.

A. I return -- I have been in France.

Q. Sorry?

A. Sorry. I have been in France when a submarine sunk and Putin had been in Sochi, in Black Sea location.

Q. Yes. But you rang up Mr Voloshin --

A. Yes, yes, I ask -- it's exactly what I want to add. First of all I asked president to have a meeting by

telephone and I return but he said when he will be Moscow back, we will have, and he said, "Connect to Voloshin". And when I returned back to Moscow I called to Voloshin and asked organise meeting with president; it's correct.

Q. Now, if Mr Voloshin and Mr Putin had wanted to threaten you, they surely would not have waited for you to drop in for that purpose, would they?

A. What does mean "drop in"?

First of all I would like to remind you, Mr Sumption, that the first meeting that I had with Voloshin without presence of President Putin and only next day they have been together. And I was shocked, not less than you in your question now, when I came there to explain why president is doing wrong hiding, not appear -- not show up for the people, and this was my main reason to meet Mr Voloshin.

But instead of this point, Voloshin start to present me that ORT is placing president -- president only told me by telephone, "What, did you decide to fight against me?" But I think it is a joke, yes, because we had good relations still. But Voloshin was absolutely serious, saying that I'm against of president and I follow Gusinsky to jail, because Gusinsky, as you remember, at that time already was jailed a couple of times I think.

Q. Now --

A. And if -- that surprised me.

Q. Have you read the witness statement of Mr Voloshin in these proceedings?

A. Yes, I read -- I don't remember well but I read it from the beginning to the end.

Q. Right. He has denied your account of the meetings that you had with him and President Putin, has he not?

A. I didn't recognise if he denied that. The contrary, as I remember: he confirmed that there were two meetings with him personally and as president and him.

Q. Yes, he doesn't deny the meetings occurred; what he denies is your account of those meetings.

A. Yes, definitely Voloshin denied. My question is just one: why he decide deny today but not immediately after my open interview where I blame him personally that he tried to threaten me? It was -- it's happened a couple of days later when I met president. I especially didn't mention president, not to put him directly, that he also was threaten me, that he threaten me, but I put directly that -- I don't remember -- "High-level officials from your administration threaten me", this was my presentation, and Voloshin never refused that, that time. Now, when he support Abramovich, he decide to say completely opposite.

Q. He says that at the meeting that you had with him, he did say that the government wanted you to stop using ORT for your own political purposes but he did not demand that you should sell out of ORT.

A. He is lying.

Q. He also says that at the meeting with President Putin, Putin said that he wanted to see ORT run collectively by its board of directors and its director general, and not just by you in your own interest.

A. He is lying.

Q. He's lying about that too, is he?

A. Correct.

Q. And on neither occasion were you threatened with imprisonment or with the fate of Mr Gusinsky.

A. He is lying as well.

Q. Now, I suggest that you have overdramatised this incident in the account that you wrote about it shortly afterwards in Kommersant for the purposes of the press campaign that you were in the process of running against the president.

A. That time Mr Voloshin had great opportunity to answer and say, "Berezovsky is lying". It didn't happen like that because I took absolutely open position, gave interview to mass media, and it's just only question: why that time Mr Voloshin did not answer openly? This

is the question. Because he absolutely perfectly knew that it was true. And moreover, what happened later just demonstrate that it's true.

Q. Your initial response to the dispute between Mr Putin and yourself was to announce that you intended to place your ORT shares into the hands of a group of journalists and prominent cultural figures so as to safeguard it from the State. Do you remember that?

A. Even more, maybe you remember also it is in my witness statement that when Putin run presidential campaign and become president, recently -- shortly after, I came to Mr Voloshin as I remember, but I think I talk also to president, that I decide to give my share up to under control of -- not under control -- to make ORT like BBC, really that I don't want more to have control in OR -- to be shareholder of ORT because it's too much for me because I believe that Putin becoming president continue Yeltsin reform. It's the reason what I voluntarily came to Voloshin, and I talk to Putin as well, that I don't want more to own ORT shares, I want to give them up.

Q. Right. You were --

A. And you're absolutely correct, that when I recognise that Putin turn back, that he -- I mean back from democracy, to --

MRS JUSTICE GLOSTER: Just a second, please.

Right. I'm told that sound has been lost in the other room. Is that right?

COURT OFFICIAL: It's okay now.

MRS JUSTICE GLOSTER: It's back. Thank you very much indeed.

MR SUMPTION: Perhaps I should talk louder.

THE WITNESS: No, still people who are interested again in the other room even.

MR SUMPTION: Now, that proposal to put the shares of ORT into the hands of a group of journalists and intellectuals was made in September 2000, wasn't it?

A. I think yes, in September 2000.

Q. Right.

A. As a trust, TV trust.

Q. Shortly after that, the possibility arose of your selling your stake instead to Mr Abramovich. Do you recall that?

A. No, I don't recall that. Opportunity happened when Abramovich threatened me, saying that being messenger of Putin.

Q. Do you say that there was no discussion with Mr Abramovich about the possibility of his acquiring your shares in ORT until your meeting with him that you say happened at Cap d'Antibes in December?

A. First of all, not until my meeting at Cap d'Antibes in

December; until my meeting in Le Bourget, and you know that well. And the second, I really knew that Badri start to negotiate that. It does matter that I was completely opposite of that but it's true that Badri start to discuss that before our meeting in Le Bourget.

Q. Yes. In fact he started to discuss it right back in September or October, didn't he?

A. I don't remember that --

Q. And he discussed --

A. -- in September/October, but definitely it was completely opposite what was -- what I was trying to do to give up my shares to trust to journalists and intellectuals.

Q. He discussed it with Mr Abramovich and you knew about that presumably because he told you, Mr Patarkatsishvili told you?

A. Yes, we had completely different opinion what to do and Badri position was that we need to be calm, we need to be quiet, that it's dangerous for us. My position was completely opposite and I present my position also openly. It's the reason why I decide to create TV trust and the decision to cancel this idea.

I declared only after Nikolai was arrested, December 7, 2000, and I gave interview to several mass media, including Ekho Moskvyy, where I announced that

I don't have choice. And I didn't have this choice also referred to people who I invited to trust saying that now it's dangerous not for Nikolai, who is in jail, but elsewhere for them and that is the reason why I decided to stop that.

Q. Right. Now, when this subject was raised with you by Mr Patarkatsishvili in September or October, as I suggest, you were initially reluctant to sell but you authorised Mr Patarkatsishvili to continue his discussions with Mr Abramovich, did you not?

A. I never authorised Mr Patarkatsishvili to continue his discussion with Mr Abramovich because, as I told you, I was opposite of that. But I understood dangerously where we are, particularly after Mr Putin interview in Figaro, as I remember, 26 December, when he said -- and it's quoted -- "State has cudgel in his hand and the State will hit at the head but once", and the head -- not a head, the head -- it was addressed to me, to request to the question of journalists.

Q. That was in October, wasn't it?

A. Yes, 26 October.

Q. Right.

Now, Mr Patarkatsishvili would not have engaged in negotiations on this subject with Mr Abramovich if you were opposed to him having discussions at all, would he?

A. No. Badri and me, we had completely -- first of all -- different understanding -- not completely different understanding but what is the most important, different behaviour. Badri all the time tried to find the solution because he afraid that Abramovich -- already at that time he start to afraid that Abramovich will try to cut his obligations in front of us and that is the reason why all the time Badri was very accurate with Abramovich, up to -- even up to almost his die, he all the time tried to negotiate to Abramovich more or less, tried to be in touch with him. It was completely opposite of my position.

Q. In the course of the negotiations between Mr Patarkatsishvili and Mr Abramovich, they reached agreement in principle that your stake in ORT would be sold to Mr Abramovich. Initially the price agreed was \$100 million. Do you accept that or do you deny it?

A. No, not at all. Mr Sumption, you know that as a fact, that the discussion started when Mr Gusinsky was in jail, from that time State start to ask us, to press us to sell the shares. And it was meeting, as you correctly said, not only me with Putin but also meeting with Badri with Putin, yes, and Putin put Badri in front of the choice: or Badri will stay with me and continue to do any business he want; or Badri stay with me and he

will be pressed like me.

And after that, Putin recommend Badri to meet Mr Lesin, at the time minister of information, and Lesin propose Badri to pay \$300 million for shares, for our shares in ORT. It's well-known fact.

Q. Yes.

A. And we refused that. We refused that. I refused that. Badri said, "Boris, we should sell", and so, and I said, "Badri, no". And we didn't sell, even for 300.

Q. Mr Lesin subsequently withdrew his offer of \$300 million, didn't he?

A. I don't know anything about whether he withdrew. I know that just Mr Lesin is exactly the person who got signature of Gusinsky when Gusinsky had been in jail and Gusinsky gave up his shares of ORT to under State control. Exactly Lesin was the person who visited Gusinsky in jail.

Q. While these discussions between Mr Abramovich and Mr Patarkatsishvili were going on, Mr Abramovich visited you at Cap d'Antibes on 6 November 2000, did he not?

A. As far as me is concerned, I don't remember this meeting at all. I remember our meeting in Cap d'Antibes in December 2000, after Nikolai was arrested; this I recollect, this I remember. But as far as our meeting in 6 November -- in 6 November, I don't remember this

meeting.

Q. Since your acquisition of the Chateau de la Garoupe at Cap d'Antibes, you must have seen Mr Abramovich there many times?

A. Yes, it was our favourite place to meet for me and Mr Abramovich as well, and later on he bought property himself in the same region.

Q. Now, you can't possibly remember now, can you, whether one of those meetings happened on 6 November --

A. No, again, I remember perfectly meeting in December and I don't remember at all -- again, I'm very precise, I don't say that impossible and so. But I don't remember any meeting in November with Abramovich at all but I remember well meeting in December with Abramovich.

Q. Mr Abramovich's flight records show that he flew from Moscow to Nice on 5 November and returned late on the 6th.

A. Mr Sumption, my proposal is very clear --

Q. I haven't asked my question yet.

A. Ah, sorry. Excuse me.

Q. Can you think of any other reason why he might do that --

A. Could you repeat, please, the date?

Q. -- in November 2000, other than to come and see you?

A. I see a lot of reasons why he can do that. I know that

he many times has been on the south of France without visiting me.

Q. Now, subsequently, in the middle of November, there was a further meeting between Mr Abramovich and Mr Patarkatsishvili, was there not, at which Mr Patarkatsishvili said that you were unhappy with the terms previously agreed and invited Mr Abramovich to renegotiate them at a higher price of \$150 million?

A. Again, I don't remember anything about such kind of meetings, the first. The second, I'm sorry that I refer to the previous question, Mr Sumption: if we operate with the stamps in the passport of confirming our travelling, it's a completely different story and not to make -- not to mislead my Lady, we need first of all to give knowledge to my Lady what it means.

It means that let's operate in just -- just not in fact of stamps in the passport because you know well the problem which we have together, and Abramovich and me --

MRS JUSTICE GLOSTER: Just track back a bit.

Do you deny that the meeting took place in November or do you accept that it's possible that it may have done but you have forgotten?

A. Yes, it's good question. I likely deny that then, to say that it's --

MRS JUSTICE GLOSTER: You positively remember it didn't

happen?

A. Yes. Absolutely correct.

MR SUMPTION: Mr Berezovsky, how can you possibly positively remember that among the many meetings that you've had with Mr Abramovich in the south of France, one of them did not happen on 6 November?

A. I explain you why: because that time I just left Russia, yes? I left Russia, as I recollect, 30 October.

Q. Mm-hm.

A. And next point what I remember: that we agreed we need to talk, because I left not very well prepared to leave, yes, to leave Russia, and next -- and we discuss with Badri and with Abramovich, I think with Abramovich by telephone, to organise a principal meeting, we start to discuss at approximately the middle of November, at the middle of November. We start to discuss principally: do we have chance? When we will fix the meeting to discuss about what is happening?

My Lady, if you read my statements, I did not remember at all at the beginning, I forgot completely -- and this is my answer to Mr Sumption -- meeting in Le Bourget, the principal meeting when we talk so much about how we deal -- continue to deal together. And if, my Lady, you analyse what I present, I forgot completely about meeting in Le Bourget; completely. And only when

I was informed that there is a taping of that and I was reminded, I was presented here first of all extract of this meeting and I heard voice of Abramovich, I heard voice of Badri and myself, only then I recollect that we had this meeting, but I didn't recollect even when exactly; and only when I got the full transcript, step by step, I reconstruct that it's happened 6 December 2000.

Just to give you better understanding how my memory is organised, yes? I didn't remember at all the principal meeting when we agreed and we understand each other much better, I understood that Abramovich already is betraying me. But it's principal meeting, but I forgot that. I know the reason, I explain it later, why I forgot. I know the answer now.

Q. At some stage in the first half of November 2000, Mr Patarkatsishvili came to you or spoke to you and told you, didn't he, that Mr Abramovich was prepared to pay \$100 million for the stake in ORT, and you said you were unhappy with that. Do you agree that that exchange took place between you and Badri?

A. I don't remember then Badri told me that Abramovich -- or maybe -- just a second. (Pause)

I don't remember that.

Q. You don't remember that. Do you deny it?

- A. I deny it.
- Q. And you said that you might be interested at a higher price, didn't you?
- A. 100 per cent wrong, because I was not even -- it was not even under discussion from my position to sell it.
- Q. Subsequently, Mr Patarkatsishvili came to Mr Abramovich in Moscow and said you were unhappy about the deal previously agreed, that it could probably be done for \$150 million?
- A. Mr Sumption, impossible. Again, I did not take a decision to sell ORT shares until Nikolai was arrested. It's absolutely no doubt about that.
- Q. Do you recall that in October and November 2000 you authorised Mr Fomichev to discuss with Mr Gorodilov, one of Mr Abramovich's staff, the administrative details of the transfer of your ORT shares to Mr Abramovich?
- A. Definitely not.
- Q. Are you aware that in fact Mr Fomichev did discuss the details of that transfer with Mr Gorodilov in October and November 2000?
- A. Definitely I don't -- I was not aware about that. Definitely I also read -- not so attentively like Mr Voloshin's statement -- Mr Gorodilov's statement and, as I remember, he discussed about that.

Again, Mr Sumption, I didn't authorise anyone,

including Badri, to talk about selling ORT shares. This is absolutely 100 per cent I am sure in that because it was my clear position. Up to the last moment, when they took Nikolai in jail, definitely I change my mind in a second; but up to that, no chance.

It's the reason why even understanding the battle, even convince journalists to create a TV trust, to put in trust my and Badri's shares. It's the reason why we prepare to restructure finally our relations to shares of ORT, because before ORT was partly in ORT-KB, shares of ORT, ORT-KB, and it was in Logovaz, which also were owned through, let's say, not only Badri and me, but preparing to give it to trust, to journalist. We make it absolutely clear, transparent, that half of 49 per cent belonged to Badri structure, half of 49 per cent belonged to my structure.

Q. Now, if Mr Fomichev had discussions with Mr Gorodilov in October and November 2000, which is what Mr Gorodilov will say, Mr Fomichev would not have done that, would he, without your approval?

A. No, no, it's absolutely wrong, because, as I told you, Mr Fomichev was much closer to Badri. He is not under my control, Badri controlled -- no, what is under my control? We had good relations, definitely Fomichev understood my position in our -- with Badri relations,

but Badri connect to Fomichev directly himself.

- Q. Mr Fomichev was your financial manager, not Badri's.
- A. It's wrong again because Mr Fomichev was financial manager, not mine, he was our financial manager; and, again, Fomichev report to Badri, not to me.
- Q. Mr Fomichev, according to Mr Glushkov, was appointed as your financial manager in 1999. Do you deny that?
- A. Again, it's completely wrong. Fomichev never was appointed as my financial manager. Fomichev had position in Obedinyonniy Bank, as I recollect, he was the chairman of Obedinyonniy Bank, and definitely I knew almost nothing how Obedinyonniy Bank is operating and Badri knew a lot; and definitely Fomichev communicate to Badri and not to me.
- Q. Now, Mr Fomichev had worked for the Consolidated Bank in the mid-1990s, hadn't he?
- A. Approximately from that time.
- Q. Yes.
- A. He was recommended to me my daughter.
- Q. You say that Mr Glushkov has got it wrong when he says that Mr Fomichev was your financial manager from 1999 onwards?
- A. I did not read Mr Glushkov's statement but it's wrong.
- Q. I see.

Now, would you agree that Mr Fomichev was the only

person who knew everything about your financial affairs in the period immediately after your flight from Russia in October 2000?

A. In October 2000, I think Badri knew better.

Q. I see. Because that's what you told the judge in the North Shore litigation. Do you remember that?

A. No.

Q. Would you like to take bundle H(A)98 at page 97, please. H(A)98/97.

A. Again, just a second. I want to concentrate. This is my --

Q. This is your evidence in the North Shore litigation?

A. Yes, yes, I remember.

Q. We have already referred to it for other purposes. All right?

A. Yes.

Q. You are being cross-examined here by Mr Swainston --

A. Yes.

Q. -- and you're being cross-examined about Mr Fomichev's functions, right?

A. Yes.

Q. And at line 3 on the top left-hand box --

A. Just a second.

Q. -- on page 97 --

A. Just a second.

Q. In the minuscrit it's page 57, starting at line 2. You can see from the page before that it's about Fomichev that you're talking.

A. Just a second. May I read this line which you have mentioned?

What is Q, what is A?

Q. Question is Q, answer is A.

A. Ah, sorry. It's my answer; correct?

Q. It's your answer.

A. Thank you.

Q. What you say is:

"He was involved with all my financial activity when I moved to London. We start our relations, I think, in 1995/1996 and when I moved to London he was only person, starting from 2000 up to -- even not to London, even when I moved to France from Russia, from autumn 2000 up to 2003, he was only person who know everything and who managed my money, my business and so. Because Badri at that time, my partner, he was in Georgia, he was not able to travel here and wasn't able -- also, he was also left Russia because political problems and I didn't have, let's say, I'm sorry to say, my right hand, Badri. It's the reason why Ruslan..."

That's Mr Fomichev.

"... took the position of my right hand and he knows

well all the problems which we had with our money."

Now, is that evidence --

A. It's absolutely correct, I confirm everything, because, as you know, Badri left Russia and lost opportunity to move all over the world in March 2001. It means until that time Badri was the person who manage everything, including connection with Fomichev.

Q. But what you are saying in this evidence is that from the time that you moved to France from Russia --

A. Yes.

Q. -- Mr Fomichev knew everything and managed your money and business.

A. Again, Mr Sumption, let's be correct, because I mentioned that when Badri moved to -- I moved to France, as you know, October 2000, but Badri still continued to travel and he was able to manage everything. And definitely Fomichev took much more that time that -- when I have been in Moscow, in my communication, because I was not able to communicate every day to Badri.

But again, Fomichev really took a lot of financial control over my activity after Badri was stuck in Georgia in March 2001. And when I moved to London, long time -- around two years, maybe even more -- until Natalia Nosova joined me here in London, Fomichev was

responsible and he got direct -- connect directly to me, without Badri participation, because Badri was stuck in Georgia.

But until Badri was able to travel, to move, Badri was definitely person who communicate to me and to Fomichev.

Q. Mr Berezovsky, what you are saying in this evidence was that it was before you moved to London. You say:

"... even when I moved to France from Russia, from autumn 2000 up to 2003, he was only person who know everything and who managed by money, my business and so."

A. Okay, Mr Sumption, I explain my position. It's absolutely clear that it's not precisely what you tried to just to do like wording. But, again, the situation is absolutely simple and clear: Badri manage until he was able to communicate to me. As far as Badri was not able to communicate to me as often as before, when I moved to France, Fomichev start to took more and more position in that. It's true.

Q. You see, a moment ago you were trying to pretend that Mr Fomichev was some sort of agent of Mr Patarkatsishvili and that he was not your manager.

A. No, it's not agent. It's not agent. He employed by us, by Badri and me. But when I had direct connection to

Badri, I communicate to Badri directly; when I did not, I communicate through Fomichev. And it's happened that after 30 October I moved to London but Badri -- I moved to France but Badri continue to communicate to me directly; but when he was not able to communicate to me directly, we communicate through Fomichev.

This is a very simple position, simple situation, I'm sorry to say.

Q. Mr Berezovsky, do you or do you not deny that in 2000, from the time that you fled to France, Mr Fomichev was managing your affairs? Do you deny that or not?

A. I did not deny. I deny that he managed that alone; he managed that together with Badri.

Q. He managed it instead of Badri, which is what --

A. No, not instead; together with Badri.

Q. Which is what you --

A. At the beginning, until Badri left Russia -- left to Georgia in March 2001, Fomichev and Badri. And I told you correctly that role of Fomichev was increasing at that time but he was not only one.

It means that I was not precise here. The precise situation is simple: that until Badri was able to connect to me, mainly I tried to do everything with him, but that time already we had difficulties as to communicate because I was not able to travel at all,

I stuck in France -- no, I travelled to London and so, but I was not able to travel like before. And it's the reason for why Fomichev's role was increasing.

- Q. Ms Nosova, in the North Shore litigation, gave the same evidence. She gave evidence that from about 2000 Mr Fomichev was managing your affairs, operating your finances, setting up your bank account, instructing your lawyers and paying your bills. Do you deny that?
- A. I don't see any contradiction between what I said and what Mrs Nosova said. And in science it's called like a transformation, like transformation time. It was time of transformation from one structure which we had, where Fomichev communicate to me just through Badri, to the other structure. Finally I start to communicate through Fomichev to Badri because Badri was in Georgia and he was not able to move. It's transformation period. It's very correct what I said there.
- Q. Do you remember telling Mr Samuelson at the beginning of September 2000 that Mr Fomichev was your most trusted lieutenant as well as Badri's?
- A. I can't exclude that even I think before, I think that in the spring 2000, I think we start to form western-style organised structures and Mr Samuelson was involved in that because we decide to restructure our relations with Badri in western way and we create

several trusts, we create several structures and so.

And Fomichev was key person with that because, as I recollect, Mr Fomichev the person who brought -- no, Mr Curtis, yes, Mr Curtis, the person who brought Mr Samuelson, and Mr Fomichev was the person who present me and Badri this negotiation. And the reason also was clear because Fomichev had excellent speaking English and he is professional. That's it.

- Q. Now, if we can go back to the point which gave rise to this little excursion, if Mr Fomichev, this trusted lieutenant of yours, your business manager, if he had negotiations with Mr Gorodilov about the sale of ORT in October and November 2000, he wouldn't have done that without your approval, would he?
- A. Once more, I never gave him any power to negotiate any subject concerning ORT. This is the point.
- Q. Now, your ORT stake and Badri's was 49 per cent of the company, wasn't it?
- A. Correct.
- Q. And 38 per cent out of that was held by you and Badri through a company called ORT-KB?
- A. Correct.
- Q. The other 11 per cent was held through the same company by Logovaz; is that right?
- A. The same -- you mean ORT was owned Logovaz 11 per cent,

correct.

Q. Logovaz had another 11 per cent of ORT --

A. Correct.

Q. -- and they held that 11 per cent also through ORT-KB, didn't they?

A. No, no, no, no. 38 per cent was owned by ORT-KB and 11 per cent owned Logovaz. It means that I don't remember that Logovaz own ORT-KB; I don't remember that. I think it's not so.

Q. Now, I think that you accept, but let me know whether you do or not, that in early November 2000, shares in ORT-KB were transferred from various intermediate holding companies to you and Mr Patarkatsishvili personally.

A. It's exactly what I mentioned before. We were preparing to put our shares to ORT to TV trust and to make it absolutely transparent. And in proper way we first of all structured my and Badri relations 50/50, Badri put under his personal control 25 per cent and I put under my personal and direct control the shares, to present the people who we invite to trust to show that everything is absolutely clear and transparent.

Q. The purpose of these transfers, as I think you've just confirmed, was to equalise your holdings with Badri's so that it was 50/50?

- A. Absolutely correct.
- Q. Right. Now, if this was in preparation for transferring the shares to your telly trust, why was it important that they should be held 50/50?
- A. It's important because it was common knowledge for all journalists, for all in Russia, that we own with Badri 50/50 and it would be strange that we propose him the structure which surprise them and they start to think, "Oh, there's something wrong with these people, they trick us and so", and it's the reason why we want to put absolutely precisely.

Common knowledge was exist even without that, that we are 50/50 partners and we show our shares when we equal partners, which help them to accept our proposal and understand that we don't trick them at all.

- Q. Mr Berezovsky, it was completely unnecessary to equalise your share with Badri's for the purpose of transferring the shares free to a telly trust; it was only necessary because you were planning to sell them to Mr Abramovich?
- A. It's absolutely wrong because maybe you don't face like me with journalists, so often like me, but I know well that journalists are very, very curious and very care what they are doing and believe me that it was very complicated to convince first-level journalist of Russia in situation when they understood well that I am

fighting, I start to fight against of president, to take my proposal. Believe me, it was not simple. And I don't want to create any doubts what is the source of these shares, who owned the shares.

Q. The shares in ORT were in fact owned, as you've confirmed, by ORT-KB. You could have transferred those shares to your telly trust without anybody having the slightest idea --

A. Definitely not.

Q. -- who owned the shares of the holding company or in what proportions?

A. Definitely not, Mr Sumption, because journalists want to know how -- what is the source of the shares and how they're owned. And if we take Logovaz shares, for example, 11 per cent of, it was mess at all because we -- formally I own, I don't remember, even 7 per cent of Logovaz, and Badri maybe more, I don't remember well. No, at that time already more I own.

But it already was not clear that its shares belong just to Badri and to me, that's it. And this is the reason why we -- again, I'm referring to the same point -- we want to show journalists absolutely clear story.

Q. Why should the journalists have cared a fig where the shares came from as long as they received them?

A. No, it's absolutely clear why. Journalists must know that the story is not fake, the story is not -- the story is completely transparent. And what we declared before -- okay, could you imagine that we, before it was reference that Badri and me, we have equal shares, and then the journalists will go to the source and will recognise it was not so? They put the question: why it was not so? Why they present that they have 50/50 partner but the shares which we got aren't clear that it's, let's say, Badri share, Badri part more than Berezovsky or to the contrary? It's the reason why we decide not to create any problem, to present them completely truthful story.

Moreover, as you know, we decide to equalise -- to equalise and to create a trust using by Russian law, not English law, yes? What we have done before, we used English law. But that time we decide to use just Russian law again, to make clear for journalists it's Russian story, because journalists did not have experience like we have, that we have offshores and trust, already we knew that. Many people in Russia didn't like that. They didn't understand why Russian company should be on offshore, on abroad. It's not simple story to explain. It's the reason why we even used Russian law for that.

- Q. Now, if these equalisation transfers were designed as a preparation for your transfer of ORT shares to the telly trust, why was Mr Gorodilov, one of Mr Abramovich's staff, involved in that process?
- A. This question, I don't have any answer to that. As before you said that Mr Fomichev was responsible for that; I don't have any idea about that. I know just that it was done by Badri. Why Badri used Mr Gorodilov or Mr Fomichev -- or Mr Gorodilov, not Mr Fomichev, definitely I don't know that.
- Q. Now, on 10 November a notice was prepared by your and Badri's company, ORT-KB, saying that you and Badri proposed to sell your shares to a company called Akmos which was controlled by Mr Abramovich?
- A. I don't know anything about that.
- Q. Would you look at bundle H(A)23/61.
- A. H(A)...?
- Q. H(A)23/61. Now, this is a notice which is required to be registered with the companies register in Russia --
- A. Yes.
- Q. -- announcing the intention of a shareholder to sell his shares so that any other shareholders who may have pre-emption rights can exercise them.
- A. Yes.
- Q. What it says, it's dated 10 November and you will see

the stamp of the private company registry --

A. Just a second.

Q. The stamp of ORT-KB at the bottom.

A. Yes, yes, I see that.

Q. Okay?

A. Yes.

Q. The middle paragraph says:

"... ORT-KB has received notices from two shareholders... that own 23,726.25... registered shares [in the company]..."

A. Yes.

Q. Now, that must be a reference to you and

Mr Patarkatsishvili; do you agree? Those were the number of shares you owned.

A. It could be. I can't refuse that.

Q. Well, we can see that when we compare the ultimate sale agreement.

A. Yes, yes.

Q. The notice goes on:

"The shareholders expressed the wish to sell Akmos Trade LLC all of the common registered shares of [the company] that they own at a price of USD 2,107.37... per share in rubles at the exchange rate... as of the date of payment."

A. Yes.

- Q. Now, this is a notice which is being served on your behalf and Mr Patarkatsishvili's behalf on 10 November announcing your intention of selling your shares to Akmos, isn't it?
- A. It looks like that.
- Q. At a later stage, shortly after 10 November, this document was deposited with the Moscow companies registry.
- A. Just a second. Where did they deposit?
- Q. They deposited it with the Moscow companies registry.
- A. Okay. Where is that, the information that they deposit there?
- Q. I'll give you chapter and verse in a moment. But at any rate, what we see on this certificate is an announcement of an intention to sell Akmos. That intention must already have existed on 10 November 2000?
- A. Mr Sumption, I can't exclude that. I just tell you that I don't know anything of our preparation to sell the shares to Mr Abramovich. This is the point.
- Q. Mr Berezovsky, you've been trying to exclude it for the last three-quarters of an hour by suggesting that you never authorised anyone to negotiate about a sale to Mr Abramovich before December.
- A. I just confirm that again.
- Q. And in fact you did, because here is a certificate in

which you and Badri are announcing your intention of selling to Mr Abramovich's company Akmos?

A. I just want again to stress: I didn't have any approach to sell ORT shares. What Badri was doing is completely different story, as I told you that Badri, even if we return back -- I'm sorry, if we return back to Le Bourget and it's already December, December 2000, and even there you see how Abramovich insist that we finally took a decision to sell and, as you know, we took a decision to sell and signed the papers only 24 October -- 24 December, after Glushkov was prisoned.

Q. You see, I'm not suggesting to you that you entered into a legally binding agreement to sell the ORT shares before December. What I am suggesting to you is that by the end of November, at the latest, you had agreed in principle, through Mr Patarkatsishvili, that you would sell your shares to Mr Abramovich for \$150 million.

A. Again, it's wrong. I did not accept that. What Badri is doing is other story and I told you from the very beginning that Badri is trying to protect our interest; Badri was trying not to lose everything. It was his game, I don't know how to say else, but the game where -- which I don't accept, up to the last moment.

Q. And Badri wouldn't have done that, would he, if you didn't approve of the idea of selling your shares at

all?

A. I just can follow Badri advice what to do, but Badri knew absolutely perfect that I was not in position to sell shares to anybody.

MR SUMPTION: My Lady, I'm about to embark on a chunk that is a good deal more than five minutes long.

MRS JUSTICE GLOSTER: Right. I will rise then for today.

Mr Berezovsky, 10.15 tomorrow, please. I repeat the warning: don't talk to anybody.

THE WITNESS: Okay. We're finished now, yes?

MRS JUSTICE GLOSTER: We've finished now.

THE WITNESS: Okay.

MRS JUSTICE GLOSTER: Don't talk to anybody about your evidence.

THE WITNESS: Definitely.

MRS JUSTICE GLOSTER: Very well. 10.15 in the morning.

(4.10 pm)

(The hearing adjourned until  
Tuesday, 11 October 2011 at 10.15 am)

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Tuesday, 11 October 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR BORIS BEREZOVSKY (continued)

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Do you want to stand up, Mr Berezovsky?

A. I start with that, maybe I sit. When you put me down,  
I sit!

Q. No, no, no, you do what you like.

Could you please be given bundle E6. This is the  
Le Bourget transcript.

The main purpose, as I understand it, of the meeting  
that you attended at Le Bourget was to discuss the state  
of your accounts with Mr Abramovich and in particular to  
work out how money could be paid to you and Badri  
outside Russia in a tax-efficient way. Do you accept  
that that was what this meeting was mainly about?

A. Generally, yes. I -- I'm sorry, you put me down  
already. Generally, yes, my Lady, but I just want to  
mention that it was, in my recollection, the first  
meeting with Mr Abramovich after I left Russia, in spite  
of my wife, she recollect that we have a meeting at --  
I left Russia, as I remember, 30 October. As far as my  
wife recollect that we had meeting at 31 October as  
Badri birthday in Paris, I don't recollect that.

The reason of this meeting was absolutely correct, mainly for calculate what is happening because it's new reality, but -- okay, that's it. Just to show, to mention that there was the first meeting, at my recollection, after at least -- after I left Russia between Badri, Abramovich and me.

Q. There was at least one other meeting, wasn't there, on 6 November but we'll come to that later. Let's not take up time on 6 November now.

Looking at this transcript, I'm not going to take you through the whole of this transcript, but in broad terms the conversation began with a discussion of the state of accounts between you and Mr Abramovich; is that right?

A. As I understand, I initially didn't participate almost at all in discussion as far as account is concerned. As my recollection is and when I read that, as I told you, my Lady, I forgot at all about this meeting. My recollection was that the first meeting was just in Cap d'Antibes and only later on I recollect, when I got this recording I recollect.

As I recollect, I almost did not participate in discussion at all, except of some principal points. And if you watch who is speaking, me or Badri or Roman, it's clear that it's mainly discussion between Roman

Abramovich and Badri as far as accountings is concerned.

Q. Yes. Well, you explain that and the reason for it at box 29 in your commentary --

A. Just a second, Mr Sumption. I'm sorry, could you please give me the Russian transcript.

Q. You've got it, I hope --

A. Yes, yes, it's in parallel.

Q. -- in parallel columns. English translation, then Russian text, then your commentary and then Mr Abramovich's commentary.

MRS JUSTICE GLOSTER: Could you give me the page, please, Mr Sumption?

MR SUMPTION: Page 8 of the bundle E6/01/8.

A. Just a second.

Q. If you've got E6, that should be the version which has both the English and the Russian text.

A. No, I have -- you see in --

Q. Are you looking at the right bundle, Mr Berezovsky?

A. Just a second. In E6 there is English translation of our conversation.

Q. Yes. Look at the second column: it should be the Russian text. If it's not, then you've got a different version of E6.

A. Yes, yes, it's true, but it's in English our conversation and I prefer to have two, English and

Russian as well.

Q. You should have both.

A. Yes, thank you.

Q. Well then, fine.

A. E6 and E7 as well.

Q. Now, would you look at E6/01/8, box 29. Okay?

A. E6, box 29.

Q. Page 8, box 29.

A. Yes.

Q. You'll see that at 28 Mr Patarkatsishvili says, "well, where shall we start?" which is the effective beginning of this discussion.

A. Just to be -- to identify, R is Roman, yes?

Q. Yes.

A. A is Badri?

Q. No, A is Mr Abramovich.

A. P is Patarkatsishvili and B Boris, yes, or Berezovsky, yes?

Q. Yes.

A. Thank you. Now it's clear.

Q. If you look at your commentary against box 29, what you say is:

"... I did not play an active role in [the discussions that followed this box] as it was my practice to leave the detail of our joint business

affairs to both these men."

Do you see that?

A. Yes.

Q. Just to make sure I understand this, you have told us on a number of occasions that you left the details of your financial affairs, particular transactions and so on, to other people?

A. Yes.

Q. And that included not just Mr Patarkatsishvili but also, as I think we established yesterday, Mr Fomichev, the other people who dealt with your affairs?

A. Yes.

Q. Now, that meant, did it not, that when you were at this meeting you did not yourself have the detailed information about the discussions and transactions that had happened earlier that Mr Patarkatsishvili had?

A. Definitely, yes.

Q. And that must have made it quite difficult for you to follow at the time what they were talking about?

A. You're absolutely correct.

Q. Now, the discussion opened with the \$305 million which we discussed on a couple of occasions yesterday, did it not? If you would look on to box 35, which is on page 13 E6/01/13, you'll see that Mr Abramovich says:

"So, this is last year's."

That's referring to what Mr Patarkatsishvili was just saying.

A. Just a second. It's box...?

Q. If you look at box 35 --

A. Just a second because I need in parallel Russian and English. 35. Yes.

Q. Now, box 35, Mr Abramovich says:

"So, this is last year's. This is what we had agreed, 275 million."

Okay?

A. Yes.

Q. And Mr Patarkatsishvili says:

"Absolutely (correct)."

And Mr Abramovich says:

"From this point. And 30 million -- it was... Aluminium."

Mr Patarkatsishvili says:

"Ah, Aluminium. Yes, correct. It's 305."

A. Just a second. This is the box now we discuss number?

Q. Well, I've been referring you to boxes 35 to 39.

A. Thank you. Ah, 35 to 39. Yes, I'm sorry.

Q. Yes. I mean, in fact references to the 305 million continue into subsequent boxes.

A. Could you give me chance to read that?

Q. Very well. (Pause)

A. Yes, okay.

Q. Now, those are the amounts, 275 million plus 30 million, which make up the 305 million?

A. Yes.

Q. And you'll see that Mr Abramovich refers to that as the sum which had been agreed, box 35, and Mr Patarkatsishvili agreed --

A. Yes.

Q. -- and then there's additional 30 million making up the 305 at box 37.

A. Yes.

Q. So it looks, doesn't it, as if Mr Abramovich and Mr Patarkatsishvili had agreed at some previous stage that you would be paid \$305 million?

A. Yes, it looks like -- just I want to go back my comment. When Badri said in 35, in 35 -- just a second. When Roman said at box 35 that, "This is last year", in English, I need to understand, "last year", it's clear identification that it's money for Sibneft because the previous year, I mean the year before 2000, as I understand, we did not get a profit from aluminium because we did not obtain that time aluminium assets.

Q. Well, it's obviously the current year, isn't it, ie 2000, which was just coming to an end?

A. Just a second.

Q. It can't have been 1999.

A. Just a second, okay.

Yes, I think they calculate now the year 2000 from the beginning.

Q. Yes. Now, therefore at some stage before this meeting Mr Abramovich and Mr Patarkatsishvili had obviously agreed that you were going to be paid, the two of you, \$305 million, hadn't they?

A. I think that they definitely discussed that. I don't have almost any doubts that they discussed before.

Q. And the reason why it was broken down into two amounts of 275 and 30 was that \$275 million was going to be funded from Mr Abramovich's oil trading operations and \$30 million from his aluminium operations?

A. Maybe. I only -- I refuse the word "funding". It was not funding; it was our profit which we share with Abramovich in Sibneft and profit which we start to share with Abramovich in aluminium.

Q. Well, we'll have to agree to disagree on that, Mr Berezovsky. But Mr Patarkatsishvili's complaint was that so far he said he'd received only \$100 million out of the 305 and he wanted to know when he'd receive the rest; isn't that right?

A. Where is mentioned?

Q. I think you may find that it helps to look at box 60

E6/01/23. This is a very long and rambling conversation. Do you see?

A. Just a second, Mr Sumption, because I need to list two sections.

Q. Don't look at E7 because I'm referring you to E6.

A. Just a second.

MRS JUSTICE GLOSTER: Mr Sumption, it's helpful if you refer to the page number just because it then gets automatically hyperlinked, if you could.

MR SUMPTION: Yes. In that case it's E6/01/23.

MRS JUSTICE GLOSTER: Thank you.

THE WITNESS: Just a second. Why it's different here?

MR SUMPTION: Is that --

THE WITNESS: Just a second, Mr Sumption, because it's different in two bundles. Just a second.

MRS JUSTICE GLOSTER: You're being directed to box 60.

THE WITNESS: Yes. My Lady, I need to look as well at the other bundle because there is --

MR SUMPTION: What is the other version?

THE WITNESS: -- a different translation. Russian, because conversation had been in Russian, and it's reason why I like to watch our comment in --

MRS JUSTICE GLOSTER: You have it in Russian in the box next to the English, the translation.

MR SUMPTION: Did you write the commentary in Russian or in

English?

A. No, I wrote the commentary in Russian.

Q. I see. Okay. Well, E7 contains a Russian version of the commentaries as well as a Russian version of the text.

A. Yes, correct.

Q. Right.

A. Okay, again I return back. 60?

Q. Well, the numbering is the same so just look at the Russian version if that's easier for you.

A. Yes.

Q. In box 60 on page 23 you'll see that Mr Patarkatsishvili says:

"No, here, look... to get 275 plus 30, right?

Instead of which we got 100."

So in summary what Mr Patarkatsishvili is saying is: you said you'd pay us 305 million, we've only had 100 of it?

A. Yes.

Q. Do you agree?

A. Yes. But, my Lady, I'm sorry for interruption because I have different story in two bundles with the same number, 60. I'm sorry. I don't know what's happened, it's technical problem, but it's different.

Q. The commentary is different, are you saying? Is the

commentary different --

A. Just a second.

Q. -- or the text?

A. Okay, fine.

Q. The text seems to be the same.

A. Fine, okay.

Q. It's just on different pages.

A. No, the same, okay. Yes.

Q. All right.

Well now, I think we've established, have we not, that Mr Patarkatsishvili's complaint is he'd been promised 305 and he'd only got 100? Do you agree with that?

A. Yes.

Q. Now --

A. Yes, finally I got it.

Q. Could you turn on to box 90, please, which is E6/01/36, though you may prefer to look at it in the Russian version.

A. Just a second.

Mr Sumption, I have a question. What we are watching now, it's --

Q. Sorry?

A. I have a question. What we're watching now, this E6 and E7, it was Abramovich last correction how he said that,

"I later recognise", and so-so or it's just initial version which was presented by us?

Q. I'm sorry, I can't tell you anything, Mr Berezovsky, about the Russian version; what I can tell you about is exclusively the parallel texts in English and Russian and the commentaries in English because --

A. No, no, I just -- my Lady, it's very important because initially, when the first detailed explanation of Le Bourget was done by our team, not Abramovich, Abramovich initially presented just three pages in his witness statement, yes? Or reply.

MRS JUSTICE GLOSTER: Okay. Well, what you've got now is clear in the English version.

THE WITNESS: No, no, no, it's no doubt about that. But later on Abramovich added (inaudible) correct what he understood after he start to listen attentively, what he did not understood and what he want to add as he remind how to continue. My question is very simple: is it initial version or it's which corrected by Abramovich later?

MRS JUSTICE GLOSTER: I imagine this is the finalised version. Could Mr Rabinowitz and Mr Sumption agree that this is the final version?

MR SUMPTION: I am told that there are minor translation issues in relation to just the text but not the

commentary which have yet to be resolved but I also understand that they don't actually affect the substance of the matter.

THE WITNESS: No, no, my Lady, I'm sorry --

MRS JUSTICE GLOSTER: Well, I'm going to direct that we work on this one at the moment. If Mr Rabinowitz has any concerns with the cross-examination on the current translation, that is something he will have to raise in re-examination with you.

Are you content with that, Mr Rabinowitz?

MR RABINOWITZ: I am, my Lady.

MRS JUSTICE GLOSTER: Right. Let's proceed on this at the moment, please.

THE WITNESS: Thank you.

MR SUMPTION: I am not going to ask you about

Mr Abramovich's comments because that's a matter for his evidence. But if you look at box 81 on E6/01/34, or you may prefer to look at it in the Russian version --

A. I just want to mention, I don't care about Abramovich comment; I care just correction of initial text. This is important point.

Q. Mr Berezovsky, we're going to proceed for the moment on the footing that this is a correct translation but if you want to make any points about the translation when giving your evidence, you must feel free to do so.

- A. No, I worry just about the other point: I worry that Abramovich added the text. It's only translation or it's added text? This is simple question.
- Q. No, Mr Abramovich has not edited the text.
- A. Good.
- Q. You mustn't be so suspicious, Mr Berezovsky.
- A. Yes, okay. No, no, because he added text at the last his correction.
- Q. Do you see at box 81, which is on page 34 in the version that the rest of us are looking at, Mr Abramovich is on the phone? Do you see that?
- A. Just a second. Yes.
- Q. And he is on the phone to Ms Panchenko, who is the accountant. That's not apparent from here but --
- A. It's his statement that it's Mrs Panchenko.
- Q. Absolutely.
- A. I didn't comment that.
- Q. Yes, I quite understand that you have no direct knowledge of that. But what happened was that he rang somebody, and I'm telling you it was Ms Panchenko, and he then handed the phone over to Mr Patarkatsishvili -- see boxes 83 and 84 -- so that he could discuss with the accountant directly.
- A. Yes. Yes.
- Q. And then, it's obviously a bit difficult to follow only

one side of a conversation that's been recorded but if one turns to box 90 at E6/01/36 --

A. Just a second. Now we go to box 90?

Q. Yes.

A. Yes.

Q. -- it looks as if it's been established during that phone call that there is \$85 million outstanding from the \$305 million. Do you see that?

A. Yes, I see that.

Q. Right, and that seems to have been agreed.

Now, I'd like you to turn on from there to a different subject covered by this transcript at box 159, which is at E6/01/59.

A. Yes.

Q. Now, that is a discussion, isn't it, of the raid by the police on ORT's offices in Moscow which had happened the day before?

A. You're absolutely correct, 5 December 2000. It's the point where we start to recognise when happened this meeting.

Q. Yes. In your commentary on this, you appear to suggest -- and your commentary is quite a long commentary on this box but the essential point is at the bottom of E6/01/61 to 62.

A. Sorry, again?

Q. In the version I'm looking at at E6 --

A. Yes.

Q. -- it's at the bottom of pages 61 and 62 of the page numbering.

A. Could you please -- because I want the other version in Russian, better for me -- could you just refer to the box, 90 or 89?

Q. Well, I'm referring you to the box but it's a very long commentary on this box.

A. Yes, yes, yes. It's just one box, 158 -- 9?

Q. 159, Mr Berezovsky.

A. Yes.

Q. Towards the end of your commentary on that box --

A. Okay.

Q. -- in fact the last paragraph of your commentary on that box, you say:

"When Mr Abramovich returned to Russia without our Signatures..."

That's on the ORT contract.

"... Mr Putin realised that he needed to increase the pressure to make us sell. Consequently, the following day, 7 December 2000, Mr Glushkov was arrested."

A. It's correct.

Q. What you are saying there is that it was because of what

happened at Le Bourget, or what didn't happen at Le Bourget, that Mr Glushkov was arrested on the following morning?

- A. You're absolutely correct because it's absolutely -- my Lady, and I want to make a special comment to that for better understanding because it's absolutely the way of KGB black op. At 5th they organise their Maski show, they demonstrate power, at 5th; at the 6th, Abramovich came to discuss that push us to sign papers and ask how I -- "Vladimir Vladimirovich Putin is waiting, I need to report him", "to report him" we will find here; and on the 7th, because we did not give clear answer to Abramovich that we sell, and next day they arrest Nikolai Glushkov.

Just understanding how I worry about that, because I put direct question to Mr Abramovich, "Tell me, Roman, could Nikolai be arrested?" And Roman said, like, "I think not, I think not. Not likely. I think not".

It means that it's typical KGB way. Everybody know from their classical books that the threat, then negotiation; and if negotiation is not successful, another threat. This my understanding, I'm sorry.

- Q. Now, the first question I want to ask you about this part of your commentary is: did Mr Abramovich have a draft agreement for the sale of ORT with him at

Le Bourget ready for you to sign?

A. I haven't seen anything what Abramovich had but they discuss with Badri that everything almost ready.

Q. You see, he didn't.

A. But Abramovich insist, "Let's sign something".

Q. His evidence is that he did not have an agreement with him for signature --

A. No, no, no, no.

Q. -- and I think your last answer indicates that you never saw one?

A. You're correct. It doesn't mean that it didn't exist.

Q. Right.

A. I haven't seen that. You're correct.

Q. Now, if he didn't have an agreement for signature, he certainly can't have pressed you to sign such an agreement at the Le Bourget meeting, can he?

A. Mr Sumption, it doesn't mean like you just now mentioned. I haven't seen, it means that I'm sure that if Abramovich be sure that we are ready to sign, he could have this agreement with him or some paper to sign, because if you really read attentively the text, Abramovich told absolutely clear, "Can you sign something that I report Mr Putin that we are -- that you are selling -- you sold ORT". This is the point. And Abramovich mentioned that directly in Le Bourget.

- Q. Mr Abramovich never asked you to sign any particular document at Le Bourget, did he?
- A. Particular, no, but the sense what he was asking to sign is absolutely clear: to report Mr Putin, how he said directly, that we made a deal. This is the point, to sign anything.
- Q. Now, the next aspect of this I want to ask you about is your suggestion that it was because of the non-signature of something at Le Bourget that Mr Glushkov was arrested. As I understand what you said a few moments ago, this is something that you infer from the sequence of dates: the raid on the 5th, the meeting on the 6th and the arrest on the 7th.
- A. You are absolutely correct.
- Q. Right.
- A. And my clear understanding is that Abramovich like to get clear answer, clear understanding that we finalise the deal, and he did not get. He did not get. And it is reason why he several time mentioned, "What I need to report Vladimir Vladimirovich?" What he means, like not -- to convince us to finalise the deal, and he did not get that. And the next day they arrest Mr Glushkov. And I put direct question to Mr Abramovich, "What do you think about Nikolai, could he be arrested?" Because I start to worry about that because I already calculate.

Mr Sumption, you as a professor understand that it's impossible just to take one point without understanding what happened before and day after. And it's absolutely clear it's KGB black op operation. That's it.

- Q. You had known for five weeks at the time of the Le Bourget meeting, hadn't you, that Mr Glushkov was going to be arrested?
- A. Definitely not. I'm not -- he could be arrested, I know that well. He could be arrested. He took a risk. Moreover, Nikolai Glushkov -- you will have chance to question him -- I recommend him to leave Russia. He refused that. He did not believe. And I believe because I knew -- I know -- I already can recognise these people better. It's the reason why I left Russia.
- Q. Yes. When you left Russia, you advised Mr Glushkov that he should leave Russia as well, didn't you?
- A. We discussed that with him.
- Q. Yes. You advised him that he should leave Russia?
- A. He's already not young man and he made his personal choice but I talked to him about that.
- Q. Did you advise him that he should also leave Russia; yes or no?
- A. As I recollect, yes.
- Q. Right. So you obviously anticipated at the time that you left Russia that he was going to be arrested?

A. I think that he could be arrested, yes.

Q. The occasion which finally pushed you into leaving Russia was that on 30 October you learnt that you were going to be summoned for questioning by the public prosecutor on 13 November, didn't you?

A. No, main reason was, as I mentioned yesterday, that president of Russia, Mr Putin, said that he has a cudgel in his hand to hit me on the head. This is a little bit more dangerous than the other reasons.

It means that clear that after that Prosecutor Office start to operate in the manner like they know how to operate, just starting to increase pressure, they press me to leave my house, which I rented years, stay with my family, with my children, and then they start to make other -- I don't recollect exactly. I wrote in my statement how they developed the pressure: opening again investigation, then calling me to General Prosecutor Office to meet and finally issue -- finally issue warrant to arrest me. But this happened a little bit later.

But, as I recollect, on 13 November 2000 I was invited for questioning to Prosecutor Office.

Q. Yes.

A. But I have been that time already abroad when I was --

Q. On 30 October the deputy public prosecutor,

Mr Kolmogorov, publicly announced, did he not, in a live television interview in Russia, that you were going to be charged with misfeasance related to Aeroflot? He publicly announced that, didn't he, on 30 October?

A. I don't recognise the 30, I think 31 October, but maybe 30 October, you are correct. But it's happened, it's correct.

Q. That's what Mr Glushkov tells us in his witness statement.

A. But it's clear to clarify, I think 31 October it was.

Q. Well, he says 30 October --

A. Okay.

Q. -- and that is consistent with the documents that we have.

A. Good.

Q. Now, when Mr Kolmogorov gave that interview, he also said, did he not, that he was proposing to charge Mr Glushkov?

A. Yes.

Q. So you had therefore known at the time of the Le Bourget meeting for five weeks that not just you but Mr Glushkov were going to be charged?

A. Yes, I knew that, definitely.

Q. Yes. And if they charged Mr Glushkov, that meant that they were going to arrest him, didn't it?

- A. It's -- you already know the practice of Russian KGB because if they --
- Q. Not dissimilar to other police forces.
- A. -- if they invite someone to questioning, it's practice that the same day they practise to arrest, yes? And it was really my worry that Glushkov on the one hand did not follow my advice and understand that he could become hostage and it was my worry about that.
- Q. Now, in the middle of November your newspaper, Kommersant, reported that when Mr Glushkov appeared for interrogation he was going to be arrested. Do you remember that?
- A. Again, I don't remember that definitely but I just now present you the regular practice of General Prosecutor Office that people -- that people are invited for questioning and in the second it could be that they -- from the witness could be converted to suspicion. And it's exactly happened when Mr Kolmogorov, to whom you refer, after Putin took cudgel in his hand, inform immediately that Berezovsky could be turned from witness to suspicion.
- Q. At the time of the Le Bourget meeting you and everybody else close to Mr Glushkov knew already, didn't you, that the date fixed for Mr Glushkov's appearance at the interrogation by the prosecutor was 7 December?

A. Yes, it's correct.

Q. Right. And presumably you also know that Mr Glushkov was tipped off by a friend in the security services about that also? That's what he says in his witness statement.

A. Look, you know, there is a principal point here and the details are important. As I know, Glushkov came to this questioning with a suit, yes, not with the heavy things which people are prepared -- when people are prepared to go to jail. It's very important. For example, when Badri met Mr Patrushev, when he was invited and after that they go to president together -- maybe you remember, my Lady, we discussed that -- Badri took his sweater, Badri took his special trousers, being prepared to be arrested.

Nikolai Glushkov was not prepared to be arrested, even at that situation. And I think it's -- some details are important to understand what Glushkov feels, not what I feel, yes? This is important.

Q. You did think that he was going to be arrested on the 7th anyway?

A. Definitely not. I hope, and it's the reason I ask Abramovich and he gave me the positive indication, not negative indication. But my question definitely create for Abramovich clear impression that Glushkov is very

important for me because I did not participate attentively when they discussed the numbers, and you will see that clear. But I really worry about Nikolai and it's reason why I put the question to Abramovich.

Q. Well, so far you've given two answers to this question. On one occasion you have said that you were aware he was going to be arrested on the 7th; you now say that you were not. Can I ask you to look at your commentary at box 642, please, which is E6/01/206, box 642.

A. Just a second.

Q. Do you have box 642?

A. Just a second. I've got it, I just try to read it, okay? Because the first -- I read the question in Russian -- the comment, the transcript. (Pause)

Yes.

Q. Now, that confirms, does it not, that you were aware at the time of the Le Bourget meeting that he was going to be arrested on the following day or interrogated --

A. Definitely not. Mr Sumption, if I were aware, why I should put question to Abramovich if I already aware? As you mentioned before, I knew that Glushkov already is invited, I'm sorry --

Q. Yes, for the next day.

A. Mr Sumption, please let me finish. Invited. And if I was sure, as you tried to explain my Lady, it's not

correct, because it's exactly the question which I put Mr Abramovich. If I was sure, I didn't put this question or at least would get the answer that: yes.

Even Abramovich has doubt about that, more informed than me. Definitely I'm not informed like Abramovich at the time being informed. And if Abramovich created doubt that he could -- no. His answer is, "I think no", this answer from Abramovich, and for me he is an expert now, much more than me, because he is in Moscow, I am not. And as I told you, referring how Glushkov was prepared for this meeting, he was in suit. Nobody who is prepared to be arrested goes to the suit to Prosecutor Office.

Q. I will come to Mr Glushkov in a moment.

A. Thank you.

Q. Let's just look at what you wrote. Did you write in your commentary, which is part of your witness statement:

"I, and everyone close to Mr Glushkov, was aware that he had been summoned to the Prosecutor-General's Office for an interrogation interview on 7 December..."

Did you write that?

A. Yes, yes. Yes, I wrote that.

Q. And was it true? Were you aware of that?

A. I knew that he next day should be in General Prosecutor

Office.

Q. Yes, and you told us a few minutes ago that the practice was that when you turned up for interrogation, you were arrested?

A. The practice was that it's not definitely that he -- many people go to Prosecutor Office and were not arrested. Many people. But one of the terrible practices that people are invited as a witnesses and then transfer to the suspicions and arrested. But it's not the regular way what Mr Sumption tried to insist. It's happened like that, it could happen with Glushkov, and it's the reason why I ask Abramovich, "What do you think about that?" And his answer is completely opposite. He said, "I think no".

Q. Mr Berezovsky, Mr Glushkov in his witness statement said that on 13 November it was announced in Kommersant that he would be arrested at his interrogation and he says:

"From then on, I knew that I would be arrested and detained."

Now, you're not questioning Mr Glushkov's evidence about what he himself knew, are you?

A. No, I -- Glushkov is writing his witness himself, not me. I never even, I'm sorry to say, I haven't seen his witness statement. But again, as far as my clear understanding, Glushkov -- whatever Glushkov is writing

now, my understanding is completely opposite. Glushkov didn't exclude that he could be arrested but he did not know that he would be arrested.

Q. You were very close to Mr Glushkov and in constant contact with him before his arrest, and with his lawyers, weren't you?

A. I was not in very close contact with him because I had a lot of headaches except of that, but definitely I worry about Glushkov. He is my closest -- one of the closest friends and definitely we discuss that and it is reason why I think that he also should leave Russia, it's correct.

But, on the other hand, nothing more than I said and it's just confirmation that you tried to -- as I understand, you suggest that I knew that Glushkov was arrested. No, as I told you before, my Lady, I am optimist. If we maybe have much more evidence that he could be arrested, I think that he will not. This is the problem.

Q. Mr Berezovsky, if the prosecutor had announced his intention to charge Mr Glushkov five weeks before the Le Bourget meeting and if you already knew, as you have admitted in your witness statement, that he was going to be arrested, then the Le Bourget meeting cannot have had anything to do with his arrest on the 7th, can it?

A. Completely wrong. Moreover, Mr Sumption, go a little bit ahead. As, my Lady, I told you yesterday, I forgot about Le Bourget meeting at all and definitely I analysed how it's happened that so important meeting I forgot. And now I know the answer absolutely clear: because I was so shocked that Glushkov was arrested.

You know, like maybe you have a mother who is sick and you know that one day maybe she will die, but when she dies it's shock; and definitely for me it's absolutely shock that Glushkov was arrested. Again, particular because Abramovich answer is, "I think no". And after Glushkov was arrested, later on, I didn't have any doubt that Abramovich played game together with Putin and the Prosecutor Office and so, no doubt at all. This one of my key -- turn point.

Q. Mr Berezovsky, I've referred you to what you yourself said at box 642. It's inconsistent with the untruthful evidence that you have been giving for the last five minutes, is it not?

A. No, it's absolutely truthful what my understanding -- what is written in box -- in my comment box 642 and my answer now.

Q. Right. Let's look at box 234, which is at E6/01/93.

A. 200...?

Q. E6/01/93, box 234.

A. 200...? Sorry, I'm sorry.

Q. 234.

A. Yes.

Q. Okay. Now, this is where Mr Patarkatsishvili turns to the proposed sale of ORT to Mr Abramovich.

A. Yes.

Q. Now, it is obvious, isn't it, from the fact that he is raising this subject that there had been previous discussions between him and Mr Abramovich about the sale of ORT, hadn't there?

A. And not only between him and Mr Abramovich; also between me and Badri as well.

Q. Right. Well now, what he says in 234, if you'd just like to read the Russian text of the tape, is that:

"We had a problem with Borya..."

That's you.

A. Yes.

Q. But that had been sorted out and he, Mr Patarkatsishvili, was now ready to go ahead. That's essentially what was being said, wasn't it?

A. Yes.

Q. So it looks as if already on 6 December there had been an agreement in principle which everybody was ready to go ahead with?

A. Everybody are not go -- are not prepared to go. As

I told you, Badri and me, we had different understanding what is happened and different approach what to do. My position was absolutely clear: I was not prepared to sell ORT till Nikolai was arrested. Badri tried to play kind of game, as I understand, try not to cut our relations decisively and so. And he is playing his game because he knew perfectly that I am not in position to sell ORT that time.

Q. Well, let's have a look at what he said.

A. Yes.

Q. "We had a problem with Borya, and we sorted that out too."

So what he's referring to there, as you point out in your commentary, was your earlier resistance to the idea of selling. What he says is that that problem has been sorted out; and it had been, hadn't it?

A. Again, Mr Sumption, it's absolutely the same answer.

Badri play his game, I play his game, because I knew already the pressure and the pressure was not -- the source of the pressure was not Mr Abramovich; the source of the pressure was president of Russia, who made clear statement, eyes to eyes, I mean me and him on the one hand, and when I did -- I mean our meeting in Kremlin in presence of Voloshin, when he said that I should immediately transfer my shares under State control. And

after that, when I refused to do that, after that he made a clear statement that he has stick to hit to my head. What do you think, it's not impressive enough? It's impressive.

But again, I already start to collect people for TV trust and I took some obligations, and only after Glushkov was arrested I deny my obligations because I recognise that people are in danger because Glushkov already in jail and they follow him to jail. This is only the position.

Q. You say that Badri was playing games. Please explain to us why Mr Patarkatsishvili should have said that the problem with you had been sorted out if it hadn't been?

A. Because Badri and -- you see that I -- and if you watch what has happened in Le Bourget, I didn't confirm that there. Because Badri want to say that, "Roman, I will control Boris and I am finally -- we'll find a solution with Boris", and it's clear that he said Boris was a problem, yes.

It's complicated nevertheless to understand what kind of problem that is: a problem general that I refuse to go or a problem with a payment which I don't accept. My recollection is that the problem was that he explained that he knows -- Roman knows well that I'm not prepared to sell, but I can't exclude that the same time

it could be discuss about the way of payment. But my recollection is that mainly both or one and the other point.

Q. Mr Berezovsky, would you like to focus on the question, which I will ask again.

A. Mm-hm.

Q. You say that Mr Patarkatsishvili was playing some sort of game.

A. Yes.

Q. I want to try and discover what sort of game you think he was playing and my question is this: why should Mr Patarkatsishvili say that your objections to this deal had been sorted out, and say it in your presence, if it wasn't true?

A. What does mean the "game"? The game is game. And what we discuss with you, it's just mislead person who insist that we make a deal now because he want to report Mr Putin.

Q. But why --

A. And I am not prepared to give him documents to report Mr Putin that he made a deal. This only the point.

Q. I'm not asking --

A. And Badri -- I'm sorry. And Badri understood that well. He play in his way the game, trying to -- not to make deal today because he understand that I'm not prepared

to make any deal.

Q. But, Mr Berezovsky, on the contrary, he is saying that there's a deal to be made today because he's saying that your objections have been sorted out.

A. Mr Sumption, it's very simple. If it's so -- let's suppose that it's so -- why it was not done? Why there was no paper which confirm that the deal was done? This is the crucial question. And why only 24 December I gave finally confirmation to Mr Dubov, who is sitting here, that we don't have choice to sell because it's price for Nikolai freedom? Why it did not happen immediately? If everything was ready.

And even when 7 December, my Lady, I announce publicly, "That's it, do this", I accept to sell because Nikolai is in jail, I don't want to danger the other journalists, and why, again, 20 days or more, allowing 20 days after, the papers were prepared? Why if they were ready now? Why it should take again 20 days more to prepare the papers? This is question.

Q. Would you have a look at boxes 235 and 236. The reference is E6/01/95.

A. Sorry, Mr Sumption, 235?

Q. 235 and 236, the very next boxes after the bit of Badri that I've been referring you to. Do you see that?

A. Yes.

Q. Mr Abramovich says in answer:

"We also have everything ready, as always and like everybody."

A. Yes.

Q. Mr Patarkatsishvili says:

"Yes."

A. Yes.

Q. Right?

A. Yes, yes.

Q. Now, that suggests that the two of them were in fact agreed that it would now be possible to go ahead, doesn't it?

A. Your mentioning "two of them" is absolutely correct; not three of us but two of them.

Q. In your presence?

A. In my presence and I don't comment that.

Q. And without any objection by you? You didn't say, "Hang on" --

A. But without any confirmation.

Q. Let me finish my question.

A. Sorry.

Q. You isn't say, "Hang on, I'm not agreed to all this", did you?

A. Because Badri is playing game and I don't want to destroy his game.

Q. What sort of game did you think he was playing?

A. Not to sign anything because he knows well my position, not to sign to selling ORT. This is the point.

Q. Would you look back at box 234 on page 93 in the E6 version E6/01/93.

A. Yes.

Q. After observing --

A. Just a second. 234, yes?

Q. Yes. After saying that the problem with you had been sorted out, there's a slightly obscure part of the text here but the text as appearing in the translation says:

"He..."

Or "it", I think.

"... is in England, he is ready, we disclosed the documents, everything, and we are ready to sort it all officially."

A. Mm-hm.

Q. Now, that rather obscure piece of text is a reference, isn't it, to the fact that you and Mr Patarkatsishvili intended to credit the proceeds of the ORT sale to trust accounts in England?

A. Mr Sumption, it's absolutely correct. On the other hand, again and again I repeat the same point, and the point is very simple, my Lady: where is the result? If it's everything like Mr Sumption try to present, not

like me, suppose Mr Sumption is absolutely correct that deal already done, no questions, why after that it took 20 days more, and only after Nikolai was arrested, when I confirm that I'm ready to sell? If everything is done already, as you try to insist, and Badri said done, I don't object, why not to sign next day or day after? Why it takes 20 days more to make this deal happened?

Q. Because, Mr Berezovsky, Mr Abramovich had an election campaign to fight in Chukotka and it took time to get the documents prepared and to sort that out with Logovaz?

A. Really? I have completely opposite information. I know that people what I read in the witnesses of Mr Abramovich said that they plan -- they were waiting for Mr Abramovich. My Lady, it's important what Mr Sumption mentioned now. They waited Mr Abramovich on 5 December to fly with them to Chukotka but they postponed -- but Abramovich postponed to fly, yes? And they fly without Abramovich even. I don't remember on the 7th or on the 8th or the 9th, but later on.

And now Mr Sumption gave us answer why it's happened: because Abramovich promised Mr Putin definitely to get a result and he did not. And the result he wants to get -- again, Mr Sumption, I would just to remind you why Mr Abramovich was in hurry:

because Putin was in hurry, because on 24 January, according of the government or presidential decree, government elections in many Russian regions were planned to happen and Abramovich as well participate as a -- at these elections, and Putin was in hurry to put under control ORT at that time to be sure that nothing happened wrong in information -- in information space. This is the point.

- Q. Mr Berezovsky, on your own case, as it emerges now from your latest witness statement, you decided to sell on 7 to 10 December and it still took 20 days to sort the documents out, didn't it? Your present case is that you decided to sell between 7 and 10 December --
- A. Mr Sumption, you are absolutely correct. It means that it took time. Everybody need to take time to prepare the papers. If papers would be ready, it will be signed next day.
- Q. Right.
- A. The papers were not ready. This is the reason why the signature --
- Q. That's exactly what I put to you a moment ago.
- A. Just a second. It's the first. And the second reason why: after that I had discussion with Mr Abramovich about conditions, final conditions, and the final conditions was releasing of Mr Glushkov, not money

sense. And this is the reason why they were not signed immediately, the basic reason.

Q. Would you go to box 237 again E6/01/96. We've looked at it before for a different reason. The point which is being made by Mr Abramovich here is this, isn't it: Mr Abramovich was saying that he's dealing, is he not, with the problems of paying the ORT proceeds to you in the west? Do you agree with that?

A. Yes.

Q. And what he says is:

"The simplest thing would be to do what (Gorodilov) was explaining..."

And Mr Gorodilov had been on the phone.

A. Mm-hm.

Q. "... to me last night: we transfer part of the money in Moscow from Moscow to a person who would, you know, to your account, say, 20 million dollars. The rest we shall transfer to the West..."

A. Yes.

Q. Now, that's a reference, isn't it, to potential exchange control problems that might be encountered in making payments out of Russia?

A. I think so. I think so.

Q. And you had your own reasons for not wanting to receive funds in Russia, didn't you --

A. I have --

Q. -- because there was a threat of criminal proceedings against you?

A. No, that was not against -- because of criminal proceedings; because I knew well that Russian may freeze my money using this criminal proceeding.

Q. So Mr Abramovich is referring to a proposal from Mr Gorodilov that a small part of the money should be paid to you in Russia and the rest outside?

A. Yes, it was proposal by Mr Abramovich and Badri; I don't remember well how they decide to do that. But it's -- at this paper, it's Abramovich proposal.

Q. Now, if you look at box 238 E6/01/97,

Mr Patarkatsishvili says:

"No, in fact, when we made our agreement, when we made our agreement in Moscow, yes, you said the following: that as you are taking it all on your account, I mean, you are the one who is paying for it, right, so you will not have any problems with transfers, because the payment transfer will originate from the West."

A. Yes.

Q. Now, what do you say was the agreement to which Mr Patarkatsishvili is referring in that box?

A. I said -- I don't comment that. No, I comment that --

I comment then lower.

Q. Well, comment on it to us now, will you, please. What do you say was the agreement to which

Mr Patarkatsishvili is referring?

A. Again, the question? What is the question again? I'm sorry.

Q. What do you say is the agreement to which Mr Patarkatsishvili is referring in box 238?

A. Here, I will comment that below.

Q. Well, what is your answer?

A. My answer is that I comment that below and --

Q. Can you not remember what you think about this, Mr Berezovsky, without finding it in your commentary on this transcript?

A. I don't remember that, definitely.

Q. You don't remember?

A. As I told you, I even don't remember initially that this meeting happened.

Q. Well, it's obvious, isn't it, that Mr Patarkatsishvili is referring in your presence to an agreement that he has made with Mr Abramovich in Moscow about the sale of ORT?

A. It's correct.

Q. Right. What he --

A. Not made; is preparing and is discussing.

Q. And what he is saying in this box is that he had been assured by Mr Abramovich that when they reached agreement in Moscow, Mr Abramovich had said "We'll find a way somehow or other to pay the money in the west". That's the point he's making, isn't it?

A. Yes, it's correct.

Q. Now, if you would turn on to box 249, which is at E6/01/99. This is part of a discussion between Mr Abramovich and Mr Patarkatsishvili --

A. Yes.

Q. -- about Russian exchange control problems.

A. Yes.

Q. And it's in this context, isn't it, after the conversations we've just been looking at, that Mr Abramovich refers to his conversation with Mr Putin, box 249?

A. Yes.

Q. Okay?

A. Yes.

Q. And in his witness statement Mr Abramovich says that he had spoken to Mr Putin in order to make sure that the government would not object to his buying ORT and had been told that it would not object. This is Mr Abramovich reporting that conversation to you, isn't it?

- A. That Mr Putin will not object it? This happened at Le Bourget, Mr Abramovich said that -- described how Mr Putin will help or not help to organise payment for ORT. It's the first time when I had clear identification that Abramovich is a messenger from Mr Putin and he has direct connection to Mr Putin and obligation, some kind of obligation to help Mr Putin to convince us to sell ORT. It's true.
- Q. Well, all he said is that he's gone to Mr Putin to find out what Mr Putin's view would be about an acquisition of ORT, which was majority government-owned, by him. That's all he said, isn't it?
- A. Yes, he said many things and including that. But the main point is his phrase, "Can I report already Vladimir Vladimirovich". It means that it's absolutely clear target of Abramovich at this meeting to find the final decision of us that he may report Putin that everything is done.
- Q. And he returns to that subject, doesn't he, at box 259 E6/01/102, when he says -- this is referring to Putin:
- "He doesn't want to say 'yes'... He says, 'If you can sort it out yourselves, so it doesn't involve me, then I don't mind, go ahead...'"
- That was what he was saying Mr Putin's reaction was to the possibility of him, Mr Abramovich, acquiring the

49 per cent stake in ORT?

- A. Yes, because Putin has just one target, to obtain control over 49 per cent and he said, "Roman, find the solution yourself, find the solution with Badri, with Boris, it doesn't matter for me how you... don't involve me to this money sense transaction". That's it. Nothing more. And Abramovich is proposing how to find the solution.

MR SUMPTION: My Lady, it may assist if we just finish this rather turgid transcript before we have the break.

MRS JUSTICE GLOSTER: Yes, very well.

MR SUMPTION: I don't think it's going to take much longer.

Could you turn on, please, to box 339, which is at E6/01/123.

A. 339?

Q. Yes.

A. Yes.

Q. Now, this is the conclusion of a very long series of exchanges about Mr Gorodilov's proposals for getting the money to you in the west.

A. Yes.

Q. Okay?

A. Yes.

Q. I'm not going to go through all the previous discussions about that rather technical subject.

A. Yes.

Q. But at box 339 you will see -- and I'll ask you just to remind yourself in a moment of what it says -- that Mr Abramovich telephoned Mr Gorodilov in the course of this meeting; Mr Abramovich handed the phone to you so that Mr Gorodilov could explain the payment method. That appears from 340.

A. Yes, it's correct.

Q. Sorry, to Mr Patarkatsishvili, isn't it?

A. Yes.

Q. Sorry, not to you.

The next 40 boxes or so are Mr Patarkatsishvili's side of a conversation with Mr Gorodilov interspersed with occasional exchanges directly between you and Mr Abramovich.

A. Yes.

Q. And then at box 402, which starts off at E1/01/136 --

A. Just a second.

Q. -- the conversation ends with Mr Patarkatsishvili saying in effect that he doesn't mind where the money comes from, provided it gets to London.

A. Yes.

Q. And Mr Abramovich and Mr Patarkatsishvili both agree about that.

A. Yes.

Q. Now, then, if you turn on to boxes 403 and 404 you'll see that they agree about that --

A. Sorry, box?

Q. Well, you've confirmed that that was agreed?

A. Yes, it was agreed between Abramovich and Patarkatsishvili.

Q. At the end of box 402 he hands the phone back to Mr Abramovich.

A. 40...?

Q. End of 402. Okay?

A. Yes.

Q. Now, at box 406 E6/01/139, if you move on a bit, Mr Patarkatsishvili tells Mr Abramovich that he will organise the mechanism for payment of the ORT proceeds straightaway.

A. Yes.

Q. And there's then a discussion about some other things that Mr Patarkatsishvili wants Mr Abramovich to pay. And at box 408 you refer to -- at 407 you'll see Mr Abramovich is still on the phone to Mr Gorodilov and at 408 the text says:

"Borya, well, we need to finish this off, don't you think? So a decision must be taken, one way or another, right? I am absolutely fine with what I am being offered..."

That's Mr Patarkatsishvili to you. And your comment is this is Mr Patarkatsishvili "continuing to string Mr Abramovich along".

A. It's correct.

Q. How could Mr Patarkatsishvili have been trying to string Mr Abramovich along when Mr Abramovich was not a party to this conversation but was on the telephone to Mr Gorodilov?

A. No, it's very -- it's absolutely simple: that -- just a second -- that understanding well that Abramovich is present in here and continue to do absolutely the same because, as I told you, Mr Sumption, if it was agreed, the question is why it was not signed. The position is absolutely the same: that not Badri, not me -- not Badri, maybe he accept that, but me definitely he knew absolutely perfect that I am not prepared to make any step to sell ORT shares.

Q. Now look, please, at box 428.

A. Just a second.

Q. Yes? 428. It's at E6/01/148.

A. Just a second. 428.

Q. Have you got box 428?

A. Yes.

Q. Would you read boxes 428 to 431, quite short bits of text.

A. Yes, yes. (Pause)

Yes.

Q. Now, Mr Abramovich says:

"We could now close this deal as it is, and later -- I promise -- we shall always find understanding on this matter..."

And Mr Patarkatsishvili says:

"Sure, sure..."

A. Yes.

Q. And Mr Abramovich says:

"(So then) we shall finalise this deal, so that I could report on it without further ado, (that) the deal is done..."

And Mr Patarkatsishvili says:

"No problem..."

A. Yes. But if you go a little bit -- sorry, sorry.

Q. What I am suggesting to you, Mr Berezovsky, is that this shows that while the formal documents would no doubt have to be agreed and signed later, the deal was done in principle by this stage, was it not?

A. Definitely not. Because it's not occasionally that Abramovich mentioned in paragraph 432, if you read that -- 432. I just want to find that in English.

The purpose why Abramovich is in hurry, he phoned me later himself, absolutely clear:

"... (So that he can finish the election campaign in peace)..."

This is the main reason why Abramovich want to report Mr Putin not to worry about ORT problem and, as you know, the result, the result is absolutely clear: we didn't signed anything, in spite of Abramovich was asking, "Sign please anything because Vladimir is waiting me with anything you sign". And we did not sign and next day they put in jail Mr Glushkov and everything happened automatically, nothing more.

Q. Mr Berezovsky, the boxes that I've referred you to show Mr Patarkatsishvili and Mr Abramovich, in your presence, agreed in principle that the deal was done, don't they?

A. In my presence, it's absolutely correct. Badri, as I told you before, played a game which he knows to play because he knew my position: that I don't accept to sell ORT. And it's absolutely clear: as a result -- I would like to stress, my Lady, that why I insist and I can confirm my position: because the deal was done on 24 or 27 December and if everything was ready, like Badri and Abramovich are discussing now, why it was not signed the next day, after I gave up and said, "Finish the story, Glushkov in jail, I ready to sign"? Why it was not signed? Only because of one reason: because it was not still a deal. It was not ready to sign.

Because what was signed finally -- and this is the question, because I didn't pay attention to this question -- what was signed finally, how it was corrected and so, it's important, maybe not so important, but what is important that it was not signed. It was not signed until 24 December. If everything was ready, why not to sign immediately? Because it was not ready.

Q. The only thing that was outstanding after this meeting was the arrangements for the transfer of the funds to the west in a way that would solve any problems related to Russian exchange control or western money-laundering regulations; that's correct, isn't it?

A. It was one of the worry what Badri had and me, if we took a decision to get the money.

Q. Finally, Mr Berezovsky, would you turn to box 449, E6/01/154.

A. 449?

Q. Box 449.

A. Yes, just a second. Yes.

Q. Mr Abramovich says there:

"What, then, should we sign then so that I could take it to Vladimir Vladimirovich, show it to him and say: here you are, the deal is done..."

He's asking what documents should be signed so that

he could establish that the deal is done.

A. Yes.

Q. And Mr Patarkatsishvili, two pages further on at box 450 E6/01/156, says:

"... we have signed everything. Now, as soon as the payment goes through, they can already get the shares... we have already signed everything (we have everything signed)."

Now, that is a reference, isn't it, to the fact that all of the preliminary steps necessary to transfer the shares, such as the issue of the pre-emption notices and so on, had been sorted out in Moscow in the course of November with Mr Gorodilov?

A. It's very good word what you mentioned now, "preliminary signed". I hadn't seen anything preliminary signed, yes? I hadn't seen anything preliminary signed and this is a good point. And moreover, as I have clear recollection, Mr Dubov called me surprising that he should sign paper on 24 or 20 -- 24, I think, December and only that time the papers were completed; not before.

MR SUMPTION: My Lady, that would be a moderately convenient point to break.

MRS JUSTICE GLOSTER: Have we finished with this transcript?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(11.32 am)

(A short break)

(11.44 am)

MR SUMPTION: My Lady, having told your Ladyship as we rose that we could put away E6, there is one thing that I should perhaps --

A. I'm sorry, I don't have it.

Q. -- have pointed out to the witness. Perhaps the witness can be given E6 again. If you could find for the witness box 408 E6/01/140.

A. 408?

Q. 408, yes.

A. Oh, we miss that. E6. 408. We miss these papers.

Q. Sorry?

A. We miss these papers, there is no papers. We have 400 and then 426.

Q. Well, you certainly had it 20 minutes ago because I asked you a different question about this, so I'm not sure what's happened to it.

MRS JUSTICE GLOSTER: It's page E6/01/140 in the English.

MR SUMPTION: Can somebody find the witness box 408, please, or the piece of paper on which it was once written.

THE WITNESS: Because it doesn't --

MRS JUSTICE GLOSTER: Are you looking at it in the Russian?

THE WITNESS: I look not. I look at the English translation, Russian text and commentary in English and there is no papers with --

MRS JUSTICE GLOSTER: The page is missing.

THE WITNESS: The page is missing here.

MRS JUSTICE GLOSTER: You look at it in the Russian then.

THE WITNESS: Yes, yes.

MR SUMPTION: Now, between boxes 408 and 411 there is a private conversation between you and Mr Patarkatsishvili while Mr Abramovich is on the telephone. Do you see that? You can see he's on the phone from 407 and from 409.

A. Just a second. (Pause)

Yes, yes.

Q. Right. Now, the private conversation that you had while Mr Abramovich was on the phone consisted of Mr Patarkatsishvili saying:

"Borya, well, we need to finish this off, don't you think? So a decision must be taken, one way or another, right? I am absolutely fine with what I am being offered..."

And then he continues, 410:

"The only thing is, they're saying that we should make the transfer from offshore... This will not, in any case, achieve legalisation, right? Therefore, what is

the point of it for us?"

And you say:

"Yes."

Now, there's then a further conversation about the cost of legalisation which appears to be concerned with satisfying money-laundering enquiries.

Now, this isn't Mr Patarkatsishvili playing any game, is it, because this is a private conversation with you?

- A. No, it's not so. I explain you. It's private conversation that Abramovich is still hear. It's my understanding, again. And it means that Badri not -- didn't tell me in secret, yes? And he is discussing with me, you're correct, but again I want just to confirm that Abramovich still hear. I don't know what kind of acceptance of the situation Badri has. But again and again, I never gave any confirmation on any messages that I accept what they are doing, what Badri is discussing.
- Q. What you didn't say privately to Mr Patarkatsishvili was, "I'm not selling at all", did you?
- A. Again, Abramovich is here telling by telephone. It's the situation like it is and game is absolutely the same, as I understand.
- Q. Now, let's just move on to the next day, 7 December.

Mr Glushkov was arrested in Moscow on 7 December.

A. Yes.

Q. You, I think at that time were in Cap d'Antibes, having returned there from Paris the night before. Is that right?

A. I returned back to Cap d'Antibes the same day of meeting in Le Bourget.

Q. Yes. Now, you tell us in your witness statement that at the time of Mr Glushkov's arrest, his lawyers were with him. This is in fact in I think one of your later witness statements. You may be able to remember it.

Do you remember being told that his lawyers were with him --

A. Yes. He called me around -- he called me around 10 o'clock French -- European time. It was around 12.00 midday in Russia when Nikolai was arrested; immediately he called me.

Q. Right. I thought it was in fact his lawyers who called you?

A. It's complicated. My recollection is that likely it was Mr -- I don't remember -- Borovkov, I think, lawyer called me.

Q. Mr who?

A. I think my recollection is it may be Mr Borovkov, lawyers, who was lawyer, he called me. But lawyer.

I don't remember Borovkov, but I remember Borovkov as a lawyer.

Q. As I understand it, as soon as you heard the news about Mr Glushkov's arrest, you concluded that this was Mr Putin's way of getting at you. Is that correct?

A. It is correct.

Q. Now, you then immediately, after hearing the news of the arrest, decided, didn't you, that you would give to Mr Putin what you thought he wanted and sell out of ORT?

A. No, immediately I made the -- immediately I made the call to Badri, because Badri still had been in Paris that time, and I call him because -- as I remember, when I returned back from Paris I also called him; it doesn't matter -- I called him and talked to him about this news. And I don't remember well what happened then but definitely conclusion was that we are now in the corner; we don't have any choice.

Q. Right. So as soon as you heard the news of Mr Glushkov's arrest, you decided that you would have to sell?

A. I even gave interview to Ekho Moskvyy at the same day saying that I decide to sell it and I tried to conclude that in short time.

Q. Yes. Now, if you decided as soon as you heard the news of Mr Glushkov's arrest that you would have to sell out

of ORT, then it can't have been any visit by Mr Abramovich to Cap d'Antibes that caused you to do so?

A. It's completely opposite. I took a decision -- first of all I try, as I told you, to recollect exact date, and it was a lot of investigation. I have done my -- my wife's recollection, my bodyguard's recollection, people who have been there, and not only; we even calculate the flights and so. Today my recollection, the most my recollection is that has happened on the 7th, the same day, or it happened 8 December.

My recollection is -- and again, my Lady, the point is that I forgot at all about Le Bourget, and I forgot at all about Le Bourget because everything what -- because Nikolai arrest was, as I told you, absolutely was shocking me and it's the reason that only later on I remind -- recollect that meeting in Le Bourget.

My recollection even now is it's happened definitely 7th or 8th but I can't make a choice and I can't --

MRS JUSTICE GLOSTER: What are you saying happened on the 7th or 8th?

A. 7th or 8th, correct.

MRS JUSTICE GLOSTER: What are you saying happened on the 7th or 8th?

A. It's meeting with Mr Abramovich in Cap d'Antibes.

MR SUMPTION: Well, we'll come to the date. But there's

a difficulty, isn't there, before we get to that? Your evidence is that as soon as you learnt of Mr Glushkov's arrest, which was very shortly after it happened, you decided you'd have to sell out of ORT?

A. Yes, I announced that on the evening of the 7th.

Q. Yes. Well now, if you decided straight after hearing about Mr Glushkov's arrest that you were going to have to sell out of ORT, unless Mr Abramovich was already there in Cap d'Antibes when the news came through, you couldn't have been influenced by anything that he said to you, could you?

A. No. The point is that, as you remember, our discussion with Mr Abramovich in Cap d'Antibes is the condition to give up is Mr Glushkov release. And this is a key point because after that I told that I am not interested more in money at all; I am interested in just the condition should be Glushkov should be released.

Q. Mr Berezovsky, I don't think you're really grappling with the point I'm putting to you. Your case is that you would never have sold out of ORT if it hadn't been for what Mr Abramovich said to you on this visit to Cap d'Antibes. That's your case, isn't it?

A. My case is absolutely clear: that I would not sell ORT if Glushkov would not be arrested and I would not sell -- I wouldn't sell ORT if Glushkov would not be

released, and this is the point which I discussed with Mr Abramovich in Cap d'Antibes. As I told you just now, I don't remember, happened on the 7th, and it means that I decree -- that I decree my position, present my position, when already Abramovich visited me or it's happened later, one day later.

Q. Mr Berezovsky, is it your case or is it not that it was Mr Abramovich's threats that caused you to decide to sell out of ORT?

A. Definitely, but threat already have done by Putin himself, putting Mr Glushkov in jail.

Q. Now, the point I'm putting to you is very simple --

A. Abramovich was just messenger of that.

Q. If you decided to sell out of ORT as soon as you heard the news from Mr Glushkov's lawyer that he'd been arrested, unless Mr Abramovich was already at Cap d'Antibes, he couldn't possibly have influenced your decision?

A. Definitely he could not influence to my decision but I still have in mind my clear understanding that the condition finally will be if Nikolai Glushkov will be released. I was very emotional, as you understand, that day and I don't remember exactly what happened. But the point is absolutely clear: that condition was to release Glushkov, in spite of I said I don't have choice, but

I have arguments to make happen that Glushkov will be released because I had hope that if he will not be released, I will not accept that.

Q. Would you please turn to paragraph 361 of your witness statement D2/17/274. What you say --

A. Just a second. Paragraph?

Q. Paragraph 361.

A. Yes.

Q. What you say is that you regarded Mr Abramovich's words to you as being an implicit threat --

A. Yes.

Q. -- that if you didn't sell out of ORT, he would keep Mr Glushkov in jail for longer.

A. Yes.

Q. That's your case, isn't it?

A. Yes, it's correct.

Q. Right. Now, you say -- see the last sentence of this paragraph -- that:

"On [this basis, and [on that] basis alone, [you] agreed to sell [your] interest in ORT."

A. You are correct.

Q. And you agreed, as I understand your case, with Mr Abramovich there and then, while he was at Cap d'Antibes, that you would sell?

A. Mr Sumption, you remember that in my interview I said:

I will take a final decision in two days, if you refer to my interview to Ekho Moskvyy. It means that I was in position -- sorry, Mr Sumption -- that I was in position: on the one hand I didn't have choice; on the other hand I want to be sure that if I sell, Mr Glushkov will be released. This is the point. And if you open my interview in Ekho Moskvyy, it's written clear: I will take a final decision in two -- in couple of days. This is the point.

Q. That is what you said to Ekho Moskvyy.

A. Yes, correct.

Q. But what you actually decided to do was to sell your shares to the State, and you made that decision immediately and certainly on the same day, the 7th, didn't you?

A. Mr Sumption, I present my position in Ekho Moskvyy like it is. Definitely I already took my decision to sell ORT shares because they put me in the corner, but I said that I need two days more to take a final decision. It means that I present my position. My understanding that I am in the corner, I was really shocked, and I present my position. But I took the final decision, as it's correctly I gave in my interview, only after we agreed that Mr Glushkov will be released because I will sell my shares in ORT.

Q. Could you please turn to bundle H(A)29/206, which will be produced.

A. H...?

Q. Somebody is just about to give it to you. Right?

A. Yes.

Q. Do you have page 206? This is a report in the Moscow Times which is based in part on an interview with you.

A. Just a second. What is date?

Q. 20 April 2001.

A. Okay.

Q. Now, if you look at the bottom of the article from the Moscow Times, what you say is:

"'Glushkov's arrest was a clear signal to me that I have to sell my stake to the State immediately'..."

A. Yes. Yes, it's true. It's correct, yes.

Q. That was true, okay. Now, you will see on the same page, about two-thirds of the way down, there's a reference to an interview --

A. Which page?

Q. Same page, about two-thirds of the way down the page, there's a reference to an interview on your website which I think was called grani.ru. That's your website address, isn't it?

A. What does mean "my website"? It's site which I funded.

Q. Yes, and which has got an awful lot about you in it?

- A. It's not -- definitely it's not correct to give any answer. Maybe they know a lot about me; maybe they don't know.
- Q. Right. Well now, I wonder if you could -- I'm afraid this is not in the bundles but we will make sure that it gets into them. I want to show you an interview with yourself that appears on the website and there's a Russian and an English version of the website. You may prefer to look at the Russian one. (Handed)
- A. When it was?
- Q. This was posted in April 2001.
- A. April 2001, yes, yes.
- Q. What you say here, if you look at the first answer under the photograph:
- "I regard this..."
- You are being asked by Mr Korsunsky, the interviewer, about a statement you made about your intentions relating to TV6.
- A. Yes.
- Q. You then say:
- "... You know that recently Kremlin bought ORT, namely the portion of shares that was owned by me and my group. It was done through Roman Abramovich, but it was done under the strongest pressure, and I would like to" --

- A. I'm sorry, I don't follow you. Refer, please, again where it is written.
- Q. The first answer that you give under the photograph of yourself.
- A. Yes, yes.
- Q. "You know that recently Kremlin bought ORT, namely the portion of shares that was owned by me and by our group. It was done through Roman Abramovich, but it was done under the strongest pressure, and I would like to point out again that I decided to sell my shares to the State on the day Nikolai Glushkov was arrested."
- A. Mm-hm.
- Q. That was the time that you made that decision, was it not?
- A. Mr Sumption, why you don't want to open my interview to Ekho Moskvyy? What is written there?
- Q. I accept --
- A. I just want to say, to tell you, immediately, the same day and so, again, it was so painful for me. On the one hand, I clear understood, my Lady, that I don't have choice after Glushkov was arrested and it's position which I presented but I definitely took some -- how to say? -- some break to understand how it could happen.
- And only way for me to sell it, even when I said after Glushkov was arrested, "It means that he will be

released if I will sell, yes?" This is the point: that he will be released if I sell. And the point what I discussed with Mr Abramovich, "I accept any price you like and for me the importance is only releasing Glushkov", that's it. And I never changed my understanding of that or changed my position on that.

Q. Mr Berezovsky, when you learnt that Mr Glushkov had been arrested, you've told us that you regarded that immediately as being Mr Putin's way of getting at you to make you sell out of ORT.

A. Yes. Definitely, yes.

Q. So without Mr Abramovich having to tell you so, you realised that one way of getting Mr Glushkov out of jail might be to do what Putin wanted and sell out of ORT?

A. You are correct.

Q. You didn't need Mr Abramovich to tell you that, did you?

A. No, I need Mr Abramovich because -- Mr Sumption, definitely I told you that I didn't remember Le Bourget meeting when I describe the meeting in Cap d'Antibes initially. But later on, definitely, if you -- but nevertheless meeting in Le Bourget happened; no one able to refuse that finally. And if it's happened, it means it just was continuation for me that time because that time it was continuation for me what happened in Le Bourget.

And as a result of that, I was in position to sell and definitely I want to understand: is it possible to exchange the selling to releasing of Glushkov? We are not able now to -- again, to discuss just in Cap d'Antibes without understanding the day before happened Le Bourget and day before happened Maski show. It's not correct because all events has a logic together, only altogether; not just to pick up one of them.

Q. Look at paragraph 358, please, of your witness statement D2/17/273.

A. 300...?

Q. 358.

A. Yes, just a second.

Q. "I gave a telephone interview to the Ekho Moskvya radio station on the day of Nikolay's arrest and expressed my view that President Putin was trying to get at me via those closest to me. However, I announced immediately that I would be giving President Putin what he wanted, namely ORT. In an interview on 7 December... with NTV (which was reported in Russian newspapers), I announced that I was abandoning my plan to transfer ORT into a trust. I explained that I was doing this because the trust would have been placed under incredible pressure by the Kremlin. This was correct, but I also understood

that I would have to give up ORT to the State so as to secure Nikolay's release."

A. Yes, correct.

Q. Now, my question is this, Mr Berezovsky: you came to that conclusion without needing to have any conversation with Mr Abramovich?

A. Definitely. On the one hand conclusion was without any conversation with Abramovich. On the other hand, I want to understand condition and I want to send clear message that I don't worry more about money, I worry just about releasing of Nikolai Glushkov. And as far as Abramovich already took mission to be messenger between Putin and me, he is absolutely correct person to present my position to Mr Putin.

Moreover, moreover, Abramovich said that Nikolai will be released, as I understand he already talked to Putin, I don't know, by telephone or somehow, that Nikolai -- or Voloshin, maybe, I'm not sure, president maybe with Voloshin, because he said that his message is from Voloshin and Putin, and he already said -- and he accept during our meeting in Cap d'Antibes.

Moreover, Mr Sumption, I would like to remind you that from the very beginning I told that it have been meeting in Cap d'Antibes and Abramovich at the beginning did not refuse that, did not refuse that it have been

meeting. Moreover, Mr Sumption, I would like to stress you to -- again, my Lady, it's important what we are discussing, the principle important, because, as Abramovich in his witness statement, after Le Bourget I met him just once and meeting have been in Le Megeve in beginning of January. If you read the statement of Mr Abramovich in Le Bourget, you will recognise that Abramovich said, "But it was meeting between Berezovsky, Badri and me, and Berezovsky did not say anything".

My Lady, you know me a little bit, I speak maybe too much, and it's almost impossible to accept what Abramovich present in his witness statement: that after Badri was arrest, I met Abramovich the first time in Le Bourget and didn't say anything at all. It doesn't work. It's the reason why I was absolutely sure from the beginning that this meeting have been -- I forgot about Le Bourget, it's true; but when Le Bourget happened, I already create the logic of what has happened, but it's impossible that I did not meet Abramovich at all after Nikolai was arrested and met him just one forever, forever.

I said, "Roman" -- in Cap d'Antibes, I said, "Roman, this is our last meeting, I don't want to see you more". And next time I met him in Hermes shop in Sloane Street just to serve him invitation to the court; that's it.

Q. Let's get back to 7 December.

A. Yes.

Q. Your old friend Mr Goldfarb came to visit you at Cap d'Antibes on that day, didn't he?

A. Mr Goldfarb recollect that, I didn't, but I accept his recollection.

Q. Did you meet him at the airport?

A. Whom?

Q. Mr Goldfarb?

A. I don't remember that.

Q. Did he stay at the Chateau de la --

A. No, no, moreover, I am sure that I did not meet him in airport and he came to visit us because his son stay in the house near the main house in Clocher, in Cap d'Antibes the same.

Q. He stayed at the Clocher de la Garoupe, which you used as a guest house for the chateau?

A. You are correct.

Q. Did he come straight to your property from the airport?

A. I don't remember that.

Q. Well, we know that he arrived in Nice at 9.50, from his own witness statement, in the morning.

A. Yes.

Q. And he says that on his way to see you he was phoned by a journalist friend in Moscow who told him that your

intention to sell out of ORT was already out in Moscow, together with reports that Mr Abramovich would be buying the shares.

A. Mr Sumption -- sorry.

Q. He says that he asked you on his arrival whether that was true and you confirmed that it was. Is that correct?

A. Yes, first of all, the first interview about Glushkov arresting I gave just, as I understand, late afternoon, not in the morning. It means that Mr Goldfarb's recollection is completely wrong.

Q. I see.

A. Moreover, I know well that I did not discuss -- not I know well -- I did not remember that I discuss with anybody except of my wife and except of Badri at that time what was happening because I afraid to -- I afraid to break my opportunity to release Glushkov.

It's the reason why, again, we discuss all the time when it happened, the 7th or the 8th. My -- again, not my recollection, my logical understanding is it happened more likely at the 7th than at the 8th, and Abramovich came with Badri from Paris and Badri came the first just to make me come, because he knows that I didn't have any doubt that Abramovich is a messenger and play game together with Putin.

Q. So is this your theory? We know that Mr Abramovich returned to Moscow on the evening of 6 December because his passport stamp records his entry into Moscow Airport on that date. You say that at some stage after Mr Glushkov's arrest on the next morning, he flew straight back to Paris, met Mr Patarkatsishvili, and the two of them came down to Nice to see you. Is that your theory?

A. Definitely not.

First of all, you're referring to passport stamp. It's a special story, my Lady, and if you'll see how long time we spent to identify what means one stamp, what means the other stamp. And until now, as I know, Mr Abramovich refuse to invite the person who gave him information how it's happening in Russia, it's the deputy of FSB --

MRS JUSTICE GLOSTER: Well, we don't need to go into that. Just give your evidence.

A. Absolutely, 100 per cent. It's not the base for that.

But, on the other hand, in Le Bourget transcript, which you I understand read attentively, it's clear that Abramovich said, "I will fly tomorrow". Abramovich is rejecting now that. But it's his words, as I recognise. Abramovich later on said, "No, it's not my words". But his -- my recollection, again, the most likely

recollection -- I want to be very precise, my Lady -- that they came the next day, Badri and Abramovich separately. Badri came the first, just to prepare me, because he know that I didn't have any doubt that it's Abramovich and Putin together, and then Abramovich appeared. This is my -- the most likely recollection.

MR SUMPTION: Mr Berezovsky, I'm not going to cross-examine you on anything connected with the stamps for the additional reason -- and my Lady should know this -- that we have received from Addleshaws a letter saying that, having examined the original of the passport, they confirm that the 6 December 2000 stamps in both Mr Abramovich's and Mrs Irina Abramovich's passports are no longer in dispute.

Now, could you please turn to paragraph 359 of your witness statement D2/17/274. Now, you have just said in your last answer that you now clearly remember that Mr Abramovich came down to Cap d'Antibes shortly after the arrival of Badri, that Badri prepared you for the imminent arrival of Mr Abramovich and that Mr Abramovich himself then appeared. Right?

A. Yes, it's my most likely recollection.

MRS JUSTICE GLOSTER: Excuse me. When you say your "most likely recollection", a moment ago you seemed to be suggesting that you were, as it were, constructing

a theory logically.

- A. No, no, no. Because my recollection -- on the one hand you're correct, my Lady. On the other hand I still have a little bit doubts about the 8th. And it means that my recollection almost -- not 100 per cent, first of all, but almost 100 per cent that has happened on the 7th.

MR SUMPTION: So you're not reconstructing from documents; you are actually recollecting almost 100 per cent that this was when it happened. Is that right?

- A. I don't reconstruct any documents, you are correct; I reconstruct just my memory. I try to understand my feelings and my memory, nothing more. On the other hand, when I present this position, definitely I try to understand how it's happened and events which happened before and events which happened after. Again, my recollection is that it's happened at the 7th.

Q. Well, Mr Berezovsky, if you have a look at paragraph 359 of your witness statement --

- A. Yes.

Q. -- what you wrote here is:

"A couple of weeks after Nikolay's arrest, towards the end of December 2000 and a day or two before Christmas, Mr Abramovich came to my house in Cap d'Antibes, where I was then living..."

- A. Yes.

Q. You obviously then did not have the recollection you've just described when you wrote this witness statement.

A. Mr Sumption, I changed my recollection many times.

Q. Indeed you have.

A. I changed my recollection many times because it was so emotional and if you look at my witness -- at my discussion with Mrs Duncan in Tel Aviv in 2000 --

Q. 2007.

A. -- 2007, you will see that I told there that it's happened shortly after Nikolai was arrested.

Q. I think you told her that it was on 17 December.

A. This Michelle Duncan, this Michelle Duncan mark 17 because initially I also want to remind it's happened on the 7th or 17th. Then definitely I recollect that it's happened on 7 December, Nikolai arrested. But I really change many times of my recollection, it's happened immediately or it's happened later, because information which influence to me, particularly Le Bourget meeting and so.

Q. Mr Berezovsky, what's actually happened is that you have put various dates as being the date when this meeting occurred.

A. Yes.

Q. Each time you identify a date, someone points out that you were somewhere else, usually on the other side of

the world, when this happened, so then you try another date. That's what's happened.

- A. I didn't try anything. You put me the question: is it your reconstruction, logical reconstruction of events, or it's just because of your recollection? And I gave you absolutely clear answer. It's not reconstruction because I put logical construction: definitely I fix some point and then try to follow this way. I just present my -- my reconstruction -- my feelings, my memory, my recollection. That's it.

Because, Mr Sumption, again, I don't want to explore too much the same point --

- Q. No, I'm not surprised.

- A. -- but, my Lady, just to pay you attention, I really forgot about Le Bourget. I really forgot about Le Bourget, a principal meeting, because arrest of Nikolai was just like explosion and I forgot a lot what happened before.

It's happened once in my life when I had car accident and it's very famous story in psychology: when you have a shock, you don't remember what happened ten minutes ago or half an hour ago. I have car accident and I didn't remember what happened two hours before. I remember that well. This almost the same.

Again, I don't ask excuse. It's my recollection

which unfortunately changed several times.

Q. Well now, Mr Berezovsky, you told us a few moments ago about what you said to Michelle Duncan: you said that you told Michelle Duncan that it happened on the 7th. I'm going to ask you to look at Michelle Duncan's notes of that meeting, which will be handed to you: they're in R(D)2/30/120. This is quite a confusing bundle to handle because there are internal divisions 1, 2 and 3.

A. I can take this H(A)29 --

Q. Yes, in a moment somebody, I'm sure, will remove that for you. You don't need it anymore. It's in flag 30 --

A. Just a second.

Q. I'm addressing not you, Mr Berezovsky --

A. Sorry.

Q. -- but the gentleman who is trying to help you behind.

Now, is that headed at the top of the page "Michelle Duncan's notes of Tel Aviv meetings with Badri in November 2007"?

A. Just a second.

Q. I'm not asking you, I'm asking the assistant. Right.

Could you look at it, please, and look at the top heading on the first page that's open in front of you, "Michelle Duncan's notes of Tel Aviv meetings with Badri in November 2007". Do you see?

A. Yes.

- Q. Right. Now would you please turn in the bottom left-hand numbering to page 122 R(D)2/30/122. It's the third page behind the flag.
- A. Page?
- Q. The bottom left-hand numbering, page 122. It's the third page. If you turn two pages on from the bit you've just been looking at.
- A. Yes.
- Q. Right? You will see in the margin on the left the initials "BB": that's you.
- A. Yes.
- Q. And you'll see in the second box down from the top:  
"Glushkov arrest Dec[ember]."  
Do you see that?
- A. Just a second. "Glushkov arrest Dec[ember]", yes.
- Q. "17 [December] RA came to France -- arranged by Badri."
- A. Mm-hm.
- Q. So the date that you actually gave Michelle Duncan was not the 7th, it was the 17th?
- A. No, it's not what I gave her, it's what she wrote here. She write nevertheless.
- Q. She wrote 17 December.
- A. Again, she wrote like that. I can't recollect that I said 17th or 7th but I think, again, that it's correct written here that I said 17th.

Q. Right, thank you.

Well now, in your statement in support of Mr Glushkov's asylum application, which was made in February 2007, you said that Mr Abramovich's threats to you were delivered at the end of December. Do you recall that?

A. I think so. I don't want to check but I hope you're correct.

Q. Right. And in your main witness statement for trial, as I've just shown you --

A. Mm-hm.

Q. -- paragraph 359, you say that it was a couple of weeks after Mr Glushkov's arrest and a day or two before Christmas.

A. Yes, yes.

Q. Now, the common feature of all these statements is that they place the meeting in the second half of December, at least ten days after Mr Glushkov's arrest. Do you agree?

A. Yes, but -- yes, I agree.

Q. Now, as I understand your evidence, it was at the meeting with Mr Abramovich --

A. It was --

Q. Let me finish the question -- at Cap d'Antibes and faced with the threat that Mr Abramovich, you say, had made to

you, that you said to him, "Okay, I'll sell the shares".

Is that correct?

A. You're absolutely correct.

Q. Now, you say in your witness statement that after the meeting with Mr Abramovich -- look at paragraph 365, if you would D2/17/275.

A. 365, yes.

Q. It's just a page beyond the last bit you had open. You say that:

"After the meeting with Mr Abramovich... [you] left it to Badri and Dr... Dubov to deal with the detail of how the shares would be transferred."

Do you see that?

A. Yes.

Q. That's true, is it?

A. Yes. And I refer today that I met -- that I talk to Mr Dubov how the shares will be transferred at around 24 December 2000, correct.

Q. Well now, Mr Dubov was the deputy director general --

A. Yes.

Q. -- of Logovaz, wasn't he?

A. Yes, yes, correct.

Q. And Logovaz held 11 per cent of the shares in ORT-KB?

A. Yes, correct.

Q. And was that the reason why you were --

A. No, not -- just ORT, not KB. ORT-KB own 39 per cent and Logovaz itself own 11 per cent.

Q. Okay. That was why Mr Dubov had to be involved, wasn't it?

A. Correct.

Q. Now, presumably you wanted both Mr Patarkatsishvili and Mr Dubov to deal with the details as fast as possible?

A. They made it at the 24th and I ask them to move as quick as possible after I agreed with Abramovich that Nikolai will be released. Definitely we're in hurry to release Nikolai on the eve: on the one hand 24th; on the other hand it was birthday of Nikolai Glushkov, 24 December.

Q. Well now, if Mr Abramovich visited you at Cap d'Antibes on 7 December --

A. Mm-hm.

Q. -- why did you wait until 24 December before telling Mr Dubov to get on with organising the transfer?

A. I didn't give Mr Dubov information to organise the transfer. I confirm when Dubov called me with all prepared documents that we are doing that. He need my confirmation. It means the preparation, completely opposite to your previous discussion, started just when I decide to sell ORT and change Glushkov to ORT.

But, my Lady, on the other hand, the same meeting with Michelle Duncan, the same, and if you turn to the

page 130, the page before the last, and if you will see "AP" on the top, it's written here:

"2 meetings w[ith Roman Abramovich] -- Fouquet [plus] Antibes."

It's written clear here.

Q. Now, Mr Berezovsky --

A. Threat made.

Q. Mr Berezovsky, I entirely accept that you have said before that this meeting happened but, as you will understand, the point that I am leading up to is that you've made this up.

A. Mm-hm.

Q. But we'll come to that.

Now, you may recall -- have you read Mr Dubov's witness statement?

A. Sorry?

Q. Have you read Mr Dubov's witness statement in this action?

A. No, not at all.

Q. Could I ask you to look at a part of it now, please.

Bundle D1/12. Right. I would like you to turn in Mr Dubov's witness statement to paragraph 114, which is on D1/12/285.

A. Mm-hm.

Q. Okay?

A. Yes.

Q. Now, in the previous paragraph, paragraph 113, he is describing a conversation with Mr Abramovich. In paragraph 114 he then says:

"Immediately after Roman called me on 24 December, I spoke with Boris. Boris called to tell me that I should proceed with the deal..."

Now, Mr Dubov's evidence therefore was that you telephoned him and told him to proceed with the deal on 24 December.

A. Yes.

Q. He says:

"... it was clear that he and Badri had already agreed this with Roman."

Okay?

A. Yes.

Q. Now, the question that I have for you is this: if Mr Abramovich came and threatened you and forced you to agree to sell on 7 December, as you now suggest, why did you wait until the 24th before talking to Mr Dubov?

A. It's absolutely clear: because after in principle we agreed with Abramovich that Nikolai will be released, we start to negotiate -- not me personally, I don't remember that, because, as I told you, after that meeting I never talked to Abramovich at all; it was

negotiation which I think led by -- Badri leads -- that Nikolai should be released until 24th. This is the point.

And it's nothing illogical that after we took a principal decision, we want to be guaranteed that Glushkov will be released. Definitely we are not able to get written guarantee because no one could imagine that written guarantee; it means something from Mr Putin that time. But it's absolutely clear that our approach was to release Glushkov as quick as possible.

Q. You say, as I understand your evidence, that Mr Abramovich gave you that guarantee. Is that right?

A. Yes.

Q. And you now say that he gave it to you on 7 December?

A. And he gave it on 7 December, if we calculate the meeting. I recognise meeting was on 7 December.

Q. So I repeat my question: having got that guarantee on 7 December, why did you wait until the 24th in order to get Mr Dubov to act on it?

A. Again and again, if Glushkov will be released, we will immediately release the paper; but as far as Glushkov was not released, definitely we continue to insist to release Glushkov because, as I told you just before, we are not able just to have written guarantee and Glushkov will be released automatically.

Q. Why didn't you, if your story is true, Mr Berezovsky, ring up Mr Dubov on 7 December itself, immediately after your meeting with Mr Abramovich, and tell him, "I've made this agreement to sell out of ORT, please get moving on the 11 per cent that Logovaz owns"?

A. Because, as I understand, first of all Badri continued to manage this situation and to prepare all agreements and that completely coincide with my previous point of view that nothing was prepared for that.

On the other hand, as you know the result, Nikolai Glushkov was never -- was not released. It means that we insist that he should be released and they did not release him. Finally we agreed, and I remember that well, that he will be agreed (sic) on the 24th, and we wait up to the last moment; and when finally recognise that it will not happen, we decide, okay, what to do. We don't have choice now.

Q. Mr Berezovsky, it's become apparent to you, hasn't it, over the last few weeks before the opening of this trial that the date which you originally gave for this meeting was impossible because you flew to Luton on 16 December and from there to the United States, where you arrived on the 17th?

A. You're absolutely correct. As more information I have about my flight, more opportunity I have to recollect

what has happened, to excluding when it can't happen.

Q. You accept that you were in Washington on 18 December and in Aspen, Colorado on 21 and 22 December, don't you?

A. I absolutely accept that and we wrote when we investigate in absolutely details all flights and all -- I reconstruct events and Alex Goldfarb remind me that I have been in Washington opening the Foundation for Civil Liberties in conference. And when we really reconstruct and reconstruct what was not -- when it was impossible to think what happened, but I think I still continue to recollect, to recollect what has happened. And it's absolutely natural way to exclude what logically impossible.

Q. And your passport stamp shows that you passed back through Luton on 26 December from America?

A. It's my stamp in the passport, it's correct. And moreover we call all hotels, all credit cards bank, all aviation, I mean the company which I use and company which even I use before, asking them to give us all information.

Q. Now, you now say, as you've told us, that this visit occurred almost certainly on 7 December; that's right, is it?

A. Yes, that's correct.

Q. That's your evidence now. Now, in your latest witness

statement, you say -- and you also said this orally yesterday -- that you always remember or you usually remember events that are of great emotional significance to you. Do you remember saying that?

A. Yes. You're correct.

Q. Was the arrest of Mr Glushkov an event of great emotional significance to you?

A. The most. One of the most in my life.

Q. And Mr Abramovich's visit to Cap d'Antibes, was that an event of great emotional significance to you?

A. Much less, but also emotional strong.

Q. Now, if these two events happened on the very same day, I suggest that you would always have remembered it and you wouldn't have had to shift about choosing one date after another.

A. I was waiting this your question. It's good question. And I tell you I recollect definitely the arrest of Glushkov; I recollect definitely the meeting with Abramovich in Cap d'Antibes. I did not recollect that it's happened in the same day and I think, again, because it's so emotional, was Nikolai Glushkov arrest, that I did not coincide those two events, I did not put those two events in one day. It was too much for one day. It's the reason why initially I didn't remember that it could happen at the 7th.

Q. If Mr Abramovich came to see you at Cap d'Antibes on the 7th, after the arrest of Mr Glushkov, which occurred, you've told us, at about midday in Moscow, Moscow time, he would have had to get into an aeroplane from Moscow at mid-day Moscow time, head for Paris, meet Mr Patarkatsishvili, then come down to Nice and then arrive, according to your wife, after lunch at Cap d'Antibes to see you.

A. I don't believe in that.

Q. No.

A. As I told you, I believe that Abramovich came from Paris together with Badri and there is a plane who took three passengers, because they don't put name in the flight list, they put just number of passengers and dates. And Abramovich came, as I understand -- definitely logically, not my recollection -- came the same day.

They land in -- not in Nice airport, which happened regularly, they land in Marseilles, and then we reconstruct because that time was the summit of European leaders in Nice and they came from by helicopter or by cars, I don't know, by cars, I don't know. And Badri -- as I remember, when Abramovich came -- it's again picture in my eyes -- when Abramovich came, I already had been with Badri. I remember the room where we were sitting and this was not sunshine that day, but this is

other story.

Again, it is the reason why I think that it's almost 100 per cent it's happened on the 7th, not on the 8th, and what is -- definitely it's happened. And Abramovich, it's not -- your theory that Abramovich he turn back, then returned back, as far as stamps is concerned, my Lady, it's a very special story; we will discuss that, I think, again and again. And until now, as I understand, the key witness statement (sic) is not ready to go and to give witness statement, who -- I mean this higher level officer who is head of -- who is head of custom officer, who made statement for Mr Abramovich, but he refused, I don't know why, to come as a witness statement -- as a witness.

MRS JUSTICE GLOSTER: No, I don't think you need to go into that at this stage. I still have to make the ruling about that.

A. Just to let you know that it's special story about stamps is concerned. On the other hand, as I told you in Le Bourget transcript it's clear for me -- and it was not made by me, it was made by professional -- that Abramovich said, "I will fly tomorrow".

MR SUMPTION: You'll be glad to hear, Mr Berezovsky, that we won't be discussing this particular stamp endlessly because your solicitors have told us that the passport

stamps of Mr Abramovich and his wife for that date are no longer in dispute.

Am I right in thinking, however, that the whole of this notion of yours that Mr Abramovich came to see you on the 7th depends on the idea that instead of going back to Moscow on the evening of the 6th, he actually stayed in Paris overnight? Is that what you're suggesting?

A. Yes.

Q. I see. Well, at least we know where you're coming from.

Now, what I suggest happened is that you remembered a meeting in Cap d'Antibes in late 2000 when you came to devise your case in this action but it was in fact the meeting of 6 November that you remembered. I'm telling you this so that you get a chance to comment on it in a moment.

A. Yes.

Q. You then made up this story about threats and associated it with the meeting that you had had with Mr Abramovich at Cap d'Antibes. Because the story that you had made up involved threats about Mr Glushkov's continued imprisonment, you had to place the meeting in December, so you placed it in December, but without checking where either you or Mr Abramovich were at the time. As a result you have simply been found out. Your story is

nonsense.

Do you follow the point that I'm going to be submitting in due course? Now is your chance to say something about that.

A. I completely disagree with your way of thinking and with your conclusion.

Q. Now, you were, I think, very close to Mr Patarkatsishvili in this period, were you not?

A. Yes.

Q. Did he tell you all about his dealings with Mr Putin and Mr Voloshin?

A. What does mean "all about his dealings with Mr" --

Q. Did he tell you about them?

A. What do you mean? As I told you, I know that he visited Putin in September -- in August 2000, as I told you, convened(?) by Mr Patrushev, head of FSB. That only I know about meeting of Badri and Mr Putin.

Q. Now, you knew about that because Mr Patarkatsishvili told you?

A. About this meeting which we are discussing?

Q. Yes. Is that right?

A. Yes, definitely. Mr Patarkatsishvili told me about proposal of Putin to leave me and to stay with Putin. Yes, I know that well.

Q. And did Mr Patarkatsishvili tell you about discussions

that he had had with Mr Abramovich? When Mr Patarkatsishvili had a discussion which affected both of you with Mr Abramovich, was it his practice to tell you about his discussions?

A. Not every time definitely.

Q. Usually?

A. I think mainly, yes.

Q. Now, could you please have a look at bundle R(D)1/02/13.

A. Sorry?

Q. Let the assistant get it for you.

A. Yes. What is that?

Q. Hang on. Right, do you have -- sorry, the referencing system is quite complex in this volume. Have you got flag 2 at the beginning of that volume?

A. Yes.

Q. Right. That should be a note, as you will see from the top right-hand corner, dated 30 June 2005 of a meeting with Mr Patarkatsishvili. You were not present on this occasion.

A. Yes, I think it's -- okay, I don't remember. Yes, okay, fine.

Q. Now, this is a typed up version of Mr Stephenson's note of his meeting with Mr Patarkatsishvili on that occasion.

A. Yes.

Q. Mr Stephenson, as you'll recall, was a partner of your then solicitors, Carter Ruck.

A. Correct.

Q. Now, could you turn on to page 20 at the very bottom right-hand numbering of the bundle to find the relevant part of this note R(D)1/02/20.

A. Yes.

Q. Now, you'll see a line about a third of the way down the page, a horizontal line.

A. Yes.

Q. The note records:

"Badri met Lesin..."

He was the minister of telecommunications.

A. Yes.

Q. "He negotiated -- agreed 300 [million]. That's all they had -- need to pay for Gusinsky [and] ORT. Badri wanted to sell first -- BB stubborn -- not going to sell -- did not go back to Russia. Agreements breached by gov[ernment] don't trust them."

Then he goes on:

"So we needed trustworthy man" --

A. Sorry, again?

Q. "So we needed trustworthy man..."

That's the next block of text under the line. Okay?

A. Mm-hm.

Q. "... rec[eive]d invitation from Roman to meet -- met in Paris. RA said for your sake -- I will buy shares [and] give them to government -- offered \$150 [million] -- before that agreement with Roman -- for election campaign for Putin \$50 [million] -- our share was \$25 [million]..."

He then refers to, "Fouquet Champs Elysees 3rd table":

"NG mentioned one of main reasons to sell -- Before meeting -- even if not paid -- we will give free for NG release. -- Didn't hesitate. -- Evidently he couldn't -- Voloshin promised in personal conversation with Badri later -- not easy to persuade BB -- thought would deceive -- Badri believed should keep."

Now, what Mr Patarkatsishvili is saying there is that he wanted to sell and would have liked to accept an offer of 300 million from the Russian government and you were more reluctant, and the agreement with the Russian government for whatever reason failed. It then goes on to say, so you and Mr Patarkatsishvili needed a trustworthy man, and that was Mr Abramovich, wasn't it?

A. Mr Sumption, first of all, it's dated 2005. As I understand, it's the first time when I start to act

and ask Mr Stephe -- Andy Stephenson to visit Badri in Tbilisi that time. As we know and as we'll see many times, the notes of lawyers were not absolutely the same what it was the reason to discuss -- what was the real sense of discussion. That time which Badri describe, I don't understand exactly which time he discuss, and it's correct to say that I did not want to discuss to sell at all after Gusinsky was arrested and they start to press me. That's it, because my understanding of ORT was completely different and the price even completely different. But what is the question?

Q. The question was that, after the discussions with the Russian government had got nowhere, you and Mr Patarkatsishvili decided that you needed a trustworthy man. Do you see that's recorded?

A. I don't remember that at all.

Q. And that trustworthy man was Mr Abramovich, wasn't it?

A. I don't remember that at all.

Q. And it was Mr Patarkatsishvili, therefore, who was keen to do a sale to Mr Abramovich?

A. Mr Sumption -- could you please, my Lady, allow me to have a look for the interview which was given by Roman Abramovich press secretary, I don't know, Mr Mann, in 2010 who based here, that to make story a little bit shorter, and Abramovich never refused this interview.

Q. Mr Berezovsky, I'm afraid I am going to set the agenda for this cross-examination and I want your answers about this document.

A. Okay.

Q. Right? Now, I have suggested to you that the trustworthy man was Mr Abramovich because, as we see from the note:

"... rec[eive]d invitation from Roman to meet -- met in Paris."

Do you see that?

A. Again, I can't exclude that at all. I just tell you that I don't know.

Q. Now, Mr Patarkatsishvili says in the note taken by the solicitor that Mr Abramovich offered, for your sake, to get the two of you out of the difficulty of owning ORT, now that you had fallen out with Mr Putin, by buying the shares off you. That was what Mr Patarkatsishvili told the solicitors, wasn't it?

A. No, it was solicitor wrote after he discussed with Mr Patarkatsishvili. It doesn't mean that it's exactly what Patarkatsishvili said. I'm sorry to say that.

Q. Now, Mr Patarkatsishvili is then recorded in this note as saying that one of the main reasons for selling was the position of Mr Glushkov, and we know from the material we've looked at earlier this morning that from

the end of October it had been appreciated that Mr Glushkov was going to be charged and arrested?

A. It means for me now that, unfortunately, Andy Stephenson that time lost completely the subject, I am sorry to say. Because it was first discussion with Badri at all, the first meeting of solicitor, and it's completely wrong story at this point.

Q. But you weren't there, Mr Berezovsky. How do you know what Mr Patarkatsishvili told Mr Stephenson?

A. No, because I know the story, the real story. I won't -- I haven't been there but I know that Patarkatsishvili was well-informed and it's not the story which he present.

Q. Now, according to Mr Patarkatsishvili, who ought to have known, it was Mr Voloshin who had promised, in a direct conversation with him, Mr Patarkatsishvili, that Mr Glushkov would be released. Do you see that?

A. Again, I don't know anything about meeting of Mr Patarkatsishvili with Mr Voloshin, and it's exactly the reason why I have a lot of doubt what is written here.

Q. Right.

A. You're absolutely correct --

MRS JUSTICE GLOSTER: You can't say whether there was a meeting between Mr Patarkatsishvili and Mr Voloshin?

MR SUMPTION: Or a phone call.

A. Yes, yes. I said that I -- I'm sure that Mr Sumption is correct, that if Badri meet Voloshin, I am almost sure that Badri inform me about that but --

MRS JUSTICE GLOSTER: Or if he spoke to him on the telephone?

A. He will tell me that.

MR SUMPTION: Well, Mr Berezovsky, he did tell you about that, didn't he, and that's why you were happy to sell out of ORT?

A. Mr Sumption, I understand, you put the question, I am not able to move away, but if you see the document which I want to present you, it's absolutely clear that I didn't want to sell ORT, including even if Glushkov would not be arrest, because the price for ORT was completely different and Mr Abramovich spokesman confirm the price was completely different. That time the price of ORT was more than billion dollars, this is the point, and this direct reference to Mr Abramovich spokesman which he gave this estimation on the -- November 2010. And again I was 100 per cent sure, no, okay, 100 per cent sure, that if Mr Badri -- Patarkatsishvili talk to Voloshin, definitely he will tell me that.

Q. Right. Because, you see, it's not just Mr Stephenson who recorded that but the same point was independently

noted by Mr Lankshear also of Carter Ruck, if you would like to look on to -- sorry, he was of Streathers. If you look on behind flag 3.

A. After flag 3?

Q. After flag 3, and in the bottom left-hand numbering --

A. Just a ... Before?

Q. After flag 3.

A. It's in writing, yes?

Q. Yes but I'm going to ask you to look at the typed-up version which is at page 39.004 R(D)1/03/39.004. Do you see "PAGE 10"? It's 39.004, there's a heading "PAGE 10".

A. Yes.

Q. Right?

A. Yes.

Q. "Didn't hesitate that RA fulfil agreement. 'How would release be arranged'. Voloshin promised to release in conversation with Badri later."

Now, what actually happened was that you concluded that the best way of getting Mr Glushkov released was to sell out of ORT because of a direct conversation that Mr Patarkatsishvili had had, either face to face or on the phone, with Mr Voloshin, the head of Mr Putin's administration?

A. Mr Sumption, I don't know anything about Badri

conversation with Mr Voloshin, believe me. It doesn't mean that Badri did not have but I'm almost sure, almost 100 per cent, that if Badri in this important time for us, to release Mr Glushkov, will talk to Mr Voloshin, I think he will inform me about that.

Q. Now, I suggest that the reason why, in these interview notes, Mr Patarkatsishvili doesn't mention any threat by Mr Abramovich is that there wasn't one?

A. It's your suggestion. My understanding and my proof moreover is completely different. Tell me the reason why I never met Abramovich again after.

Q. You did meet him again. You met him at Megeve early in January, that's part --

A. And it's strange that Abramovich wrote that I didn't say even one word. I met him in Megeve in January 2010 but did not talk anything at all about Nikolai's arresting, I know connections Abramovich to Putin well, that he is messenger and so, and I just keep silent. It's impossible, Mr Sumption.

Q. Now, Mr Berezovsky, in fact, Mr Glushkov was not released after the sale of the ORT shares and you say, in your witness statement, paragraph 365, that you think that Mr Abramovich deliberately arranged for Mr Glushkov to stay in prison so that he could use the same threat a second time in order to force you out of Sibneft as

well?

A. You are correct -- I am correct, sorry.

Q. That is a very serious allegation. What evidence do you have for it?

A. I present my evidence in my witness statement and I can -- again, I can just, to make the story shorter and more better for understanding, my clear understanding is that after Mr Abramovich recognised how important Mr Glushkov is for us and that we, without any discussion about price or anything, agreed that Glushkov will be released if we will -- if we'll sell -- return back our shares and not to be keep in jail a long, long time. Abramovich recognise that it's -- this point is very sensitive for us.

And just later on, but not too much later because even in autumn 2000, when we have been in Russia, Abramovich already mentioned that Sibneft is under pressure because of my new and -- because of my tension with Putin and he already that time start to, already that time start to present position that we had become more dangerous for the company than even before. But when he recognised that he has amazing leverage, then he made -- he is progressing in his, I don't like to say, violence. Because initially he put Putin behind -- he put Putin in front of him as far as ORT is concerned,

saying, "This is Putin, this is not me, this is Putin asking".

In Sibneft, position was different, "Putin is behind of me and you know that he is dangerous, he can do everything and I'm the person who has special relations with Putin", and he may influence -- "I may influence to his decision".

In Rusal case, he even did not put Putin at all as a name because he already was form himself, I'm sorry to say, as a gangster, yes, because he already knew that it's enough him to do any step, we are not able to do anything. It's like evolution of crime of Mr Abramovich and in Sibneft it was the same story but it's the story of Abramovich with Putin behind of him.

- Q. What is your evidence, if you have any, that Mr Abramovich deliberately kept Mr Glushkov in jail so as to be able to use the threat a second time? If you don't have any evidence, fine; if you do, now is your chance to tell us what it is.
- A. It's exactly the point. The point is that Abramovich has a great influence to Mr Putin. I don't think that Putin point was to seize Sibneft because he got that time what he want to get, ORT under his control, and recognising the importance for us of Glushkov, Abramovich used the same method, the same method,

threat, and we didn't have choice. We didn't have choice for two reasons. Because, first of all, Abramovich did not deliver on the one hand that Glushkov will be released. On the other hand, he again said that he -- that Glushkov will be released and we will start negotiations, because it's long story, not just for five minutes. And it is the point that we accept absolutely seriously, serious, that this is threat and Abramovich (sic) stay in jail long, long time if we will not sell our shares or if we will not sell --

MRS JUSTICE GLOSTER: Sorry, you mean Mr Glushkov?

A. Yes, yes. Or our shares will be just seized by State or by whom, I don't know, this was the point of threat of Abramovich.

MR SUMPTION: The short answer to my question "What is your evidence that Mr Abramovich deliberately kept Mr Glushkov in jail?" is that you haven't got any evidence, isn't it?

A. I have a lot of evidence.

MR SUMPTION: I see.

My Lady, would that be a convenient break?

MRS JUSTICE GLOSTER: Yes. Very well. I'll sit again at 2.05.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Mr Berezovsky, in your witness statement you say that at the meeting that you contend occurred in Cap d'Antibes in December, you concluded that Mr Abramovich was a blackmailer. That's your case, isn't it?

A. Yes. She (sic) blackmail me and made a threat from the name of Mr Putin.

Q. And you say that you felt that he had betrayed you and that you never wanted to see him again?

A. It's correct.

Q. And you say that you never in fact did speak to him again until 2007, when you served the writ in this action?

A. It's absolutely correct.

Q. Could you please have a look at bundle H(A)28/18. Now, this is --

A. Just a second. Yes.

Q. This is an extract from an interview with you --

A. Yes.

Q. -- and the Russian version you will find at page 18R on the yellow sheets. You may prefer to look at that.

Okay? Now, this appeared in Kommersant --

A. Yes.

Q. -- your newspaper, on 11 January 2001. You'll find the date in the English version on the top right of the print-out.

A. Just a -- again, the date, please? Sorry, I find it my own.

Q. If you look on page 18 in the English version, you will see the date "01-11-2001" --

A. Yes.

Q. -- which I think is the American dating because if you look in the first paragraph, you will see that it says, five lines down from the top of the first paragraph:

"Following is the text of a report by Russian newspaper Kommersant on 11 January..."

A. Yes.

Q. "... In an interview with Kommersant correspondent Natalie Gevorkyan, Boris Berezovsky commented on the situation with regard to the sale of shares in Russian Public Television..."

A. Mm-hm.

Q. Could you please look at the second page of the English or I think it's probably also the second page of the Russian.

A. Yes.

Q. I can't tell you exactly where the Russian is. But if you look at the English text on page 19, you will see,

about ten lines up from the bottom --

A. Just a second. Page 19.

Q. Yes.

A. Yes.

Q. There is a question from the interviewer:

"(Gevorkyan) Will not the story of the ORT sale resemble..."

Can you see that?

A. Just a second. Which line?

Q. If you count 11 lines up from the bottom of the page.

A. Yes.

Q. "(Gevorkyan) Will not the story of the ORT sale resemble the earlier story of the sale of Kommersant..."

Do you see?

Now, would you like to find the Russian equivalent of that.

A. Yes, yes.

Q. Okay, have a look then. It will probably be on page 19R. Have you got that?

A. Yes.

Q. Now, the question that the interviewer put to you was:

"Will not the story of the ORT sale resemble the earlier story of the sale of Kommersant" --

A. Earlier story, yes, it's '9 -- just a second -- '98/'99, yes.

Q. "... when some purchaser was announced but then it turned out to be you. This time Abramovich, for example, could actually be that purchaser..."

And your answer was:

"Well, how can I rule that out? I cannot rule out anything at all. I simply know what I know and I am only saying that. I cannot say anything more than that. I trust Abramovich as a business partner.

"(Gevorkyan) Does Abramovich remain your business partner?

"(Berezovskiy) In the business that I created jointly with Abramovich he remains my partner to this day. He had no part at all in creating the ORT business."

A. Yes.

Q. Now, what you said in that interview was, "I trust Abramovich as a business partner". That seems a rather odd thing to say about somebody who has just blackmailed and betrayed you, doesn't it?

A. No, it's absolutely correct because at that time Abramovich was the person who still could be messenger between me and Putin to help to release Glushkov and that time I don't want to put Abramovich as my enemy publicly because I want to give him space to deliver what we discussed to deliver.

Q. But you didn't have to say anything about your feelings about Abramovich, did you? You could simply have said he remained your partner in other business ventures.

But what you actually said was that you trusted him.

A. Mr Sumption, I already express my vision: if I trust him at least once to discuss what happened after meeting in Cap d'Antibes, at least once I should meet him and to discuss if I trust him.

As you know, 23 January should be my birthday and I celebrate my birthday with all my friends and it's the first time when Abramovich was not invited to my birthday, it was January 33 -- 23, 2001. It means that I didn't have any trust of Abramovich but to try to -- not to explode that because Abramovich still was in position of one person who I understood perfectly was able to convince Putin to keep Glushkov in jail and to help to release him.

It's only reason why I understanding that Glushkov could stay in jail forever. I didn't want to break my public relations in -- I don't want to break in public my relations with Abramovich.

Q. You met Mr Abramovich together with Mr Patarkatsishvili at Courcheval in Switzerland on 10 January, didn't you, about the same time as you were making this statement to Kommersant?

- A. Once more, I just want to stress that I met the last time Abramovich just in Cap d'Antibes at the time -- after Mr Glushkov was arrested.
- Q. Sorry, I said Courcheval; it was actually Megeve.
- A. I didn't meet him, not in Courcheval, not in Megeve.
- Q. I see. I suggest that you had a perfectly amicable meeting, witnessed by at least one third party who will be giving evidence.
- A. Sorry?
- Q. You had a perfectly amicable meeting with Mr Abramovich in Megeve, didn't you?
- A. Once more, I want just to stress: I haven't meet Abramovich at all in Megeve. This is the first point. I didn't meet Abramovich in Courcheval as well at all. I had -- the last meeting I have had him in Cap d'Antibes and I absolutely -- and I remember the wording that I said, "Roman, I see the last time, we'll never meet again". This is the point.
- Q. You never did say that, did you?
- A. Sorry?
- Q. You never did in fact say that, did you?
- A. I said that in -- "I don't want to see you more", and this exactly what I said in Cap d'Antibes.
- Q. You were in Megeve on that day, weren't you?
- A. I have been in Megeve, as my wife recall me. I have

been in Megeve in -- for vacation, and Badri had been as well, but I didn't meet Abramovich there.

Q. You knew he was there, didn't you?

A. I can't recollect did Badri told me but I'm sure he told me that Roman is here.

MRS JUSTICE GLOSTER: The [draft] transcript has recorded at line 15, "but I did meet Abramovich there". I think your evidence you gave was "I didn't meet"?

A. I did not meet. I'm sorry, my Lady. I did not meet him.

MR SUMPTION: Could you please turn to bundle H(A)55, which you haven't got but which somebody will find that for you. You can put away the bundle I just referred you to.

A. If I can take away this?

Q. Leave your witness statement but you can put away everything else.

Now, in the volume you've just been passed, I would like you to turn to page 157.001. So the reference is H(A)55/157.001.

A. Yes.

Q. Right. This is another extract from the collection of interviews and speeches that you published under the title "The Art of the Impossible".

A. Mm-hm.

Q. Now, I would like you to turn, if you would, in the bundle numbering to page 004 H(A)55/157.004 or in the numbering in the book you might find it easier to turn to page 733. It's about the third page beyond the first.

A. Yes.

Q. All right?

A. Yes.

Q. Now, right in the middle of the page, there's a question from the host, as he's called:

"Will you comment, please, on the statement that all this is also due to the mischievous scheming of Abramovich, who is at odds with you."

A. Just a second. What we are reading now? The host, "Will you" -- yes.

Q. You're referring to the extradition proceedings that Russia had begun against you in England.

A. Yes.

Q. And you're asked to comment on the statement that all of this is due to the scheming of Mr Abramovich and you say:

"As for my quarrel with [Mr] Abramovich or with any of my former partners, I have absolutely no quarrel with them."

A. When -- just a second. When it was?

Q. Why did you say that -- can I ask you a question before you answer, Mr Berezovsky.

A. When it was? When it was?

Q. This was in 2003, the interview, the date of which appears on page 002. It was on Channel Three, Russian Channel Three, on March 25, 2003.

A. Mm-hm.

Q. Now, why did you say you had no quarrel with Mr Abramovich if the truth was that he had blackmailed and betrayed you?

A. It's absolutely the same reason: because, as you remember, at that time, as I recollect, we still did not get money, didn't get money from sale of Sibneft. And, as you remember, Badri asked me -- asked me on the one hand say that we still did not sold it; on the other hand, I try not to press personally Abramovich at all because of the other reason, because I was sure that as far as Mr Putin is concerned, as far as he reached his target and got under his control ORT, he is not -- let's say, we were not fighting for Sibneft or something himself. Moreover, as you remember, even in Le Bourget, Putin said that, "They may sell; it's not a problem. You pay him money, them money, but made quiet". It means that Putin did not try to squeeze us himself by his initiative in business.

Abramovich is a different story and Badri thought that if I will do something, if I will present some public position against Abramovich, he may just stop to return our payment. And on the other hand I just want to remind you that Mr Glushkov still was in jail and it was not threat, just one second; it was continuous threat, as far as my clear understanding and Badri clear understanding. And we understood well that Abramovich is able to influence to Putin to keep Glushkov in jail so much -- how much he need.

- Q. Well, we'll come to that last suggestion at a later stage because you also make it in trying to explain why you never originally complained about the circumstances in which you were sold out of Sibneft. But the facts as regards the payment are that 100 per cent of the money which Mr Abramovich had agreed to pay, \$1.3 billion, had in fact been paid into the account of Devonian by August 2002, well before this interview had been given.
- A. No, as is my recollection, the last money we got just in 2003 is the first point. But there is another reason which I mentioned to you: Glushkov was still in jail and this is the biggest -- my number one priority. But as far as money is concerned, try to check, please, with your assistants: we didn't get all money in 2002.
- Q. The position was it had all been paid to Devonian and

all, apart from \$134 million, had been paid to you by Devonian. Those were the facts when you gave this interview.

A. In 2002?

Q. In March 2003 --

A. Just a second. Interview was given in -- when interview was given?

Q. In March 2003 the situation was that the whole of the \$1.3 billion had been paid by Mr Abramovich to Devonian and all but \$134 million had been paid by Devonian to you.

A. It was paid just -- it's correct, it was paid just at -- the final payment was done in 2003, it could be. But I present you two reasons, because I can't recollect exactly. But the main reason, as I told you from the beginning, was that Glushkov was not released. But nevertheless there is -- I remember that it was also economic reason and, as I understand that time, Rusal still was not -- at that time we did not sell Rusal steel. It means that we have on the one hand economic reason and maybe you correct that Sibneft was paid already, but Rusal still was not paid.

But again, the main reason was that Glushkov was in jail and I understood that for Putin, it already was become the periphery of his thoughts about me; but for

Abramovich it was important.

Q. The position of Mr Glushkov at this stage was that he was indeed still in jail but his trial was actually in progress, wasn't it?

A. Glushkov was in jail, spent in jail two and three years and he --

Q. Yes. His trial was in progress, wasn't it?

A. Just a second, Mr Sumption, okay? Our clear understanding was that Glushkov is in danger and I am threatened until Glushkov return back in London. And even more, when he already has been in London and was looking for political asylum, until he was granted political asylum, only that time I become quiet. But -- because of my personal experience, because I've read that Glushkov -- that Russia will issue warrant to extradite Glushkov, what I had myself.

Q. Was his trial in progress or was it not at the time you gave this interview in March 2003?

A. I don't understand. What does mean "progress"?

Q. It meant that the trial had opened in August 2002 and was still continuing.

A. Just a second.

Glushkov, he was under the control of General Prosecution Office until he leave Russia. He leave Russia. And he leave Russia -- he was arrested in 2000

and until he leave Russia in 2006 I was threatened and my main priority of worry was Mr Glushkov and I don't follow which condition trial had. I just know one thing: that Glushkov ran away from Russia, he ran away, he was not allowed to cross the border, and he ran away himself because he afraid. This is the point.

Q. You can't possibly have thought that Mr Abramovich was going to be in a position to influence the fate of Mr Glushkov at a time when his trial was actually in progress? It was too late for that, wasn't it?

A. Completely wrong. First of all, definitely I don't remember in which condition trial of Glushkov was. I just knew that Glushkov is in jail. This is the point. Moreover, the situation changed dramatically in April 2003 because it was -- because it was classified that Glushkov tried to run away from the jail and situation become even worse after that.

Q. That was in 2001, Mr Berezovsky. You've got the dates wrong?

A. Sorry, you are correct, in 2001, agreed. But situation generally become worse after he attempt -- so-called attempt ran away because Lugovoi, as we know now, just fix this fake.

Q. Now, Mr Patarkatsishvili remained on perfectly good terms with Mr Abramovich, didn't he, after

December 2000?

- A. Definitely not. Abramovich -- after -- it was absolutely clear understanding in Badri and me, after meeting in Le Bourget and definitely after meeting in Cap d'Antibes, that Abramovich is enemy. And Badri played game against of the enemy, yes? How he can do that? Trying to protect our interests. All the time we were under pressure of Abramovich; all the time.
- Q. He met Mr Abramovich on many occasions both before and after the deal about the \$1.3 billion was concluded in 2001, didn't he?
- A. You're absolutely correct. You're absolutely correct.
- Q. And relations between them were perfectly amicable throughout that time?
- A. Perfectly, perfectly, perfectly hypocritical, it's true.
- Q. Who was the hypocrite?
- A. I think both of them.
- Q. Your claim that relations between you and Mr Abramovich broke down suddenly in December 2000 is just untrue, isn't it?
- A. It's 100 per cent true and no one have any evidence that I met Abramovich after that. Only evidence is personal Mr Abramovich, La Megeve; but strange situation, I did not tell anything at all. And after Glushkov was arrested, after I was squeezed, after I had clear

message that Glushkov stay in jail forever, you think I did not talk to Abramovich anything -- meeting him in La Megeve? But it's not my witness statement. It's witness statement of Mr Abramovich, not mine. My statement is that I never met Mr Abramovich again.

Q. Now, let's turn to the circumstances in which you say that you sold out of Sibneft in the course of 2001. As I understand it, your case is that you sold out of Sibneft because you were threatened that otherwise your interest that you claim to have had in Sibneft would be expropriated and Mr Glushkov would be kept longer in jail. That's your case, isn't it?

A. My case is that I did not plan to sell Sibneft at all; I sold that just because of threat of Mr Abramovich, who kept Putin as a bogeyman, and I had clear understanding that Glushkov will continue to stay in jail.

And I would like to just say you what Badri said after he returned back from Munich. I didn't want to use this word but you yourself initiate to use the so-called proper Russian words, very special. What Badri said me when he returned back, he said -- in Russian, I'm sorry, and then I translate it -- he said, "Borya, (Russian spoken)". And this word "zamochit", it was important because it was part of our discussion with judge in my defamation case, Judge Eady.

Q. Will you tell us what it means before --

A. Yes, and I -- it means to kill.

Q. It means what?

A. To kill. It means to kill.

Q. To kill, I see.

A. Yes.

Q. So what's the whole sentence?

A. "Borya, (Russian spoken)."

Q. Perhaps the translator sitting behind the witness could tell us what the translation is.

THE INTERPRETER: Borya is a term of endearment in Russia, this is Boris.

"Boris, you don't understand, they will waste him, they will do him in, they will kill him."

MR SUMPTION: Thank you.

Now, you say that was what Mr Patarkatsishvili said to you after Munich?

A. When he returned back -- after Munich, when he returned back. It's absolutely correct.

Q. Well, we'll come to the Munich meeting in a short time.

A. But again, Mr Sumption, I just want to tell you, it's special word which President Putin also used when he mean that he will kill Chechen terrorist.

Q. Now, when was the first time that you publicly alleged that Mr Abramovich had intimidated you into selling out

of Sibneft?

- A. I think that -- I don't remember well, but I think after Nikolai -- definitely after Nikolai was ran away from Russia but I can't exclude that it could be happened earlier because I had a lot of emotions. But at least I tried to keep me in my hands until Nikolai was in Russia because, again, I blame a lot of Putin.

I said a lot -- I gave a lot of interviews that Putin, so-so, I fight against of him, but I try to keep quiet as far as Abramovich is concerned because Putin already recognised that I'm his political opponent, he did not push us to sell our assets himself; and moreover, maybe you know well that after we sold Rusal our shares, Badri insist that we invest again in Russia if --

MRS JUSTICE GLOSTER: Sorry, say that again?

- A. After we sold our interest in Rusal -- it happened later on and we got around \$600 million -- Badri, what surprised me, insist to invest again into Russian business, in Metalloinvest, because he said, "I know well Mr Anisimov", who as I understand is present today here --

MR SUMPTION: Mr Berezovsky, I'm not asking you about that.

- A. No, no, I just answer to my Lady's question.

Q. The first public statement that you made that you had

been pressured by Mr Abramovich into selling out of Sibneft was in December 2003; that was three years after you say that it happened and three years before Mr Glushkov reached England.

A. Mr Sumption, I was absolutely correctly said that sometimes my emotions were over my logic and my rational behaviour. But you just yourself mentioned, and I think it's happened when we already sold Sibneft, and you are correctly mentioned that all those years I kept silent.

Q. Would you, please, look at bundle H(A)69. Somebody will give it to you in a few minutes. The reference I want is H(A)69/2. This is a report on 1 December 2003 from the Moscow Times, an English-language paper, and I would like you to look at page 3 in the bundle numbering, the second page of the report.

A. Yes.

Q. Now, what you were being asked about was the --

A. It's in English.

Q. This is the Moscow Times which is an English-language paper.

A. Yes, yes, it's correct.

Q. Now, what you are being asked about is the recent news about the abandonment of the second Sibneft-Yukos merger and the fate of Mr Khodorkovsky. That's what you're being asked about. And I would like you to look at the

middle of the second page of the report, where you will see a paragraph that begins:

"In a telephone interview from London, where he is now in exile, Berezovsky said..."

Do you see that?

A. Yes.

Q. Well, what you are quoted as saying is that:

"... he had discussed a possible takeover attempt by Abramovich with Nevzlin during a trip to Israel last week.

"'I raised parallels between what happened at Sibneft and what is happening now with Yukos,' he said. He said Abramovich had pressured him into selling his stake in Sibneft or risk facing the collapse of the company."

A. Yes.

Q. "He said the same seemed to be happening now with Yukos."

A. Yes.

Q. "'Nevzlin did not rule out that this analogy was correct'..."

Now, did you say that "Abramovich had pressured [you] into selling [your] stake in Sibneft or risk facing the collapse of the company"?

A. Yes, you are absolutely correct, and it's exactly the

explanation why I said that because emotions were all, because that time I recognised that Abramovich is doing exactly the same what he have done against of us, pushing me to sell Sibneft: he's trying to play the same game with Yukos. And you know the story, finally -- there were two attempts to marriage with Yukos because Abramovich was trying to --

Q. I'm not asking you about the details of that.

A. Okay, sorry. But that was exactly why my emotions were over: because I recognised that Abramovich is doing -- is playing again the same game.

Q. All that happened on the second occasion, Mr Berezovsky, is that Sibneft pulled out of a proposed merger with Yukos shortly after Mr Khodorkovsky had been arrested. That's what happened on the second occasion.

A. But Abramovich still did not return \$2 billion to shareholders of Yukos. He obtained just \$3 billion and still nobody knows how he used this \$3 billion.

Q. Now, if you look at the passage from the interview that I've just pointed you to --

A. Yes.

Q. -- you'll see that the pressure that you said that you were under when you gave this interview was that Mr Abramovich had told you that if you didn't sell out of Sibneft, the company, Sibneft, would collapse.

That's what you were saying at that time, wasn't it?

A. Mr Sumption, I said absolutely precisely that if there are two ways of threaten me: one way was that Glushkov will die in prison; the second way was that our shares just will seize to somebody, to Abramovich, to State. It means that -- or just seize for nothing, we will get nothing. This is the point and this is my case, nothing more.

Q. Mr Berezovsky, what you were saying in this interview was not that your own stake in Sibneft would be expropriated. What you were saying is that if you continued to be associated with Sibneft, the Russian government would destroy the whole company; just as in 2003 it was destroying Yukos.

A. Mr Sumption, again you are absolutely correct. We should clarify this in context. My case is what I think -- what is reality for me is written in my case. There are two points again: that if I will not -- Badri and me will not sell Abramovich our shares, Nikolai will be under his death -- Nikolai will die in there, in the prison; and the second, that our shares will be just seized by State or someone. This is my case and it's written clear.

You refer to interview. Definitely interview is different story. Moreover, sometimes you -- because

I recognise me as a politician and definitely I try to send messages. And what happened with Yukos, it was my real prediction that Yukos finally was destroyed completely, nothing more. And Abramovich, definitely he was lucky because he was in connections with Putin, they just -- he just squeeze me and Badri, he got our shares, and Sibneft survived until he sell it for \$13 billion.

With Yukos, completely different story, and I present absolutely correctly.

Q. Well now, can I please ask you to be given bundle K2 and you can put away the bundle you've just been looking at. K2/01/1, it's the first page of text in the bundle.

This is the letter before action sent by your solicitors, Carter Ruck, in May 2007 to Mr Abramovich.

A. Yes.

Q. And it is the letter in which they say that they are going to claim --

A. Yes.

Q. -- and on what grounds they're going to claim, unless Mr Abramovich pays up. Okay?

A. Just a second. Yes. Yes, I remember that.

Q. You presumably supplied the information that went into this letter; do you agree?

A. Sorry?

Q. You must have supplied the information to Carter Ruck

which they put into this letter?

A. You're absolutely correct, I talk discussion with Andy Stephenson and his assistant, I forgot her name now, and I described them the story and they put that in written form.

Q. Right. Let's have a look at the letter. They start by saying they act for you.

"We write in connection with transactions concerning the sale of his beneficial interests in three companies, [ORT, Sibneft and Rusal] as described below. In each case he was forced to dispose of his interests at a very significant undervalue. In each case you unconscionably and improperly took advantage of the threats and persecution he suffered at the hands of the Russian authorities... directly in relation to Sibneft and Rusal, to enrich yourself and your partners."

Now, in that paragraph your solicitors do not seem to be saying that Mr Abramovich made threats; they seem to be saying that Mr Abramovich took advantage of threats that had been made against you by the Russian State.

A. Mr Sumption, you absolutely correctly said that it was just a letter before actions and I describe absolutely correctly to Mr Andy Stephenson what was reality and Mr Stephenson put in this way. It's happened not one

time. Because, for example, "beneficial interests" is written here; I never told about beneficial interest, yes, in these terms? I told that Abramovich is holding -- was holding our shares and we have interest and so.

Again, I can comment and I will answer to all your questions definitely, but I try to explain you that understanding of lawyers step by step changes but the facts are the same which I present from the beginning. Because I just want to stress you, Mr Sumption, for better understanding, in '99 I said that if we take Sibneft company and put in United States -- it's written in some my interview -- its value will be \$50 billion. And could you imagine that I buy myself without any pressure, without any threat, decide to sell it for nothing?

It's not nothing, definitely, \$1.3 billion it's a lot; but company was \$50 billion, it's nothing. And it's just my will, just because I decide I'm not under threat, just because Nikolai is not in jail?

Q. Well, let's look at the facts.

A. Just like that?

Q. You say we should be looking at the facts.

A. Yes.

Q. The facts as you presented to your solicitors are

summarised on the second page under the heading "Sibneft" where you say, in the first paragraph under the heading "Sibneft" --

A. Just a second. Yes.

Q. "Notwithstanding our client's agreement to relinquish his shareholding in ORT, you advised Mr Patarkatsishvili that for as long as our client continued to hold any beneficial interest in the oil company, Sibneft, the company, its management and owners would face continued persecution from the Russian Prosecutor's Office and the tax authorities."

And then if you would now look two paragraphs below that:

"In May 2001, you..."

That's Mr Abramovich.

"... advised Mr Patarkatsishvili that if he and our client did not relinquish their beneficial interest in the shares of Sibneft, the companies would come under the same attacks from the state authorities as had the companies controlled by Mr Gusinsky. You also, again, assured Mr Patarkatsishvili that if their interests were sold, Nikolai Glushkov would be released from imprisonment."

I'm going to come to the bit about Mr Glushkov in a couple of minutes but at the moment I want you to

concentrate on what you said about the threat relating to Sibneft.

According to your solicitors, the threat relating to Sibneft was that, for as long as you were associated with Sibneft, the company Sibneft would be persecuted by the Prosecutor's Office. You were not saying that your particular stake in it would be expropriated, were you?

A. Mr Sumption, it's absolutely incorrect to say that I didn't say that, what you mentioned just now. It's just Andy Stephenson's understanding, the result of our discussion, nothing more. And you know that long time, when I already met -- faced with other solicitors, with the other barristers, it was not simple to understand this story, even when they put all the time -- for example, in Devonia agreement they put, "Berezovsky sold beneficial interest", because they don't understand what was agreement in Russia and how it could be without beneficial interest. It's just terminology, nothing more.

But again, I present from the very beginning not the story; I present from the very beginning my personal involvement in all events. And they describe even later on, the other company got, Cad --

Q. Cadwalader.

A. Cadwalader -- they also describe in different terms than

Andy Stephenson describe.

Definitely, definitely, your point and your position is to prove that Berezovsky just play trying to form according of English law and so. I don't know -- I didn't know anything. Do you know that time I don't know what does mean "implicit" or "explicit"? I didn't know that at all, definitely, if it was explicit choice of law or implicit choice of law. I didn't know anything at all. I just present my story and this is just reflection of my solicitors.

Q. The story that you presented was the one that they summarised in the bottom half of this page of the letter, isn't it? That's what you told them?

A. Again, I told the same story which I tried to present to my Lady and to you, to explain what is the real story. It's the only reason why we are here. If the story was like that, Abramovich won't strike out and we did spend time here for nothing.

Q. Mr Berezovsky, the story as summarised by Mr Stephenson of Carter Ruck in this letter was exactly the same, wasn't it, as the story that you told to the Moscow Times in the interview that I showed you a few minutes ago?

A. Definitely -- Mr Sumption, again, what journalists reflect, how they -- how I present the story, it depends

on political reasons, first of all, not on economic reasons. This is the story. Because definitely I sent all the time messages not to Abramovich on newspaper; I send messages to Putin. And this is for political battle, not economic battle. And when I return to the point of economic battle, I present my understanding in economic terms and what's happened in reality.

Q. Would you please put that bundle away and be given bundle H(A)95/84.

Now, let me tell you what this is before I ask you a question. This is a witness statement made by you in September 2007 in Mr Michael Cherney's action against Mr Deripaska. This was a witness statement made in support of Mr Cherney's application for permission to serve the claim form on Mr Deripaska out of England, right?

A. Yes, correct.

Q. Now, if you take page 86 and page 87 of the bundle numbering, I would like you to have a look at paragraphs 9, 10 and 11.

A. Yes.

Q. Just read those to yourself, if you wouldn't mind.

A. I more or less remember this statement. It is the reason I will not take a lot of time.

Q. Right. Have a look at it.

A. Yes. Just a second.

Q. Now, this isn't your lawyers, this is you, and at the last page of it you say it's true.

A. Yes, it's me, and last page has a signature. I have seen this witness statement.

Q. What you say at paragraph 9 is:

"... Mr Patarkatsishvili informs me, and I believe, that Mr Abramovich told him that for as long as I continued to hold any beneficial interest in the oil company, Sibneft, that company, its management and its owners would face continued persecution from the Russian Prosecutor's Office and the tax authorities."

A. I'm sorry, I just concentrate a little bit. It's point number...?

Q. Paragraph 9.

A. 9, just -- okay.

Q. You've read that once; if you would like to read it again.

A. Yes.

Q. You are describing what you say Mr Patarkatsishvili said to you.

A. Yes.

Q. What he said to you, according to this document, is that if you continued to hold a beneficial interest in Sibneft, "Sibneft, the company, its management and its

owners would face continued persecution" from the Russian authorities.

A. Yes.

Q. Now, you do not say that the Russian authorities were simply going to expropriate your particular interest in Sibneft, do you?

A. Yes, I understand the point, Mr Sumption.

Mr Sumption, this statement, my witness statement, made mainly to help Mr Chernoi in his litigation and against of Mr Deripaska and the main point, as I understand here, was the relations with Mr Deripaska which -- and the way how Abramovich and Deripaska in parallel doing the same way. If you recognise, it's written here also "beneficial interest", what is not so again.

And again, I responsible for this witness statement, but on the one hand, it's nothing wrong; on the other hand, it is not added that at the same time it's absolutely clear that Glushkov will stay in jail forever, yes?

Again, I present absolutely the same story. Definitely it's my witness statement, which was prepared with the help of my lawyers, and moreover definitely my lawyers have truth to prepare this statement; but again, what I describe in my presentation is exactly what

I describe in my witness statement at this hearing.

Q. Mr Berezovsky, let me just try and explain the problem to you.

A. Yes.

Q. You say in your witness statement for this action that Mr Abramovich threatened you that he would get Putin to expropriate your interest in Sibneft.

A. Yes.

Q. Now, I understand what you're saying, although we don't accept it, as you know. What you're saying here is that the danger was not to your interest in Sibneft but to the whole company, and Mr Abramovich couldn't possibly have said to you, "I will ensure that Sibneft is destroyed if you don't sell out of the company", because it was his company, on your case, just as much as yours.

A. Completely wrong. Abramovich, his message was very clear: that my shares and Badri's shares which will be taken somehow just State and Abramovich did not discuss that he -- it will -- his part will be destroyed.

At the very beginning, in autumn 2000 -- in August 2000 maybe, when just I start to fight against of Putin strongly, he discussed exactly in wording which you presenting now. At the first stage Abramovich really said the company will be destroyed, it's dangerous for the company; but later on he completely

changed his presentation. He never said that he will be destroyed; only we will be squeezed. And this is a big difference what he start to -- how he talk in the autumn 2000 and how he talk already in 2001, when he decide to squeeze us, threaten us -- threat us to give our shares under his control. And we know the result again.

Mr Sumption, my Lady, I appreciate you that you told me: is it your recollection or is it your logic just, when we discuss about meeting in Le Bourget? And I said: my Lady, it's recollection, but definitely recollection based on the new knowledge, as much knowledge I have because it's ten years ago, it's impossible to... and I try to -- definitely I try to be logical as well.

But the basis of my presentation is recollection, yes? And it's exactly the same at the beginning and you will see it's clear that in 2000, in autumn 2000, Abramovich said about company, that company is in danger and so, but later on he completely changed his position and that we will be squeezed, Nikolai will stay in jail forever. This is the point.

Q. Would you turn over the page, please, of this witness statement. Paragraph 10:

"... Mr Patarkatsishvili... tells me... that Mr Abramovich told him in May 2001 that if he

(Mr Patarkatsishvili) and I did not relinquish our respective beneficial interests in the shares... the companies would come under the same attacks from the state authorities as had the companies controlled by Mr Gusinsky."

A. Yes.

Q. And you then say in the next paragraph:

"Based on these representations... an agreement was entered into [to sell out of Sibneft]."

A. And the next paragraph?

Q. Paragraph 11: "Based on these representations", you agreed to sell your interest, as you call it, in Sibneft?

A. To sell to whom? To sell to Mr Abramovich, not to State. It means that it's absolutely logical that company is not destroying because Abramovich become shareholder. And it's exactly what I all the time try to present: that Abramovich, understanding well that we have enormous difficulties, he decide just to squeeze us, having Putin back to him, and to buy our shares for very low price. That's it.

Q. Mr Berezovsky, in the last few answers you have said that the very clear message of Mr Abramovich, as described to you by Mr Patarkatsishvili, was that your shares would be expropriated and that this was your own

clear recollection.

Now, if that is true, why did you not say so in these paragraphs of your witness statement for Mr Cherney?

A. I don't have clear answer to that. I just have clear understanding that it was not a decisive point for evidence of Mr -- for Mr Chernoi and it's clear understanding that Abramovich, starting from 2001, never mentioned that the company will be destroyed completely if we'll continue to stay as a shareholder. Abramovich position was very clear: to take our stake for nothing, for his personal benefit. That's it.

Q. Now, you say that wasn't the critical point for Mr Cherney. Was it the critical point for you in this action?

A. I don't think that it is critical point because it's a lot of evidence where present my position all the time in the same way.

Q. Well, would you please look at bundle K2. You can put away bundle H(A)95. Bundle K2, flag 3. This is how you originally put it --

A. What is the date?

Q. Well, your statement of truth, if you look at page 14 K2/03/14, was dated 6 September 2007.

A. Page 14. Yes, I see that.

Q. Now, if you look at page 9, paragraph 15 K2/03/9, you say:

"At the May 2001 meeting" --

A. Page 9?

Q. This is your pleading.

A. Page 9, sorry?

Q. Page 9, paragraph 15. You say:

"At the May 2001 meeting, the Defendant..."

That's Mr Abramovich.

"... told Mr Patarkatsishvili:

"(1) that so long as the Claimant continued to hold any beneficial interest in Sibneft, Sibneft, its management and its owners would face continued persecution from the Russian Prosecutor's Office and the tax authorities;

"(2) that if the Claimant did not relinquish his interest in Sibneft, it would come under attack by those in power in Russia in a manner similar to companies controlled by Mr Gusinsky;

"(3) that if the Claimant did not relinquish his interest in Sibneft it would simply be seized by the Russian State without compensation. Accordingly, he had no alternative but to dispose of it to the Defendant."

Now, what you say there is both versions; is that right?

A. What does it mean, "both versions"?

Q. Ie both that there was a threat to expropriate your interest and that there was a threat to the company.

A. It's like, as you see, it's particulars of claim and it's -- I have more responsibility what you present before, my witness statement, my personal witness statement to Mr Chernoi, and it's really I should -- it's also not at the beginning -- what year it was? 2000 -- in Chernoi, could you remind me again?

Q. What are you asking, Mr Berezovsky?

A. The time when you just refer to my witness statement for Chernoi, what time was that?

Q. That was in September 2007.

A. 2000 -- always the same -- all of the same time, and this is particulars of claim. And again, it was understanding -- and definitely, even preparing the witness statement which I sent personally for Mr Chernoi, definitely it was preparing by lawyers, with the help of my lawyers, and that the position which they recommend me to put in, exactly like particulars of claim, it's also prepared by lawyers, not also -- I have more responsibility for claim for witness statements for Chernoi than this one, yes?

But again, I present again, Mr Sumption, the same story. I never change the facts. The interpretation of

the facts is like lawyers' understanding. And at the beginning, particularly at the beginning, it was a lot misunderstanding what I presented and what was reality; what I presented and how they accept it.

Q. Now, if you look at the way in which for the first time you suggested that there was a threat to expropriate your interest, which is at paragraph 15(3) on page 9?

A. 15...?

Q. 15(3). I've just shown it to you. Page 9, paragraph 15, subparagraph 3.

A. Just a second. Yes.

Q. You do not suggest there that Mr Abramovich was threatening to bring about the confiscation of your interest; what you say is that Mr Patarkatsishvili told you that that is what the Russian State would do. There's no suggestion that Mr Abramovich was responsible for what the Russian State would do.

A. Well, first of all, it's absolutely clear that my understanding what Abramovich is doing as far as Sibneft is concerned based on connections with Mr Patarkatsishvili because that time, after December 2000 Cap d'Antibes, I never met Abramovich again. It means that it's the result of my meeting with, on the one hand, with Patarkatsishvili; on the other hand, I want to stress again it's particulars of

claim. It's how lawyers accept what we discussing.

Q. But it was signed by you, Mr Berezovsky, personally --

A. Definitely it's signed by you (sic) but --

Q. -- as a true statement.

A. This is true statement, no doubt. But this how my lawyers convert that to legal form; nothing more.

Q. If you weren't satisfied with the account that they gave about the facts -- this is a description of what Mr Patarkatsishvili told you but can only have come from you.

A. Again --

Q. And if you weren't satisfied with it, you would have said, "No, you've got this wrong, I want it changed", wouldn't you?

A. I didn't know the way what is -- what accent should be done in the claim in Great Britain. I didn't have this experience. And I just present this story how it is. And how they reflect this story, it's completely other point, according of my understanding. And you will see that we asked to put changes but never changes connected to the facts, which are present from the very beginning.

Q. Now, would you please turn to paragraph 383 of your witness statement D2/17/280.

A. 3...?

Q. 383 of your witness statement.

A. This I can --

Q. You can get rid of the other bundle that you've got there if you like.

A. K2 I should keep still or not?

Q. No, I would put away K2.

A. Thank you.

Q. This is the point of your witness statement where you say what you claim now --

A. Sorry, which point number?

Q. Paragraph 383 is the section of your witness statement where you deal with what Mr Patarkatsishvili told you had been said at the Munich Airport meeting in early May. You say at paragraph 384:

"Badri telephoned me from the meeting. I was at my home in Cap d'Antibes..."

A. Yes.

Q. Right? Then you summarise the conversation at 385:

"The first thing we discussed was the release of Nikolay from prison, which, Badri told me, he had raised. He said that Mr Abramovich had told him that although Nikolay had not been released in December 2000, if we were to sell our interest in Sibneft to him, he would see to it that Nikolay was now released."

A. Yes.

Q. Now, what you are saying there is not -- you then go on

to say:

"I understood from this that, unless we sold our interests in Sibneft, Mr Abramovich would use his influence with President Putin... to ensure that Nikolai would not be released from prison."

Now, as I understand your evidence, you're not suggesting that Mr Patarkatsishvili was telling you that Mr Abramovich would use his influence in that way; that was just what you claim to have inferred. Is that right?

A. No. Definitely after -- as I told you, after Le Bourget and after meeting in Cap d'Antibes we understood absolutely perfect the influence of Abramovich. And when today we started from the Le Bourget transcript, we touched some point but we didn't touch the point that it was the first time when Badri and me recognised how powerful Abramovich become and how connection he has in Prosecutor's Office. It's absolutely clear that -- and Badri and me understood absolutely the same when Badri mentioned Prosecutor's Office and Putin.

Q. In fact --

A. And it's clear absolutely reason here that Nikolai could stay in jail forever. And, as I told you, when Badri met me after this meeting already eyes to eyes, he said me that, "They kill him, they kill him". It was what

Badri thought as -- what Badri expressed, which I accept as a result of the meeting.

Q. Are you saying that Mr Patarkatsishvili said to you, "Mr Abramovich is going to ensure that Mr Glushkov stays in jail"?

A. Definitely. Our common understanding was Mr Abramovich can ensure that Glushkov stay in jail.

Q. Are you saying that that's what Mr Patarkatsishvili said to you?

A. It's exactly what I told you. When we met with Patarkatsishvili when he returned back, if he said me that they can kill him, it means that he understood well that Abramovich is able to ensure that Glushkov stay in jail. This is the point.

Q. Well, he was talking about the state killing him, not Abramovich killing him.

A. Definitely Abramovich is not killer, as I understand it still until now, but influenced the killers, he had this opportunity.

Mr Sumption, you know well, already from the new history, Mr Magnitsky died in jail, they kill him. Unfortunately my prediction of what this power can do was front of the other, in front of the other, I predict a lot what they have done later. And definitely my worry was that they kill Mr Glushkov. Particularly he

was very sick and Abramovich knew that, that he is sick. And they raised several times questions -- the point that Glushkov is sick and can die any time. Like happened with Magnitsky, like happened with Aleksanyan who recently died, just for dying, he stay in jail even being -- even having cancer.

Glushkov is lucky, he doesn't have cancer, but he has a health problem which very dangerous. He is invalid of the first rate. It means that the most rating invalid -- there are three rates in Russia, the third, the second and the first, and Glushkov, as I understand, is like the first rate.

Q. Would you please take bundle R(D). The reference I want is R(D)1/03/39.004. What you're looking at or about to be looking at is Mr Lankshear's notes of June 2005.

A. Lankshear, it's from the Carter Ruck, yes?

Q. Well, Lankshear was in fact Streathers. They were assisting with this at that stage.

A. But here -- I'm sorry, Mr Sumption, I want just to remind.

Q. Mr Lankshear worked for the people who were then your solicitors: they were a firm called Streathers.

A. But they work together with --

Q. With Mr Stephenson of Carter Ruck.

A. Yes, good. Thank you very much that you helped me to

remind.

Q. Now, these are notes of an interview with Mr Patarkatsishvili. You weren't present but Mr Patarkatsishvili gives his account of what was said at the Munich meeting. Okay?

A. Yes.

Q. Now, if you look on this page --

A. Page number?

Q. 39.004, which should be open in front of you.

A. Just a second. Yes, I open.

Q. You will see there's a heading at the bottom of the page "Sale of Sibneft". Okay?

A. Just a second. Yes, I have it.

Q. And right at the bottom of the page, under that heading, it says:

"Date of Munich meeting. Either April/early May 2001. No specific mention of [Glushkov], but not necessary as implicit."

Do you see that?

THE INTERPRETER: I'm so sorry, Mr Sumption, which part of --

THE WITNESS: No, no, "Implicit".

MR SUMPTION: Last two lines of 39.004.

THE INTERPRETER: Thank you very much.

THE WITNESS: Okay.

MR SUMPTION: Now, what Mr Patarkatsishvili remembered when he was interviewed by your solicitors was that there had been no specific mention of Mr Glushkov but that it wasn't necessary as it was implicit.

A. Mr Sumption, I already face many demonstration when my solicitors did not put me questions at all for some area, but later on they asked me. I give you the best example: I never was asked, when we return back to Rusal, I never was asked about their -- which kind of -- how to say this? -- law we discuss; but when I was putting the direct question, I gave answer.

It means, again -- I just want to stress again -- it's just the beginning. It's just the first -- what is the date? It's also 2005 or which year?

Q. 2005, yes.

A. 2005, yes, I'm correct. It's just the beginning of understanding what happened in very complicated Russian story, where a lot of killers -- well, the president is almost killer and so and so. It's not simple to understand and it's -- and I don't see any unusual according of my personal experience.

Q. You see, it's obvious that the solicitors did in fact ask Mr Patarkatsishvili about the Munich meeting and what had been said at that meeting about Mr Glushkov because that's why Mr Patarkatsishvili told them that

Mr Glushkov hadn't in fact been mentioned.

A. Mr Sumption, I want just to stress again and again: this is discussion solicitors at the very beginning. How it would happen that they didn't get that if Badri -- it was the first point which Badri discussed with them and there's a lot of evidence that it's so. If you read the statements of Badri -- not statements -- yes, statements or his notes of lawyers meeting with Badri later on, it will be clear, because I also not read in too details, but no doubt that Glushkov was a key point of the meeting in Munich.

Q. Indeed. And if you look in flag 6 of the same bundle, you will see -- flag 6, in the very bottom right-hand numbering, page 79 of the bundle numbering R(D)1/06/79.

A. 79?

Q. Yes. Flag 6, page 79. This is the draft proof that they prepared on the basis of the interview we've just looked at and you should see -- there are lines numbered on the left and I'd like you to look at line 377, which is his account of the Munich meeting:

"We agreed a price of \$1.3 billion. When negotiating this deal there was no specific mention made of [Mr Glushkov] but this was not necessary as it was clear that his release was one of the reasons we were

prepared to sell."

There was no threat by Mr Abramovich, was there?

- A. No, Mr Sumption, completely wrong, because what is written here that it's clear that Mr Glushkov is a key issue to sell the company; the key issue, I would like to stress.
- Q. Yes.
- A. And again, it's how solicitors made the note and all the time Glushkov is mentioning here. It means that absolutely clear that Badri discuss story of Nikolai Glushkov. How they accept that, how they put it in the note, is the other story.
- Q. What it means is that whatever was known or thought about Mr Glushkov, he wasn't mentioned at the meeting?
- A. Mr Sumption, I have a lot of doubts that Mr Glushkov didn't mention on the meeting, the first point. The second point: it was just the beginning of our preparation for the claim, it was 2005, it's just the first meeting of Mr Patarkatsishvili with solicitors and it's clear that there were a lot of questions which will be clarified later on.

Unfortunately Badri is not with us now and definitely we are not able to ask him what happened. But, again, just note of the solicitors which -- who met him and understood in this way, and we had a lot of

examples that solicitors understood not correctly.

MR SUMPTION: My Lady, I'm coming to a natural break in a moment.

MRS JUSTICE GLOSTER: Fine.

MR SUMPTION: Now, Mr Berezovsky, if you could look at bundle A2, flag 12, page 69 A2/12/69.

A. Yes.

Q. You are asked for some further information about your claim.

A. When it was? When it was?

Q. Do you see the heading "Under paragraph 51" on page 69? Page 69, Mr Berezovsky, you see a heading --

A. Yes, 69.

Q. -- "Under paragraph 51". They're asking for further information --

A. Just a second. Yes. Yes.

Q. -- about your statement:

"Mr Abramovich undertook a course of conduct in which he made and was party to the implicit and explicit coercive threats and intimidation pleaded above."

They ask:

"Please clarify...

"a. precisely which statements... are alleged to have constituted an explicit... threat... [and]

"b. ... which conduct of the Defendant is alleged to

have constituted an implicit coercive threat..."

Right? Then over the page you will see the answer which you sign a statement of truth for.

A. Could you please read me the question and with help of translator?

Q. I think actually the answer is self-contained. Let's have a look at your answer, which is what you said was true:

"The statements pleaded at paragraph C41...

That's of the main pleading.

"... were implicit threats, in that Mr Abramovich intended by these statements to cause Mr Berezovsky and Mr Patarkatsishvili to fear that, unless they sold their interests in Sibneft to Mr Abramovich, Mr Abramovich would use his influence... to cause their interests to be expropriated."

You go on to say:

"The statement... at... C46(1)(a) was an implicit threat, in that Mr Abramovich intended by this statement to cause Mr Berezovsky and Mr Patarkatsishvili to fear that, unless they sold their interests in Sibneft to Mr Abramovich, Mr Abramovich would use his influence within the Putin regime to seek to ensure that Mr Glushkov would not be released from prison."

The reason I'm asking you to look at those was that

that was the first occasion -- and it was on the fifth day of the hearing in the Court of Appeal of your claim on the strike-out hearing -- that you said in clear terms that Mr Abramovich was threatening to bring about these results himself. That's right, isn't it?

- A. Mr Sumption, I, as I've told you before, answer to request of my lawyers and when they ask me to confirm or to refuse something, I prepare to give my truthful statement as far as the point is concerned. And my lawyers put me the question, I give the answer.

And I don't understand, I'm sorry to say, what is the problem. Because, as I understand, every day there are new questions, even today, during the hearing, and answers which are not contradict. This is the most important, are not contradict. You are not able to -- that I lie, that I change my -- change the facts. I didn't change the facts; I just follow advice with my lawyers to give or not to give answers. That's it.

- Q. Mr Berezovsky, the reason why this was introduced into your claim is that Mr Abramovich was applying to strike out your claim on a number of grounds, one of which was that you hadn't pleaded a threat of action by Mr Abramovich but only a threat of action by the Russian State and he wasn't liable for that. Your response to that was to change the facts so as to say that

Mr Abramovich intended and you understood that he was threatening to do these things himself. That's what happened, isn't it?

A. Mr Sumption, it's not the change of facts; it's added the facts. It's a big difference between that -- the first one and the second one. Moreover, I would like to tell you that finally, as a result of that, including that, the court took decision in my favour.

Q. It took the decision that now that you had changed your case, you had produced a legally arguable case.

MR RABINOWITZ: With respect to Mr Sumption --

A. I completely disagree.

MRS JUSTICE GLOSTER: Yes, Mr Sumption, we don't need to argue the analysis of the Court of Appeal.

MR RABINOWITZ: -- that is factually false as well.

MR SUMPTION: Well, I quite agree. I'm not going to cross-examine Mr Berezovsky about what was actually decided. We can read the judgment ourselves.

I apologise.

Mr Berezovsky, what I suggest to you is that there was never a threat and you never understood that there was a threat by Mr Abramovich either to get your interest expropriated or to get Mr Glushkov kept in jail.

A. Mr Sumption, I'm sorry that I am already boring to say

that I am not an idiot. If the company -- I understand value and I declare that even in '99, understanding that everything is growing, my estimation is \$50 billion in the United States, yes, if to put in protection in -- protected area. Do you think that seriously I just, my personal will, will sell it? Estimation is \$2.6 billion because we sold 50 per cent for \$1.3 billion. It's not serious at all. It's impossible to establish this position; impossible.

Only threat, only Nikolai Glushkov in jail under pressure that he could be killed, and we have example that it's happened so with many people, businessmen in jail. You know it well, not less than me. How it's possible to imagine that just because I'm idiot to sell Mr Abramovich, nice guy, my and Badri 50 per cent, \$1.3 billion, and in three years Abramovich sold the same for \$13 billions? I'm really, really crazy, completely. It's impossible to believe in that.

MRS JUSTICE GLOSTER: Right, I'm going to take the break now, if that's a convenient moment, Mr Sumption. Ten minutes.

(3.28 pm)

(A short break)

(3.40 pm)

MR SUMPTION: Mr Berezovsky, could you please be given

bundle R(D) again. The reference I want is

R(D)2/30/123. Do you have that?

MRS JUSTICE GLOSTER: R(D)2/30/132?

MR SUMPTION: No, 123. I'm sorry, I think I did say 123 but that's certainly what I'd like.

Mr Berezovsky, just before we took the break you had asked the forensic question: why in that case did you accept the \$1.3 billion? And I'm going to show you a passage from a discussion in which you took part which explains that. These are Michelle Duncan's notes of the meeting in Tel Aviv with Mr Patarkatsishvili in November 2007 at which you were present.

A. Mm-hm.

Q. On the page that you should have open, page 123, the bottom left-hand numbering, you will see that there is a grey horizontal band about two-thirds of the way down the page where I would like you to start. Okay?

A. Yes, okay.

Q. Right. Now, this is the part which deals with the discussions that led to the sale, as you put it, of the Sibneft interest.

First of all, there's a measure of uncertainty about this but Michelle Duncan has put in the left-hand margin "AP via BB". So if that's right, this is Mr Patarkatsishvili but through you. Okay?

A. Mm-hm.

Q. What the note says is that:

"... [Mr Patarkatsishvili], [understanding] the reality, started to play same game.

"He spoke to RA, said I [understand your situation], we need to work out how to save [you].

"Therefore started disc[ussion] on Sibneft, [Patarkatsishvili] spoke to [Berezovsky] [e]xplained his position [and] using BB disagreed gen[eral] but u[nder]stood logic... that c[ould] lose assets [and] agreed [Patarkatsishvili] sh[ould] share.

"[Patarkatsishvili] met [Abramovich] in Munich at airport. In v[ery] small room -- not conf[erence] room.

"- Ruslan, he our financial m[anag]ler, BP, RA and his financial m[anag]ler, Irina [Panchukova]."

As they call her. Then there's a bit where Patarkatsishvili takes over himself, according to Michelle Duncan's note.

A. Sorry, what he took himself?

Q. Do you see it says "AP"? The first bit I've just read says "AP via BB" and then we've got a thing that just says "AP". Right?

"BB [and] I decided 2.5 [billion].

"We start to disc[uss] with him."

That's with Mr Abramovich.

"I [understood] his pressure [therefore] I had no choice but to take what he offered -- not poss[ible] to negot[iate] [because] if we didn't agree w[ith] his price, he c[oul]d walk away [and] give us nothing.

"BB felt differently.

"Also understood [Abramovich] hadn't paid us."

There's a reference to a gold mine. And taking it up just opposite "AP" on the next page --

A. Yes.

Q. "[Had not paid] any div[idend]s for a few months. We were outside co[mpany], no other income -- BB needed [money] to fund political career."

A. Yes.

Q. "So accepted 1.35 [billion]. Also agreed he needed to pay 500 [million] in 3 m[on]ths and balance in 12-15 months.

"Agreed this, shook hands -- that is all.

"[Meeting] only took 1 hour."

Now, summarising that, what Mr Patarkatsishvili is saying in your presence is that there was a meeting with Mr Abramovich at Munich Airport and that you didn't think that your bargaining position was very strong because Mr Abramovich could just pay you nothing; you were outside the company with no other income and needed the money to fund your political career.

Now, that was why you agreed to accept \$1.3 billion, wasn't it?

- A. Definitely not. I explain you. First of all, to discuss about that, we need to go to the beginning. And the beginning was again ORT, who sold because we didn't have a choice or Nikolai continue to stay in jail forever and they take our shares in ORT for nothing.

Then the same story happened with Sibneft. The difference is just that beneficiary of ORT was Mr Putin and beneficiary of Sibneft was Mr Abramovich. It means that you start to discuss from the point which already middle of the story and it's not correct. This is already a story that we accept under pressure, under everything, to sell the company, under threat.

And now we are discussing about number and Badri said that even the proposal \$2.5 billion which we give to Abramovich, he refused because he's strong, Putin behind of him, Glushkov is in jail. And I'm not in hurry, let's say, political. We understand that or we get anything or we get nothing, and this is the reason.

Again, it's story which described by Michelle Duncan, yes, this kind of story, and the story impossible to interpret without understanding why we start to discuss 2.5. This is the story.

- Q. Michelle Duncan wasn't describing the story; you and

Mr Patarkatsishvili were describing the story.

Now, if you look at this note, first of all it doesn't suggest that there was anything said at this meeting in Munich about Mr Glushkov and the reasons given for accepting the \$1.3 billion are nothing to do with either Glushkov or a threat of expropriation, are they? It's all about your need for money now that you'd left Russia.

- A. Mr Sumption, completely wrong. I already gave my explanation, not one time; and I not only gave my explanation, I gave my recollection and I gave -- and, as I understand, I present completely logic what everything what happened. Why we were in the corner? Glushkov in jail, we should sell. It's decision which was done under threat, nothing more. We voluntarily never planned to sell.
- Q. Why didn't you say at this meeting, "Hang on, Badri, you've got this all wrong. Don't you remember? We decided to accept the \$1.3 billion because he threatened to keep Glushkov in jail and get our interests expropriated"?
- A. Mr Sumption --
- Q. Why didn't you say that?
- A. Mr Sumption, what Mrs Duncan put in that, it's her priority, her understanding at that time our discussion.

I don't have any doubts that we present this story like I present it today, without changes of the facts. Maybe really I understood better what is priority to make the story, to make the story more understandable, but I never changed the sense of the story, the facts of the story.

Q. The question that I actually asked you was: why didn't you, at this point in the meeting, say, "No, that's not the right explanation; the explanation is that we were threatened"?

A. It's not -- it doesn't mean that I didn't say anything. It doesn't -- it means that Michelle Duncan understood priority like she understood and put on the note; nothing more at all.

Q. Now, do you say that Mr Patarkatsishvili didn't really say at this meeting that you needed the money to fund your political career? You see, that's what Mr Patarkatsishvili is quoted as saying. Do you say that Mr Patarkatsishvili never said that?

A. I don't remember that at all.

Q. Do you deny that he said it or do you --

A. No, Mr Sumption, I don't deny. Maybe we discuss about that I continue a political battle and so and I need money, it's true, but not -- I'm sorry, it's maybe not correct, not peanuts which they propose me. I never

hide that I want to spend money for political reason,  
I never hide it, because we start to create -- what year  
is that? It's 2000...?

Q. 2007.

A. Yes. I already two of my friends, they were killed.  
Maybe, my Lady, you didn't read that, yes? And  
definitely I will continue, definitely I need money, but  
it's not the basic reason that -- to sell for nothing.

Q. Because, you see, this was in November 2007, about four  
months after you'd started this action, when it was very  
important to discover what the real facts were, wasn't  
it?

A. Mr Sumption, I answered the questions which Mrs Duncan  
put me and she fix what is important for her, what is  
not important for her, and that's only the story.  
I don't know why it's in that way.

And moreover, I understand that it's not simple  
again to understand the story and she just start to  
discover the story and, as I understand, Mrs Duncan  
accept to give evidence and definitely she has better  
explanation what is happening compared with me and why  
it's happened so. I don't think -- I don't know,  
I don't suppose -- I don't propose that it's mistake but  
I don't know the reason why it's happened so.

Q. Now, as with the ORT threat, these threats that you say

induced you to accept the \$1.3 billion, you have simply made them up, haven't you?

- A. Mr Sumption, I already gave, I think, clear answer. And I think it's a very special story to pridumat story like that. Unfortunately it's life, life in Russia.

And moreover, all events which happen after we under threat, sold ORT, sold Sibneft and sold other company -- or at one case it was threat from Putin, the other case it was threat from Abramovich -- it was just the beginning of the new Russia. We just were the first victim. And then step by step they increased number of victims and their way, Jesuitic way how they raid the other company, how they destroy the other company, how they got under control the other company. We just were the pioneers, I am sorry to say.

- Q. Would you look at paragraph 377 of your witness statement D2/17/279. You can put away bundle R(D).

- A. Paragraph?

- Q. Paragraph 377 of your witness statement. Would you like to read that paragraph to yourself before I ask you about it.

- A. Thank you, Mr Sumption, just a second. (Pause)

Yes.

- Q. Now, what you are saying here is that before Mr Patarkatsishvili met Mr Abramovich in Munich in

May 2001, you discussed with him how your agreement would be recorded and agreed that it would need to be in writing and subject to English law. Do you see? That's your evidence there.

A. Yes.

Q. If you turn on to paragraph 382 over the page, you will see there's a bit more information about that. You say:

"... it was very important for us that the agreement be in writing and subject to English law, and recording the interest in Sibneft which we were giving up."

And you give three reasons why it was important.

A. Yes, I remember.

Q. First of all, you say you wanted to be able to enforce it if Mr Abramovich didn't pay; is that right?

A. Yes. Not enforce it -- what the terminology I use?

Q. You wanted to be able to enforce it if Mr Abramovich didn't pay up, so you needed it in writing for that reason, among others; yes?

A. Mr Sumption, don't be in hurry, please. I'm already tired(?) a little bit like you as well.

No, the first:

"... we wanted to be sure that... Abramovich would not find a way to avoid making payment."

Q. Yes. And that was why you wanted it in writing?

A. Secondly, we want to have absolutely transparent money;

and the third, we need a record that later on, when -- I mean, unfortunately after ten years it's happened today, what I predict at that time: we're in the court finally and to have arguments enough to prove that it was sale.

- Q. Now, if it was so important to you to have the transaction in writing, why did neither you nor Mr Patarkatsishvili ask Mr Abramovich for a written agreement?
- A. Sorry, we have two -- we discuss two opportunities. The first, direct sale from Mr Abramovich to us, direct sale. And the second, if Abramovich will not accept that, because of some reason which we don't understand if it's truthful agreement '95 and '96, then to find a way how to obtain this money nevertheless. Money should be absolutely transparent, not like you present in your skeleton that it's money-laundering, special professional team. And the third one, to have record of that, that one day to return to --

MRS JUSTICE GLOSTER: To have what on it?

- A. A record. A record. To fix it in writing that we sold our interest or our shares, then to have opportunity to prove in the court that it was our shares which was sold.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Did you or Mr Patarkatsishvili, so far as you knew, ever ask Mr Abramovich to enter into a written agreement about the basis on which he would be paying you \$1.3 billion?

A. As I told you, I never met Abramovich more. And, as I know from Badri, the first -- he tried to realise the first idea, to have direct sale from Mr Abramovich; was not successful. And after that we returned back to the mechanism which we use already before, I mean sheikh, the way how we sold ORT; not the same exactly way but the way using the same vehicle -- the same type of vehicle, the same people, and that was done.

In case of ORT, Abramovich did not hide that he sold because he agreed with Mr Putin, as he told before, he insist that I shouldn't be visible as well. But in Sibneft case we use the same mechanism but even more accurate for Abramovich not to be linked to us directly.

Q. Mr Berezovsky, what I'm interested in is discovering, so far as you knew from Mr Patarkatsishvili, what was actually discussed between Mr Patarkatsishvili and Mr Abramovich.

What I want to ask you is this: so far as you are aware, did Mr Patarkatsishvili ever ask Mr Abramovich for a written agreement recording this agreement?

A. Written agreement recording the agreement?

Abramovich -- Mr Patarkatsishvili, from the very beginning, we understood that our priority is direct agreement between us and Abramovich. This is the point and that what exactly I discussed with Mr Patarkatsishvili. I don't remember -- or maybe Mr Patarkatsishvili discussed that with Abramovich but the result, I remember well the result, the result was negative: finally we should go through the scheme where sheikh was included. This is the point.

Q. You see, in fact there was no suggestion at any point by Mr Patarkatsishvili to Mr Abramovich that this transaction should be recorded in writing. Are you in a position to challenge that?

A. No, Mr Sumption, completely wrong. Completely wrong. And I told you again, and it's mentioned in my witness statement, that the first option was direct agreement between us and Abramovich. This is the first option and Abramovich refused this option. This is the point. And after that --

Q. When did he refuse it?

A. Sorry?

Q. When did he refuse it?

A. I don't remember when he refused it. Badri told me that we don't -- we have just this option, this one which we used finally.

Q. Well, we will come to the discussions that led to the Devonia agreement --

A. Yes.

Q. -- I'm afraid not today but tomorrow, and we'll have to go through that.

But did you decide or did Mr Patarkatsishvili decide to make, having not got any kind of written record from Mr Abramovich, did you decide to make any note or memorandum or record of your own?

A. Mr Sumption, I completely follow what Badri was doing. As I recollect, Mr Curtis, the professional English lawyer, was involved to create agreement between us, sheikh -- and I think Mr Curtis present sheikh, not us, and Mr Fomichev was involved in that -- how to make happen that our interest in Sibneft was fixed under Abramovich name and Abramovich paid to us \$1.3 billion. Sheikh took commission, as I remember, a lot -- a big commission. That's it.

Q. Now, what about Mr --

A. It means that it was fixed in this agreement the way how Abramovich pay us money and how we put under his control and how we fix that it was our interest.

Unfortunately -- not unfortunately -- they wrote even in agreement "beneficial interest" because everybody understood that it's beneficial interest. It's

mistakable -- if it's mistake, definitely, because we didn't have a beneficial interest, we just had agreement '95, but everybody on the west understood that it's beneficial interest. That's it.

Q. So far as you know, Mr Berezovsky, did Mr Abramovich ever ask you or Mr Patarkatsishvili for a document recording the transaction?

A. Mr Sumption, I told you that I didn't talk to Abramovich at all after last meeting in Cap d'Antibes.

Q. So far as you knew, did Mr Abramovich ever ask Mr Patarkatsishvili for a document?

A. I don't remember that.

Q. Because you see, according to you, Mr Abramovich was promising to pay you \$1.3 billion in return for the surrender of your interests in Sibneft. That's your case, isn't it?

A. Yes, it's my case.

Q. Now, so far as we are aware, Mr Abramovich never asked you for any written record that you had surrendered your interest, did he?

A. Mr Sumption, I didn't talk to Abramovich at all. My -- and Mr Abramovich knew absolutely perfect that my interests are presented by Badri and it's the reason why he talked to Badri directly.

Q. So far as you are aware, Mr Abramovich never asked Badri

for a written record that you had surrendered your interest either, did he?

A. Mr Sumption, I already gave this answer: I don't remember that at all.

Q. If Mr Abramovich was really agreeing to buy out your interest in his company, then I suggest to you, Mr Berezovsky, that both sides would have insisted on a written record.

A. It's wrong.

Q. And in fact neither did.

A. It's wrong. The written form is what you have seen in the paragraph 377 and it's absolutely clear that sheikh bought not air. Sheikh understood perfectly what he bought and he understood perfectly that what he is buying is Abramovich interest in Sibneft -- should be transferred to Abramovich as his -- as -- according of this deal, we sold our interest of Sibneft to Mr Abramovich and sheikh absolutely perfectly knew that.

Q. Now, you have given evidence earlier today that the reason why you never referred to these threats before 2003 was that you were worried about the position of Mr Glushkov. That's evidence that you have previously given?

A. The main priority; it's not the only one, as I told you.

Q. Yes.

A. Because before they did not pay us -- didn't pay us full amount of money, we even continue -- I even continue, because of Badri request, say -- present that I still own Sibneft. How I may at the same time say that it was threat from Abramovich if I still continue to have that? It's not logical at all.

Q. Could I please ask you to look at bundle R(E)2/7/169.

A. Could I keep my witness statement in front of me?

Q. Yes, please. This is behind flag 7 of bundle R(E)2.

A. What is that?

Q. It's your statement in support of Mr Glushkov's application for asylum.

A. Yes.

Q. Now, if you turn to page 229 --

A. When it was done? When it was done?

Q. July 2006. Please turn to page 229 R(E)2/7/229. This is while you were planning your action against Mr Abramovich.

A. Yes.

Q. And at paragraphs 164 to 167 you explain why you have said nothing about -- sorry, September 2008. I gave you the wrong date before. I apologise.

A. No, no. Thank you. 2008, yes?

Q. Yes, so after this action had begun.

Now, what you are dealing with here is you are

explaining why it is that you had not mentioned being intimidated out of your stake in Sibneft in your own asylum application some years before --

A. Mm-hm.

Q. -- but you are saying it now in support of Mr Glushkov's asylum application.

A. Yes.

Q. In summary, what you are saying is that you did not wish to mention it in the earlier application made on your own behalf because you and Mr Patarkatsishvili were trying to negotiate with Mr Abramovich compensation for the undervalue.

A. It's true that Badri discussed with Mr Abramovich compensation undervalue, it's correct.

Q. Well, first of all, there were no negotiations with Mr Abramovich about compensation at any time before you began these proceedings, were there, either with you or with Mr Patarkatsishvili?

A. Before -- no, no, no. According of my understanding, Badri negotiate to Abramovich about compensation even in 2004/2005.

Q. Well, if it was in 2004 and 2005, that was after your application for asylum, wasn't it?

A. My application for asylum, I think it's a little bit -- for my asylum or for Glushkov asylum?

Q. No, your application for asylum in which you didn't mention the threat which you say forced you out -- let me --

A. Sorry.

Q. You didn't mention in your application for asylum being forced out of Sibneft by these threats. That application for asylum was originally made in October 2001 and was successful in September 2003.

A. Mr Sumption, I gave application for political asylum, it's clear that the accent -- and I told you even now -- that Abramovich made this threat because he had behind of him -- not behind of him -- because he was supported by Putin. And Putin is a key person because he put Putin, show Putin and say, "If you will not do that, Putin will be -- will damage you".

I just want to tell you that this is important to understand: that it was impossible in Yeltsin time because Yeltsin never -- no one can accept that Yeltsin will support you to raid something. In Putin time it's different and I make political -- you're absolutely correct -- I made political application because I try -- I start -- I try to stress that it's political motivated and I think it's correct what I have done.

Q. Mr Berezovsky, the point I'm getting at is actually quite a limited one.

A. Yes.

Q. I have challenged you on your account of these things.

A. Yes.

Q. I am now interested in discovering why you never publicly said anything about the threats you say forced you out of Sibneft until long after 2001.

A. I -- sorry.

Q. In this asylum statement you say that your reason was that Badri was negotiating with Mr Abramovich.

A. Yes.

Q. You do not say, as you did this morning, that your reason was that you didn't want to make trouble for Mr Glushkov in Moscow.

A. Mr Sumption, I have many reasons not to do that and all the reasons, if you want, I may repeat those reasons again. The reason was, first, that the first priority was Nikolai and my belief was that not Putin more fight for Nikolai to be in prison but Mr Abramovich is fighting for Nikolai to be in prison. It means that even when I came to the battle against of Putin openly, I tried to keep Abramovich aside of that because I knew that if Abramovich will come to Putin just caring of his interest, he will make influence Putin to be more aggressive. This is the point.

Q. Well now, I understand your evidence that you've just

given to be that you didn't want to make public statements that you had been intimidated into selling out of Sibneft in case it made Mr Abramovich cause difficulty for Mr Glushkov in Moscow. I understand that's your evidence.

A. It's one of the reasons, you're correct.

Q. Now, I would like you to look, please, at bundle

H(A)69/3.

My Lady, I think this may take just five minutes or perhaps a little more.

MRS JUSTICE GLOSTER: Very well. Can we put away the asylum statement?

MR SUMPTION: Yes, we can.

Would you please look at H(A)69/3, which is a document you've seen before where you said for the first time that you had been pressurised by Mr Abramovich into selling out of Sibneft.

A. Yes.

Q. Now, you've seen that before and you said sometimes your emotions got the better of you?

A. Yes, correct.

Q. Now, on the same day that you made this statement to the Moscow Times, you also issued a press statement to Agence France Presse, didn't you?

A. Yes.

Q. We'll find it at page 5 of the same bundle.

A. Okay. Yes.

Q. And a few days after this you told the Novosti wire service that you were preparing a claim for damages; see page 13.001 of the same bundle H(A)69/13.001.

A. Yes.

Q. Your statement a few days after that to Novosti?

A. Yes.

Q. Now, you didn't just do this in a fit of emotion, did you? You took very great care over several days to give your intentions the widest possible publicity?

A. Yes, and what? That connect -- I need to recognise what events happen exactly because I was emotional, it doesn't mean that I emotional one second, yes? It means that something happened, I don't remember, maybe -- I don't remember well, as I told you, because in parallel there were very other -- a lot of other events which were happening. For example, in 2003, was killed my partner from liberal Russia, I don't think that it was December or at the end(?) of the year but it was something what made me emotional and not for a second, that's it.

You are absolutely correct: there are several statements which contradict with my previous position. It is that something happened, I don't remember well

what happened exactly, I try to analyse that and to give you the answer but it's nothing what didn't coincide with my position that sometimes I have been emotional.

Q. Now, at the time that you made these statements to the various news agencies and papers, Mr Glushkov's trial was in progress in Moscow, wasn't it, and he was still in jail?

A. I don't remember when Nikolai Glushkov was released from the jail --

Q. In March 2004.

A. Yes, 12 March 2004, correct.

Q. Right.

A. It means that he still have been in jail.

Q. You wouldn't have made these statements if you had really been concerned that Mr Abramovich would respond by making difficulties for Mr Glushkov, would you?

A. Again, Mr Sumption, again and again, sometimes my emotions were over, yes, and I'm a human being. I understood that it's the most dangerous because Abramovich is -- in case of Glushkov, he's more dangerous than Putin, but I have done that. You have correctly said that it's just few examples of that and you gave example which coincide with almost -- which made almost at the same time. It means that something really touched me a lot and I made this statement.

Q. Well, would you turn to bundle H(A)90, page 55 H(A)90/55. You haven't got it yet but somebody is about to give it to you. This is an extract from Kommersant and there's a Russian version on the yellow pages that immediately follow.

A. Yes, fine.

Q. Now, this is 18 months or so later, in July 2005, when you publicly announced that you would be suing Mr Abramovich shortly. Do you see?

A. July 2000...?

Q. July 2005.

A. Yes.

Q. And what you say is:

"The experts and my lawyers are estimating the losses I suffered when forced to dispose of the assets. I had to do it under the pressure of Putin, Voloshin... and Abramovich. I was, in effect, under the racket. I'm no short in proofs of their actions having political background."

So you are saying you are about to sue Mr Abramovich, that's what you were announcing?

A. Just second, I want to open Kommersant, okay? What is the paragraph?

Q. In the English, it's the second paragraph of the article.

A. Yes, yes. (Pause)

Yes.

Q. Then after saying a bit more about your proposed claim, in the fourth paragraph of the article you say:

"The timing for the suit is not accidental: the public opinion on Putin has changed in Great Britain. They used to believe his actions resulted in economic growth in Russia, that, for instance, he had to rectify Yeltsin's errors. Today's public opinion is rather that political persecution started in Russia exactly in the time of Putin..."

A. Yes.

Q. Now, at the time you made this statement, Mr Glushkov was in the middle of his second trial in Moscow, the retrial that was ordered by the Court of Appeal?

A. Yes.

Q. So this was a particularly sensitive moment for Mr Glushkov, wasn't it?

A. Glushkov was -- as I remember, Glushkov that time was already not -- was already -- just a second. When Glushkov was released?

Q. Glushkov was released in 2006 --

A. 4, yes.

Q. Sorry, Glushkov was released from jail in March 2004, he left Russia in 2006.

A. Yes, 12 March. It means that Glushkov already was not in jail and to put in jail much more complicated than to release from the jail, particularly Glushkov -- proof Glushkov was in jail not because he accuse what they initially tried to prove but Glushkov was in jail mainly because he tried to run away from jail. It was the final conclusion.

Q. Now, you told us this morning that the reason why you had taken so long to make public allegations and you have said in your pleadings that the reason why you took so long to start this action was that you didn't want to do anything until Mr Glushkov was safely out of Russia. Now, he wasn't safely out of Russia at this time and yet you explicitly said that you planned to have an action against Mr Abramovich by September?

A. Yes, again I want just to stress, that time Glushkov was not already in jail. Definitely it's again, as you see later, it's politically motivated, what I said, because I connect with Putin position that time and definitely it's -- again it does not help Glushkov but my calculation was it will not damage him to be in jail again.

Q. You can't mean that, Mr Berezovsky.

A. Sorry?

Q. You can't possibly mean that. What you have literally

said is that Mr Glushkov wouldn't mind going back to jail and I don't think you meant to say that.

A. No, no, no. I mean that I understand that Glushkov already was released again, that he is on the trial and it's -- I don't remember what time I discuss with him to run finally -- to leave Russia and he was completely, he was in completely different position when he was in jail and I tried to -- not to present any strong statements against of Mr Abramovich.

Q. This morning, what you told us was that you couldn't make strong statements even after he left jail until he was safely out of Russia?

A. You're absolutely correct but, again, my position, as I told you, my emotions sometimes and my situation sometimes move me, push me to make such kind of statement.

Q. It wasn't your emotions that pushed you to make this statement. The reason you made this statement appears from the fourth paragraph. You made it at this time because it would maximise the political impact of what you were saying?

A. You are again -- it's exactly the reason why I mentioned when I gave explanation that it was political reason for that. And all the time, I would like to stress that Glushkov being in jail told me, "Boris, don't change

your political battle to my freedom". It's not my word, it was wording by Glushkov.

Q. Mr Glushkov's position had nothing to do with the delay in making this allegation and bringing this action, did it?

A. No, it's completely wrong and you know well that I serve or that I start action almost the last days when I had limited time to start and it's only the reason why I wait up to the last moment was -- and I discussed that with Glushkov, was the reason that maximise -- minimise the risk for Glushkov. It was the main reason. But when Glushkov already had been in -- again, it's declaration that I will start action. It's not -- and only when Glushkov had been in London already and when he was almost to get political asylum, because it also was the point which I discussed with Mr Glushkov and Glushkov accept my position finally, I file -- I start the process. I ask Andy Stephenson to write a letter for action only after I talk to Glushkov and Glushkov accept to start these steps.

MR SUMPTION: My Lady, I have one more question, I'm quite happy to leave it until tomorrow if your Ladyship wishes to rise now.

MRS JUSTICE GLOSTER: I can't sit beyond 4.30.

MR SUMPTION: No, it should take less than that, even under

difficult conditions.

MRS JUSTICE GLOSTER: Right. Well then, put it,  
Mr Sumption.

MR SUMPTION: Mr Berezovsky, you say in your witness statement that even after Mr Glushkov arrived in England, you didn't want to start this action in case Mr Abramovich got the Kremlin to obstruct Mr Glushkov's asylum application.

A. Yes, it's absolutely correct. I afraid that it will be -- it will come extradition warrant to arrest Glushkov and what happened with me and it's reason why I wait up to last moment to start the process.

Q. In your evidence you're not talking about extradition warrants; indeed, you hardly could because the trial had already occurred. But what you say is that you were concerned that Mr Glushkov's asylum application might be obstructed by the Kremlin at the prompting of Mr Abramovich.

A. Exactly, because as equally from personal experience, when I was asking political asylum and a long time I didn't get political asylum, exactly at that moment Russia sent extradition warrant and I faced with the two case together in parallel: political asylum and extradition. And I fight in parallel with -- against of one and for another one. And I got political asylum

automatically only when extradition warrant was refused.

It's exactly what I afraid --

Q. It was the other way --

A. -- what Glushkov could face at that time.

Q. It was the other way around, Mr Berezovsky.

A. Sorry?

Q. It was the other way round, Mr Berezovsky.

A. Mr Sumption --

Q. -- the home secretary granted you asylum and then the extradition warrant was refused.

A. Mr Sumption, you're absolutely correct. But the point is that in parallel I face two problems: political asylum fighting and extradition fighting. And extradition was refused after I was granted political asylum. But, before, when I just start political asylum, it was refused at the initial stage. It is reason why I went to the court to fight for that.

Q. Your own experience must have shown you that the Russian government had no influence over asylum applications against Russia in England because your asylum application was granted in spite of protests by the Russian government, wasn't it?

A. I have completely different experience because I know well that unfortunately -- know well unfortunately, or it maybe coincide, but when I was looking for political

asylum and there was no answer at all, one and a half year I think, and then when Russian sent extradition warrant, that time asylum was refused.

It means that it was some coincidental between my attempt to obtain political asylum and waiting for extradition warrant. I don't want to say that British government coordinate with Russians but it is the reality. And after that I faced with two problems together: I was refused political asylum, and start to fight for political asylum, in surrounding of extradition warrant.

MR SUMPTION: My Lady, that's a natural break.

MRS JUSTICE GLOSTER: Very well. 10.15 tomorrow?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well. 10.15 tomorrow.

(4.30 pm)

(The hearing adjourned until  
Wednesday, 12 October 2011 at 10.15 am)

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Wednesday, 12 October 2011

(10.15 am)

Discussion re housekeeping

MS DAVIES: My Lady, before we start the evidence may we just deal with one short matter relating to Clydesdale Bank.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: My Lady has made two orders against Clydesdale Bank and that has resulted in various material being produced, but the material that's been produced contains some redactions apparently on the ground that the redactions relate to names which are not names of the parties.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: Essentially the parties have now agreed that various terms should not be redacted and Clydesdale, through their solicitors, Dundas & Wilson, have accepted that they would not oppose an order requiring those terms to be unredacted and we therefore ask my Lady to make an order requiring those terms to be unredacted.

I hope in front of you you have a draft order, which has been seen by my learned friends for Mr Berezovsky and for the family defendants who are concerned with this.

MRS JUSTICE GLOSTER: It was handed to me just before I came

down. I haven't read it. I better just read it. I'll read it over the short break.

MS DAVIES: I'm very grateful, my Lady.

MRS JUSTICE GLOSTER: But there's no opposition from Clydesdale or from the claimant?

MS DAVIES: There's a letter at the back of the clip from Dundas & Wilson of last night indicating they're neutral on the application.

MRS JUSTICE GLOSTER: Right. Well, I'll read it in the short break.

MS DAVIES: I'm grateful, my Lady.

MR BORIS BEREZOVSKY (continued)

MRS JUSTICE GLOSTER: Mr Berezovsky, good morning, you're still on oath.

THE WITNESS: Good morning.

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Good morning, Mr Berezovsky.

You may remember that in your witness statement and in oral evidence yesterday you gave us one of your reasons for wanting the agreement over the \$1.3 billion to be in writing: that you would need to satisfy western money-laundering regulations. Do you remember that?

A. Yes, I remember that there were several reasons and one of the reason was that everything should be absolutely transparent and clear for the banks.

- Q. Yes. That was because you were aware that the banks would be bound by rules requiring them to discover the source of the funds?
- A. At that time I already understood much more about requirements of western banks and it was one of the reasons why I want to have -- don't have any problem with western regulations of money sources.
- Q. Now, in 1999, as we established the day before yesterday I think, Mr Fomichev became your financial manager?
- A. I think he became financial manager a long time before that but in 1990 (sic) he was financial manager of our group, it's absolutely correct.
- Q. Well, by 1999, it may have been earlier, he was the financial manager of you personally, your affairs, wasn't he?
- A. As I told you, till I leave Russia, everything what -- all operations with money or main operation with money was done by Badri.
- Q. Was it Mr Fomichev who suggested to you that you should consider shifting your assets into offshore holding companies and trusts?
- A. Which kind of companies?
- Q. Well, any kind of companies and trusts. As I understand it, in about late 1999 or 2000 --
- A. Yes.

- Q. -- you and Badri had a project to put your assets into offshore holding companies and trusts?
- A. Yes, you're absolutely correct that at the end of '99 and the beginning of 2000 we start to think how to construct our assets in western manner. It's correct. And Ruslan Fomichev was the one who accept to help us to do that.
- Q. Yes. Was the suggestion originally made by Mr Fomichev?
- A. I don't remember well. I think that it was mainly Badri and my personal understanding already at that time that the way how even we manage our business with Mr Abramovich, it's time now to move forward and to do in western manner.
- Q. Yes. Well now, when you say "in western manner", you mean shift the assets into western financial institutions, don't you?
- A. It means to create more protection on the one hand and to another hand to create more transparency for banks on the west. And on the other hand, more -- to increase our protection as far as Russia is concerned.
- Q. Now, Mr Fomichev has often been mentioned in the course of the evidence and I'm afraid he's going to be mentioned quite a lot more.

You are aware, are you not, that at least one of the various firms of solicitors who have acted for you in

this litigation have interviewed Mr Fomichev?

Cadwaladers did so in December 2007, didn't they?

A. Definitely I don't remember that but if you said that and it's so, I absolutely believe in that.

Q. Well, that was evidence given in the striking-out application but you may not know one way or the other.

I understand that you have quarrelled with Mr Fomichev about a loan and indeed you sued him in the North Shore litigation?

A. Moreover I won the case and it's the final decision of Supreme Court to refuse the appeal of Mr Fomichev. It's final decision and I won around \$35 million, it's true.

Q. Yes. Well, you've fallen out with Mr Fomichev. Have you asked Mr Fomichev to give evidence in this action?

A. Definitely not, because after I lost my trust to Mr Fomichev and after I recognise him as a crook and moreover I went to the court and passed through all courts, I mean the initial court, the appeal court and finally the other, I don't have now any doubt that he's crook.

Q. Well, you had a quarrel over a loan; it's not quite the same thing as being a crook.

MRS JUSTICE GLOSTER: Is that a question?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: What's your answer to that?

A. I'm sorry. (Pause)

The reason of my separation with Mr Fomichev was exactly the reason that he is crook. I didn't recognise that from the beginning but I -- after recognise that, me personally, I identified as a crook.

MR SUMPTION: If you do not know all the details of your financial affairs and Mr Fomichev, as you said in your evidence in the North Shore litigation, does know all the details of your financial affairs, what have you got to lose by calling him?

A. That he lost his credibility. Impossible to call person who is playing game, as I know now. He has already relations with team of Mr -- with the team of Mr Abramovich, I know this, I got this knowledge from people from Salford, and it means that he's playing game.

But that time definitely I didn't know that, but I lost my -- any my respect to him. I recognised him as a crook. And how I may ask him to be witness at this court which, from the very beginning, my understanding is that to present true, only true and nothing except of true? It will be illogical completely.

Q. Does Mr Fomichev live in England?

A. I know that he has apartment here with his wife and children. I know as well that his father is general --

was general of KGB and that he's continued travelling to Russia. This my knowledge is.

Q. Well, he lives at least for much of the year in England, doesn't he?

A. I didn't meet him last two or three years at all.

Q. Now, Ms Nosova tells us that Mr Fomichev introduced you and Badri to Mr Samuelson of Valmet in Geneva. Is that correct?

A. I think this is correct. This was introduction by Mr Fomichev and as well I think Mr Curtis as well was introduced to me by Mr Fomichev.

Q. By Mr Fomichev or by Mr Samuelson? Ms Nosova thinks it's Mr Samuelson.

A. I don't remember that. Ms Nosova definitely has better memory than me and I think that she's correct.

Q. Now, Valmet and Mr Samuelson were specialists, were they not, in creating offshore structures to hold assets for very rich individuals?

A. As I understood from the beginning, it was exactly the reason to introduce me to them. I did not aware -- was aware that they work just for rich; I think that they work for everybody who want to create proper structure to keep their assets in legal way. But I didn't know anything about other clients of them.

Q. No, okay. Well now, is it right that before you ever

met Mr Samuelson, there had been preliminary meetings with him by Mr Fomichev and Ms Nosova?

A. Again, I don't recollect that. But I am sure that if Mr Fomichev decide to introduce him to me, it means that he had knowledge who is this gentleman.

Q. Now, at paragraph 249 of your witness statement D2/17/248 you tell us -- and this is consistent with what you said this morning -- that at the time when Mr Samuelson became involved, which I think was in 2000, you already knew something about western money-laundering regulations.

A. I didn't know anything about money-laundering regulation but I knew the word "money-laundering" and I knew that it's bad.

Q. Yes.

A. But I didn't know anything about regulation.

Q. Well, you have told us earlier this morning that you realised that western banks had certain duties to perform about investigating funds deposited with them?

A. It's absolutely correct. It means that if I know that it's money-laundering regulation, it means that something what is possible to check.

Q. Yes. Now, when I talk about western money-laundering regulations, I'm talking about the regulations that required the banks to carry out those investigations.

Do you understand? It's a shorthand.

A. Yes, yes, and I understood that I should present absolutely clear picture the source of the money and what is there.

Q. Right.

Now, if you look at paragraph 249?

A. 249, sorry?

Q. Yes, 249.

A. Yes.

Q. Right. At the very bottom of the page you're talking here about the offshore trusts, the Hotspur and the Octopus Trusts --

A. Yes.

Q. -- and you say that these structures were created to legalise or to formalise your interests in various businesses:

"This was not solely in order to provide protection from political attacks; we had also learned by this time that, in order to comply with Western money laundering compliance requirements, it was necessary to have interests in assets formally recorded so that the source of funds could be demonstrated where required."

A. Yes, correct.

Q. Now, as I understand it, you understood by this time -- that's to say early 2000 -- that the best way of

satisfying western financial institutions about the source of funds was to demonstrate that they represented an asset that you owned?

A. Yes, it's optimum.

Q. Yes. And you also realised, didn't you, that in order to satisfy western institutions about that, you would need to have documents establishing your ownership of them?

A. I understood well that the words are not enough; you need to present the picture which they want to have.

Q. Yes, with documentary evidence?

A. If -- definitely it's the best way.

Q. Yes.

Now, in 1999 and early 2000 you and Mr Patarkatsishvili were receiving large sums of money from Mr Abramovich and companies associated with him which you were unable to explain with any documentary evidence; do you agree?

A. It's exactly what I try to make happen and it's the reason why I call professionals in establishing the foundation and it's -- not foundation -- the professional who can establish the structure and exactly that I want to explain them what is source of my money and they accept my explanation.

Q. Now, would it be fair to say that during the period

after you left Russia, the need to satisfy western institutions about the source of your funds was a significant issue for you and Mr Patarkatsishvili?

- A. It was significant issue even when I have been in Russia and, as you correctly mentioned, I start to think about that in '99, at the end of '99, the beginning of 2000. And as you remember, I left Russia in autumn 2000. It means that I start to think about that not when I -- when I left Russia but at the moment when I recognised that it's now a moment already because it was already clear that Putin will become president, it was election campaign March 2000, and we start to think how to make transparent our assets.

And if again we return back to meeting in Le Bourget, it's my request to Mr Abramovich was absolutely the same: I want to make everything transparent for western bank.

- Q. Yes. And you have had to face, since leaving Russia, haven't you, money-laundering investigations by prosecutors and judges in a number of countries?
- A. You're absolutely correct. I face that -- faced the source of this investigation was just Russia and it was just political motivated, what was accepted in this country when I was granted political asylum. All the rest investigations, Mr Sumption, you know well, are

closed because no one reason was found that it was money-laundering. I mean Switzerland, I mean Holland and --

Q. France?

A. -- and as far as Russia is concerned, I don't calculate at all because it doesn't matter.

Q. I'm simply trying to establish the significance in your financial affairs of this question of money-laundering regulations.

A. And we know the result.

Q. Yes. Well now, you have mentioned Russia, Switzerland and Holland and I think there have also been investigations in France and Brazil, haven't there?

A. In Brazil it's still ongoing.

Q. Yes.

A. And as far as France is concerned, as I understand, we don't have investigation of money-laundering. We have investigation now already activity of Runicom company, which belong to Mr Abramovich. And as I understand from the last question of French lawyer, lawyer accept the position that impossible to discuss just about Berezovsky at this matter without discussing of role of Mr Abramovich and Mr Shvidler at this matter. This is my understanding of what French judge recognised.

Q. Now, did you meet Mr Samuelson of Valmet at your house

in Cap d'Antibes at the beginning of September 2000?

A. My recollection is that I met him earlier, I met him in spring 2000, and then I had several meetings with him and could be in September as well.

Q. I see. Could you perhaps be given bundle H(A)19.

I would like you to turn to H(A)19/10, please. This document is a note made by Mr Samuelson, an internal note within Valmet made by Mr Samuelson about discussions that he had had with you and Mr Patarkatsishvili. The date of the discussions does not appear from the document; the document itself is dated 5 September 2000. It's the American dating system that's been used.

A. It could be the same May 9 but I don't want to argue against of that now.

Q. Yes. Well now, you think that it was in spring that you had discussions with Mr Samuelson?

A. My recollection is spring, the beginning of our relations, of our conversations. But, as I told before, I can't exclude that -- not I can't exclude -- it could be several discussions and one of them could happen in September, what is less probable. But nevertheless I had several discussions with Mr Samuelson.

Q. Yes, understood.

Now, if you look at the bottom of page 10 and the

top of page 11, there is a description, a summary, in Mr Samuelson's note of the Hotspur and Octopus Trust structures. Do you see that?

A. Just a second. Okay.

Q. Now, that suggests, at any rate to me, that at the time this note was prepared the Hotspur and Octopus Trust structures had been created already. Is that correct?

A. I don't know. I don't know. I just remember the big -- how to say? -- pieces of paper which a lot of trusts and mentioning aluminium, Sibneft and connection how symmetrical trusts for Badri and for me will be organised; not only trust but how everything will be specified.

Q. Did you discuss with Mr Samuelson what assets you wanted to transfer to these offshore structures?

A. Yes, I discuss with him. We discuss that it will be almost all valuable assets which, as I understand, Badri and me share. And we discuss about Sibneft, we discuss about aluminium assets, we discuss about our -- as I remember, our mass media -- our TV, our newspapers, about future privatisation -- possible future privatisation of Aeroflot and Transaero, which we already own at that time. We discuss about all potential -- all existing potential assets which Badri and me own or will own together.

Q. If you would look at the top of page 11, you will see, five lines down from the top, Mr Samuelson says:

"We will start by moving the Sibneft holdings in to the funds in about ten days."

A. Just a second.

Q. Five lines down.

A. Just a second. Mr Sumption --

THE INTERPRETER: Five lines down.

THE WITNESS: Mr Sumption, I ask you very much: don't push me, I am not in hurry.

MR SUMPTION: I'm trying to help you by telling you where to find it.

THE WITNESS: Thank you very much, I have help from my translator.

THE INTERPRETER: Sir, is this --

THE WITNESS: Even translator doesn't understand where is that.

MR SUMPTION: Top of page 11, five lines down from the top.

THE WITNESS: Okay, just a second.

THE INTERPRETER: "We will start by moving..."

THE WITNESS: Yes.

MR SUMPTION: Right.

"We will start by moving the Sibneft holdings in to the funds in about ten days. These holdings are owned through Cypriot companies mainly today."

Did you tell Mr Samuelson that your holdings in Sibneft were held through Cypriot companies?

- A. Not at all. I don't remember that at all because I didn't know that -- as I told you, my relations with Abramovich at that time were that he hold my shares and it means that it was not organised in any way how it's structurised. And it's exactly the reason of if I already own through Cyprus company, why I should -- what the reason to change one way to another way?

- Q. Well, quite, but let's just establish the facts.

Your interests in Sibneft, as you claim, were not in fact held by Cypriot companies for you, were they?

- A. Again, my interests in Sibneft hold by Mr Abramovich and he organise how to hold that. I was really the first time informed how it's organised in Le Bourget, as you remember, Mr Sumption, I think well, because exactly there Mr Abramovich said, "Oh" -- when I said, "I want to organise in western manner", and Abramovich said, "Boris, it's already organised for me". And I don't remember who is owning what, Zhenya or Zhenya, he said exactly in his -- in our discussion at Le Bourget: it means Evgeny Tenenbaum or Evgeny Shvidler. And I was a little bit surprised that he already organise everything in western manner and why he does not want to do me the same, in the same way.

It's exactly what I start to think at the beginning of 2000 and Abramovich just confirm that he already have done that. I didn't know that until I met him in the -- during our meeting in Le Bourget.

Q. Mr Berezovsky, you must have told Mr Samuelson that your Sibneft holdings were held for you by Cypriot companies or Mr Samuelson wouldn't have recorded the fact in this note?

A. Mr Sumption, my position is very simple and very clear: I never mislead Mr Samuelson. What he wrote in his papers, maybe he think that best way is Cyprus; I don't know at all. But I never mentioned him that I have any structure which own my shares in Sibneft because I knew well that it's owned by Abramovich.

Q. Can you suggest any way in which Mr Samuelson could have been under that impression if you or your staff had not told him?

A. Mr Sumption, I give you clear answer: I didn't know anything about how that time all shares, including which belonged to me, Abramovich structurised. I got this knowledge just in Le Bourget. And you -- and if you read attentively, and from yesterday I understood that you read attentively what happened in Le Bourget, it means that Abramovich already had a structure to structurise and I insist and press Mr Abramovich to do

the same; Abramovich refused.

Q. Now, did you tell Mr Samuelson that you had a large stake in Aeroflot?

A. Definitely I informed Mr Samuelson that we are going to privatise Aeroflot. At that time I didn't have, as you told, stake. As I know, being already many years before managing Aeroflot, Logovaz had maybe less than 1 per cent share there.

But the plan which we established from the beginning was to go to privatise Aeroflot and, as you know well, at that time we already owned Transaero -- it's, my Lady, also very big air company -- and my plan was to integrate together Aeroflot and Transaero like one company, and this company should control more than definitely maybe 70 per cent of Russian market in passenger -- in transportation by air.

Q. Transaero was a charter and internal airline within Russia, wasn't it?

A. It's not correct.

Q. What was it?

A. Even now it's one of the most famous for foreign airlines as well and you know well that they have even domination in some countries, like Israel, and they have flights also in Great Britain.

Q. Now, Aeroflot had been privatised about five years

before this, hadn't it?

- A. Unfortunately not. Unfortunately not, and Aeroflot really become privatised only -- very small portion of Aeroflot was privatised at the time when Glushkov, Nikolai Glushkov, was deputy general manager of Aeroflot; and, as I told you, Logovaz had just very small portion of that.
- Q. Mr Glushkov tells us in his witness statement that when he joined Aeroflot at the beginning of 1996 it was in the process of being privatised. Initially, he says, it was 51 per cent owned by the State and the rest by the employees. As I understand it, the privatisation occurred in the mid-1990s. Is that wrong?
- A. No, maybe it's -- you are correct. I mean that privatisation not for the market, I mean that State kept 51 per cent control. And I didn't recollect that -- definitely I don't remember -- that maybe the employers (sic), maybe correctly, own 49 per cent. But it was not privatisation itself as we understood well; it was not on the market to buy and to sell. It's the reason why, as I told you, Logovaz, we owned just very small portion of that.
- Q. You did not own any stake in Aeroflot in 2000, did you?
- A. As I remember as well, I did not own anything and we just -- and at that time Abramovich move to the Aeroflot

and, as you remember, he even sold shares of Aeroflot because, breaking our agreement, he already operate himself and only who I know the first real private owner except of employers (sic) was Mr Abramovich and his team.

Q. Mr Glushkov tells us in his witness statement that you were not involved in Aeroflot either as a director, shareholder, employee or otherwise. Is that correct?

A. It's absolutely correct. Again, and as I told you before, I'm not sure did Logovaz -- how much Logovaz owned; it means my involvement may be one-hundredth part of per cent. But, as I know, we did not start -- we try to start privatisation in real sense and we were not successful that time. Only Abramovich was successful when he took control over Aeroflot.

Q. If you look back at Mr Samuelson's note on page 11?

A. Page?

Q. 11 -- you'll see that he records that you and Mr Patarkatsishvili owned a large stake in Aeroflot. That's what you told him, isn't it?

A. I never told him that because I did not own. It's absolutely clear.

Q. Would you look at the top of the next page, page 12, please.

A. Yes.

Q. What's recorded here is that you had been:

"... lent on by a past Prime Minister to support his Presidential campaign and, having refused, was targeted for the attention of the Prosecutor in Moscow on the Aeroflot cash collecting arrangements."

A. Again --

Q. And in the third and fourth line of that page --

A. Yes.

Q. -- Mr Samuelson records:

"Aeroflot was partially owned by [Berezovsky] and also by the State."

That's what you told him, isn't it?

A. No, I didn't told him that. Maybe his understanding was that because Aeroflot, as you mentioned now, what I recollect, was privatised by employers (sic) partially, maybe his understanding was that it's my privatisation. I didn't have -- again, I did not have any shares but I planned to participate in privatisation of Aeroflot. What happened later, when Abramovich privatised, this exactly was my plan which Abramovich realised when I left Russia.

Q. You didn't have any plan to privatise Aeroflot, Mr Berezovsky, because it had already been largely privatised in the middle years of the decade, hadn't it?

A. Again, it's not correct. I told you precisely that

private -- I mean businessman, I'm sorry, in this terminology, did not privatise Aeroflot until Abramovich came there. There is no one had any real stake. Maybe the employers (sic) they had shares, small shares, but it was not privatised in the sense that business control Aeroflot. And only Abramovich was successful with that, basing on what Mr Glushkov had done before.

And Abramovich came there because he asked me personally, "Boris, could we also manage Aeroflot?" We have -- I had real understanding that he is good professional manager with Shvidler and so, having experience in Sibneft already, and it's the reason why -- and Glushkov was not happy with that, he did not like that, but finally I organised meeting of Mr Shvidler with Mr Jenni as well, Mr Jenni who, as I understand, will give witness statement here, and it's the way how they start to be involved in Aeroflot. And finally they privatise, not me.

Q. Well now, could I ask you, please, to look at bundle H(A)18.

A. 18?

Q. Yes. The full reference is H(A)18/221.003.

Now, this is something which in this litigation has been called the "Explanatory note". The Russian version starts at page 003.

A. Yes, I have it.

Q. There's an English translation of the first page over the page and then the following pages follow. Okay?

A. Yes.

Q. Now, we don't know a great deal about the origin of this document except that it's been disclosed by the family defendants and appears to have come from the office of Mr Kay.

A. Yes.

Q. Now, it appears to be a plan or a draft plan for the restructuring of your assets at some stage around 2000 or possibly a bit earlier.

A. Yes.

Q. Now, if you look at stage 2 in the proposal that's been made --

A. Just a second. Could I have the English as well? Because I have just Russian.

Q. You will see on the page after the Russian --

A. Yes, yes, fine.

Q. -- there's a translation.

A. Yes, yes, good.

Q. And each page of Russian is followed by its own translation.

A. Yes, thank you.

Q. Okay? I'm looking at the translation and at the bottom

of page 003T of the English H(A)18/221.003T, stage 2 of this process is described.

A. Yes.

Q. This is describing a process of distributing assets to partners in proportion to their stakes.

A. Yes.

Q. Over the page in the English, you will see a list of seven assets:

"It is initially envisaged that assets owned by the partners in the main business interests will be distributed. Such business interests include:

- "1. LOGOVAZ;
- "2. The aluminium sector;
- "3. SIBNEFT;
- "4. ORT and other media;
- "5. AEROFLOT..."

A. Yes.

Q. Now, were you telling your staff around 2000 that you owned part of Aeroflot?

A. Mr Fomichev, who you mentioned before, knew absolutely perfectly what situation is as far as Sibneft, aluminium, Aeroflot as well, and he knew well that we plan to privatise Aeroflot at that time.

It's the reason why all the time I'm a little bit sceptical when you mention the date of Valmet document,

insisting that it was September, not May. I can accept September as well, but in September, as you already know, I was in fight already with president and I did not pay -- I did not wait that I will be able to privatise Aeroflot. But nevertheless it was a plan and it's absolutely clear reflected here.

But if you demonstrate me the other paper with the structure which my Lady mentioned, big list with a lot of companies and so-so, you will find out clear that Aeroflot is not mentioned there because it was just plan for the future. It's mentioned there just aluminium and Sibneft as the main assets there.

And it's just -- I don't know is it argument or not, but my understanding is absolutely clear that that time we are going to privatise Aeroflot; what Abramovich have done later but without our participation, breaking our agreement.

- Q. Mr Berezovsky, we have seen two documents from entirely independent sources but both relating to your assets which refer to Aeroflot as an existing asset. What I suggest to you is that you were giving people the impression that you owned part of Aeroflot.
- A. Mr Sumption, I already gave you answer to this question; I can just repeat the answer if you insist to do that. I plan -- because it was absolutely regular way at that

time and you know also that well from Russian history that if one business group planned to privatise something, they try first of all to take management control.

It's exactly what Mr Abramovich have done, and Mr Shvidler, with Sibneft. They knew well general manager of the companies and they went there and -- in their witness statement, moreover, Mr Shvidler said precisely that we were surprised to privatise because it's enough, for us, financial streams to control. Definitely it was hypocrisy, and Mr Abramovich was happy to privatise, but it was a general approach for privatisation: first of all you put team who professional is able to manage in market economy and then you try to privatise.

- Q. Mr Berezovsky, while you've been answering those questions we've checked the position on Aeroflot. 49 per cent of the company was privatised in the mid-1990s; the other 51 per cent is still owned by the Russian State to this day. That's the position, isn't it?
- A. Mr Sumption, you remind me, even today I didn't remember that, but it's not privatisation itself because if you compare -- it was -- sometimes State made this step to privatise for employers (sic) and you were absolutely

correctly said that it was not privatisation itself; it's just the beginning of privatisation when State split shares among of employers (sic), not on the market.

Q. There has been no further privatisation of Aeroflot either in 2000 or since 2000, has there?

A. As I recollect, it was -- it's happened later when Abramovich took control over the company.

Q. It never happened. The Russian State still owns the same 51 per cent as it owned in the mid-'90s. That's the position, isn't it?

A. I can't recollect that. I just know that Abramovich privatised the company and sold his stake. This is the point.

Q. Was --

A. And it's -- I don't -- definitely I don't know how Abramovich got this stake but it's absolutely clear that he become -- he finally bought the stake of Aeroflot, not me.

Q. Now, was Andava a joint venture company originally owned by you and Mr Glushkov and I think Andre & Company?

A. Andava was created by my initiative, together with Mr Glushkov and I understand with Andre & Cie, who were -- who are still or who were our partners in Logovaz, and a company was created for the collecting

money for the -- for finding money to fund the new project, which name is Ava. And I start this project in '93, before the coup, and when coup happened it was autumn '93: everything collapsed, market collapsed. I didn't have enough money on the internal market and it's the reason why I, having experience with the Forus company, which help me to fund Avtovaz, I create -- I propose the same idea to fund Ava project.

And it's absolutely correct: you said that this company was created by me, Mr Glushkov and Andre & Cie, maybe -- no, Badri definitely as well. As I understand, that's it.

- Q. Did you, in 2000, still have a significant interest in Andava?
- A. I think that in 2000 I still continue to have shares in Andava; how much definitely I don't remember. But it's clear to understand because Andava is transparent company, it's not a problem to understand what is that. Moreover, as I told you before, it was a lot of investigation in Switzerland, pushing by Russian Prosecutor Office, and they finally were closed all of them without any judging against of me.
- Q. The case that you have made in the Chancery action is that after 1996 you held 75 per cent of Andava; is that correct?

- A. Maybe together with Glushkov or someone. I don't remember that I control Andava at all.
- Q. Well, not in connection with Glushkov because, as you have told us in your evidence, Mr Glushkov gave his shares to you in about 1996 or '97, didn't he?
- A. Mr Sumption, I just want to remind you that he gave me shares of Logovaz.
- Q. Of Logovaz?
- A. And later on, when Glushkov returned back to --
- Q. Well, Mr Berezovsky, I'm puzzled about that. I'm reading from your pleadings in the Chancery action, where you say --
- A. It's --
- Q. Let me finish.
- A. Sorry, sorry.
- Q. -- Mr Glushkov gifted his shares in Andava to BB such that BB held a 75 per cent stake in Andava, and that's said to be in 1996.
- A. Mr Sumption, you're absolutely correct because I still have been in 2000 year, and that was a different time. You're absolutely correct then when Glushkov gave up his shares, including Andava, he gave up to me. You're absolutely correct.
- Q. Now, in 2000 were you still receiving income from Andava?

A. I really don't know did that time Andava generate money, but what I understand that -- and why I forgot about Glushkov, because when Glushkov return back to -- when he return back and went to serve Aeroflot, it was happened in '96. He served Aeroflot between '96 and '98. He, as I recollect, used the Andava as a vehicle for Aeroflot.

Q. Yes.

A. It's the reason why I forgot that he did not -- I think that he become again shareholder but it's the reason why I forgot -- I thought that we discuss about already new time. Sorry.

Q. Well now, is it right that from 1996 onwards Andava managed the foreign currency -- that's to say the non-ruble -- treasury of Aeroflot?

A. It's absolutely correct. And it was the idea of Glushkov to concentrate all foreign streams which were spread through more than hundred banks in one hand, that to control -- first of all to put all income of Aeroflot in one place and, basing on that, to obtain the credit to lease the new planes for Aeroflot. Yes, it was idea of Mr Glushkov, it's correct.

Q. Okay. Now, Mr Jenni says in his witness statement that when Mr Glushkov arranged for Andava to manage the foreign currency treasury of Aeroflot, it had no other

business thereafter; its only business was managing the foreign currency treasury of Aeroflot. Do you agree?

A. Mr Sumption, as I told you before, I was not involved in managing anything at all. I just follow at that point Andava. As I told you, at the beginning we create Andava to find funding for other project; it's the reason why it's Andava, yes? Later on Glushkov decide to use that for the purpose of Aeroflot and I don't have any connection how it was managed and Glushkov completely was responsible how to do that.

Q. Now, in 1996 and '97, is it right that substantial sums of money were paid by Andava to companies controlled by you?

A. What do you mean? Which company controlled by me?

Q. Anros, Forus and Ruco, principally.

A. I participate in Anros, I participate in Ruco and definitely Andava was not -- how to say? -- Andava was a business project, not just a charity.

Q. You see, the Swiss court, in its judgment against Mr Jenni, has established in some detail, hasn't it, that funds derived from the management of Aeroflot's foreign treasury were transferred to companies including Anros, Forus and Ruco in which you, and in some cases Mr Glushkov, were interested?

A. Believe me that I did not read the judgment of Swiss

court or Swiss judge but I want just to stress you: there were a lot of attack to me from Russian Prosecutor Office which they spread all over the world, including Switzerland. And as I told you recently, today, I didn't have any charge from Swiss authorities against of me.

And moreover, all investigations which Russia initiate for many years is closed now. I have official paper which demonstrate that they don't have any -- anything what I have done illegally there.

And again Andava was a business, not charity: it means that absolutely clear that this company generate money.

Q. Now, Aeroflot's foreign treasury was still being managed by Andava in 2000, wasn't it?

A. It's a great story. You're absolutely correct. As I heard, I don't remember well, that even when Glushkov was in prison in Russia, Russian -- Aeroflot continued to use the vehicle which Glushkov created. And it's really -- they charge him because he create this mechanism first of all, Andava, and on the other hand they continue to use this mechanism for the purpose of Aeroflot. It's just demonstration again that his charge, the case against of Glushkov was just political motivated, nothing more, because his connection to me.

Q. Now, Mr Berezovsky, we've seen in Mr Samuelson's note in two places that he was given to understand by somebody that you owned a large part of Aeroflot. What I suggest to you is that that was the impression that you gave him because you were receiving large sums of income via Andava and the other companies, Forus, Anros and Ruco, which actually emanated from Aeroflot.

A. Mr Sumption, it's absolutely wrong. I gave all my answers to your questions. I never mislead Mr Samuelson as, I would like to say you, nobody who I met in business.

Q. Now, at some stage after the meeting that Mr Samuelson records in his note -- which I should tell you does not refer to problems about meeting money-laundering regulations at all -- at some stage after that meeting did you and Mr Patarkatsishvili decide that you would need to consult a specialist, a lawyer, about money-laundering requirements?

A. I don't remember that at all. I just know that all -- everything what's concerning our visualisation -- legalisation on the west, you're absolutely correct, was -- at that time was managed by Mr Fomichev, as I understand. Mrs Nosova also participate but not so much like Mr Fomichev. And as I recollect, he introduced to us several people, including Mr Samuelson,

Mr Curtis, as I remember later, or the same time,  
I don't remember.

But again, the point is not what -- not that we want  
to hide something; we want to make it transparent,  
that's it. Transparent and protected from western  
regulation -- from point of view of western regulation.

Q. Mr Curtis of Curtis & Co was a solicitor that you had,  
I think, briefly had dealings with at the time of your  
litigation against Forbes, is that right, in 1998?

A. I don't remember that, '98. Maybe you remind me it.  
Mainly I remember Mr Curtis appearance connected to the  
time when we decide to create the proper western  
structures but I can't exclude that I met him earlier.

Q. Right. Well now, can you tell us when you first met  
Mr Curtis in connection with the western structures?

A. I don't remember well. I met him many times generally,  
I met him many times in London. He based in London.  
I knew him well and he organised this idea with sheikh  
and so. And if -- maybe it's so, the way to remind,  
maybe -- already I know that Roman pay to us our profit,  
I forgot from aluminium or from Sibneft, already using  
the structure of sheikh. Definitely sheikh was --  
I knew, I got knowledge about sheikh through Mr Curtis,  
it's true.

Q. Now, Mr Patarkatsishvili appears to have consulted

Curtis & Co, Mr Curtis's firm, in October 2000. Were you aware of that?

A. I don't remember.

Q. You can't remember?

A. I don't remember. I know that Badri, as I told you, as only we decide to create the proper western structures and Ruslan Fomichev took initiative to organise that because he said that he has connections, proper connections on the west. And Natalia Nosova as well, but less that time I think, but she remember that better.

And at that time I was introduced to several people. As far as Curtis, I told you that I didn't remember that I met him in '98 but I met him a lot already in -- being in France, I think, and definitely more often in London. And he was the key person, as I understand, who organise the Devonia deal, when we sold our interest in Sibneft, and -- because his connection to sheikh, as I understand.

Q. Now --

A. And I just want to mention to you that I was confirmed by Mr Nevzlin and, as I recollect, Mr Khodorkovsky that Mr Curtis is a proper lawyer because they -- he serve them as well; I mean Menatep Group.

Q. Now, at the end of 2000, as we know, you and

Mr Patarkatsishvili agreed to sell your stake in ORT for \$150 million. Now, do you remember that the agreement that you signed to sell your stake to Mr Abramovich's company Akmos only mentioned \$10 million of that \$150 million price, \$5 million to each of you? Do you recall that?

- A. No, I just remember well that we decided to organise payment in the way which is proper for Mr Abramovich, which is proper for us, because you remember in Le Bourget Abramovich mentioned that Putin does not like to be involved in that and so and so. And as my recollection is the price was, as you correctly said, 150 is completely wrong as a price because even press secretary of Abramovich gave clear evidence in 2010 that the price was at least \$1 billion, but we didn't have choice, as I told you. And because of tax reason or some other reason I don't understand, Abramovich --

MRS JUSTICE GLOSTER: Just a second. Mr Berezovsky, when you say that the secretary of Abramovich gave clear evidence in 2010 that the price was at least \$1 billion --

- A. You are correct.

MRS JUSTICE GLOSTER: -- are you talking about the price or the value?

- A. I'm talking about value of the company which is -- was

estimated by Central Bank when they gave a credit to  
ORT. It was '99, after the crisis, and estimation --  
and we gave our collateral, 13 per cent, 1-3,  
13 per cent, and they gave credit 100 million.

MRS JUSTICE GLOSTER: Yes, I see.

A. This is the point which I mentioned. That means that  
I understood well the real value of ORT that time.

MR SUMPTION: Mr Berezovsky, I'm asking you about the terms  
of the agreement that you signed for the sale.

A. The terms of the agreement were very simple.

Q. A very simple question. There were two agreements for  
the sale of ORT to Akmos, one by you and one by  
Mr Patarkatsishvili; do you agree?

A. Mm-hm. I don't remember Akmos name but I remember well,  
as you mention, terms of agreement.

Q. The price mentioned in each of those two agreements was  
\$5 million, wasn't it?

A. It's absolutely correct.

Q. So the only price that was referred to in your  
agreements for the sale of ORT was a total of  
\$10 million, not 150?

A. Where is mentioned?

Q. The price mentioned in the sale agreements between you  
and Akmos was only \$5 million each, a total of  
\$10 million, not \$150 million?

A. Mr Sumption, as I told you, I follow advice of Badri and my financial advisers and I told them clearly what I remember well: that the price, real price, is \$150 million but we're --

Q. I'm not quarrelling with you about that. I quite accept it was \$150 million. The point I'm putting to you is that out of that \$150 million, only \$10 million was referred to in the written agreements. Is that right?

A. Mr Sumption, as far as my signature under \$5 million or \$10 million -- I don't remember well -- you are absolutely correct.

Q. Thank you. Now, was that because you wanted to avoid receiving the other \$140 million in Russia?

A. It's absolutely correct.

Q. Did that mean that you had no documented explanation for the fact that your actual receipts were \$150 million?

A. I don't know that at all, but I am sure that if banks accept that, they have reference why -- what is that. And you remember well, again in Le Bourget Mr Abramovich insist -- not me, Mr Abramovich insist -- that it should be in this manner. And I never insist -- I prefer the direct payment, like --

Q. In what manner?

A. Sorry?

Q. In what manner do you say Mr --

- A. In manner that we should think about tax, we should think about that Central Bank maybe not give me this money because it needs to discuss with the Russian -- because you know all that what happened in Le Bourget.
- Q. Did you or Mr Patarkatsishvili instruct Curtis & Co to assist you in documenting the source of the \$140 million?
- A. As far as me is concerned, I am sure that not. As far as Badri concerned, I think likely that he instructed, or Mr Fomichev, I don't remember. But definitely I never -- I don't remember that I gave any instruction, as you said, to my financial adviser, so people who organised the deal.
- Q. What do you know about a company called Spectrum General Trading?
- A. I know I heard the name but I don't -- can't identify. If you remind me, I'll do that.
- Q. Well, from your recollection, however, can you not tell us anything about Spectrum Trading?
- A. I don't remember the name. I just --
- Q. You don't remember the name?
- A. The name Spectrum?
- Q. Spectrum General Trading.
- A. I don't remember the name.
- Q. You don't remember the name. I see. Would you please

take bundle J2/2, flag 9.

A. Just a second.

Q. This is addressed to the assistant so that she can find the page for you: flag 9 of bundle J2/2, page 122 J2/2.09/122.

A. Yes.

Q. Now, this is part of the witness statement of Mr Marino, your then solicitor --

A. Yes.

Q. -- which was used in the striking-out proceedings.

A. Yes.

Q. He talks about Spectrum in this part of his witness statement.

A. Yes.

Q. At paragraph 381 he refers to the sale agreement, then at paragraph 382 he says that:

"A third party was involved... Spectrum, which was an Abu Dhabi corporation."

A. Yes.

Q. Owned by Sheikh Sultan bin Khalifa et cetera.

A. Mm-hm.

Q. And in the next paragraph under 382 he says that he understands from you --

A. Just a second.

Q. Last sentence of 382.

A. 382, last sentence, yes.

Q. "I understand from Mr Berezovsky that Spectrum... entered into a deed of assignment with Akmos, pursuant to which Spectrum assigned its rights under the call option to Akmos."

A. Yes.

Q. Now, you appear to have discussed Spectrum with Mr Marino; do you agree?

A. No, look, again, if they present me how it was structured, because definitely I did not participate how it was structured, and they mention, "This is Spectrum, which made a deal with Akmos", definitely I can identify that it was so. But when you put me the question, "Did I remember Spectrum?", I gave you the answer: I don't remember Spectrum at all, the name.

Q. Were you the chairman of Spectrum?

A. I don't know.

Q. You don't know?

A. I don't remember.

Q. You don't remember whether you were the chairman of Spectrum?

A. Definitely.

Q. If you were the chairman of a company, you wouldn't recollect that at all; is that right?

A. I recollect -- I just remember that I was executive

secretary of CIS countries and so, but I definitely didn't recollect in which company I was chairman because there were 1,000 different companies and only Badri and my advisers regulated where I should be chairman or not.

Like it's happened, for example -- and you know well example: it's NFK. I was -- it turned out that I was chairman and definitely it was not my approach to become chairman of this company; it was approach of Mr Shvidler and Abramovich to put me in this position, and Badri.

Q. Let's concentrate on Spectrum, shall we?

A. I concentrate already. I didn't -- I don't recollect anything.

Q. Spectrum was a company 100 per cent owned by the sheikh. Did the sheikh, as 100 per cent owner of Spectrum, make you its chairman?

A. I don't know that. I don't remember that.

Q. Do you remember that on 6 January 2001 you applied to open an account at Clydesdale Bank?

A. I knew only that account was opened in this bank, definitely I don't remember the date, but I know that the money which were -- which should be paid from the transaction of -- I don't remember -- Sibneft definitely but I don't remember the others, ORT and so, they paid -- finally they should be on the account of this bank -- what is the name?

- Q. Well, this is a personal account of yours, not an account in the name of one of your trusts.
- A. It means that I didn't recollect that I had personal account there.
- Q. Well now, could you please look at bundle H(A)27/248. Do you have that? This is an account opening application form.
- A. Yes.
- Q. Do you see?
- A. Just a second.
- Q. It's signed and I think completed in manuscript by you; is that right?
- A. I recognise my signature here.
- Q. Yes. And do you recognise your handwriting on the rest of the form?
- A. Not. It's not my wording, my hand.
- Q. But it is your signature?
- A. Signature is mine, definitely.
- Q. Right.

Now, this shows that on 6 January you applied to open an account at Clydesdale Bank. Whose idea was it that you should open an account at that bank?

- A. I think it's idea of Ruslan Fomichev or Curtis, I don't remember.
- Q. Now, over the page, second page of the document, you

describe yourself as the company chairman of Spectrum.

Can you tell us why you did that?

A. First of all, definitely, as I told you, it's not my hand.

Q. Right.

A. It's someone who prepare that and even there is no signature at this page. It means that it could be almost 100 per cent that I even didn't see this page because my signature is only on the front page. And you may put me very correct question: is it your -- your hand which put the letters? I said: signature is mine, all the rest is not mine.

Q. Mr Berezovsky, if you signed a document which described you as the chairman of Spectrum, that must be because you or one of your staff gave that information to the person who actually wrote it out before passing it to you for signature; is that right?

A. Mr Sumption, I want to be very, very precise. This is my signature, it's correct. I am responsible formally for everything what is written. As you have seen before, I put my signature even where I was mentioned and even not me was mentioned because my birthday was completely wrong. You have seen this document.

I am sorry to say it's not good, I agree with you, but believe me, it's almost zero per cent probability

that I have seen the second page. They gave me it to sign; I sign. They said me that it will be your account; fine. Because it's prepared not by me, it's prepared by people to whom I trust.

Q. Like Mr Fomichev?

A. Absolutely correct.

Q. Right.

Now, Spectrum was the company through which you intended to pass most of the proceeds of the sale of ORT, wasn't it?

A. I don't remember that, but I think you're absolutely correct. Because, as I told you, the mechanism to sell our assets through sheikh was created before Sibneft and even before I think ORT because part of the -- again, it's my recollection, I don't want to insist that -- that part of our profit from Sibneft or maybe from aluminium -- again, I don't want now to mislead you -- we pass in the same way. And it means that this Clydesdale Bank operate in our favour, it's correct.

Q. Right. So sometime before 6 January --

A. 6 January which year?

Q. 2001.

A. Yes.

Q. -- you and Mr Patarkatsishvili had decided, for whatever reason, that you would be using Spectrum as a structure

for getting you the proceeds of your ORT stake?

A. Be sure it was -- be sure it was not my decision.

Definitely it was decision of my adviser and maybe first of all Badri because, as I told you before, Mr Sumption, I trust Badri, it was time when I trust Fomichev as well. And it's my way -- maybe it's the reason why I'm here in the court -- to trust people who I really think that they are fair and they are truthful, but it's happened different.

But again, Mr Sumption, you don't have -- you shouldn't have any doubts that I never went into details. I was asking to sign; I signed that. Moreover, I wouldn't too much surprise, I was lucky that it was not -- it is not my signature on the second page. I just was lucky, because it could be that my signature also could be there, because I just follow advice of my financial adviser. And it's not good, I know that.

Q. Now, could you please be given bundle H(A)28/73.

MRS JUSTICE GLOSTER: Can we put this one away?

MR SUMPTION: Yes, my Lady.

I'm told that there may be an error on [draft] line 22 on the current page of the transcript where "lucky" has been rendered as "slightly", but maybe that can be checked on the tape in due course.

MRS JUSTICE GLOSTER: Yes. Yes, it was "lucky".

MR SUMPTION: That was what we remember.

Now, this is a letter from Mr Curtis to an official at Clydesdale Bank. He says that he's acting for Spectrum at the very beginning of the letter, as you'll see.

A. Just a second. Yes.

Q. Now, if you look at the third paragraph, you will find the basis -- I mean, your evidence was you don't know about this but just to show you, in the third paragraph you will find that Mr Curtis says:

"... we have previously acted for Mr Berezovsky, our first instruction being in 1998. Mr Berezovsky's associates in turn introduced me to Mr Arkady..."

That is obviously Mr Patarkatsishvili.

"... who I have acted for for a period of three months."

It is for that reason that I suggested to you that Mr Patarkatsishvili had consulted Mr Curtis in October.

A. Yes. Logical.

Q. Now, looking at the rest of the letter, Mr Curtis in this letter describes the two sums of \$70 million that are to be credited to the accounts of you and Mr Patarkatsishvili. I should tell you that there's also an application form to open an account at Clydesdale Bank for Mr Patarkatsishvili.

A. Mm-hm.

Q. In the second paragraph:

"Pursuant to the option agreement, it is proposed  
that Mr Berezovsky" --

A. In the second paragraph?

Q. Second paragraph.

A. The first page or the second?

Q. The first page.

A. Yes.

Q. "... it is proposed that Mr Berezovsky and Mr Arkady  
will each be paid the sum of US\$70 million. These sums  
will be remitted from Spektrum's account with the  
National Bank of Fujairah and we are advised by  
Dr Jumean that they will be accompanied by confirmation  
of non-criminal source."

Now, if you look over the page, he asks Mr Sykes in  
the second last paragraph whether they would be prepared  
to accept these two sums of \$70 million, one for each  
account.

A. Yes, okay. Just a second. Yes. Mm-hm. Yes.

Q. What he is explaining to Mr Sykes is that there is going  
to be an option agreement. I'm trying to find the first  
reference to the option agreement but it's also referred  
to in the first full paragraph on the second page of the  
letter.

If you look at the first paragraph of the whole letter on the first page, in the opening of the letter he says:

"We have been instructed by Spektrum... in connection with a proposed option agreement. Pursuant" --

A. It's the first paragraph?

Q. Yes, first paragraph on the first page.

"Pursuant to the agreement Spektrum's nominee will acquire 99% of the issued share capital of ORT KB... which we understand is the largest [TV... operator...]"

Et cetera. Over the page Mr Curtis says:

"We have yet to finalise the terms of the option agreement and are agreeing the format of this with Mr [Ivlev, as he should be called], the senior partner of Eversheds [Moscow bureau]..."

A. Yes.

Q. So what Mr Curtis was explaining to Clydesdale Bank was that there was going to be an option agreement --

A. Yes.

Q. -- and that the \$70 million that each of you and Mr Patarkatsishvili were going to receive represented the amount payable under that option agreement.

A. It's written here.

Q. Yes. Now, what can you tell us about this option

agreement?

A. Nothing.

Q. Nothing?

A. I don't know anything how they organise the payment. My request was just simple: I want to have this legally on the west. And, as I know, until now nobody, even Russian Prosecutor Office, didn't charge me about this sum.

I want like nevertheless, Mr Sumption, to stress what is I think very, very important: Russian Prosecutor Office is fishing all over the world for the last ten years and big, big amount of money, billions, they never even recognise, knowing well, and I know why: because it's paid by Abramovich. If it would not be paid by Abramovich, they immediately recognise that it's dirty money and I already was charged in all countries which connected to that. It's only reason, because it's a lot of money. They find even \$5,000 which were transferred to my account, I mean Prosecutor Office.

Q. Would you agree with me that you had never agreed with Mr Abramovich in relation to ORT that there would be any option agreement?

A. Me personally? I don't remember --

Q. You personally.

A. Me personally, I don't remember at all how it was

organised. We just discuss, and you see it in Le Bourget again transcript that there is discussion about amount. I don't discuss with Abramovich definitely about any option or somehow.

Q. Right.

Now, the option agreement that we have is not dated but, for various reasons that I won't trouble you with, it must have been prepared after 9 February. And I'm going to ask --

A. 9 February which year?

Q. 2001.

A. Mm-hm.

Q. Well, it must have been signed, sorry, after 9 February.

I won't trouble you with the reasons for that because it's not matters that you would necessarily have known about.

I want to ask you to look at one of the three execution copies of that agreement which was signed by you.

A. Okay.

Q. You'll find that in bundle H(A)28 at page 225

H(A)28/225. Okay?

A. Just a second.

Q. Do you have 225 open? If you flick forward to 231,

I think you'll find your signature.

A. Just a second.

Okay, it's my signature.

Q. Now, this agreement is an agreement relating to what are called the option shares -- look at page 225 -- and that's 23,726 shares owned by you in the capital of ORT-KB.

A. Yes.

Q. That is the correct number of shares that you had owned back in December in ORT-KB, isn't it?

A. Definitely I don't remember correct or not correct.

I don't remember these numbers. I just know what I own in shares. In shares my impression is that Badri and me own together 49 per cent.

Q. Well now, this document which you signed is a document which, on the face of it, grants to Spectrum an option to acquire your shares in ORT-KB for \$70 million.

A. Yes.

Q. See clause 2 on page 226.

Now, somebody must have explained to you when they asked you to sign this what it was?

A. Mr Sumption, I don't recollect at all. I absolutely confirm that it's my signature, it's absolutely correct. I absolutely confirm that we discuss about \$70 million to me and \$70 million to Badri as a sale of ORT. I don't remember this paper.

- Q. Did you know when you signed this document that the transfers of your shares in ORT-KB had actually been registered in the Moscow Companies Register on 29 December 2000?
- A. Definitely I didn't know. I know that it should be registered. I know that Abramovich is beneficiary, is final buyer of that. Definitely I don't know how it's organised in Moscow. I know that -- just that I deliver all request of my team and Mr Putin to sell my shares. That's it.
- Q. You wanted the transfer to go through as soon as possible after you'd agreed it with Mr Abramovich in order to get Mr Glushkov, you say, out of jail?
- A. Definitely it's correct.
- Q. Right. So it won't surprise you to learn that it did in fact go through very soon after the agreements were signed on 29 December, even if you don't know the exact date?
- A. Again, I just want to tell you what I told you yesterday: that definitely -- and it's just confirmed -- that it took time to prepare. It's completely opposite what Abramovich insist and you insist: that it was prepared in Le Bourget. And definitely up to the last moment I try to get Nikolai Glushkov out of the jail and it was agreed that he will be released after his

birthday, the 24th. And when I got the call and then when I recognise that it will not happen, I signed this agreement.

Q. You see, Mr Berezovsky, the agreement that you signed here is a completely bogus document, isn't it? It's pretending --

A. It's completely...?

Q. It's a completely misleading document because it is pretending to be selling to the sheikh's company for \$70 million shares that had in fact already been transferred to Mr Abramovich's company Akmos weeks before.

A. Mr Sumption, I don't want to argue against your definition, yes? I just argue against of what happened. Never no one, again, charge me of something wrong with this paper -- not the bank which got the money; not Russian Prosecutor Office; not Mr Putin personally -- because it was organised not by me. It was organised in proper way, as I understand, because no one charge was done against of this paper.

And if you will be lucky, after this court it will be charged. But I am sure it will not be because it's nothing against of law as I understand, at least until now. It means that to insist, to continue to insist that it was money-laundering and so on, it's not correct

already.

- Q. Mr Berezovsky, this document, I suggest to you, was signed by you for the sole purpose of being shown to Clydesdale Bank in order to get them to accept your \$70 million. That's the position, isn't it?
- A. Mr Sumption, it is not. The position is that I follow advice of my lawyers, including, as you know, as you mentioned yourself, professional English lawyer, Mr Curtis or some others, but professional English -- certified English lawyers. And what is wrong with that? Never after that I had any problem with this payment. What is wrong with that?
- Q. You mustn't assume that everything I am putting to you is necessarily an accusation of wrongdoing, Mr Berezovsky. But would you agree with me that you did not in fact sell an option on your shares in February or thereabouts of 2001 in ORT because you had already sold them to Akmos and they had been registered already in Akmos's name? Do you agree with that?
- A. Mr Sumption, I even don't understand what you are telling. I'm sorry to say that.
- Q. Can you tell us what the point of this agreement was then?
- A. The point was very simple. Putin threat me -- messenger was Abramovich -- to sell my shares in ORT. They kept

in jail my friend, Mr Glushkov, and he was very sick. And I didn't have choice, under threat, to sell my shares of ORT. How they organise, through option, through not option, I don't care at all. I just care that finally the western bank should accept this money without problem for me and for the bank. It was done. That was done. That's it.

Q. Hadn't you pretended to be chairman of Spectrum in your account opening form in order to prepare the way for this agreement?

A. Mr Sumption, I was absolutely sincere and truthful when I told you that I even don't remember this name, this company.

MR SUMPTION: My Lady, would that be a convenient point to break?

MRS JUSTICE GLOSTER: Yes. Can I just ask you, Mr Sumption, is there a reference to any transfer to -- just a second.

MR SUMPTION: We have the document which records the registration of the transfer in ORT-KB to Akmos. Would your Ladyship like the reference to that?

MRS JUSTICE GLOSTER: I would like the reference to that. You can give it to me later.

MR SUMPTION: I will give that to you on your Ladyship's return.

MRS JUSTICE GLOSTER: Yes, very well.

Yes, ten minutes, Mr Berezovsky.

(11.44 am)

(A short break)

(11.55 am)

MR SUMPTION: My Lady, I will invite your Ladyship to look at the document because it will give the witness the opportunity to do so as well.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: It's in bundle H(A)26 at 151 in the Russian and 152 in English H(A)26/152.

A. H(A)28?

Q. H(A)26, page 151. You are being given it, Mr Berezovsky.

A. You will not need that more, the previous one?

Q. Don't put any other bundles away for the moment, please, because you may need them again. If I can ask you, in spite of rather encumbering your desk, just to take the bundle that's being given to you.

A. Yes.

Q. H(A)26/151 is the Russian version of an extract from the register of ORT-KB --

A. Yes.

Q. -- at 29 December. You will see that this records that at 29 December --

- A. Just a second. Just a second. 29 December.
- Q. Top right.
- A. Yes. I already left Russia. Yes, okay.
- Q. Halfway down the document, you will see that the party into whose name it was registered was Akmos Trade Limited, which was the Abramovich company to which you contracted in late December to sell the shares.
- A. Yes. It's the page -- let's see in English, which page?
- Q. It's the following page in English.
- A. Okay, thank you. Where are you referring to Akmos?
- Q. Halfway down the page.
- A. The third paragraph, let's say?
- Q. The third box, yes.
- A. Thank you.
- Q. Okay?
- A. Yes.
- Q. So at the time when Mr Curtis was drafting and you were signing documents which were apparently assignments of your shares to Spectrum, in fact the same shares had already, with your consent, been registered in the name of Akmos?
- A. I didn't know anything about that.
- Q. I see.

Well now, my Lady, just for the transcript, I don't think there's any dispute about the chronology.

Mr Ivlev, who is being called as a witness and was Mr Berezovsky and Mr Patarkatsishvili's Moscow lawyer at the time, confirms the date at paragraph 33 of his witness statement D1/08/107; so also does Mr Gorodilov, who handled the transfer on our side, at paragraph 78 of his first witness statement E2/04/32.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: Now, I would like you, please -- you can put away the bundle that I've just been showing you, Mr Berezovsky, and perhaps you could be given instead bundle H(A)27/218.

Mr Berezovsky, you may remember that I showed you earlier this morning an extract from Mr Marino's witness statement in which he said that you had told him about an assignment between Akmos and Spectrum.

A. Yes, I remember that, that you told me that.

Q. And I showed you the passage from Mr Marino's evidence in which he said that he'd been told about this assignment by you.

A. I can't refuse that.

Q. Well now, this is the assignment in question. It's a document which appears on its face to be an assignment of the option that you had just granted to Spectrum by Spectrum to Akmos Trade --

A. Yes.

- Q. -- and this too was drafted sometime after the middle of January.
- A. It could be.
- Q. And there is, on page 220 a signature on behalf of Spectrum and there is a signature on behalf of Akmos which I have to tell you is a forgery.
- A. Okay, it's --
- Q. You wouldn't know about that but it is a forgery.
- A. I don't know anything about this document.
- Q. No, I'm not suggesting you do.
- A. And you have proved that it's not correct?
- Q. That will be our evidence.
- A. Okay.
- Q. Now, this document is pretending to be an assignment back to Akmos of the shares that you had granted an option to Spectrum over.
- A. Mm-hm.
- Q. Now, what I want you to help us on is this: how were you able to tell Mr Marino when he made his witness statement about this document? You obviously knew about it, didn't you?
- A. Definitely -- I just describe, my Lady -- definitely I don't remember about this document, about Spectrum, about how it's organised. But when Marino put in his -- what it was, statement or somehow?

Q. Yes.

A. -- he just use information how he understand that.

Q. Yes.

A. Believe me, I never know about this document and I even -- maybe he remind me that it was Spectrum involved and so, but I didn't know anything about that.

Q. Mr Berezovsky, that can't be true, can it? Because what Mr Marino said -- you saw the document this morning J2/2.09/122 -- was:

"I understand from Mr Berezovsky that Spectrum then entered into a deed of assignment with Akmos, pursuant to which it assigned its rights under the call option to Akmos."

A. Mr Sumption, again, if he told me, "Boris, do you know that it was organised like that?" I just say that, "Mr Marino, I didn't remember that definitely, but if you have evidence that it's organised like that, I confirm that it's organised like that". Definitely, Mr Sumption, you understand well that I didn't know not Spectrum, not anything, before someone remind they me that it's Spectrum and it's Akmos. I even don't know that.

Again, Mr Sumption, I don't want to present me that I don't have memory at all, and so I have memory what I remember, yes, and I remember the most important for

me. That was not important for me at all; I was just presented my assistants what to do. And if Mr Marino, who is very professional, present me that it was organised like that, "Boris, can you confirm?" I said, "I think so". That's it. Believe me, I didn't went in investigation how it was organised.

Q. This --

A. And now you even said that it's false. I don't know at all what is that.

Q. This document appears to have been disclosed by Mr Patarkatsishvili's widow and may not have been available to Mr Marino when he made his witness statement.

A. I don't know anything about it.

Q. But you told him about it, didn't you? He didn't tell you about it; you told him?

A. Mr Sumption, again, the technology is very simple. They -- my lawyers, they try to investigate how happened maybe ten years ago, maybe five years ago, and they told me, "Boris, look, it was organised like that. Do you remember anything about that?" Definitely my -- the probable answer, "I don't remember. But if you investigate that, put like that".

Mr Sumption, believe me, I'm not misleading you. My Lady, I'm not misleading you. I just present what

I remember and what I think happened that time, when Mr Marino present his pleading or something.

Q. Did you read Mr Marino's witness statement before he served it on us in the striking-out proceedings?

A. I did not. I just --

Q. You did not?

A. I just -- he told me about general position but I did not read that in any details.

Q. I see. Well, did you read it at all?

A. Definitely I didn't read that, that pleading.

Q. Why did you say in your own witness statement in the strike-out proceedings:

"I have read the first witness statement of Pietro Marcello Marino dated 16 April and confirm that to the best of my knowledge and belief it contains an accurate account of events."

A. I signed it because, as I told you, Mr Marino explain me what is in this pleading. But I didn't read all details what were presented there.

Q. Well, you must have read it carefully enough to be able to confirm that it contained an accurate account of events, surely?

A. Mr Sumption, again, I believe, I trust Mr Marino and definitely you understand already well that I did not read that attentively what he present and if I need to

sign that I understand what is this document, I sign that.

Q. In the course of your evidence about this transaction this morning you have been trying to distance yourself from it although in fact you know full well what its purpose was, do you not?

A. I didn't try to distance myself. I just present what I know about that, what I remember about that. And my recollection is very simple: we agreed finally that we will pay -- we will be paid \$175 million. \$25 million I should return back to Abramovich in favour of election campaign of Putin. It was very hypocritical at that time because I already was out of the country, but nevertheless it was agreement before and we deliver that.

Then we discuss that how it should be structured and to protect our money and not to be squeezed and should be transparent enough for the west and so-so. But it's not my point which I discussed personally; I just heard about that, nothing more.

What I remember well that we agreed that \$10 million will be paid in Russia, \$140 million will be paid abroad. It should be finally put in proper western bank. That's it. This is my knowledge. What I know today again just confirm that everything was done in

proper way: no one commission, no one prosecutor charge me or Mr Abramovich or Mr Badri for that.

- Q. Mr Berezovsky, could you please be given bundle H(D)2. This is a note in documents recently produced by Clydesdale Bank. You probably won't have seen it because they were produced while you've been giving evidence.

I'd like you, please, in H(D)2 to turn to page 4a, which is behind flag 4 H(D)2/04/5.

- A. It is in -- not in typing, yes?

- Q. It's a manuscript note. There is a typed-up version behind it -- not in my copy. I'm told there is a typed-up version. We'll have to produce that in due course. It is on Magnum but it hasn't found its way into the bundle.

Let me just tell you what this is. This is a note made by an official at Clydesdale Bank of a conversation with Mr Curtis on 22 January 2001.

- A. 2001?

- Q. Yes.

- A. Which month?

- Q. January.

- A. January, thank you.

- Q. On the second page of the note, and I'm sorry that the handwriting is not that easy --

A. No problem. I trust you.

Q. On the second page of the note you will see that there's a break in the page and just about halfway down the page there's a paragraph that begins:

"Berezovsky is v[ery] political animal..."

And about four lines down...

The typewritten version I'm told is on the screen now. Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: And I hope the witness does as well.

You will see:

"Berezovsky is v political animal -- has own views. He had a large part to play in putting Yeltsin in power. New guy started campaign against Berezovsky. B[erezovsky] also has shares in Aeroflot and receives Russian flyover fees."

Now --

A. And what?

Q. -- it looks as if either you and some member of your staff told Mr Curtis that you had at this stage a share in Aeroflot, doesn't it?

A. Mr Curtis, I already gave many times answer to the same question: I didn't have shares in Aeroflot.

Q. No, but you did tell Mr Curtis that you did?

A. I did not tell Mr Curtis about that. I present

Mr Curtis just true, nothing more. He is English lawyer.

- Q. But your evidence is that you didn't have shares in Aeroflot. What about the overflying --
- A. My evidence is that I did not have shares of Aeroflot, it's correct.
- Q. Tell us about the Russian overflying fees -- flyover fees?
- A. Overflying fees, it means that, as I understand again, that Russia -- Mr Glushkov, definitely he is professor in that, he will give you a correct answer. But, as I understand, every country, including Russia, take fees for their flights over the -- this country.
- Q. Indeed.
- A. And company collect this money or State collect this money; it depends on the country, as I understand. This is the fees, yes.
- Q. Yes. And were you, Mr Berezovsky, entitled to receive Russian flyover fees?
- A. Mr Sumption, I told you I don't know. I don't know because not me operate with the business concerning Aeroflot. As you correctly said, it was Andava company, based in Switzerland, which provides service for Aeroflot, and it was business itself for Andava. As I know, Glushkov never was charged for something wrong

with that --

- Q. I'm not asking you about Andava or Aeroflot; I'm asking you about flyover fees.
- A. Okay, okay. My answer: I don't know.
- Q. Right. Somebody told Mr Curtis that you were entitled to receive Russian flyover fees. That was wrong, wasn't it?
- A. I don't know. I don't know. Again, I don't know how Mr Curtis obtained wrong information, as I understand.
- Q. Do you agree it is wrong?
- A. Sorry?
- Q. Do you agree that it is wrong? You weren't entitled to receive Russian flyover fees?
- A. No, I don't know. In amount of money that Andava made, maybe it was, as I say, money of this flyover. It could be. But I told you I don't know that.
- Q. Mr Berezovsky, I'm not asking you about Andava. Andava may have had nothing to do with these flyovers.
- A. Yes, it's correct. Okay, I don't know --
- Q. Russian --
- A. -- I don't know that this money was paid to me. I don't know about it.
- Q. Russian flyover fees, given the size of Russia's land mass, charged, as you correctly say, on commercial flights overflying Russian territory, amount to a very

large sum, don't they?

A. I don't know how much they charge.

Q. Are you seriously --

A. I know that they charge.

Q. Are you seriously suggesting that you could have been receiving Russian flyover fees without knowing it?

A. Again, I don't know did I receive or not this money; this is the point number one. And definitely I don't know the amount of money that the State or company charged for these flights.

MRS JUSTICE GLOSTER: Can I just ask you this. You've mentioned Andava; you say you don't know whether Andava received some flyover fees.

A. Yes, because my impression was that Andava operating with the Aeroflot, as we told before, that maybe Andava charged this money for flying.

MRS JUSTICE GLOSTER: Okay. But did you personally receive -- forget about Andava. Did you personally receive any flyover fees?

A. No. Definitely not. Definitely not.

MR SUMPTION: You see, what I would suggest to you is that this is an example of you telling, either directly to Mr Curtis or via your staff, fibs about what you owned.

A. Mr Curtis -- sorry, Mr Curtis unfortunately not with us but you are there.

Q. But I am.

A. I refer -- yes, I'm happy as well.

Q. I'm very grateful for that confirmation.

A. I'm sorry, Mr Sumption, for this comparison.

Mr Sumption, I really never report -- never mislead Mr Curtis, understanding well the rules of English lawyers. And not only because of that but English lawyers, first of all, I really learn from the very beginning that English lawyer not person who just protect me; it is the person who try to present the truth to the court, as you said at your interview in BBC, five minutes' interview recently, and I really believe that you also want not to mislead my Lady but to present the truth in front of the court.

Q. Just in case your Ladyship is wondering, that was not an interview on the subject of this case.

A. But -- no, it's your general position.

Q. Okay.

Now, Mr Marino tells us in his witness statement for the strike-out application that the procedure used to deal with the \$1.3 billion, when that came along a few months later, was similar to the one used in the case of the ORT proceeds, and I think you said something to much the same effect earlier.

A. Yes, my understanding was that generally for the selling

our interests in Sibneft was decided -- first of all Badri, and Mr Fomichev I think at that time as well, but he assist just Badri -- that this way will be the -- factually it's only one because, as you remember well, in my witness statement I said that our approach was to ask Mr Abramovich to pay us directly but Mr Abramovich refused that and he even explain why he refused: because maybe he will -- because of he will be harmed. And we didn't have choice, we accept this way; as in ORT, we also have not a lot of choice how to do that.

Q. We'll come to that in a moment, Mr Berezovsky. But, as I understand it, your case is that because of what you say was Mr Abramovich's intimidation, you entered into the Devonia agreement, selling your interest to Devonia. That's your case, isn't it?

A. My case is that not the mechanism how it was sold; my case is that it was sold under threat. And how it was organised, this is the other story.

Q. Well, what you are saying in this action is that you didn't actually sell your interest to Mr Abramovich; you sold it to the sheikh's company, Devonia?

A. I sold my interest to Mr Abramovich definitely, but mechanism how it was organised, it was organised with sheikh, and exactly did he insist that I sold my interest in ORT or my shares not to Abramovich. I sold

to Abramovich exactly that I sold again through sheikh, exactly what happened with Sibneft, I sold my interests through sheikh to Abramovich.

It's absolutely -- if to compare those two events, it's absolutely clear that I sold my interest in Sibneft, Abramovich recognised my interest, using the technology -- the same technology, that's it.

Q. What involvement did you personally have with the planning of the Devonia structure?

A. Not -- I don't recollect that I have any involvement. As I told you, that I didn't recollect that I have any involvement in selling of ORT. I just was told by Mr Curtis, I think, and then already Mr Badri, that this is factually only way how we can make it transparent for the bank, to be guaranteed that it will be finally paid by Abramovich and give us track that it's happened, that we sold that. And as I told you before, yesterday, I need to have this track because I took a decision that one day I go against of Abramovich to the court, what is happening now.

Q. Who was it who suggested the Devonia structure?

A. I don't remember well. I think or Badri or Mr Curtis himself or Mr Fomichev, I don't remember. I think likely it was Fomichev that time because -- ah, Devonia structure -- no, Devonia, you mean Sibneft. Just

a second, I just want to recollect that. I think it's Mr Curtis who discussed that.

Q. Yes.

A. Or Fomichev. Mr Curtis and Fomichev, I think.

Q. Well, the evidence you gave in the North Shore litigation was that the structure was proposed by Mr Curtis in order to protect your assets and your money because the Russian authorities were after your assets all over the world.

A. It's a very rare example where I really recollect that it was Curtis, it's true.

Q. Well now, could you please look at your witness statement, paragraph 379 D2/17/279. Now, you say here that:

"One possibility we discussed was a direct sale to Mr Abramovich... another... was a sale to a third party..."

Now, as I understand it -- correct me if I'm wrong -- this refers to discussions that you had with Mr Patarkatsishvili which you mention in the previous paragraph. Is that right?

A. I don't see anyone who could talk to Mr Abramovich -- as far as me, I already didn't talk to him at all, and it means that it's Mr Patarkatsishvili the most probable.

Q. So "we" in that sentence means you and

Mr Patarkatsishvili?

A. It means that he present my interests in front of Mr Abramovich. As I told you before, I never talked to Abramovich after we --

Q. That's not what I am suggesting.

You discussed a direct sale to Mr Abramovich, you say, and, as I understand it, you discussed it with Mr Patarkatsishvili. That's what you're saying here; is that right?

A. Again, to be absolutely precise, I never talk to Abramovich more after Cap d'Antibes; the first point. It means that when it is said "we", it means Badri, from my name -- the most probable, Badri discussed that with Mr Abramovich, correct.

Q. What you're saying here is that you discussed it with Mr Patarkatsishvili; isn't that right?

"... we discussed... a direct sale to Mr Abramovich."

A. "We" -- again, "we" means --

Q. "We" means you and Mr Patarkatsishvili?

A. Mr Sumption, don't please do that like what you are doing. I told you absolutely correctly that I didn't talk to Abramovich at all; I talked to Badri.

Q. If you listened more carefully, Mr Berezovsky, you would realise I'm not suggesting that you spoke to

Mr Abramovich about this; indeed, I entirely accept that you never did.

All I'm trying to ask you is: was this a subject that you discussed with Mr Patarkatsishvili and is that what you're saying in this paragraph?

A. Yes, I discussed this subject with Mr Patarkatsishvili, it's correct.

Q. Thank you.

A. The subject how to organise the technology to sell.

I discussed the subject because Abramovich refused to sell directly, correct.

Q. Who else did you discuss it with, in addition to Mr Patarkatsishvili?

A. I think Mr Curtis also.

Q. You discussed it with Mr Curtis, right.

A. Mr Curtis. I don't remember -- and I think maybe Mr Fomichev as well.

Q. Yes. And did you discuss it also with Mr Jumean, the head of the sheikh's private financial office?

A. You mean Eyhab?

Q. Sorry?

A. You mean Eyhab?

Q. Eyhab was his first name.

A. Yes, yes, yes, I know him. I know him, I would like to say, well. I was introduced to him and maybe he is the

first person who I identify with sheikh, he is like right hand or head of administration, and I can't -- I am sure that I talk about that also with Eyhab as well.

Q. So you discussed the Devonia structure with Mr Curtis, Mr Patarkatsishvili, Mr Fomichev and Mr Jumean?

A. Not correct at all. I didn't discuss the structure. Again, I did not discuss the structure. I discussed the deal should be done through sheikh. I never discussed structure of Devonia. I don't know even what is that.

Q. Did you discuss with those people the fact that the Devonia transaction was used simply as a means of effecting the sale of your interest in Sibneft?

A. No. We discussed -- my recollection is, and the only way how I can discuss, that we are selling our interest in Sibneft; we are selling that to Abramovich.

Q. Mm-hm.

A. This the number one point. We need to get this, the money, the payment, in the proper way that to have that on the western bank and we discuss that we already have done that and example was ORT. And my recollection is that I just was present at the moment when we decide to do it the same way.

What is the structure of Devonia? I did not know when ORT was transacted, I didn't know when was

transaction of money for sale of our interest in Sibneft.

And moreover, Mr Sumption, you definitely remember how and where I signed Devonia agreement. I signed that at Nobu at 10 o'clock pm, on the table of Nobu.

It means that this is -- I don't want to present -- my Lady, and it is important -- I don't want to present that I really don't remember everything and I just refuse and worry what happened if I start to go into details but it's really what I know. I don't know more; I know just that. I never went into -- I never was even presented the structure of Devonia, never.

Q. Well, I think what you have said, however, is that there were some aspects of the transaction that you did discuss with Mr Curtis, Mr Patarkatsishvili, Mr Fomichev and Mr Jumean.

A. We discussed.

Q. Now, just tell us what you did discuss with them.

A. Yes, yes, exactly.

We discussed that it will be done in the same way like ORT, through Sheikh Sultan. We discuss that we have a bank on the west and that this bank, which is Clyde -- sorry -- Clydesdale Bank, which where money will be. We discussed that we should have no problem, legal problem, with that transaction. And we discussed

that I want to have at least track of that transaction.

And Mr Curtis, as I understand -- because later on I was shown the papers -- that he understood that it's our beneficial interest. It's really complicated to explain our relations with Mr Abramovich but this only what I was interested in, nothing more. I didn't know -- even -- and you know well that I even didn't see sheikh until the moment when he already -- I already based in London and he came to our family, my wife have been here and me, and he came also with his wife -- it was 2003 or 2004, I don't remember well, maybe 2005 -- and I was introduced before to Mr -- to sheikh.

Q. Now, you said a moment --

A. And I knew later, or that same time, I knew about commission which we should pay to sheikh.

Q. I'm going to come to that.

A. Yes, okay.

Q. Now, you mentioned as part of that answer that one of the things you had discussed was that you had banking arrangements in England for receiving the money with Clydesdale Bank.

A. I discussed maybe not Clydesdale Bank but I discussed the bank in England because I already had my personal understanding of the country and it's the reason why I worry that -- I prefer definitely that money should be

in London.

Q. Were you planning to pay the \$1.3 billion into accounts of the Itchen Trust and the Test Trust at Clydesdale Bank?

A. When?

Q. In 2001.

A. No, the question is -- when?

Q. Were you planning that when you received the \$1.3 billion, you were going to have them paid into accounts of the Itchen Trust and the Test Trust with Clydesdale Bank?

A. It's -- again, it's not my decision, it was Badri decision, because he operate with our money, and I think Curtis and Fomichev as well. And that time I already -- we signed agreement in June or July 2001, I still that time based in France, but I don't remember where I was -- I think that I had been that time -- no, I signed agreement in Nobu, in London, but I spent mostly my time that time in France.

Q. The Itchen Trust was your trust, wasn't it?

A. Yes, I remember that it's -- there were two trusts, I think one Badri and one belonged to me.

Q. Your trust was the Itchen Trust, wasn't it, and his was the Test Trust?

A. I think so.

- Q. Right. Now, accounts were being opened, were they not, for those two trusts at the Clydesdale Bank?
- A. It's so -- again, I don't recollect it, but I am sure that it's -- we don't have the other bank that time, as I understand. We don't use the other bank, as I understand.
- Q. And what you needed -- is this right? -- was a document which might explain where this money had come from?
- A. Not me, I don't need that. Bank need that document to make money absolutely sufficient, absolutely clean.
- Q. Well, you knew perfectly well, didn't you, that both of you would need documents to prove that you had sold assets, namely an interest in Sibneft, and that that explained where the \$1.3 billion came from?
- A. Definitely I think it was request of financial institution. But on the other hand, as I told you before, I need the track, the recognition that I sold my interest to Mr Abramovich; and as far as Mr Abramovich refused to make it directly, it means that it was done in the way through -- which you described just now, through Sheikh Sultan.
- Q. Now, you say that Mr Abramovich refused to give you a document. When do you say that he refused to give you a document?
- A. I didn't say that he refused to give me document; he

refused to pay directly. We never discuss about document; we discussed just about his payment, his obligation to pay. And he refused that from the very beginning when we start to discuss how it will be organised and we, as I understand, start to discuss that immediately after Badri met Mr Abramovich or before. It was -- in any case it was spring 2001.

Q. When did you say that Mr Abramovich refused to pay you directly?

A. I should recollect. I think, as I recollect -- it is in my witness statement, but I think it was after we took -- after Badri met Mr Abramovich in Munich or Cologne.

Q. Are you referring to what you say in your witness statement at the top of page 282, paragraph 391 D2/17/282?

A. Just a second. 2 -- paragraph?

Q. Paragraph 391 of your witness statement.

A. I'm sorry. Yes.

Q. Is that what you're referring to?

A. Absolutely correct.

Q. Yes. Now, Mr Abramovich, I must suggest to you, did not say that to Mr Patarkatsishvili; that at least will be his evidence. Are you aware of any attempt by Mr Patarkatsishvili to get a written document out of

Mr Abramovich?

A. Mr Sumption, I never discuss -- I don't remember at least that we discussed about any document. We discussed just about the payment of Abramovich to us, our interest in Sibneft, and we -- our preference was to make it absolutely transparent and direct payment. That's it. Nothing more. And when Abramovich refused that, motivating that it will harm him and so, we didn't have choice. That's it. And it's the reason why we decided to use the same vehicle which we used before for ORT; almost the same, as I understand.

Q. Now, did Mr Curtis visit you at Cap d'Antibes on 17 May 2001?

A. 17...?

Q. Mr Jacobson --

A. Just a second.

Q. -- says that he did.

A. 17...?

Q. 17 May 2001.

A. I don't remember that.

Q. If Mr Jacobson says that Mr Curtis visited you at Cap d'Antibes, you wouldn't deny it, presumably?

A. I wouldn't deny because I don't remember that.

Q. I see.

Well now, did Mr Curtis ever advise you that you

needed to have a written agreement with Mr Abramovich?

Did he advise you that?

- A. You see, I had a lot of advisers -- not a lot. I don't understand -- I don't understand that moment Mr Curtis understood reality or did not understand reality, I think that definitely as a lawyer, as a proper professional English lawyer, he advised me to do it in simple way, in direct way, and I don't remember that we discussed that. I really don't remember, but in any case I am sure that his advice would be to make it directly. But he already had experience with ORT because he organised ORT deal.

- Q. Yes. Well now, could you please turn to bundle H(A)30/148, which you haven't got yet.

Now, let me just explain to you what this document is, with information that I have obtained from Mr Jacobson's witness statement. Okay?

- A. Yes.

- Q. This document was prepared in London at Mr Curtis's office while he was in Cap d'Antibes with you and it was faxed to the Villa Medy Roc, which I think was Mr Patarkatsishvili's house --

- A. It's correct.

- Q. -- at 2.47 pm during your discussions and Mr Patarkatsishvili's discussions with Mr Curtis.

- A. So sorry. Again, I had been with Mr Patarkatsishvili at that time or with Mr Curtis?
- Q. According to Mr Jacobson --
- A. Yes.
- Q. -- Mr Curtis came out to Cap d'Antibes for discussions with you and Mr Patarkatsishvili and I think also Mr Fomichev.
- A. And all together we have been at the Badri place, yes?
- Q. Well, I don't know which house this was in. Mr Jacobson has --
- A. No, Medy Roc is Badri's house.
- Q. Yes. Well, it may have been in Mr Patarkatsishvili's house or it may have been in yours, but it was at Cap d'Antibes; that's what Mr Jacobson says?
- A. My question is -- I'm sorry that I ask you that because I should know better than you, but I don't remember -- we have been together with Badri at that time or we have been separate this time with Badri?
- Q. Well, Mr Jacobson appears to suggest that he had discussions with all of you and I have assumed that they were together, but perhaps you can help us on that.
- A. No, unfortunately I don't, because I don't recollect that.
- Q. Now, this document is described as a:
- "Preliminary discussion draft..."

Do you see the italicised heading just below the fax details?

"Preliminary discussion draft for [Mr Curtis] SLC to discuss with the Vendors and Ruslan Fomichev in the South of France on 17th May..."

A. Sorry, where is that? (Consults interpreter)

Yes, okay.

Q. Okay?

A. Okay.

Q. Now, "the Vendors", as you'll see by turning over the page, means you and Mr Patarkatsishvili.

A. Where is that?

Q. If you look, you'll see that the sale and purchase agreement is between Boris Berezovsky --

A. Yes, yes, yes.

Q. "The Vendors".

A. Yes.

Q. So this is a draft being sent to Mr Curtis in the south of France to be discussed with you and Mr Patarkatsishvili and Mr Fomichev.

My question is this: did you discuss this draft with Mr Curtis?

A. I don't remember that.

Q. Now, I suggest that you must have done because this document was specially prepared to be discussed with you

and the others.

A. Mr Sumption, again, I don't remember that. I don't refuse: it could be discussed. I don't have anything in my memory about 17 May 2001. I'm sorry to say that. I even don't remember did I really meet that day Mr Sumption -- sorry -- Mr Curtis or not. This is the point.

Q. Now, Mr Jacobson also tells us that he thinks that Mr Curtis rang him from France to get his office in London to amend this document and that that explains the manuscript notes that one can see on page 161 H(A)30/161.

These are manuscript notes in Mr Jacobson's handwriting --

A. Just a second. 161?

Q. Yes.

A. Yes.

Q. Now, you wouldn't necessarily have seen these notes; I quite accept that. You certainly wouldn't have seen them at the time. These are notes which Mr Jacobson made in London. According to Mr Jacobson, he made these notes when Mr Curtis rang him from the south of France and said, "We'll need to make changes to the draft", and suggested what changes should be made.

A. I can't comment that. I don't know that at all.

Q. I see.

Now, at the same time as he faxed this document to you, the one that starts at page 148 --

A. Faxed to whom?

Q. To the Villa Medy Roc.

A. Yes, okay.

Q. -- Mr Curtis also faxed a draft deed of release by which Mr Abramovich was to -- it starts at page 163. Sorry, let me just check this. Yes, this document starts at page 187.

A. 187?

Q. 187.

A. Yes, because this document which you showed me started that we have 44% to sell to Mr Abramovich. It's not correct, I'm sure.

Q. The first document that starts at 148 --

A. 148?

Q. 148 is a draft sale agreement directly between you and Mr Patarkatsishvili to Mr Abramovich, yes?

A. Yes.

Q. The document that starts at 187, which was also sent at about the same time to Mr Curtis from London, is a document which says "In consideration of Abramovich paying to the Transferees", that means you and Mr Patarkatsishvili, various sums that are set out,

a release is being agreed.

Clause 1:

"... the Transferees hereby... undertake to [Mr] Abramovich that upon receipt of all such payments detailed below... they shall release all or any claims of any nature they may have [in relation to the shares]."

Do you see that?

MRS JUSTICE GLOSTER: I can't see it.

MR SUMPTION: It's on page 187 -- I'm told Magnum has the wrong document.

MR RABINOWITZ: I think we all have the wrong page.

MR SUMPTION: Well, there's another reference, H(A)30/142.

This is to assist the people operating the Magnum system.

THE WITNESS: No, no, no, that's no problem. I just want to know the page.

MR SUMPTION: You've got the right document,

Mr Berezovsky --

THE WITNESS: I think H(A)30.

MR SUMPTION: -- I'm just ensuring that so does the judge.

THE WITNESS: I'm sorry.

MR RABINOWITZ: With respect to my learned friend, I'm not sure the document he's referring all of us to is the right document because I also can't find it.

MR SUMPTION: H(A)30/142 I'm told is the deed of release.

Yes. I've got it up under that title on Ms Davies's screen.

Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I do.

MR SUMPTION: It's a fax which was sent to the Villa Medy Roc at 14.29 on the 17th.

MRS JUSTICE GLOSTER: Yes, I have that.

MR SUMPTION: Does the witness have that?

THE WITNESS: Was sent -- yes.

MR SUMPTION: Okay.

If you look at clause 1 of this document, you will see that it is a draft of an undertaking by you --

A. What is by me?

Q. -- that as soon as you have received --

A. Yes.

Q. -- the payments listed below, you will release Mr Abramovich from "all... claims of any nature they may have" in relation to the shares.

A. What is the question?

Q. The question is: did you discuss a document of that kind with Mr Curtis on the 17th?

A. As I told you before, I don't remember the discussion. What is important is that this paragraph you mentioned now, because I was even absolutely surprised when the

first time I was shown the same way how Badri managed that with Abramovich in case of Rusal selling, yes, that Badri took obligation in front of Abramovich not to make any claim of that, and I was absolutely surprised.

As far as this is concerned, this point is concerned, I never -- I can't recollect at all that we -- that it was under discussion because for me, as I told you from the beginning, that before Badri travelled to Munich I said, "Badri, one day we go to the court", and definitely I never accept this point.

I don't know what happened in reality; I never have seen that it was signed by our side. I just know that Badri signed the same in this way the document concerning Rusal and I completely -- and I am sure 100 per cent that I never even was shown this paper. It means that when you show me this now, the first time I see that, Mr Sumption, and I surprised that it is here. I never accept that.

- Q. Now, in fact, as I think you accept, no direct agreements, either by way of release or by way of sale, were ever made in writing with Mr Abramovich about the \$1.3 billion, were they?
- A. I don't know a direct agreement. I know just how it was done finally through Sheikh Sultan.
- Q. Nobody on your side ever approached Abramovich and asked

him to sign these documents containing a release agreement and a sale agreement, did they?

A. I already answer to this question. Badri told to Abramovich and insist even that we should have direct sale from Mr Abramovich to us; Abramovich refused that. This only my knowledge about that.

Q. When do you say that happened?

A. It's happened -- it's happened I think after meeting in Munich.

Q. Well, the meeting in Munich had happened earlier in May and these documents were being produced on 17 May.

A. Again, I don't have anything with this document, Mr Sumption, and I told that absolutely precisely.

Q. The proposal to abandon direct dealings with Mr Abramovich, I suggest, Mr Berezovsky, was made for this reason: you abandoned the idea of entering into written agreements with Mr Abramovich because you knew perfectly well he was never going to sign a sale agreement, didn't you?

A. Mr Sumption, I already gave my answer to this question.

Q. He was never going to sign a sale agreement because there had never been a sale.

A. Mr Sumption, this is the case and this is why we are argued here. Abramovich own my shares. Abramovich -- I sold finally under threat and intimidation my shares,

my interest in Sibneft to Abramovich, and this is the case.

Q. Would you please turn to bundle H(A)35/89.

A. Yes.

Q. This is the signed version, which you signed, as you rightly remember, at Nobu restaurant at 10.00 pm. This is a document by which you are apparently selling your interest in Sibneft to the sheikh's company, Devonian. Were you aware that that's what this document was when you signed it?

A. Not so good but I was informed that it's our sale of our interest in Sibneft to Mr Abramovich and it's prepared by professional English lawyers.

Q. You were told, weren't you, that it was a document which recorded a sale of your interest to Devonian, not to Mr Abramovich?

A. Yes, because it was agreed that it will not be the direct sale because Abramovich refused to have direct sale.

Q. Ms Minty was the solicitor who produced this document for you to sign at the restaurant, wasn't it?

A. Definitely I don't remember her name but -- because I was preparing for this and I was shown, I was told that it was Mrs Minty. I don't recollect her now but I think it's so. She is -- as I understand, she is from

the Mr Curtis company.

Q. Well, just so that you don't answer questions under a misapprehension, Ms Minty -- and I don't think this is at all controversial, Mr Berezovsky -- what had happened was that Mr Curtis decided he couldn't act for both you and the sheikh.

A. Yes, I knew that later.

Q. So he acted for the sheikh and he arranged for Reid Minty, which was Ms Minty's firm, to act for you in the last three or four days before this was signed on 5 June?

A. You're absolutely correct because my impression long time was that Mr Curtis operate for us but it's turned out that Mr Curtis operate for sheikh interest. It's the reason why the other company appeared as a company who present our interest.

Q. Now, could you please look at bundle H(A)35/240.

A. We should close this one?

Q. No, no, it's the same bundle. If you turn on to page 240, you will see a note made by Ms Minty.

A. 240?

Q. Yes. Now, what she records -- and it's in the third block of text down on page 240 -- is that she met Mr Fomichev and you at 10.00 pm in the foyer of the Nobu restaurant in Park Lane.

A. Yes.

Q. She records that she gave you the amended letter of advice and the agreement.

A. Yes.

Q. And Mr Fomichev went through those documents with you answering questions, presumably from you, in Russian.

A. I don't remember that, okay.

Q. And they had a copy of the agreement which had been faxed by Mr Patarkatsishvili. You already had, apparently, a copy of the agreement --

A. A copy of the agreement which we are discussing now, yes?

Q. Yes. And then you signed it.

A. Mr Sumption, I really even not able to recollect. It's important event in my life to get 1.3 billion but it's happened like happened. It's happened in Nobu, at 10 o'clock pm, and she's correctly -- she's correct. Again, I don't remember but it's written here, I don't have any --

Q. So --

A. Just a second, Mr Sumption. Definitely I was not able to read that, this a lot of papers. I trust what they present to me and I don't recollect that I have seen this document before. I don't remember that. It doesn't mean that it was not happen.

- Q. In your witness statement, it's paragraph 393  
D2/17/282, you say you have seen this attendance note,  
you summarise it.
- A. Sorry, the paragraph?
- Q. 393.
- A. Just a second.
- Q. You say:
- "I do not specifically recall this, but I have no  
reason to doubt that everything happened as written in  
this note."
- A. Okay, it's exactly what I just told now.
- Q. Yes, absolutely. So you don't doubt, do you, that you  
were in fact taken through the agreement by Mr Fomichev,  
asked questions, and apparently had them answered?
- A. I don't remember that at all. And, moreover, I have  
a lot of doubt because, as I told you, maybe it's --  
again maybe it's rubbish, maybe it's bad, but I trust  
that time to Fomichev and definitely I didn't spend my  
time to read what they write here. I trust him and it's  
reason why I signed this document. I can't recollect  
that I investigate this document. It doesn't mean that  
it did not happen but I can't recollect and it's not  
very high probability that I went into details of this  
document. As I told you before, I didn't know about  
structure of Devonian, I didn't know anything and

I didn't pay attention to them because I just trust Badri and Mr Fomichev. That's it.

- Q. I suggest that you did actually understand the transaction because you were taken through this agreement in detail by Mr Fomichev in the presence of your solicitor, Ms Minty.
- A. Mr Sumption, I can't not accept what you are saying but you also can't produce impression that in Nobu restaurant I go through this document at 10 o'clock pm.
- Q. Now, if you turn back in this bundle to page 84 H(A)35/84, you will see the other document --
- A. 84?
- Q. Yes -- which Ms Minty says was explained to you. This is the letter of advice which is referred to in Ms Minty's note.
- A. Yes.
- Q. And it's a letter of advice which was written by her partner, Mr Stephen Moss, who was the other person at Reid Minty involved in this transaction?
- A. Yes.
- Q. I won't read you the whole of it. What it begins by saying is that Mr Moss has been told by Mr Curtis that you wish this firm to act for you in relation to the sale of your interest in Sibneft:

"I attended a meeting... with Mr Curtis... who are

acting for [the] Sheikh...

"As I understand it, the proposed transaction consists of a sale by you of a percentage of your beneficial interest in Sibneft, and a series of options enabling (but not requiring) Sheikh Sultan to acquire further tranches of your beneficial interest. I enclose a copy of the current draft of the agreement and I should be glad if you would read through this carefully to ensure that it represents your intentions..."

Right. Now, before I ask you anything, if you just look at the next paragraph --

A. What paragraph was that, what you just read?

Q. The second paragraph in the letter.

A. Yes, okay. Give me time, I just want to --

Q. Of course, just read it to yourself. (Pause)

A. It's addressed to me, yes? (Consults interpreter)

Q. All right?

A. Just a second.

Q. The next paragraph, the very next paragraph of text if you look at it, he specifically draws your attention to the warranty section:

"The lawyers representing Sheikh Sultan have asked you to give various warranties in relation to the shares..."

And they include --

A. What --

Q. I will tell you what a warranty is. A warranty is a promise that something is true, okay?

A. Yes.

Q. One of the things that you had agreed to promise was true was that you had the right to sell this interest, okay?

A. Yes.

Q. And he says that he cannot advise you -- see six lines down from the third paragraph:

"I cannot advise you to give these warranties because, as I understand it, you are not involved in the running of the company..."

That's Sibneft.

"... and have no documentary evidence that the beneficial interest in the shares is held... for you."

A. Yes, and what?

Q. Now, you were given this advice, were you not? You were told what the nature of the transaction was, see the second paragraph, and then you were told that you should not give the warranties that were contained in the agreement because you had no documentary evidence to support it?

A. Mr Sumption, I follow advice of my lawyers. If they put

questions, I gave truthful answer. If they didn't put the question, I did not comment at all and, as I mentioned from the beginning, I wanted everything should be done in proper western way, in proper English way. That's it.

Q. Were you taken through this letter?

A. I don't remember.

Q. It's recorded in Ms Minty's attendance note that we looked at last that you were taken through it.

A. No, it's my signature at the second page. It means that she told me about that, at least, yes.

Q. And you signed it --

A. And I signed it, yes, it's correct.

Q. -- to acknowledge that you had read it and understood it?

A. Definitely. And what?

Q. So, now, you did understand, didn't you, that this was a sale of your beneficial interest to the sheikh? You understood that, didn't you?

A. Definitely, Mr Sumption, I explain them absolutely precisely that I -- that my point is that I -- Roman Abramovich is holding my shares. How they call that beneficial interest, it's their understanding of that, and it's happened many times that people understand that it's beneficial interest because definitely on the west

it's almost impossible to imagine that two men shake hands, agreed and that's it. I understand your point.

Q. Mr Berezovsky, I'm not asking you about that. I'm asking you what you understood the contract with Devonian to mean at the time. Do you see that in the second paragraph, Mr Moss points out in his letter --

A. Second of which page?

Q. The first page, second paragraph. Mr Moss points out in his letter that the Devonian agreement which you were being asked to sign contained various options. It wasn't an outright sale of the shares in Sibneft, it was a series of options, right?

A. It's the mechanism, as I understand, how it was done, my Lady. Because the payment was done not in one shot, it was done in several portions in some period of time. It means that step by step, according of the payment from Mr Abramovich, the shares -- our interest become interest of Abramovich. That's it.

Q. Now, do you see that you are being advised in that second paragraph that, under the agreement you were about to sign, the sheikh in fact had no obligation to buy your shares at all; he only had an option to do so.

A. Mr Sumption, again, I sign that. I understood well that we made a deal with sheikh and with Abramovich and how it technologically was organised is another problem.

I just sold my interest in Sibneft to Mr Abramovich through Sheikh Sultan, like I have done almost the same with ORT. And what I know, the payment was done not in one shot, it was done in several payments and this is the point what we are discussing now.

MR SUMPTION: My Lady, I'm going to be a little longer on Devonia. I say a little, far too long to try and accommodate it before the break.

MRS JUSTICE GLOSTER: Very well. I'll sit again at 2 o'clock.

Ms Davies, I thought my clerk had taken the draft order up to my room, he hadn't, he'd left it there.

I'll look at it over the luncheon adjournment.

MS DAVIES: I'm very grateful, my Lady.

MRS JUSTICE GLOSTER: Very well. 2 o'clock.

(1.02 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Ms Davies, I've read the papers now and I've made the order. I've made one slight amendment to the recital which deletes "and counsel for the respondent's" and substitutes "and upon reading Dundas & Wilson's letter dated...", et cetera.

MS DAVIES: Thank you very much, my Lady.

MRS JUSTICE GLOSTER: Once it's been sealed, can you provide

my clerk with a copy, please?

MS DAVIES: Of course.

MR SUMPTION: Mr Berezovsky, are you aware that the Devonian agreement which you signed provided for the transfer of one-thirteenth of your Sibneft shares that you claim to have, followed by 12 options for further thirteenths which had to be exercised over the next year? Are you aware that that was the shape of the agreement?

A. I just knew that it will not be paid -- it will not be paid in one shot, it will be paid in several payments and it takes time.

Q. You see, Mr Moss, in this letter of advice which you should still have open in front of you, was pointing out to you, wasn't he, that under this agreement you weren't necessarily going to get the whole \$1.3 billion because the sheikh did not have any obligation to exercise those options; he only had a right to do so?

A. I don't recollect that at all. I just remember that it will be paid in several shots and I don't remember what you mention. I'm reading now that he has right to retain that and so on. But my understanding was clear that we made a deal and he will get commissions for that and money will be paid in several steps and it takes -- as I recollect, they finished to pay at the very beginning 2003.

Q. Were you aware that in the course of Mr Patarkatsishvili's meetings with Mr Abramovich in May, it was agreed between them that the payments of the \$1.3 billion would be made to an account nominated by Mr Fomichev, \$500 million within the next month and then instalments of \$100 million eight times over the next year? Were you aware that that was the agreed timetable for payment?

A. No, I did not -- I don't recollect that. I just understood, as I told you before, that it will be not in one shot, it will be several payment.

And what is also agreed with Badri that in contradiction -- or additionally to our agreement with Badri that I will be paid -- I will be paid for sale 2:1, 2 in my favour, 1 to Badri favour, because we now have new situation that we are in difficulties. I accept position -- I don't remember who initiate that, maybe me, maybe Badri -- that 500 will share equally, not in proportion 2:1, and the rest 800 will be shared in proportion 2:1 in my favour.

That's only my recollection; it does not connect at all to what you said just now.

Q. Well, I'm not going to cross-examine you about that because your only claim in this action is for half of it or half of the total loss.

Now, would you agree that the Devonia structure was thought up by your lawyer, Mr Curtis, in order to protect your interests?

A. As I told you, and this is a point which is little controversial, that Mr Curtis, I understood him as my lawyer but it's turned out that he serve sheikh formally and it's reason why the other lady came to sign the agreement from the other company. Definitely I didn't pay attention to that at that time, I didn't understand that well, because he -- I mean Mr Curtis -- he operate like my lawyer. I didn't understand that time that he formally present interest of Sheikh Sultan.

MRS JUSTICE GLOSTER: I think you may have told me this: was the sheikh a client of Mr Curtis prior to your introduction to him?

A. Sorry? Sorry?

MRS JUSTICE GLOSTER: Was the sheikh a client of Mr Curtis?

A. Yes, yes, as turned out, he was a client of Mr Curtis.

MRS JUSTICE GLOSTER: Yes.

A. But I did not understand that because he communicate with me like presenting my interest.

MRS JUSTICE GLOSTER: Yes, but prior to your introduction to the sheikh in the context of the ORT agreement, did you know that he was a client of Mr Curtis's?

A. No, I didn't know that. I didn't know that.

MR SUMPTION: My Lady, I think one of Mr Curtis's letters to the Clydesdale Bank which I referred to this morning refers to his having been a client of Mr Curtis for, from recollection, three years.

MRS JUSTICE GLOSTER: I think that's where I picked it up from, yes.

MR SUMPTION: Now --

A. And as I told you, my Lady, I met sheikh just later on, already being in London.

MRS JUSTICE GLOSTER: Yes, you told me that.

MR SUMPTION: Now, the question that I put to you was about the purpose of the Devonia structure. What I want to know is: do you agree that its purpose was to protect your interests?

A. I understood it well that its purpose to protect my interest, definitely.

Q. Now, if we can just identify with your assistance what those interests were.

Was one of the purposes of the structure to protect your assets from being identified by the Russian authorities?

A. No, I formulate the general point which I already formulate today that I want to be paid, I want to be -- that money should be transparent for western banks and should be acceptable there. On the other hand, I want

to protect myself from Russian authorities as well. But this what the formula which I formulate in front of Mr Curtis and Mr Fomichev; and not only me, I think that mainly Badri was involved in the realisation of the formula. But understanding is exactly like you just mentioned now.

And still now I am successful, Russian authorities never touch this money; maybe because it's money of Abramovich, I don't know.

Q. Yes. I mean, I think that you are saying much the same as you said in the North Shore litigation, where you said that the structure was proposed by Mr Curtis and the final beneficiary, you say, was Mr Abramovich:

"... but it was done through Sheikh Sultan. The reason to do that was just to protect my assets and to protect my money because the Russian authorities went after all my assets and my money all over the world."

Was that evidence true?

A. It's -- the evidence is true.

Q. Now, I think you mentioned in the last answer that you gave that there may have been another purpose and that's what I want to ask you about now.

Do you agree that the other purpose of this structure was to generate documents which would satisfy the enquiries of Clydesdale Bank?

- A. I don't know about anything "to generate"; I just formulate my understanding that I need to have clear money on the west, nothing more. I want as much as possible to be protected against of Russian attack and I want to have any record that in future I can use against of Abramovich understanding that it was threat, nothing more. Three points.
- Q. Well, you needed a document, didn't you, to explain to Clydesdale Bank where the money had come from?
- A. Mr Sumption, again, I don't need -- I didn't care about any documents; I care just about how to settle that that it will be proper for western bank. As you know, we had basic problem with documents, yes? Because I had with Abramovich, as you remember, agreement '95 and agreement '96, it's verbal agreement. It's agreement. And what is important for me that bank accept my explanation.
- And again, Mr Sumption, I again want to stress: nobody ever had any problem with this money. With the other, yes, they investigate a lot.

MRS JUSTICE GLOSTER: I've got that point.

THE WITNESS: Sorry, my Lady.

MRS JUSTICE GLOSTER: No, I've got it.

MR SUMPTION: Now, could you please be given bundle J2/2.

This is Mr Marino's witness statement again. I'd like you to turn in that bundle to page 131.

A. Yes.

MRS JUSTICE GLOSTER: It's tab 9, isn't it?

MR SUMPTION: It is tab 9, yes. The reference for Magnum is J2/2.09/131.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, this is part of Mr Marino's statement.

I think perhaps you should start on the previous page just to get the context.

A. The page previous is 130?

Q. Yes. Now, first of all, do you see paragraph 405?

"Mr Berezovsky informs me that it was his clear understanding, including from discussions with Mr Curtis, Mr Patarkatsishvili, and Mr Fomichev that the interests being sold under the Devonia transaction were being acquired by Mr Abramovich, or one of his companies, and that the Sheikh and Devonia were merely acting as intermediaries in the transaction."

Is that the information that you gave to Mr Marino?

A. I think that yes.

Q. Now, Mr Marino then goes on to describe a dinner at Mossimans and at paragraph 407 you will see that he quotes from a document of 14 May.

A. Just a second. 14 May --

Q. Paragraph 407.

A. Just a second. 14 May which year?

- Q. 14 May 2001.
- A. 2001. And what is this document?
- Q. Now, he is referring to a note --
- A. Note of whom?
- Q. -- of a conversation -- it's a note made by Mr Jacobson of a conversation between Mr Curtis and the compliance officer at Clydesdale Bank.
- A. Okay.
- Q. Okay?
- A. Jacobson refer to conversation of Mr Curtis --
- Q. Mr Jacobson was present at this conversation --
- A. Yes. But he refer to conversation, yes.
- Q. -- and he prepared a note of it, and the note is quoted in this paragraph.
- A. Yes, okay.
- Q. Have a look at it, would you? (Pause)
- A. All of items to read or just first one?
- Q. I would like you to read the whole of paragraph 407.
- A. Yes, I see. Okay, yes.
- Q. Have you done that?
- A. The four points, yes?
- Q. That's right. (Pause)
- A. Okay, fine.
- Q. Now, in summary, what that note records is that Clydesdale Bank were told that Mr Abramovich's funds

were coming from Latvia and Ms Hilton, the compliance officer of Clydesdale Bank, said that was going to be a problem because Latvian banks would not be bound by the same stringent money-laundering regulations as UK banks.

A. Mm-hm.

Q. Then in 4, over the page, Mr Curtis suggests that the new deal would be more along the lines of the option scenario.

Now, if you look next at paragraph 408, the next paragraph, Mr Marino --

A. Just a second.

Q. For the transcript, my Lady, I will give your Ladyship the bundle reference to that note --

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: -- which is H(A)30/33.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, Mr Berezovsky, what Mr Marino is saying at paragraph 408 is that the original plan was to have a sale directly between Mr Abramovich and you and Mr Patarkatsishvili but that was unattractive to Clydesdale Bank because of the problems of identifying the source of funds coming from Latvia if they came from Mr Abramovich.

A. Mm-hm.

Q. By contrast, Ms Hilton said that they were happy with the idea of receiving money from the sheikh because they had undertaken due diligence on the sheikh already.

Now, this is Mr Marino's explanation of why the Devonia structure was adopted: he says it was adopted in order to satisfy the Clydesdale Bank.

A. I don't have any doubt that it's so.

Q. Sorry?

A. I don't have -- I think it's so.

Q. Right. Therefore, he says in paragraph 409:

"These problems were overcome by the Sheikh purchasing Mr Berezovsky's and Mr Patarkatsishvili's interests... using his own funds and then entering into a separate arrangement... to sell [them to Mr Abramovich]. The purchase was effected through Devonia..."

Now, he says:

"I understand from Mr Jacobson that the Sheikh did not actually commit to being involved in the transaction until on or about 29 May..."

Now, the purpose therefore, in addition to protecting your assets from the Russians, was also, was it not, to satisfy the money-laundering requirements of Clydesdale Bank, to satisfy their money-laundering enquiries?

A. Mr Sumption, I even start to understand a little bit more -- thank you very much -- how it's happened. But I just want to tell that from the very beginning, I want just again to concentrate for three points which arise when we decide -- when we decide to sell. Three points. Money should be absolutely transparent for bank: it means that bank accept that and in future I will not have problem. The second: it should be a record that it's happened. And the first one I already forgot because several times I repeat the same.

But the point, the most important point, the point is that my condition was absolutely clear: I don't want -- not I don't want -- I don't know how to organise that, is it possible to organise that or not? Because my advice, what is written here, my proposal was to pay directly because I'm not able -- I'm not in position to hide. It's my money; it's not fund of Abramovich, it's my money. I want to get that. I want to get it in the most simple, transparent, but protected way. This is the story.

If they decide to organise that through option, it's not my point. I'm advising by professional lawyers and I got my money. Again, I want just to stress that till now I don't have any problem with this money. It means I know that a lot of -- you know, a lot of -- there

exist a lot of ways how to reduce the tax. There are many legal ways to reduce the tax; there are many illegal ways to reduce the tax. And as to make it absolutely legally, that monies should be identified like my money, and again I want to stress: no problem with that any time at all, in spite of a lot of problems with the other monies.

Q. In your --

A. And Latvian bank -- I'm sorry that I just want to add -- and Latvian bank, I have experience with a Latvian bank. Now they are much more transparent for -- not much transparent -- they operate in proper way. I don't want to discuss which bank I use before Russia close my account there, sent letter to bank, "Berezovsky is using money from your bank". It has happened recently, my Lady, yes? But again, it's not a problem for me if they decide to follow this way.

Q. Right. Now, Mr Berezovsky, earlier today, you gave evidence that the reason for why you abandoned the direct sale proposal involving a contract directly with Mr Abramovich and instead sold your interest, you say, to Devonia was because Mr Abramovich had refused to engage in a direct transaction.

A. It's correct. Abramovich refused to engage direct transaction; it's true.

Q. Mr Marino does not say that, does he?

A. Okay.

Q. What he says is that the reason was that it was not possible to satisfy the Clydesdale Bank's enquiries if the money came directly from Mr Abramovich.

A. Mr Sumption, it's not so. Many times you already find confirmation that Abramovich refused to make direct transaction. Even recently it was written somewhere. I forgot where it was written.

Mr Sumption, again and again, my point was very simple: as more transparent as better; as more simple as better. Only problem that time I worry really seriously how to protect my money from Russia. Nothing more. But money should be transparent. It's happened. It's happened as a fact. And after many years, after many years, nothing happened more.

It's well known, it's absolutely clear for British authorities when I move here how my money moved because I declared in front of Pricewaterhouse that I sold my interest in Sibneft and Rusal. I'm sure that they investigate in details and if something crime here, definitely I'll have a problem earlier, not now.

Q. Mr Berezovsky, we established this morning that you had read Mr Marino's witness statement and you said in your own witness statement in the strike-out proceedings that

you agreed with it.

A. Mr Sumption, where I put my signature, it means that I agree. It means -- on the other hand, it doesn't mean that I go into details. I responsible for that, what I was writing, it's true, and only my Lady able to estimate is it correct what I have done or not correct. I absolutely open in front of you. I told you everything how I understand and it's -- you are judge and you took a decision.

Q. Mr Berezovsky, presumably when you write and sign a document saying that something is true, you go to some care, do you, to ensure that it is? Or don't you?

A. Mr Sumption, yes, definitely yes, and I responsible for that. I try to explain you. My way unfortunately is not correct and even the document of sale of \$1.3 billion I signed in the restaurant. It's wrong, I agree with that. But you want to know the truth; I present you the truth.

Q. Now, I would like to ask you to turn, please, to bundle H(A)34/64. Now, this is a letter from Mr Curtis to the sheikh's private financial office.

A. When it was written?

Q. 1 June 2001.

A. 1 June 2001.

Q. Yes.

A. Okay, thank you.

Q. And I can tell you that a copy of this letter was sent to the Clydesdale Bank.

A. Okay.

Q. My Lady, for the transcript, the reference to that is H(D)2/22.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, at page 65, which is the second page of this letter, Mr Curtis is writing a letter to the sheikh --

A. Which paragraph?

Q. It's the second full paragraph beginning, "The bank also have to satisfy themselves..."

A. Yes.

Q. "The bank also have to satisfy themselves with regard to the underlying assets. They are aware of the position with regard to the shares in Sibneft and, in particular, that these are registered in Mr Abramovich's name. I am required to make yourself aware of the potential dangers of acquiring a nebulous beneficial interest without any third party confirmations from Mr Abramovich as to ownership. I am not sure whether you are addressing this independently with your lawyers in Abu Dhabi but in either event, I would be grateful if you would again be kind enough to countersign this letter in order that

I can show to the bank that the issues detailed above, including the question of the beneficial interest in the shares, have been brought to your attention."

So he's writing this letter to the sheikh --

A. Yes.

Q. -- in order that it can subsequently be provided to the bank, as indeed it was.

Now, if you look at the next paragraph after that, you will see that there's a reference to Mr Abramovich's position:

"It is likely that we are going to have to provide additional information with regard to the shares in Sibneft... As yet I am unclear... what the bank will require. I have explained the reluctance of Mr Abramovich" --

A. Just a second. Yes, mm-hm.

Q. "... to provide written confirmation of his trustee status and this may be a sticking point. Ruslan..."

That's Mr Fomichev.

"... is providing me with articles including one from The Financial Times in which Mr Abramovich acknowledges [Mr Berezovsky's] involvement. I will address this with you again [later]."

Now, either you or somebody working for you must have told Mr Curtis that Mr Abramovich would not be

likely to provide a written confirmation of his trustee status and that that was likely to be a sticking point?

- A. I don't know anything about that at all. As I told you, I knew just from the beginning Abramovich refuse to make direct payment. I don't know why Mr Abramovich used Latvian bank for that if he already was so great businessman and knew well that Latvian bank is not transparent enough. It's already -- it's question definitely not to me; I don't know anything about that.

But again, it means that just I provide absolutely fully information which I have about this deal; or Badri provide, I don't know. It means that we didn't hide anything at all, not in front of Mr Curtis, not in front -- not Curtis in front of Mr Sheikh. It means that it was absolutely correct what we described there.

- Q. If you would look at the next paragraph but one, the last full paragraph on the page --

- A. The last -- "I am sure..."?

- Q. The last full paragraph on the same page:

"I am sure there will be a number of other hurdles that we will have to address... generally, there is certainly a willingness to proceed with this transaction given your [the sheikh's] involvement. I have copied this letter to Ruslan and Joseph and will ask them to bring this to the attention of their principals."

A. Mm-hm.

Q. Now, Mr Curtis is there saying that he sent a copy of this letter to Mr Fomichev, who was your financial manager, and Mr Kay, who was Badri's financial manager, in order that they could bring the letter to your attention.

Did Mr Fomichev bring a copy of this letter to your attention at the time?

A. I can't recollect that completely. Moreover, I'm sure that not, but again I don't remember that.

Q. You are sure he didn't?

A. Again, I am sure that he did not, but I can't guarantee that. And again, it was not my problem at all. My problems finished when we agreed in principle what we will do: sheikh involvement, the English bank and so and so. After that, I'm almost sure that nobody inform me what was happening. And definitely when you remind me that it was not paid in one shot, I also at the beginning of our conversation forgot about that.

Q. Now, can you think of any reason why if Mr Fomichev was asked to bring a document to your attention he should not have done so? Surely if he was asked, he would have done?

A. Because it's turned out that he is not professional, it's turned out for me that he is crook. I don't know

why. It's my -- but that time I didn't think so; I didn't have, let's say, example of that. Now I know that he's crook and it is the reason why I don't invite him as a witness to this hearing.

- Q. Do you say that the sheikh sold this interest you say that he bought from you on to Mr Abramovich or do you not know?
- A. It was agreed from the beginning and I -- what I know from Badri and -- because I, as you know, I didn't communicate to Abramovich directly. What I know from Badri and from Fomichev and from Mr Curtis that it was interest because in other case, what is the reason that Abramovich pay money? This exactly our agreement with Abramovich: that we sell our interest in Sibneft to him in this way, not direct way. But the final beneficiary of this deal definitely is Mr Abramovich and all the world knows that.
- Q. Are you saying that somebody on your behalf agreed with Mr Abramovich that he would buy your interest from the sheikh?
- A. Again, I gave all power to Badri to organise and to Fomichev and to Curtis to organise that. I didn't have any doubts that Abramovich camp absolutely knew for what he paid money. This is the point.
- Q. So are you saying that somebody on your behalf agreed

with Mr Abramovich that Mr Abramovich would buy your interest from the sheikh?

A. Badri during his conversation -- from the sheikh, that time we didn't discuss the sheikh; we just discussed with Badri that Abramovich will buy our interest. And mechanism how it will be done became later, as a parallel with mechanism of ORT. And it means that I didn't have any doubts that the final beneficiary will be Abramovich because Abramovich once already was involved in that. Exactly like transaction of ORT interest; it's nothing new with Abramovich.

Q. Well, you may not know the answer to this question, in which case you must say you don't know.

A. Okay.

Q. But what I would like to know is: do you have any knowledge that there was actually some agreement with Mr Abramovich that he would buy the stake --

A. Now I understand, yes.

Q. -- in Sibneft from the sheikh's company?

A. I don't have any knowledge about his agreement, direct agreement, with sheikh of buying share or buying my interest.

Q. Yes. You see, I must suggest to you that there never was a sale by the sheikh to Mr Abramovich and there was never intended to be.

- A. It's your suggestion. You have right for this suggestion. It's completely wrong what you said. Abramovich perfectly knew what was happening and sheikh perfectly knew what happening and Mr Curtis perfectly knew what happened and Badri perfectly knew what happened. And if Abramovich did not knew, it's just his point, not my point.
- Q. How do you know that Mr Abramovich knew about the Devonia structure?
- A. I don't know anything about Abramovich knowledge of Devonia structure at all. I don't know anything because I did not communicate to Abramovich at all.
- Q. This whole transaction, as you knew, was a sham which was designed to hide your assets and to deceive banks, wasn't it?
- A. No, I didn't know that at all. I knew that it's absolutely legal way to get my money for my interest in Sibneft, what's advised by my lawyers.
- Q. Could you, in the same bundle that you've got open, please turn to page 62, which is the previous document H(A)34/62. This is a document written on the same day as the letter to the sheikh we've just been looking at --
- A. Yes.
- Q. -- and it's addressed to Mr Fomichev and Mr Kay.

A. Just a second, I have the other one. What is the number?

Q. Pages 62 and 63.

A. This document addressed to Mr -- signed by Mr Curtis; correct?

Q. Yes.

A. And addressed to Mr...?

Q. Fomichev and Mr Kay.

A. Yes.

Q. If you look at the last paragraph of the letter, he says that unfortunately he doesn't have email addresses for you and Mr Patarkatsishvili and would not wish to send this letter via the London office.

"May I therefore impose upon each of you to bring this letter to the attention of your respective principals."

So Mr Curtis is writing to Mr Fomichev and Mr Kay and asking them to show you this letter.

A. Yes.

Q. The likelihood is that if Mr Fomichev was asked to show you this letter, he did show it to you; do you agree?

A. He -- I never -- I can't say precisely but I can't recollect that I have seen this letter at all, at all. Moreover, I have told you many times already, Mr Sumption -- you may believe me, you may not believe

me -- it's in so details, they never inform me about that; never. Maximum what could happen that they show it to Badri and not to me. It's 100 per cent.

Q. Let's have a look at the last paragraph on the first page that begins "Finally..." Do you see that? This paragraph says:

"Finally, you will appreciate that in order for the proceeds" --

A. Just a second. May I look? Where is that? (Consults interpreter)

Q. First page of the letter, last paragraph, "Finally..."

A. Yes, sorry. (Pause)

Okay.

Q. Have you had translated to you that paragraph?

A. Half of the paragraph. You need -- you want I translate all the paragraph?

Q. I would like you to go to the end of the paragraph.

A. Yes, okay. (Pause)

Q. Mr Curtis is saying in that paragraph, towards the end of the paragraph, that it would be very useful if Mr Fomichev could produce some newspaper articles in which there was reference to your owning a stake in Sibneft. That's what he's saying, isn't it?

A. I don't know.

Q. Well, have a look.

"Leigh has been incredibly helpful in trying to find a way round this."

A. Yes, sorry.

Q. "It is possible that we will require additional comfort..."

A. Yes. It's why: we didn't read the end. Okay, please.  
(Pause)

Q. "... Ruslan is endeavouring to provide" --

A. Just a second.

Q. -- "back up documentary evidence in the form of newspaper articles." (Pause)

A. I'm sorry, I didn't catch: she is trying to find confirmation of what?

Q. Of the existence of your interest in Sibneft.

A. Yes, yes, yes.

Q. And Mr Fomichev was looking for newspaper articles which referred to your being an important shareholder or having some kind of interest in Sibneft?

A. Yes, clear.

Q. Right. Now, the problem was, was it not, that there weren't any articles of that sort because you never had claimed in any newspaper that you had an interest in Sibneft?

A. No, I claimed that I have interest in Sibneft; I never claimed that I am shareholder. But you gave a lot of

examples of my controversial position that I -- on the one hand I try to prove, to demonstrate publicly that I am not shareholder, but on the other hand that I have interest in that.

And maybe the best -- one of the best confirmation is not my presentation but Khodorkovsky presentation when we merge with the Yukos, when Khodorkovsky said that Berezovsky definitely will be shareholder of Yukos. It came not from the air, it's because of merge of Sibneft, and Khodorkovsky was aware definitely that I not just simple shareholder, small; that I founded Sibneft and I am one of the principal shareholders of Sibneft.

But what is important in this letter, finally I find the answer to the question which you put me, Mr Sumption, many times, many times: that Abramovich has problem in Russia, not somewhere -- it's written here exactly that he has made in Russia, yes? You know, it is written here that he has made in Russia. The problem which Abramovich has, he has a problem in Russia. And it's correctly what Badri told me: that if there will be direct sale, it harm Abramovich in Russia. This is the point and it's clear reference to this problem; the first time I have seen, I'm sorry to say.

Q. Mr Berezovsky, at the time this letter was written, on

1 June 2001, there weren't any newspaper articles which said that you had a significant interest in Sibneft, were there?

A. Mr Sumption, you know well that there are many reference to my interest in Sibneft in many articles.

Q. Not at this stage.

A. Not what --

Q. Later there were references, but --

A. No, no, no, no, no, no, no. Even from the beginning when we start to create Sibneft, there were a lot of reference that I'm founder of Sibneft. It's completely wrong what you are saying now, completely wrong. That I'm the principal founder of Sibneft from the beginning.

Q. I've taken you through that material and it's perfectly true that you had claimed to be a 50 per cent owner, through Consolidated Bank, of FNK.

A. Okay, through Consolidated Bank. Okay, fine.

Q. Now, the point that I'm putting to you is this: is it right that as a result of Mr Curtis saying it was desirable to get newspaper articles, you started, in June 2001, claiming for the first time that you were a large shareholder in Sibneft?

A. Mr Curtis -- Mr Sumption, there are a lot of coincidental in our life and believe me it's not the reason -- because you raised this question yesterday, as

I remember, or the day before yesterday -- that the first time I start to talk about that so and so. I started to talk about that, as we recognised yesterday, because of the merge of Sibneft and Yukos the second time.

And I was over my emotions, as I told you, but there are a lot of references, a lot of references, and it's the reason why Mr Shvidler and Mr Abramovich all the time tried to distance me and we had a special agreement '96 which we discussed with you that my distance from Sibneft.

It's not correct what you said now.

- Q. Mr Berezovsky, the second Yukos merger was proposed in 2003, well after these events.
- A. 2003. You understand that the first time in 2001?
- Q. Yes, well, the first one was in fact in 1998, wasn't it?
- A. The first merge was -- attempt to merge, '98.
- Q. Now, the interview with Mr Khodorkovsky that you are referring to where you say that your interest was referred to is at bundle H(A)10, page 29.
- A. H(A)...
- Q. H(A)10/29. Now, this is the interview with Mr Khodorkovsky and at the bottom of the first page of the text there is in fact, I think, a Russian version immediately after it.

A. Yes, yes.

Q. What he says is -- the question is:

"You said that you did not give a thought to the list of shareholders. But have you discussed this merge with Mr Berezovsky?"

"Yes. We have discussed this deal. And with Mr Berezovsky also, though he is not a direct Sibneft shareholder. Five and not two companies are involved in this deal. Two main companies and three supporting ones. Mr Berezovsky indeed is not a Sibneft shareholder, but he is part of the Group and obviously will be one of the shareholders of the new company."

A. Yes, correct.

Q. Now, it's not true, is it, that that interview establishes that you had an interest in Sibneft?

A. It's written here correctly that "[he] is not a [direct] Sibneft shareholder". It's the language which you already know well when, for example, Mr Shvidler used in his witness statement present to my case against Forbes magazine. On the one hand he put the paper which is false, as I understand it, I told you, my Lady; on the other hand he wrote that Berezovsky is not shareholder.

It's the language. I'm not shareholder, it's true, but I have interest in that and there are a lot of reference to that. You yourself, as I remember,

demonstrate that at the beginning of our hearing.

Q. Now, could you please have a look at bundle H(A)36/187. You can put away the H(A) bundle that you have just been looking at. This is an article that you've seen before, which was the first occasion when you publicly claimed to have half of Sibneft.

A. Yes.

Q. I want to look at it again in the context of the document I've just been showing you.

A. Just a second. When it was published?

Q. This was published on 28 June in the Moscow Times.

A. June of which year?

Q. 2001.

A. Yes, okay.

Q. "Boris Berezovsky announced Wednesday..."

And that was 27 June.

A. Yes.

Q. "... that he owns half of Sibneft, backing away from earlier contradictory statements that he either owns 7 per cent of the No. 6 oil company or no stake at all.

"The announcement, which left some market watchers scratching their heads and others tight-lipped, also flies against repeated denials by Sibneft that Berezovsky has any interest in the oil company that he helped [to] form.

"Berezovsky said his shares in Sibneft are being managed by a team overseen by Roman Abramovich, the oil and metals tycoon who was a close ally of [his] in the 1990s..."

And below you will see there's a strong denial by Sibneft.

Now, what I suggest to you, Mr Berezovsky, is that, at the suggestion of Mr Curtis, Mr Fomichev came to you and said, "We must find some newspaper articles which refer to your owning half of Sibneft", and what you went out and did is that you generated such newspaper articles by claiming, contrary to previous statements, that you owned half the company.

Do you follow my point?

- A. Yes, I absolutely follow your point. It's absolutely wrong. It's absolutely not truthful. It's -- even here it's written I own 7 per cent; it's more or less known fact. It's registered, moreover, that in this company PK I own 7 per cent. It means that it's not news and the news is just that I present that publicly. As I recollect what we discussed before, that Badri worry that Roman will stop to pay us if I refuse that I am shareholder and we don't need to hide more. This is the point.

My point was that -- and it's the reason why it's

happened; not because nobody knew that I had been shareholder of Sibneft. All the time I try really to hide that. I try not to present it publicly because of request of Abramovich and Shvidler as well.

Q. Could you please be given bundle H(D)2 and turn to flag 19 H(D)2/19/121. Have you got that, Mr --

A. Just a second. I am waiting for it.

Q. Understood.

Now, what you are being handed, Mr Berezovsky, comes from the files of Clydesdale Bank that were disclosed to us last week --

A. Yes.

Q. -- and what you see here is a copy of the same article --

A. Yes.

Q. -- and you will see Mr Curtis's initials just by the headline.

A. Yes.

Q. Now, it's apparent that what happened was that Mr Curtis suggested that newspaper articles should be produced, you gave a press interview in which you claimed an interest in Sibneft, somebody -- probably Mr Fomichev -- then promptly sent a copy of that to Mr Curtis and Mr Curtis supplied it to Clydesdale Bank.

A. Mr Sumption, I want just to repeat again and again:

I don't responsible for coincidentials, even if even they are positive for me or negative, I am sorry to say. I didn't initiate anything specially, anything to support the Devonian deal. What happened, that's happened; I'm not responsible for it.

But it's absolutely common knowledge all over the Russia, all over the business community in the world, that I create Sibneft first of all, I find the way how to privatise Sibneft, and I was -- I have interest in Sibneft. This is the point. It's common knowledge.

- Q. The limited point that I was putting to you is that you deliberately claimed for the first time in newspaper interviews in June 2001 that you had an interest in Sibneft in order to supply the evidence that Mr Curtis said he needed to show to Clydesdale Bank.
- A. I'm sorry to say, Mr Sumption, even here is -- the title is absolutely wrong. I never claimed that I have half of Sibneft; I claimed that I have just 25 per cent of Sibneft. And if I would be -- I would like to be correct in front of bank, definitely I wrote Badri and me, we have 50 per cent, not half; 25 per cent each. It means that I mislead the bank.
- Q. Now, do you remember, Mr Berezovsky, that there was a problem later in 2001 because the money was arriving in Clydesdale Bank's accounts in instalments which did

not correspond to the instalments in the Devonia agreement? Do you remember that problem arose?

- A. I remember problem. I don't remember -- and moreover I remember that we should move our money from Clydesdale Bank to another bank and we have done that.

I didn't understand the reason because nobody informed me why that happened. My understanding is because Russian were pressing them because I have all the time the problem to open any account in bank because banks -- many banks operate in Russia, they afraid to lose business there, it's natural. And the reason -- but I never informed about the reason of why they decide to do so.

As I know, I ask my adviser at the time, Fomichev and Natalia Nosova, to help me to move money because at that time I didn't have direct connection to Badri because Badri is -- which year it was? Which year it was?

- Q. Which year what was?

- A. They asked me to move money from the bank.

- Q. At the end of August 2001 Clydesdale Bank said they wouldn't accept any further money into the trust accounts and they asked you to close those accounts within two weeks.

- A. I remember that well and I remember that we move money

to another bank which accept our money.

Q. Right.

Now, could you please look in the same bundle that you should have open, H(D)2, at flag 29, which is another letter from the Clydesdale files H(D)2/29/147.

A. Yes.

Q. This is a fax letter from Mr Curtis to the compliance officer at Clydesdale.

A. Yes.

Q. In the first paragraph he is saying that, having spoken to Mr Jumean:

"All parties have agreed that they will [vary the Devonia agreement]... pursuant to which..."

So that the sheikh can purchase --

A. Just a second, Mr Sumption. I don't follow you. It's the first paragraph, is it?

Q. Yes, it is.

A. Okay. From the beginning or in the middle?

Q. Well, he starts by saying --

A. "All parties", okay, fine.

Q. -- he's spoken to Mr Jumean.

A. Yes. (Pause)

Okay.

Q. Now --

A. Okay, fine. Just the first paragraph, yes?

Q. Right.

A. Yes.

Q. The reason this letter was written was that money was turning up from Devonia's account in Latvia to the trust accounts at Clydesdale Bank in multiples of \$20 million instead of \$100 million and therefore the instalments were not matching what was said in the Devonia agreement. So Mr --

A. I don't know anything about that.

Q. Mr Curtis was saying that, "All parties have agreed that they will enter into a variation agreement", so that the sheikh can buy in multiples of \$20 million instead of \$100 million.

Now, "all parties" included you. You were a party to the 12 June agreement. Had anybody ever, at about this time, suggested to you that you should amend the agreement so as to alter the instalments?

A. Again, Mr Sumption, definitely I don't remember about this agreement. I remember only that we agreed that our money will be moved to Clydesdale Bank; then we had a problem with the bank -- it's absolutely correct what you said -- and we moved money to another bank which accept that money.

The point -- the problem, as I understand why it's so, as I mentioned to you before, because Russian tried

to follow my money everywhere and -- or Clydesdale Bank decide that it's dangerous for them, because they work in Russia, to keep me as a client, because, as I told you, I never have any problem with this money, and it's the reason why they afraid to condition relations with me.

It's happened recently, as I told you, recently, just maybe two months ago, when one bank account was closed because of request of Russian Prosecutor Office.

- Q. Mr Berezovsky, the problem with Clydesdale Bank rejecting your money arose after this, at the end of August. I would like you to concentrate, please --
- A. I concentrate.
- Q. -- on this letter.
- A. Thank you for same advice.
- Q. What Mr Curtis was telling the bank was that all parties had agreed to enter into a variation agreement of the Devonia agreement so as to allow the sheikh to buy the shares in instalments of \$20 million instead of \$100 million.
- A. Okay.
- Q. Now, my question to you was: did you ever agree to enter into a variation agreement of that kind at about this time?
- A. I follow all advices which were given me by Curtis and

my financial officers and if they advise me to do that, it means that I will do that, and maybe there is even my signature somewhere that I accept that. It does not mean that I understand what is happening. It means that I just follow again the same agreement which I have done, principal agreement, which Badri have done, not me, Badri have done with Mr Abramovich, that he will be paid \$1.3 million -- billion for our interest in Sibneft. Nothing more.

- Q. Well, I can reassure you on one point, Mr Berezovsky: there is no documentary evidence that any proposal was ever made of the kind described by Mr Curtis in this letter to you or to Mr Patarkatsishvili --
- A. Yes, maybe.
- Q. -- or anyone else.
- A. I don't know.
- Q. We do not know where Mr Curtis got this information from but it appears to be wrong.
- A. Mr Sumption, I already gave my comment.
- Q. Now --
- A. I still don't understand why Mr Abramovich decide to have this headache if he just gave me one more present, \$1.3 billion, and have this headache with a Latvian bank, with Devonia and so-so, if it's just his goodwill to give me just for my service, political krysha, and

why he should have this headache. I don't understand at all.

Q. Now, the Devonian agreement was amended much later, wasn't it, two and a half years later, at the end of 2002?

A. No, I'm sorry to say, this letter dated by 1 August 2001, as I understand. The agreement with Mr Abramovich to sell our shares in Sibneft is 2001, not two years before.

Q. Mr Berezovsky, listen carefully to the question, please.

There was an amendment to the Devonian agreement, was there not, at the end of 2002, some time after this?

A. Oh, I see. Okay.

Q. Do you agree with that? You give some evidence about it in your witness statement.

A. Amendment to this agreement?

Q. An amendment to the Devonian agreement that you had signed in the Nobu restaurant?

A. Yes, yes. Yes, it's correct.

Q. Now, it may be that you can recall the outlines of that agreement without looking at it, but if you have difficulty of course I will show it to you.

Is it true that in early 2002 Mr Curtis raised with your advisers, Mr Samuelson and Mr Fomichev, the problem of how the agreement could be amended so as to match the

actual flow of funds that was happening? Do you remember that?

A. Just a second. I don't remember that, but I can't exclude that.

Q. Right. Because there's a note of that meeting in which Mr Jenni attended as an observer on your behalf. Do you remember that?

A. Mr Jenni -- Hans-Peter Jenni?

Q. Sorry?

A. Hans-Peter Jenni, yes?

Q. That's it.

A. Okay.

Q. Do you remember Mr Jenni attending on your behalf in early 2002 a meeting with Mr Curtis and Mr Samuelson to discuss the problem about the flow of funds out of the Devonia account in Latvia not matching what was said in the Devonia agreement?

A. I don't remember definitely that but I can't exclude because I -- Mr Hans-Peter Jenni, I knew him long time from establishing of Logovaz as a Swiss lawyer and definitely he was involved in many my transactions.

Q. Well now, do you remember signing a retrospective agreement in December 2002 which altered the contractual schedule of payments from Devonia so as to match the actual flow of funds?

- A. I don't remember that, but I can't exclude that it was necessary to sign the kind of document referring to Devonia payment and I signed that. I can't exclude that.
- Q. Yes. What happened was this, was it not: you had agreed with -- or Mr Patarkatsishvili, rather, had agreed on your behalf with Mr Abramovich in May the instalments?
- A. In May which year?
- Q. In May 2001.
- A. Yes.
- Q. That was paid to the account nominated by Mr Fomichev, which was the Devonia account, and money was paid out of the Devonia account in instalments which had no relation at all to the instalments in which Mr Abramovich was paying?
- A. I don't remember that at all. Again, as I understand, the Devonia itself was the intermedium between Abramovich and me and Badri on the other hand.

And again, I did not add anything compared with what was my position from the beginning. I want to have -- again, 100 times to repeat: I want to have transparent money, I want to have on the west, I want to have track of this payment; that's it. And Abramovich refused from the beginning and now he finally -- I find out why he said there is the difficulties in Russia, why he was not

able to make direct payment, as I understand, from the letter which we discussed before.

Q. Can you please be given bundle H(A)51/89. This is the amending agreement of December 2002, signed by you.

A. Yes.

Q. What it does is, if you look at page 93 H(A)51/93, you will see a schedule of payments into the Clydesdale Bank accounts --

A. Yes.

Q. -- which started out in multiples of \$100 million but were then reduced to multiples of 35, then two of 20 and then one of 25. Do you see?

A. Yes.

Q. And then there's another schedule on the next page --

A. Yes.

Q. -- which is sums paid into other accounts after the Clydesdale Bank refused to accept any more.

A. Yes.

Q. And what this agreement does is that it retrospectively amends the Devonia agreement so that the parties agree that the obligation of Devonia is to pay the instalments set out in schedule 1 and schedule 2.

A. Yes.

Q. What this was about was creating a document trail that would support, in the eyes of banks, the money that you

were actually receiving, wasn't it?

- A. I don't know. I don't know the purpose of that. I just confirm that it's my signature again and it's Badri's signature even. Just a second, just a second. Yes, my signature and Badri's signature what I -- which I able to recognise.

But I don't understand, let's say -- and I understand that it was the reschedule, as you mentioned, is it correct. But the reason why it was reschedule, I just make guess that it's because they have difficulties with our money. Why they have difficulties? I don't know, as I told you. That's it.

- Q. Well, the difficulty that they had was that you had produced the Devonia agreement to explain the receipt of funds and it didn't explain the receipt of funds because they were coming in in different amounts at different times.

- A. I didn't produce -- I did not produce Devonia agreement. It was produced by professional lawyers and their responsibility. Why there were more questions after that? It's not question to me. I did not produce Devonia agreement. They produce the technology and Devonia agreement, professional lawyers.

Later on they had difficulties I think because of me, because my problem in Russia generally, because bank

want to continue to develop business in Russia, as I told you. It's my guess; it's not my knowledge.

Q. Your agents --

A. But it's not my problem at all why they decide to reschedule this -- to reschedule the payment.

Q. Your agents provided the Devonia agreement to the Clydesdale Bank and subsequently to other banks, did they not?

A. I don't know.

MR SUMPTION: My Lady, would that be a convenient moment?

MRS JUSTICE GLOSTER: Yes. I've got one question.

A. Yes.

MRS JUSTICE GLOSTER: Do you know who was the bank signatory to the Devonia bank account?

A. Just a second. (Consults interpreter)

I don't remember that.

MRS JUSTICE GLOSTER: You don't remember or you don't --

A. I am not able to insist that I don't know. I don't remember at all, yes.

MRS JUSTICE GLOSTER: Yes, I see. Yes, thank you.

Yes, I'll take ten minutes.

(3.14 pm)

(A short break)

(3.27 pm)

MR SUMPTION: My Lady, the answer to your Ladyship's

questions are that the Devonia account in Latvia was operated by Mr Neyadi, who was a person who we understand to have worked in the sheikh's private financial office and had been nominated as the sole director of Devonia. The reference to that is H(A)40/188. That is a document of December 2001 but we do not understand the position to have been any different any earlier. There are large numbers of transfers which he authorised.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: There were also accounts for the trusts at Clydesdale Bank which were operated -- I don't know whether your Ladyship wished to know who operated those but the account opening documentation shows that those were operated by Mr Fomichev and by two --

MRS JUSTICE GLOSTER: This is Itchen, is it?

MR SUMPTION: This is the Itchen Trust account at Clydesdale. They were operated by Mr Fomichev and by one or other of two solicitors at Denton Wilde Sapte Gibraltar: Mr Keeling or Mr Murphy.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: And the reference to that is H(D)2/17/48.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Mr Berezovsky, I would like to ask you about commissions payable to the intermediaries involved in

the Devonian transaction and for that purpose I would like to ask you to look at bundle R(D)1/20/151. Have you got that?

A. Yes.

Q. Now, you will see that this is a record by Mr Lindley, then your solicitor, of a meeting at Downside Manor, which was Mr Patarkatsishvili's English home, wasn't it?

A. Yes, yes.

Q. And various people are recorded as being present, including you and Mr Patarkatsishvili.

A. It's the note, yes, of Mr Lindley.

Q. Yes, that's right, and you will see that you were present from the third line.

A. Yes.

Q. Now, commissions are dealt with towards the bottom of the page. There's a paragraph, it's the fourth paragraph from the bottom, beginning:

"With regard to Signeft, there was an agreed commission of 15% to be paid to [the sheikh] and this had been represented to [Mr Berezovsky] and [Mr Patarkatsishvili]."

So it was being said that the sheikh had taken 15 per cent and you had been told about that.

"Representations had been made to [the sheikh] that their commission was 4%.

"1.3% was paid to [Mr Curtis] and it appeared that the remaining 1.7%..."

This is the two sums that make up the 4 per cent above.

"... was in some way distributed between [Mr Kay, Mr Jumean]..."

Who was the head of the sheikh's private office:

"... and [Mr Fomichev]."

A. Yes.

Q. Now, do you agree that those commissions were paid?

A. Mr Sumption, this is not important but this is more or less what I remember, not in this way, I'm sorry to say. I was remember perfectly and I remember that from Eyhab that it should be commissioned 15 per cent and I don't remember -- it was almost the same with ORT as well, as I remember, and later on it was a point to discuss with Abramovich that he should cover 50, but it doesn't relate now to your question.

My understanding was that sheikh -- at the beginning, maybe it come later, it's already 2007, but at the beginning my understanding was that sheikh should be paid 15 per cent: he will get 11 per cent personally and 4 per cent will be splitted between Eyhab, between Fomichev and between Joseph Kay, Badri adviser. I did not remember that time involvement of Curtis in the

sharing of this money.

And as I told you, Mr Sumption and my Lady, I remind you that I had a meeting with sheikh just one time in London, already later when everything happened, and before the meeting I was told by -- I was informed by -- I was informed by one, I don't remember who one, not to mention sheikh that he got just 4 per cent. It means that people who were around him trick him, saying me -- we were informed that he will be paid 11 per cent and not 4 as a reality, yes?

Q. Not 15?

A. Sorry, no, no. They told that 15 per cent but the sheikh himself will get 11 and the rest 4 will be distributed between them, between Ruslan Fomichev, between Joseph Kay and between Eyhab; but it's turned out that sheikh was paid just 4 per cent. I think that that knowledge I got from Mr Curtis.

And this is one of the point which I decide to discuss with sheikh because I want -- don't want to lose face in front of him when he visited me. And as I remember, and my wife was present at this our meeting, I told him that I did not understand what is reality and he mentioned me that he is fully now informed about everything and I shouldn't worry about that. This is what he mentioned.

- Q. Do I understand this right -- I hope I haven't misunderstood what you've just said.
- A. Yes, yes.
- Q. Mr Curtis told you that part of the sheikh's commission was being secretly deducted and shared between the head of his financial office, Mr Jumean, your financial manager, Mr Fomichev, and Mr Patarkatsishvili's financial manager, Mr Kay?
- A. Absolutely not.
- Q. I see.
- A. Absolutely not.
- Q. I see. What are you saying?
- A. I was told first of all not by Mr Curtis; I was told by Eyhab, sheikh head of administration, about that sheikh will get 11 per cent and the rest party -- I mean, they agreed Joseph Kay, Ruslan and himself will get -- I -- because I was not involved in so details, I immediately passed that to Badri.
- The point is that Eyhab -- it's happened so that Eyhab become close to me because he based in London and it's the reason why he told me that. But I immediately referred it to Badri and after that I don't know anything about what happened.
- Q. But this 4 per cent that was being taken out of the sheikh's share, 1.3 per cent was paid to Mr Curtis;

isn't that right? According to that note.

- A. I was not -- again, as I recollect, I didn't know about that. It could be that -- it's my recollection; it could be that it's different. But I don't remember that, that Curtis was paid as a percentage. I remember that Curtis was paid money for that, that I remember well. But is it percentage of 15 per cent or some different? I don't know that, I don't remember that.
- Q. Mr Curtis's commission was in fact at your expense, wasn't it, because he deducted it from the monies paid into the Devonia account with your consent?
- A. No, again, it was agreed that 15 per cent will be sheikh money and not my money and it will be commission from this which he will be paid because of this transaction. And it's his problem how he share his money; it's not my problem. But definitely, as I told you, I didn't have discussion with sheikh about that; I just had discussion with Eyhab, who have been and still now, as I understand, chief administration of sheikh.
- Q. And when you said that somebody was tricking the sheikh, who do you say was tricking the sheikh?
- A. Somebody. Somebody, I don't know who. Maybe those people who it's -- I thought that maybe -- I thought maybe Eyhab trick sheikh. But again, as far as follows from conversation, mine and my wife and sheikh and his

wife in London, it's turned out that it's not so; that sheikh understood the reality.

Q. Could you please look at bundle H(A) --

MRS JUSTICE GLOSTER: Sorry, just before you leave that, Mr Sumption.

The statement, "Representations had been made to SS that their commission was 4%", who is "their" in that?

A. I think that "SS" it's mentioned that's Sheikh Sultan.

MRS JUSTICE GLOSTER: Yes, I appreciate that.

"Representations had been made to [Sheikh Sultan] that their commission was 4%."

Who is "their", in front of the word "commission", referring to?

A. Sorry, just a second. (Pause)

I think that 4 per cent, it's exactly coincide with 4 per cent at the beginning we discuss, yes? 11 plus 4, it means 15.

MRS JUSTICE GLOSTER: Yes, I see.

A. It means 4 per cent for --

MRS JUSTICE GLOSTER: So the 4 per cent going to the four people who are mentioned in the next paragraph?

A. Just a second. Next paragraph.

MRS JUSTICE GLOSTER: Sorry, that's --

A. Joseph Kay, correct.

MRS JUSTICE GLOSTER: Yes.

A. This is correct. And Ruslan Fomichev, this is correct.

This is my understanding.

MRS JUSTICE GLOSTER: That's 3 per cent. I'm just not following the arithmetic quite.

A. Yes, me as well.

MRS JUSTICE GLOSTER: No, right. Okay.

MR SUMPTION: Well, let's look at what went to Mr Curtis.

Could you please look at H(A)54/256.

Now, this is a letter of 28 February which is from Mr Curtis --

A. Just a second, I'm sorry. 20...?

Q. 28 February.

A. Which year?

Q. 2003.

A. Thank you.

Q. And it's Mr Curtis, addressed to Mr Hussein, the head of the sheikh's private office in Abu Dhabi.

A. Yes.

Q. Now, this is about commissions.

A. Yes.

Q. And if you look at the second paragraph you will see that:

"At that meeting..."

And he's referring to a meeting that he had had with the sheikh a few days earlier:

"At that meeting, I also presented to you and His Highness the enclosed handwritten Schedule of Fees, gifts and payments received by me or my family relating to His Highness' gift, the Sibneft transaction, Itchen Trust and [Rainbow Fund]. I wanted these major payments to be highlighted to His Highness and to Boris Berezovskiy so that there would not be any misunderstanding."

And he goes on below on that point on the page. The next paragraph --

A. Just a second. May I try to understand. I'm sorry.

(Consults interpreter)

Sorry, I understand, okay.

Q. Right. If you look at the next paragraph, it says:

"I have copied this letter to Boris by way of clarification so there can be no misunderstandings as to the benefits, gifts and payments that [he has obtained]."

A. Mm-hm.

Q. And over the page you will see the typed up version of what he appears to have handed them in manuscript at the meeting a few days earlier.

A. Sorry, which page?

Q. Page 257 of the bundle H(A)554/257.

A. 257, the next page, yes?

Q. Yes. And you'll see that item 1 on the schedule is:

"Kind Settlement by His Highness Sheikh Sultan... of £3 million (equivalent US\$4.5 million) proceeds used to purchase [his] Penthouse..."

That appears to have been a gift. Then item 2 is:

"Payments procured by Eyhab Jumean on behalf of His Highness..."

And you will see the first of those payments is a sum of £481,000 invoices of his firm plus authorised disbursements of 388,000. So those are the professional fees and disbursements of his firm as solicitors.

A. Mm-hm.

Q. Then item 3 is:

"Payment made by Devonia Investments to Stephen Langford Curtis \$13.8 million."

A. Mm-hm.

Q. "Payment made by Devonia Investments on request of Itchen Trust \$4.5 million."

He then says:

"You will recall that I introduced this transaction and it was agreed by His Highness that while I represented him on the Sibneft transaction, he had no problem with me... or Curtis & Co working for the Itchen Trust or the other vendors in the Sibneft transaction (provided that I took no action for them in

relation to the Sibneft transaction)."

Now, adding the \$13.8 million and the \$4.5 million, it looks, does it not, as if Mr Curtis received, in addition to his professional fees and disbursements, \$18.3 million in commissions?

A. Mr Sumption, look, I don't know the relations, business relations between Sheikh Sultan and Curtis. It turned out he serve not me, he serve him. And it's, as I understand -- again, I didn't catch. Was this letter shown me or not, I don't remember --

Q. Yes, it was.

A. -- I don't remember that, but it's not reason why I answer you.

I just want to mention that my understanding, and as far as I understand your understanding, is clear that Mr Curtis serve not me, he serve sheikh, and it's sheikh decision how he want to appreciate Mr Curtis. And this is his decision; that's it. And I think that he paid this money through this 15 per cent, but it's his decision, not mine.

Q. Mr Berezovsky, the point is that if you look on the first page --

A. Yes.

Q. -- can I remind you that Mr Curtis was saying he wanted these payments to be drawn to your attention and he has

therefore copied this letter to you. Do you see that?

A. Yes, I see that. I see that.

Q. And the reason for that is that items 3 and 4 on the schedule are payments made by Devonia Investments and those sums came out of the bank accounts whose balances would otherwise have been paid to you.

A. Yes, Mr Sumption, I just want to repeat again: Mr Curtis serve not me, he serve Sheikh Sultan. And if Sheikh Sultan decide to pay him and decide to inform me that he is so grateful to Mr Curtis, it's not my point. Again, even if I was informed about that, it doesn't mean that it was my decision to do that; it's decision of Sheikh Sultan.

Q. Mr Berezovsky, it may have been the sheikh's decision but it was directly at your expense, wasn't it, and Badri's, because it was coming out of the Devonia monies, wasn't it?

A. Yes, I don't care at all how Sheikh Sultan will spend this 15 per cent. He decide to be grateful to Mr Curtis or he decide to use this money to pay other people, it's not my point at all.

Q. Mr Berezovsky, you are not listening to my question.

A. Yes.

Q. I am making to you the point that you were paying Mr Curtis this \$18.3 million, not the sheikh. You were

paying him --

A. I don't -- I don't remember --

Q. -- because the money was coming out of the Devonia accounts.

A. Again, Mr Sumption, I don't know anything about that. I just know that I paid 15 per cent to sheikh. If it was another additional expenses, I just don't remember that. But again, as I understand, Mr Curtis served Mr -- Sheikh Sultan, not me.

Q. Mr Berezovsky, item 4 is a payment of \$4.5 million paid on request of Itchen Trust. That was your trust, wasn't it?

A. It's my trust, it's correct.

Q. Yes. And your trust had asked that that \$4.5 million should be paid to Mr Curtis, hadn't it?

A. Again, Mr Sumption, I don't know why it's came through Itchen Trust. It's not again my point. It's the point how Mr Curtis was paid. He was paid by his request and the reason why they mentioned here Sheikh Sultan, it does not connect to my Itchen Trust. Why the reason that they mention -- that they inform Mr -- Sheikh Sultan about that? What is the reason for that?

Q. The reason that they were informing you was that they needed your consent, and you gave it in writing, didn't you?

A. I don't remember that at all, that I gave this in writing. Again, I can't exclude that. But again, it's all the connect to Devonia agreement and if here sheikh is mentioned, it means that because of sheikh want to do so -- because in opposite case why he is mentioned here -- we'll do that. But --

MRS JUSTICE GLOSTER: Can I be clear: are you saying that what Mr Curtis received by way of commission came out of the sheikh's 15 per cent?

A. My understanding is so, but Mr Sumption understanding is different. He said that I paid from my Itchen Trust --

MRS JUSTICE GLOSTER: Well, we can see it comes -- it's a payment made by Devonia on request of the Itchen Trust. What I'm trying to understand is: is it your case that any payments made to Curtis by way of commission came out of --

A. Of 15 per cent.

MRS JUSTICE GLOSTER: -- the sheikh's 15 per cent?

A. It's my understanding. Correct, my Lady.

MR SUMPTION: Could you please look at bundle H(A)55/153.

I'd like you to leave open the last document you looked at.

A. Yes.

Q. Don't please take away bundle H(A)54.

Have you got open in front of you H(A)55/153?

A. Sorry, no. Yes, now I have it.

Q. Now, this is a letter dated 24 March 2003, about four weeks after the letter we've just looked at. Right?

A. Yes.

Q. And it's addressed to the sheikh and it's written by Mr Curtis. He says:

"Your Highness

"I refer to the Settlement Agreement which I am in the process of negotiating..."

Then in the next paragraph:

"On the basis that I am able to successfully negotiate that you retain the \$5.8 million referred to [in that agreement]... I understand that you have agreed to acknowledge the payments detailed in my last letter to Mahmoud."

That's the one we've just looked at.

"This letter was sent only to satisfy my obligations to all parties to disclose my fees and those of Curtis & Co and I confirm that Boris is aware of these payments and has already signed to acknowledge them. I have however asked Boris to countersign this letter by way of his further confirmation in this regard. Neither the letter to Mahmoud or this letter imposes any obligation on you to make any payments..."

He goes on:

"In consideration thereof, I understand that you will have also agreed that Curtis & Co shall terminate its retainer..."

If you look at the text at the bottom of the page --

A. Yes.

Q. -- the sheikh signs by way of confirmation of the above and there's a countersignature of yours:

"Countersigned by way of acknowledgement of payments made to Stephen Curtis and Curtis & Co pursuant to the letter dated 28th February 2003 and confirmation that there are no further obligations on His Highness in relation to such payments."

Now, that's your signature, isn't it?

A. This my signature but not under this letter, as I understand, because there is a reference:

"Countersigned by way of confirmation of the above."

And what is that?

Q. Well, that's the sheikh's signature.

A. No, no, no, no, no, just a second. And my signature also "Countersigned by way of acknowledgement" and so-so. My signature, it's not on the letter of Mr Curtis, as I understand, sorry, as I understand --

Q. What you are signing is an acknowledgement to show that you consent to the payments made to Mr Curtis. Do you agree?

A. I can't disagree but I don't understand what I sign because this is not the letter which you just read; it's a little bit different.

Q. This is a letter which was written four weeks or so after the letter of 28 February. There's a letter of 28 February which lists the payments; then there's this letter on 24 March which refers to the letter of 28 February. Do you see?

A. Yes, yes, I see.

Q. And this letter asks the sheikh to sign by way of acceptance that Mr Curtis is going to get those commissions, and you also sign at the very bottom.

A. Again, Mr Sumption, my clear understanding is that this how sheikh decide himself to share 15 per cent. Again, this is my understanding, yes? And again, Mr Curtis serve sheikh, formally at least, not me, and I accept any proposal which lead to sheikh or people around this deal to -- that Mr Curtis should be paid.

I don't know exactly why it's organised like that but my understanding is that -- finally, I mean, understanding is -- that Mr Curtis paid by sheikh, not by me.

Q. Well, Mr Curtis was in effect paid by you because the money came out of the Devonia accounts which would otherwise have been paid to you?

- A. No, again, Mr Sumption, it's again -- because we -- if you calculate correctly and I accept to calculate correctly, is the money inside of 15 per cent or inside of 85 per cent, definitely I should accept the logic. But my understanding is that it's from commission which we paid already -- which we had obligation to pay sheikh and sheikh spread money between his people, not me. And this is again my understanding and the answer to question of my Lady.
- Q. Why did you consent to the payment of these large sums to Mr Curtis in addition to his professional fees?
- A. Again, I just follow advices of people who organise this deal, Devonia agreement: it was Badri, it was Curtis, it was Ruslan Fomichev. I didn't create any initiative myself and I never accept only myself any payment. It means that, as I told you, it was a big mess with this 15 per cent; I don't know who even now finally got it. And I told you absolutely correctly that I was a surprised a little bit when I knew that sheikh was just 4 per cent and the rest was shared between the other parties.
- Q. Mr Berezovsky, would you please take bundle H(A)61, page 137 H(A)61/137.
- A. I should keep that open?
- Q. I think your desk is getting a bit crowded. Perhaps

they could be kept handy behind just for the moment.

The first document I'd like you to look at is H(A)61, page 137. This relates to the \$4.5 million and it's a letter of 17 July 2003 from Mr Keeling, who was the solicitor to the Itchen Trust in Gibraltar --

A. Yes.

Q. -- addressed to Mr Jacobson of Curtis & Co. He was in fact a trustee of the trust. And what he says is:

"You will recall the decision that a special payment be made to [Mr Curtis] out of the monies due to the Trust from the [Berezovsky/Patarkatsishvili]/Devonia/Sheikh Sultan agreements as amended."

A. Mm-hm.

Q. Now, what he is saying is that the special payment, which was the \$4.5 million -- and you can see that from the following page --

A. Yes.

Q. -- where it's resolved that:

"... in consideration of the services provided by Mr... Curtis to the Trust... the Trustees should award a special payment to Mr Curtis in the amount of US\$4,500,000 and the payment of that amount to Mr Curtis be and hereby is approved."

A. Yes, yes, sorry.

Q. Now, Mr Keeling is referring to a decision that

\$4.5 million should be paid to Mr Curtis out of your trust.

A. Mm-hm.

Q. And you were aware of that, weren't you? You were paying that \$4.5 million?

A. Just a second. Let's try to clarify. Before we discuss about \$13.5 million, correct?

Q. I'm not talking about the 13 --

A. Just a second. What we discuss in previous discussion, we discuss about the same payment or this is different payment?

Q. In the previous documents, two payments are referred to: one of \$4.5 million and one of \$13.8 million.

A. It means that the previous what we discussed, that was 13.5; yes, correct?

Q. Right.

A. And now it's 4.5?

Q. There are two sums being paid to Mr Curtis referred to in the previous document.

A. Yes.

Q. This document that I'm showing you now is only concerned with the \$4.5 million. Okay?

A. Only of one payment, yes?

Q. Yes.

A. Yes.

- Q. And what it is showing is that that \$4.5 million was paid out of your trust? You --
- A. But the previous \$13.5 million also was paid?
- Q. Forget about that. I'll deal with that in a minute.
- A. Okay, okay. It's absolutely -- my answer is absolutely the same.
- Q. Right.
- A. I can't -- I can't present you now the clear understanding of what is that. My clear understanding connect only to one point: that Mr Curtis, as I understand perfect now, work for Sheikh Sultan and we paid Sheikh Sultan 15 per cent. Was it done from my Itchen Trust which I control, by request -- by some other reason or not? I don't know. I don't know anything that we, I'm sorry to say, bribe Mr Curtis in this way. I don't know anything about that.
- Q. Mr Berezovsky, first of all, Mr Curtis in fact acted for you up to 1 June; he only acted for the sheikh in the last four days before the transaction was signed. That's a matter of record, I can tell you that.
- A. This is also news for me because on the one hand at the beginning I thought that Curtis operated for me; then it's turned out that he operate for sheikh; and now it's clear that he operate just five days. I don't know anything about that, believe me.

Q. It must have been obvious to you when Mr Curtis came and gave you advice on 17 May that at that stage he was acting as your solicitor and that's what you had told us before?

A. Mr Sumption, I don't understand anything now because my impression is -- was that Mr Curtis operate for my favour; then it's turned out that he operate not for my favour, for Mr -- for Sheikh Sultan favour; now it's turned out again that he operate for... I don't understand anything.

I just want to present what I know here. I made -- I deliver everything what my financial adviser decide to deliver. If they decide to deliver, and my understanding still now is that Mr Curtis was not bribing, he was professional English lawyer and he was paid by Sheikh Sultan the way from 15 per cent, the way how he was paid is that, but I don't have any idea why it should be different.

Q. Mr Berezovsky, the truth is that Mr Curtis actually acted for both you and the sheikh.

A. Ah, okay. It's great.

Q. I'm interested in what you consented to.

This document, the reason I'm showing it to you is that it demonstrates that the \$4.5 million actually came out of your trust and not the sheikh's money at all; you

paid it.

A. No, no, no, no, definitely it came from my trust, it's absolutely correct.

Q. Right.

A. I don't know how it was agreed Mr Curtis will be paid, directly from sheikh or from my -- money which came to my trust and later on send it back to Curtis. I just really, my Lady, don't understand anything now because I don't understand the position of Mr Curtis now already.

Q. Well, let's have a look at the document that records the same thing in relation to the \$13.8 million.

MRS JUSTICE GLOSTER: Mr Sumption, just before we go along this, it must be a matter of record what is the total in relation to which the 15 per cent was agreed?

MR SUMPTION: \$1.3 billion.

THE WITNESS: No, no, no.

MR SUMPTION: \$1.3 billion.

MRS JUSTICE GLOSTER: \$1.3 billion. Therefore if one is looking at the figure of US\$26.38 million and the additional \$5.8 million that was paid, one must be able to work out what all the percentages are as a matter of arithmetic.

MR SUMPTION: Yes, one can. It doesn't exactly match. But we do know what was in fact paid to Mr Curtis and these

two documents demonstrate that. The attendant --

MRS JUSTICE GLOSTER: What I'm asking for, and I'm not asking for it now, is I would quite like a bit of paper that sets out the total and the percentages and what the percentages were of the total that Curtis received and the sheikh received and anybody else received.

MR SUMPTION: Yes. We'll certainly supply that. But these documents at least show what the figures were in actual money.

Mr Berezovsky, could you be given H(A)51/9, please. This is Mr Keeling's attendance note --

A. Just a second, Mr Sumption.

Q. Mr Keeling was a trustee of your trust and this is an attendance note of points being made about these payments. Most of them are not relevant to the present point but could you please look at paragraph 10 on page 10, which is.

A. It's dated 5 December 2002; correct?

Q. Yes.

A. At page? Which page?

Q. Page 10.

A. Yes.

Q. And that says, paragraph 10:

"SLC [Mr Curtis] made the point that the fees due to him of which the US\$13.8 million form part, are part of

the fee of" --

A. Just a second, I'm sorry. The paragraph number?

Q. 10?

A. So sorry, yes. 10, fine.

Q. "SLC made the point that the fees due to him of which the US\$13.8 million form part, are part of the fee of 0.66% of the 'turn' between the price at which Sheikh Sultan purchased the Sibneft beneficial interests from [Berezovsky] and [Patarkatsishvili] and the price at which he has sold those beneficial interests to Abramovich. Originally the Sheikh was going to pay those fees but it had been agreed that it would be taken from BB's share (i.e. Itchen Trust) and credit would therefore be given for that amount in the context of the Sibneft shares..."

So what is being said here is that originally the sheikh was going to pay them but then it was decided that you could pay them.

A. No, no, no, no. It is exactly answer, as I understand, to question of my Lady. It is exactly written here that 0.666 (sic), it's just the percentage which, as I understand, is are part of the payment of 15 per cent which were paid to sheikh, or sheikh was paid less to this 0.666 (sic) percentage.

Q. Look at the next sentence, please, Mr Berezovsky.

- A. Yes.
- Q. "Originally the Sheikh was going to pay those fees but it had been agreed that it would be taken from BB's share (i.e. Itchen Trust) and credit would therefore be given for that amount in the context of the Sibneft shares... transaction."
- A. It does not mean that it was not paid from -- it means that it's paid just from Itchen Trust, it's correct, but it doesn't mean that it's additional payment.
- Q. The Itchen trustees had a formal meeting at which, with your express consent, it was agreed that the \$13.8 million should be taken out of your trust?
- A. Again, Mr Sumption, I don't want to say that I don't know; I don't remember anything of that. I just understand today that Mr Curtis work for both sides, for my side and for sheikh's side. And how it was agreed to pay, again I never was involved in that. I never knew that Mr Curtis was bribed in any way. And, as I understand, everything was part of agreement which we had from the very beginning. This is the point.
- Q. Let's look at a document which you signed, Mr Berezovsky. I would like you to turn to bundle H(A)55/166.
- A. Thank you.
- Q. Now, what you've got here is a minute of the meeting of

the trustees of your trust.

A. Yes.

Q. Do you see that?

A. Yes.

Q. And present are Mr Keeling --

A. Yes.

Q. -- and Mr Jenni, who was your lawyer?

A. Yes. Yes.

Q. If you look over the page, you will see that you signed it?

A. Yes, I see that.

Q. Would you look at item 3 --

A. It's not signed, it's just my confirmation because they --

Q. All right. But that's your signature, isn't it?

A. Yes, the -- just a second.

It looks like my signature. I am not sure 100 per cent but it looks like my signature.

Q. Would you look at paragraph 3(b), please.

A. Yes.

Q. "IT WAS FURTHER NOTED that an additional sum of US \$13,800,000, also emanating from the Trust's entitlement pursuant to the Agreements mentioned above, had been remitted directly at the request and direction of the trustees and also [Rainbow Fund] to

Stephen Curtis in respect of his appointment as managing director... of [Rainbow Fund]."

A. Yes, it's written here.

Q. Right. Now, that \$13.8 million, which we've seen described in an earlier document as an introduction commission, came out of your trust with your consent, didn't it?

A. Definitely, if it's my signature -- and I think it's my signature -- definitely it's so.

Q. So the position is, is it not, that a total of \$18.3 million was paid out of your trust to Mr Curtis? And my question is this: what service did Mr Curtis perform for you that justified the payment of \$18.3 million to him on top of his professional fees?

A. Mr Sumption, it's again the same answer. As I understand, Mr Curtis serve me and Sheikh Sultan. How it was paid? It was paid from Itchen Trust or it was paid from Sheikh Sultan, a cover(?) he support. It's turned out now that Mr Curtis, unfortunately, was a little bit controversial even for my understanding for whom he was working. I just follow advice of my lawyers to pay this money. My understanding was, if I can recollect that, that it was money which was paid in the frame of 15 per cent which sheikh was paid for this deal, nothing more.

Q. Well, we've seen that they came out of your trust. Can I repeat my question. What service did you understand Mr Curtis to have performed that justified the payment of £18.3 million to him on top of his professional fees?

A. Okay, I don't know --

Q. Dollars, I'm sorry, not pounds.

A. I'm sorry, I don't know top or not top because I don't know how Mr Curtis was paid. I had a lot of -- not a lot, I had several deals which organise by Mr Curtis and it was not my point to decide how much he should be paid. I don't know -- I understand it is a lot, 18.5 million. I don't understand that time definitely -- now I understand a little bit better -- that lawyers got a lot of money, but believe me that I don't understand what kind of service he was paid.

Q. Well, I will suggest to you what kind of service he was paid. Mr Curtis had performed for you a service that was worth a lot of money, he had helped to launder your money, hadn't he, with your consent?

A. Mr Sumption, it's not correct to say that because I never made anything illegal and -- I accused [in] Russia many times that I made illegal but never happened that on the west somebody can say me that it's something I have done illegal. The point is in Russia, it's political motivated, I don't want 100 times to repeat

that, but I never was even mentioned that it's something I have done illegal. Believe me, I paid Curtis, according of my understanding, when he serve me. I didn't know that he change several times who he serve, I already don't know, but I don't have any reason to -- for your statement that it was help of money-laundering. It is not help for money-laundering because it was -- (inaudible) it will be discovered as money-laundering. That's it.

MRS JUSTICE GLOSTER: Mr Sumption, just before you stop, I can't seem to get up the page that is on the screen. I know what the reference is: it's H(A)55/166.

MR MALEK: Try 170 H(A)55/170.

MRS JUSTICE GLOSTER: 170, thank you very much. That's it. Thank you very much.

Yes, Mr Sumption.

MR SUMPTION: My Lady, I think five minutes worth of Rusal will not be very instructive at 4.10 but I'm in your Ladyship's hands.

MRS JUSTICE GLOSTER: No, I think that's enough for today.

Mr Berezovsky, I repeat the warning I've already given you, don't talk about your evidence or the case.

THE WITNESS: Be sure, my Lady.

MRS JUSTICE GLOSTER: Fine. 10.15 tomorrow. Very well.

MR SUMPTION: My Lady, I should say that I would expect,

with all the reservations that one has about any prediction, to finish probably late tomorrow morning.

MRS JUSTICE GLOSTER: What, all cross-examination?

MR SUMPTION: My cross-examination.

MRS JUSTICE GLOSTER: Are any other members of your team following you on the cross-examination?

MR SUMPTION: Not of my team but I understand that other parties wish to cross-examine, I understand for a short time.

MRS JUSTICE GLOSTER: Very well. Thank you very much.

(4.12 pm)

(The hearing adjourned until  
Thursday, 13 October 2011 at 10.15 am)

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    (continued)

Thursday, 13 October 2011

(10.15 am)

(Proceedings delayed)

(10.25 am)

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

It has been brought to my attention that this morning somebody took a photograph in this courtroom. It is a contempt of court to use a camera anywhere in the building, particularly in court. I should not have to be making this announcement. Please will the person who took the photograph identify herself to Mr Pollen, who is standing at the back of the court, so that he can ensure that the photograph has been deleted on the mobile phone. Mr Pollen will be waiting outside. I'm not requiring the person who took the photograph to leave immediately but during the course of the next quarter of an hour or so, I would expect that to take place.

It would be extremely boring for everybody if they had to give up their mobile phones at security at the desk when they come into the building in the morning. I hope that I won't have to repeat this sort of announcement.

Yes, Mr Sumption.

MR BORIS BEREZOVSKY (continued)

Cross-examination by Mr SUMPTION (continued)

MR SUMPTION: My Lady, checking the transcript overnight, there was one matter relating to the Sibneft side of the case which I have not put to Mr Berezovsky and should now do so.

Mr Berezovsky, the meeting at Megeve on 10 January 2001, your position on that, as I understand it, is that so far as you're aware there was no such meeting?

A. You're absolutely correct.

Q. The evidence --

A. No, no, meeting -- I have not been at this meeting.

This my position is.

Q. Yes. The evidence that will be given in due course is that you were present at a meeting between Mr Abramovich and Mr Patarkatsishvili at which there was a discussion of a final pay-off of your krysha. I'm going to give you a summary of what that is to give you an opportunity to comment on it.

What happened was that at the heliport, as Mr Abramovich was leaving, there was a meeting between Mr Abramovich and Mr Patarkatsishvili in your presence at which it was agreed in principle that there should be a final pay-out. Mr Patarkatsishvili justified this not

on the basis of any interest in Sibneft but on the basis that he wanted and you wanted certainty instead of the irregular arrival of sums of money as had happened over the past few years. No figure was finally agreed but Mr Abramovich said that he would expect to be in a position to pay about \$1 billion and the meeting then, so far as relevant, came to an end.

What do you say about that?

A. I already expressed my position, my Lady. I have not been at this meeting. It's my clear recollection because after meeting in Cap d'Antibes I never met Abramovich more, except of this meeting in the shop.

Q. Megeve?

A. Except of my meeting in the -- on Sloane Street.

Q. Yes, I see.

Now, I want to turn to the Rusal side of the case, Mr Berezovsky. I want first to ask you about the acquisition of the aluminium assets. Now, I'm not asking you at this stage -- I shall come to that -- about the subsequent arrangements for the merger with Mr Deripaska's interests. At this stage I'm only interested in the acquisition of the original aluminium assets.

Now, as I understand it, you say that the discussion about investing in the aluminium assets began when

Mr Bosov approached you with a proposal that you should buy the aluminium concerns at Bratsk and Krasnoyarsk.

Is that a correct summary of your evidence?

A. It's correct summary of my evidence.

Q. Mr Bosov, was he the manager of Trans-World Group which was controlled by the Reuben brothers and Lev Chernoi?

A. I don't -- that time when he made this proposal I didn't know that because I was not paid too much attention to aluminium business and I just knew about aluminium business and I have very strong connection in the base -- in the main region of Russia which -- where aluminium company allocated because of Mr -- because that time governor of this region, Krasnoyarsk, was General Lebed, to who I have strong connections.

Q. Mr Bosov, you say, approached you with a proposal that you should buy these two aluminium concerns. Who did you think Mr Bosov was?

A. I just -- he was my friend. I knew that he was involved in aluminium business, I didn't know his direct position in this business, and that's it. Moreover, before Mr Bosov came to me, I even didn't identify him as a main -- as a big figure in aluminium business.

As I told you, my Lady, just now, I have been already in this region, in Krasnoyarsk, because of request of aluminium people as well, like Mr Bykov

Anatoly, and he had a conflict with governor and he knew -- they knew well that my -- I have strong connection to governor and they ask me to help in the conflict. And I flew to Krasnoyarsk, it was I think '98, the beginning of '99 maybe, it was wintertime, and I came there, tried to create the peace inside of -- in them and I was successful that time.

I met General Lebed, governor of Krasnoyarsk. I met Anatoly Bykov, at that time one of the biggest figures in aluminium. Later on he was accused of criminal and so. It was a lot of criminals around. But nevertheless this meeting happened and they shake hand. It's the reason why I knew some people but I never heard before -- not never heard before -- I didn't recognise Bosov when he came as one of the main player in this business.

Q. I'm asking you about your meeting with Mr Bosov because that's when you say that this proposal to acquire the Bratsk and Krasnoyarsk assets was first brought to you.

A. And two more assets.

Q. Can you please tell me when you say that this meeting with Mr Bosov occurred?

A. My recollection is that it was the end of '99.

Q. Right.

A. The problem is that -- I just want, my Lady, again,

again, again, sorry, to return back. The end of '99, it means Parliament elections, which were absolutely crucial point for me itself, and I support that time Putin party, Yedinstvo Internova(?), I participate in the creation of this party. It means that my attention mainly was turned to politic again. But nevertheless I remember this meeting with Mr Bosov.

Q. Right. Now, if you would look at your witness statement at paragraph 256 D2/17/250. Someone is about to bring it to you, Mr Berezovsky. Now, at this paragraph --

A. Paragraph which one?

Q. 256. What you say here is that you and Mr Patarkatsishvili raised the Bosov proposal with Mr Abramovich?

A. It's correct.

Q. And as I understand it, the Bosov proposal is the one that's referred to at paragraph 254 -- see the previous page -- which was a proposal to purchase aluminium interests in Bratsk and Krasnoyarsk?

A. It was proposal -- definitely I don't remember well which kind of assets but later on it was clarified there were at least two -- four assets. Four assets.

Q. That was later.

A. Just a second, Mr Sumption.

At that time I did not pay attention which exact

assets there were, but finally it was four assets: it's Krasnoyarsk aluminium plant, it's Krasnoyarsk hydro station, it was Bratsk aluminium and Achinsk special company which produce initial material for glinozem in Russian, I don't know translation --

THE INTERPRETER: Alumina.

A. -- alumina for aluminium factories.

MR SUMPTION: Now, still on paragraph 256, as I understand it, you say that you and Mr Patarkatsishvili had a meeting, did you, with Mr Abramovich?

A. It's correct.

Q. And at that meeting, as I understand it, you raised the Bosov proposal, whatever it was, with him and he eventually agreed to proceed with it?

A. No, no, no, it's not so. I even remember where this meeting happened: it's happened in the office of Sibneft and we -- according of our agreement with Mr Abramovich '95, '96, and we were very precise to follow the agreement, we proposed Mr Abramovich -- we informed Mr Abramovich that we got proposal about aluminium business and Badri and -- I didn't understand a lot about this business but Badri made some investigation, as I understand, and we think that it could be profitable business, good business for us, and it's the reason why we ask -- why we decide to inform

Mr Abramovich about new opportunity. And we have done that, I remember that very precisely.

Q. Well now, look at paragraph 256.

A. Yes.

Q. It's not inconsistent with what you've just said but, as I understand it, you said to Mr Abramovich --

A. Yes.

Q. -- you and Patarkatsishvili said --

A. Yes.

Q. -- this could be good business.

A. Yes.

Q. He said he would discuss it with Mr Shvidler --

A. Absolutely correct.

Q. Yes?

A. And Abramovich answer was not immediate answer.

Abramovich said that, "I should think", because, as we, he didn't have experience in this business and definitely he want to take break to discuss it with Mr Shvidler. It's absolutely the same what I told you before.

Q. And at some subsequent stage he agreed to proceed with the proposal; that's your evidence, isn't it?

A. He agreed to think about that and to discuss that with Mr Shvidler. That's it.

Q. Yes. And subsequently, shortly after this meeting, you

say that he agreed to proceed with the proposal?

- A. And after this meeting, after, as I understand, he discussed it with Shvidler, he accept to participate -- he said that it's good idea and, as I understand, Shvidler understood as well, participate in this business. That's correct.
- Q. So all that was agreed on this occasion that you talk about at paragraph 256 is that Mr Abramovich would proceed with Mr Bosov's proposal?
- A. What we agreed with Mr Abramovich that he generally think that it's good business and that we start to discuss if we go to this business under which conditions we'll do that, and that Mr Abramovich and Mr Badri together took responsibility for negotiation about how should be organised. And moreover, as far as Badri had much better occasionally -- I don't know, not occasionally -- links to people who already were involved in this business and who owned this business, it means that mainly Badri at this stage discuss how it will be -- what will be the deal.

Moreover, Mr Sumption, I want to stress you that according of information which I got from Badri, after I inform him about Bosov proposal and so, Badri said that, "Boris, I had the same proposal from Mr Anisimov and from people who are involved in that business

already and I have" -- and Bosov a little bit overplay that he initiate -- that he initiated that deal.

- Q. Mr Berezovsky, would you please look on the screen at the answer that you gave which starts at [draft] line 17 and continues up to [draft] page 9, line 2. You've dealt with two matters in that last answer: one is what was actually discussed on this occasion with Mr Abramovich and the other is about something that Mr Patarkatsishvili discussed with you later. It's the first of those things that I'm interested in.

So would you remind yourself of what you said between [draft] line 17 at page 8 and [draft] line 2 of page 9.

- A. Which lines?

- Q. Start at [draft] line 17 on page 8 and continue to [draft] line 2 of page 9.

- A. Just a second. (Pause)

And what? What is wrong with that?

- Q. Nothing is wrong with it --

- A. Nothing wrong with it?

- Q. Nothing wrong with it, Mr Berezovsky. That's your evidence.

Am I right to understand that that is the sum total of what was agreed at this meeting that you had with Mr --

A. Mr Sumption --

Q. Let me finish my question, please.

A. Sorry.

Q. That is the sum total of what was agreed on this particular occasion with Mr Abramovich?

A. Mr Sumption, okay, I think it's very tricky -- I'm sorry, my Lady, to say that -- what you are doing because my recollection is the recollection of long time ago and my recollection is absolutely clear. I prepared to repeat that again.

I got proposal from Mr Bosov. I discussed this proposal with Mr Badri. We decide, according of our agreement of '99 (sic), '96, to present this proposal to Mr Abramovich and we had a meeting with Mr Abramovich in Sibneft office to make this proposal to him. He said that he need to talk to Mr Shvidler about that and after he talk with Mr Shvidler about that, later, he said that this proposal is proper and they also pay interest to participate in that. This is the point; nothing more.

Q. I understand, thank you.

Now, Mr Abramovich's evidence is that in fact he was approached about possible aluminium acquisitions not by you at all but by Mr Patarkatsishvili alone.

A. Mr Sumption, it's -- according of my recollection, it's wrong. I remember well discussion in Sibneft office

about this initiative and if recollection of Mr Abramovich is different, fine; I hope he will have chance to prove that in witness box. My recollection is that one.

Q. Now, at paragraph 258 of your witness statement D2/17/250 you discuss the reasons why, according to you, it was important that your and Mr Patarkatsishvili's interests should not be visible. Do you see that? Just remind yourself of what you said at paragraph 258, would you?

A. Just a second. (Pause)

Yes.

Q. Now, why was it important to you that you and Mr Patarkatsishvili should not be visible? You say that this was because you had come under attack from Prime Minister Primakov. That's your reason, is it?

A. Yes, it's -- it was my reason as well because I already have experience that situation change quickly and today you are friend, tomorrow you are enemies, in politics at least. And I understood well that the clash with Primakov already happened or will happen no doubt because we -- as I told you before when we discuss about Primakov, I told you before that it was choice, I mean Primakov as a prime minister, just because we didn't have alternative that time. But it became absolutely

clear very soon that Primakov become enemy.

Q. Mr Primakov had been dismissed, had he not, as prime minister in May, in part as a result of your efforts?

A. I already confirm that. Yes, it's true.

Q. And that happened in May, didn't it?

A. But the battle -- but our -- not battle but our fight, I don't know how to say that, start earlier, practically as only he took his position, and I already describe that previous days. It mean that Primakov all the time was person who didn't coincide with me as far as vision of future of Russia.

But again, I just want to stress that we didn't have choice. We need to consolidate people because at the same time, my Lady, as I told you before, we had economical and political crisis at the same time in '98 and it's the reason why Primakov was selected as a prime minister.

Q. Mr Berezovsky, I'm interested in late 1999, when you say that all this began.

A. Yes.

Q. In late 1999 you had seen off Mr Primakov, he'd been dismissed about six months before --

A. Yes.

Q. -- and you were at the height of your power, weren't you?

A. Yes, it's correct. But I told you that I had already lesson that how could be changed the -- how the situation could be changed if you involved in political battle. And this is the reason why I still was in position to afraid my political exposure because it was December 2000 -- '99 and I understood that I'm under attack of Mr Primakov as well because, as you know, exactly Mr Primakov was in a position of to meet Mr Yeltsin and you know that Primakov and Luzhkov together, they fight against of Putin and Yeltsin when they -- and they'd been together. It means that Primakov was dangerous because he pretend to become president of Russia. Definitely it's true.

Q. Isn't this secrecy simply an explanation put forward by you as to why you took no part in the negotiations of the acquisition of these assets?

A. Mr Sumption, I already mention that my position all the time was the same: I just present at the idea of the business and the initial steps. Then I left everything to Badri and to Abramovich later. It means that I participate in some meetings.

After December '99, when I was elected deputy of the Parliament, I was not participate direct, I was not, say, put my signature and so, because it's prohibited according of the Russian -- not law but some kind of law

and it's the reason, for example, my signature is not on the agreement when we got these assets. And I was surprised that Abramovich put his signature because that time he also was a deputy of the Parliament. But I think that I could participate nevertheless because we start to discuss this business before I was elected deputy of the Parliament.

Q. Mr Berezovsky, as I understand the evidence you've just given, you didn't participate in any meetings after December 1999. Is that right?

A. It's wrong. It's wrong. As I told you, Mr Sumption -- okay. I am sorry that I am so emotional because you trick a little bit according of my understanding.

Q. Mr Berezovsky, did you participate in meetings after December 1999 or was it only up to December 1999?

A. No, it's -- I gave you absolutely clear answer: I participate in meetings after December 1999 and in 2000 as well.

Q. Well, what you say in the answer a moment ago:

"After December [19]99, when I was elected deputy of the Parliament, I was not participate direct..."

A. Mr Sumption, it's absolutely wrong. I participate -- I try not to participate, I mean directly to put my signature, but I participate in many meetings concerning Rusal, and you know that well.

Q. Right. Would you please tell me which meetings you say you participated in other than the Dorchester Hotel, which I shall come to.

A. Yes. The meeting in Dorchester Hotel --

Q. Well, apart from that?

A. Just, Mr Sumption, please --

Q. I'm not asking you about the Dorchester Hotel, Mr Berezovsky.

A. No, Mr Sumption, please let me answer.

MRS JUSTICE GLOSTER: Hang on. You're being asked a question --

THE WITNESS: Yes, and I -- sorry, my Lady.

MRS JUSTICE GLOSTER: -- Mr Berezovsky. We don't want your evidence about the Dorchester Hotel at this stage. Mr Sumption in the course of his cross-examination is coming to that later.

Please can you answer the question, which is: apart from the meeting at the Dorchester Hotel, which meetings do you say you participated in?

A. I participated in several meetings before meetings in Dorchester Hotel and those meetings were happened in Russia and as a preparation for the meetings in Dorchester Hotel. Part of the meeting were reflect to creation -- to acquisition of our assets, of buying our new aluminium assets, I mean like Krasnoyarsky aluminium

plant, like Krasnoyarsky hydro station, like Bratsky aluminium plant, like Achinski alumina complex. And the part of that were already after we bought these assets and as a preparation when Abramovich create idea to merge with Deripaska and to --

MR SUMPTION: I'm not asking you about that either. My questions are only, at this stage, concerned with the original acquisition.

A. Okay. No, you ask me after '99 and I gave you answer including preparation -- you said after '99 but before Dorchester, and I gave you clear picture what I recollect.

As far as acquisition is concerned, we had a meeting to discuss first of all which kind of assets we are obtaining, we are buying, and -- just a second, it was very quick -- yes, and we agreed that Mr Abramovich will manage the business and Badri, again, refuse at the beginning that saying that he will manage the business but because of all events, again, as election campaign of president, Putin was elected president on 7 March and ORT, as, my Lady, you know well, was one of the key leverage for this election.

And situation was almost the same like with Sibneft: when Badri want to manage the company, Abramovich propose that he will manage the company and I took

decision in favour of Mr Abramovich as well.

MRS JUSTICE GLOSTER: And was that done at a meeting? Was that decision taken at a meeting?

A. The decision that Abramovich will manage the company?

Yes, it was done on the meeting.

MR SUMPTION: Mr Berezovsky, I want you to focus, please, on the meetings at which the acquisition of the original aluminium assets --

A. Yes.

Q. -- was negotiated between the sellers and the buyers.

A. Yes.

Q. Now, I'm not at the moment asking you about discussions that you had with Badri or with Mr Abramovich.

A. Yes.

Q. I would like to know about what meetings you participated in which were concerned with the negotiation between the -- sorry, what meetings you participated in at which negotiations occurred between the sellers and the buyers of these assets.

A. As I told you, I gave up to Badri to negotiate with the sellers and, as I told you, I met with Mr Bosov, who was one of the, let's say, owner of assets which we sold -- which, sorry, we bought. I recollect my meetings with Lev -- just a second -- with Mr -- with Lev Chernoi, who was -- who I knew well before and he was one of the

owner of assets which they sold. I recollect my meetings with Mr Anisimov as well, as one of the sellers. And I don't remember well but I recollect the meeting with brothers, with Mr Reuben David, who present the Trans-World company who as well sold the assets.

Those people who I recollect I met and they were the main shareholders of the assets which they sold, and Badri as well participate in meetings with these people.

Q. Now, can I ask you this. You say you met, along with Badri, Mr Chernoi, Mr Anisimov and Mr Reuben. I would like you, please, to be more specific. When did these meetings occur and where?

A. These meeting took place in short time, in short time, and it was on the one hand in Badri office in -- but it was many meetings, in Badri office and in -- as far as Mr Anisimov is concerned, I think it was -- again, I think it was in my -- in Logovaz on the one hand; on the other hand in my house, country house in Alexandrovka, near the Moscow, as well.

Q. And what terms were agreed, do you say, at these meetings?

A. The terms was -- you now are interesting only in discussion that between me and Badri and not Abramovich? I mean in terms of selling, yes, not terms of our relations with Abramovich?

Q. Exactly.

A. Okay. As I understand, as I remember, first of all they present us the reason why they decide to sell and the reason why they decide to sell: because they were not sure about political stability in Russia and it's big-scale business. It's the reason why they -- for me it was a little bit surprising that they decide to sell because I have different vision: I think that political stability will be more than before. But they worry about that.

And we discuss about -- as I remember, again, we discuss about the price which they propose to us. The price was around \$500 million, maybe a little bit more. Maybe 500, a little bit more. We discuss their -- as I told you, what company will be sold: it's four, as I remember, main companies. What else? And we discuss also that it should be done in proper western way, I mean the proper law should be put to obtain these assets, because already I had some experience and we discuss before with you, Mr Sumption, that I worry about to protect my assets and we even start to create a western structure with trust and so. I don't remember that we had any difference in our vision how it should be settled.

But again, I participate in several discussions but

definitely there were many discussions about that because Badri knew much better these people and Badri met them much often than me.

Q. And these --

A. And it is the reason why I said you that my also recollection is that there were some meetings in Badri office in Itar-Tass, he had office there, but I don't recollect that --

Q. These were important discussions, were they?

A. Sorry?

Q. The ones that you participated on, they were important discussions?

A. Mr Sumption, I already told you, definitely it was important but not so important for me because for me much more important at that time was elections, campaign of elections -- election campaign. Because December '99 was just Parliament election campaign and then we're on the way of presidential election campaign and definitely I was mainly put my attention not to aluminium, obtaining aluminium assets, as much attention pay Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili.

But I have been at several meetings because -- I think first of all because people who decide to sell, they want to understand clear that I am a buyer, that I will buy that. Because, again, the reason why they

decide to sell for so low price -- my Lady, this is important. They decide to sell for very low price. In reality it was even funny business because we bought big stake and then sell -- merge with Deripaska and compensate at the same price. It means that we got -- as the business is concerned, we got for nothing, yes, the big stake aluminium. And the reason why it happened, only one reason: because they afraid of new development. They didn't understand what is happening in Russia and so. I'm sorry to say I also did not understand because I didn't understand that Putin changed his mind.

But they came to me because of one reason: because they recognised that it's dangerous, they want to sell, they want to have good relations, not on business, yes? It's the reason why they came to me, not to Abramovich, like he described. It's funny to say that they came to Abramovich; he was nobody at that time. And they came to me just because they afraid of political situation and they decide to sell.

I think mainly my just guess, yes, is that Mr Reuben, I mean David Reuben, he being western, absolutely, he already had a big headache with aluminium already for that time when he start business in Russia and I think he decide to stop that. I don't know really

but maybe, my guess is.

On the other hand, definitely it was worry of Mr Lev Chernoi, who owned that. It was worry of Mr -- as I understand, Mr Anisimov as well and Mr Bosov, who decide also to sell. Later on it was funny because later on it's turned out that brother of Chernoi, Michael, become a partner with Deripaska in merge with us: one brother sell, the second brother become partner. I didn't understand the relations.

But I'm sorry for so long answer.

Q. Mr Berezovsky, would it be fair to say to you, as I do, that you were not involved in the detailed discussion leading up to the purchase of the aluminium assets?

A. Mr Sumption, I already answered your question. I was involved in details which I just describe you and this is absolutely correct answer. I didn't go in too much detail; I just knew several basic points.

The first point: which asset we are proposed to buy. That estimation of these assets is low, that could be because of, again, political risk which we were prepared to take and the other were not prepared to take. We discussed that it should be organised in proper western way. What was mean "proper western way"? Because already that time I had experience with trust, with, as you remember, a little -- almost that time I start to

create some structure abroad. It means that for me it was absolutely clear that we should make it more professional, if it would like.

On the other hand I had still a lot of risks and it's the reason why I accept the idea of Abramovich to be not visible: because I had positive experience with Mr Abramovich in Sibneft before, on the same condition, not to be visible. I just want to transfer to make it more western-oriented.

Q. Mr Berezovsky, if you concentrate on my question and answer that question and not 25 others, we will actually get this --

A. I predict your questions.

Q. -- done earlier.

A. Okay.

Q. Now, would you look at paragraph 262 of your witness statement D2/17/251. What you say here is that:

"[You were] not involved in the detailed discussion leading up to the purchase of the aluminium assets."

A. Mm-hm.

Q. Now, that is quite inconsistent with the evidence that you've just been giving for the last ten minutes, isn't it?

A. No, absolutely wrong. I just tell you: I was not a lot in detailed discussion. If you think just to mention

the company which will be part of the deal, it's detail. I am very surprising; you have a lot of experience in business relations as well, as I understand. And if I tell you that the price will be approximately \$500 millions, it's also not detail: it's not 500-and-so. If I tell you that it will be organised in proper western way, it's also not detail. What means "proper western way"? It's the other story I'm sure we will discuss later.

It means that I'm absolutely correct with my answer.

Q. You do not mention in your witness statement these meetings with Mr Chernoi, Mr Anisimov and Mr Reuben, do you?

A. I don't remember what I mentioned, sorry. Not -- I remember, but just I remind my meetings with Chernoi, with Mr Reuben, with Mr Anisimov as well.

Q. Why haven't you mentioned any of that in your witness statement?

A. I can't recollect, did I mention that or not?

Q. No, you didn't.

A. Okay. Because -- it's again clear because, as I understand, you cross-examine me exactly the reason that to understand more details about what I present in my witness statement.

Q. Mr Anisimov, who did participate in these negotiations,

says that you didn't attend any of these meetings and your name wasn't even mentioned.

- A. It's -- again, I can't comment what Mr Anisimov said. It's his understanding. My understanding is completely opposite. I have met Mr Anisimov, and moreover not one time. I explain even why it happened. So because, as I told you before, on the one hand it was proposal of Mr Bosov to me, yes? And on the other hand, when I told about that to Badri, Badri said that, "I have already this proposal from Mr Anisimov", first of all. It means that -- and Mr Anisimov insist that he has long-term good relations with Badri and he is involved in this business long time before and it's absolutely reasonable that Badri met Mr Anisimov and I as well met Mr Anisimov.

- Q. What I suggest to you, Mr Berezovsky, is that you had absolutely no part in the negotiations for the purchase of the original aluminium assets.
- A. It's completely wrong.
- Q. Now, you also tell us in your witness statement that you were not involved in deciding upon the structures by which these assets would be held. Is that correct?
- A. I was not involved in the structures except of I knew that the structure which will be organised the payment for that will be western structure and I knew that

Badri, Mr Abramovich and Mr Shvidler on the one side -- definitely I didn't -- I recollect Mr Shvidler only later on, when I was preparing for the court. That time initial my reaction was I didn't remember Mr Shvidler. But Mr Shvidler was there because I was shown the paper.

And on the other hand the parties who sold acquisitions, like Mr -- as I told you, Mr David Reuben, Mr Anisimov and others, they signed a document which give -- which fix the result of negotiations between seller and buyers.

Q. Would you please be given bundle H(A)18/150, which is the Russian version of a document whose English equivalent is H(A)16/111. Sorry, I've given you a false reference, forgive me. We may as well deal with this now that you have it open.

A. Sorry?

Q. Have you seen this document before?

A. Which one?

Q. The one that, if you're looking at the Russian version, is at H(A)18/150.

A. Just -- could you let me have a look.

Q. It's headed "Protocol".

A. Yes, yes. (Pause)

I don't remember that I have seen this paper before. Just a second. Can I read that?

- Q. Well, it will take you a long time to read the whole thing.
- A. In Russian I will read much quicker than in English.
- (Pause).
- I never have seen, I think, this paper. I have seen another one also with proposal that Badri is just intermedium, just middleman.
- Q. Yes.
- A. But this one I think I haven't seen before.
- Q. Well, there are four of them and you've seen therefore at least one of those; is that right?
- A. I have seen one of them which you demonstrate yesterday, when we discuss about Aeroflot, as I remember. That one I have seen. It's absolutely correct.
- Q. No, this is nothing to do with Aeroflot and that was a different document.
- A. No, no, there is -- at first page it's also written that Badri is middleman at the document which you present me yesterday. I may prove that.
- Q. What I'm asking you about is this document. This document is an agreement between Mr Patarkatsishvili and in this particular case Galinton, which was one of the four companies which was going to hold the newly acquired aluminium assets.
- A. Okay, again, I don't know anything and did not know

anything about this type of documents before the preparation to the court.

- Q. This is a document which is signed by Mr Patarkatsishvili as intermediary and records that what he was going to get out of this was a commission; do you agree?
- A. I -- first of all, as I told you, the first time I see this paper. The second time, I absolutely disagree that Badri was middleman. Moreover, all events which happen later will just simply prove that it's not so. And moreover, I don't know any paper that Badri was paid as a middleman. I don't know any evidence, because definitely I try to understand for my better -- for myself better why it's happened so, why Badri took this position. So -- and I just tell you I didn't have any confirmation and, as I know, your side didn't present any confirmation that ever Badri was paid as a middleman.
- Q. Were you aware that Mr Patarkatsishvili went to the trouble of having these four protocols, one with each of the acquiring companies, recorded as evidence by a Moscow notary in March 2000?
- A. Mr Sumption, I make just guess why it's happened, why Badri have done that. I think that one of the reasons that Badri all the time was looking for opportunity how

we will be paid because of Roman Abramovich obligations and unfortunately, unfortunately, Badri was looking not to direct way, I don't know now clear why, because maybe Abramovich again trick him that time, I don't know.

I know just absolutely clear that there is no one evidence that Badri was paid as a middleman. And we, as I understand, we ask you to present this paper; you never present these papers.

- Q. Do you have any explanation of why Mr Patarkatsishvili should have entered into a commission agreement in relation to the acquisition of these assets if he was in fact buying them for your and his own account?
- A. I just try to give you explanation and I again -- again, it's my speculation, yes, but speculation which could be logical: that Badri was looking the way how he will be paid by Abramovich because all the time Abramovich insist that we shouldn't be visible.

On the other hand, Mr Sumption, what is I think really important that when we finally decide to sell Rusal, why not to use this simple base which already, my Lady, created? Why to organise in the way how it finally was organised, through fixing that Badri was shareholder and then to sell the next day, if we have this paper and Badri is just middleman? Why not to pay him through this agreement? Why it was not ever

happened?

Q. He was actually paid a considerably larger sum rather later, wasn't he?

A. On absolutely different basis: on a real basis that he is shareholder. And this is correct, and this is not correct.

Q. Well, we shall come to that.

A. Yes.

Q. Could you please be given bundle H(A)17.

A. Fine. This finished?

Q. Yes. You've got H(A)16, have you?

A. Sorry?

Q. Which bundle are you asking me about?

A. No, you're asking me. I'm asking 18.

Q. Right, you can put away 18.

Now, I would like you to look, please, at H(A)17/33.

A. Could I have it in Russian, please?

Q. I'm not sure that it is in Russian. I think it was --

A. It means that they just follow already western standard.

Q. I think this was drawn up in English, but let me check that.

MR RABINOWITZ: Page 38.

MR SUMPTION: Page 38 I'm told. Quite right. I'm grateful to my friend. H(A)17/38 is the Russian text.

A. Yes, thank you.

Q. And the Russian text is the signed version.

A. Yes.

Q. Now, this is one of a number of agreements which were dated 10 February although actually executed on the 15th.

A. Executed -- sorry, sorry, sorry. (Pause)

I don't know anything when they signed that; I just follow this document which also was presented, yes.

Q. When did you first see this document, Mr Berezovsky?

A. I -- the first time I have seen this document only when it was signed already and I even did not recollect that I have seen that in Moscow. I think that I have seen that the first time -- I just knew about this document, I knew about this document well, but I didn't recollect that I have seen him in Moscow. That's it.

Q. Now, there were also, bearing the same date and also in fact executed on the 15th, ten individual purchase agreements, one for each of the assets being acquired. Could you keep that open and look at H(A)16/136 for an example of one of those.

A. Yes.

Q. Now, when did you first see that document or a document like it?

A. The first I see this document I think now. I think now.

Q. Sorry, are you saying you have just seen it for the first time now?

A. Yes, I think now.

Q. I see. Okay.

Now, can I take it therefore, if you've only just seen this document now, that you were not involved in the negotiation of its terms?

A. It's absolutely wrong. One is not the implication of the other.

Q. Do you claim that you were involved in the negotiation of the terms of the 11 agreements dated 10 February and executed on 15 February?

A. I don't remember that. I think no.

Q. Now, those were the negotiations which actually concluded the deal to acquire the original aluminium assets, weren't they?

A. If it's this document, it's yes. But I was not involved, as I told you, as I recollect.

Q. Now, you say that you and Mr Patarkatsishvili agreed --

A. Can I take it away or keep still?

Q. Yes, you can. You can put both of the H(A) bundles away. I'm now referring to paragraph 260 of your witness statement D2/17/251.

Now, you say in this paragraph --

A. Just a second, please.

- Q. -- that you and Mr Patarkatsishvili agreed that your share of the cost of acquiring these original aluminium assets would be paid out of Sibneft profits.
- A. This is correct.
- Q. Right. So was the result of that that you did not have to put your hand in your pocket for a single cent?
- A. Sorry, again?
- Q. You didn't have to pay cash at all for this acquisition?
- A. Yes, because Sibneft is my company and it means that Sibneft is paying my dividends and we agreed with Mr Abramovich -- between Mr Abramovich, Badri and me that Sibneft, my money, my personal money, as my dividends or my profit, will be paid for aluminium.
- Q. Sibneft only declared a dividend later in this year of \$50 million. Are you saying you were getting a dividend that the other shareholders were not?
- A. Mr Sumption, I was very correct. I don't recollect when they paid dividends, when they paid profit, as I said, dividends or profit. I was very precise.
- Q. Well --
- A. I already learn your style.
- Q. -- if you were very precise, no doubt you will be able to answer this question. When these agreements were made, in fact by others, and when you made the agreement that you refer to at paragraph 260, how much were the

acquisitions expected to cost?

- A. As I told you, what I understood that all to all it should be more than 500 but less than 600 -- I don't recollect exact number -- and it will be covered -- it will be paid through my, Badri and Abramovich interest in Sibneft.
- Q. Can you really not remember, Mr Berezovsky, how much you were paying for these aluminium assets?
- A. I really don't remember, Mr Sumption.
- Q. And can you tell us precisely what your share of Sibneft profits amounted to in money terms at the time you say you made this agreement?
- A. Again, sorry? Could you help me? (Consults interpreter)
- In money sense, no. In the sense of my interest which was holding by Abramovich, I remember well it's nothing changed from the very beginning.
- Q. When you made this agreement that you referred to in paragraph 260 did you know how much was due to you in respect of Sibneft profits?
- A. Definitely I understood well that I should -- that my share in -- my participation in aluminium should coincide with our agreement of '95, '96. It means that 25 per cent of my income -- of my interest, of my interest, should be the same proportion paid through my

profit.

Q. Did you know how many dollars that was?

A. I don't know.

Q. Did you know at the time you made this agreement how many dollars it was?

A. If to divide this 500 somehow more to four, it will be exact number.

Q. I'm not asking you about your proportion of the price; I'm asking you about your proportion of Sibneft profits. When you made this agreement, did you know how much money was due to you in respect of Sibneft profits?

A. I did not.

Q. So was the agreement that you're referring to at paragraph 260 that your share of the cost of acquiring the aluminium assets would be paid out of Sibneft profits, whatever the Sibneft profits turned out to be?

A. It's the reason why Mr Abramovich, I think, took a decision to participate in Sibneft -- in the aluminium, I'm sorry, and it's the reason why he took time to calculate: are we able to buy these assets or not? Because he was responsible, as I told you, for payment of Sibneft because he took responsibility in front of me and in front of Badri according of agreement '95 and '96. It means that it's absolutely natural that Abramovich took time because he should calculate how

much it could be, how much we can accumulate money to buy these assets.

- Q. The total price payable for the original aluminium assets was \$581 million, was it not?
- A. I said you that what my knowledge was, it's more than 500, my -- not knowledge, my recollection, yes? I don't remember 581; I remember better number 575. This I remember better.
- Q. Well, \$575 million was the price to which the figure was reduced when the two contracts relating to the Achinsk assets, which amounted to \$6 million, were dropped.
- A. I don't know anything about that.
- Q. No, you don't. Right. Okay. Well, let's proceed on the basis that after that happened the price was \$575 million.

Now, two days after the master agreement and the ten specific agreements were executed, that's to say on 17 February, a protocol was drawn up. I'd like you to look at that: it's at bundle H(A)18/37T. There's an English and a Russian version.

Now, were you aware that there was a timetable in the ten individual agreements governing the time at which the payments were supposed to be made?

- A. No, I didn't know that. At least I don't remember that but I think I even was not informed about that.

- Q. If you look, you'll find the Russian version, I think, at -- I think it starts -- I'm looking at H(A)18/37T and I think the Russian version may be after that. Yes, it is, it's after a pink sheet.
- A. No, I have already Russian version, I don't have English version.
- Q. Right. If you have the Russian version, that's fine.
- A. I have just Russian. Where is it in English?
- Q. If you want the English version, it's about six or eight pages earlier at 37T. Look at whichever one you prefer.
- A. Earlier? It's 32, 18/32?
- Q. No, 18/37T but it's actually, rather confusingly, about six or eight pages earlier.
- A. We can't find it. Just a second. No, we can't find it.
- MR RABINOWITZ: It's not in my version either.
- MR SUMPTION: The English version or the Russian one?
- MR RABINOWITZ: The English version.
- MR SUMPTION: It's on the screen and it should be in my learned friend's bundle; it's certainly in all of ours.
- THE WITNESS: Okay, let's see the screen, it's fine.
- MR SUMPTION: Do you want to look at the English version or Russian version, Mr Berezovsky?
- A. It doesn't matter, I have both now.
- Q. Okay, right?
- A. Thank you.

- Q. Now, what you are looking at is a protocol prepared in Moscow dated 17 February 2000 --
- A. Yes.
- Q. -- which summarises the payment schedule and the dates have been taken from the ten individual asset agreements that we were discussing a moment ago.
- Now, the first question I want to ask you is: have you seen this document before?
- A. I think no.
- Q. Right. Well, do I take it therefore that you were not involved in the preparation of it?
- A. Mr Sumption, I made absolutely clear statement: I participate in the principal points of that. Mr Sumption, I'm sorry to say again, 7 March is presidential election. Do you think it's really important point for me that time? I don't think so. And he accept completely.
- Q. I don't mind what your reason was, Mr Berezovsky; I just want to know whether you were involved in the negotiation of this.
- A. I was involved -- I was involved and I present you my involvement in that. Nothing more, nothing less.
- Q. Now, if you look at this, you will see that \$175 million was payable under the agreements that had been reached within a week of the date of this document, by

24 February 2000. Do you see that? There are two payments --

A. Just a second, Mr Sumption. Where is that?

Q. Do you see paragraph 3.1?

A. Yes.

Q. Party 1 -- and that's Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili and companies represented by them -- are going to pay two sums of \$150 million and \$25 million by 24 February, which was about a week ahead.

A. It's 3.1, "Party 1" -- yes, okay.

Q. Right.

A. And Badri is member of party 1: that he is paying but he has just commissions. Fine.

Q. Now, \$300 million was then payable at various dates over the rest of the year 2000 -- you can take the maths from me -- and \$275 million was then payable on 10 June 2001, over the page.

A. Yes.

Q. So that makes up the total of \$575 million. You've got \$300 million over the year 2000, including the sums payable in February --

A. Yes.

Q. -- plus \$275 million payable on 10 June 2001.

A. Yes, thank you, Mr Sumption, but I'm sorry because you

a little bit press me in timing. I just want to understand. Is it correct I understand that Badri is also the party who paid money in this document?

Q. No, because Mr Patarkatsishvili and Mr Shvidler were not entering into this document in a personal capacity.

A. No, no, it's written, it's written. Roman --

Q. I'm not going to argue with you about this.

A. Sorry, sorry.

Q. You are paying good money to Mr Rabinowitz to argue your case for you and I will debate that as a matter of law in due course.

A. Thank you very much. Mr Rabinowitz I think happier.

Q. Now, this document shows the timetable for the payment of a total of \$575 million and your and Mr Patarkatsishvili's 50 per cent share of that, if you're right, came therefore to \$150 million in the year 2000 and another \$137 million in June 2001. Do you agree?

A. Mr Sumption, I told you, I have not seen this document before. It's true. I am not able to comment; I just follow your way of thinking, logical or not. Just what I pick up from that, that Badri person who pay for that. This is fine for me. But how much and so, I don't understand because I need to investigate that. I have seen the -- now I watch this document the first time.

Q. Just take it from me that the effect of this, if you are right in saying that you and Mr Patarkatsishvili were 50 per cent participants in this acquisition, then the position is that you were undertaking to produce out of your Sibneft profits \$150 million in the year 2000 and another \$137.5 million in June 2001. That's what it says.

A. Again, everything what's connected to my financial activity was managed by Mr Patarkatsishvili and Mr Abramovich. As only Abramovich took a decision to participate in this project, I understand that he calculate well and I think not only he won -- and I think that they talk with Mr Patarkatsishvili at that time. I was involved only on the level which I described to you; that's it. Nothing more.

Q. Now, we have seen --

MRS JUSTICE GLOSTER: Mr Sumption, let me interrupt for a moment. Can you, Mr Sumption, explain to me the point that you made a moment ago at [draft] line 24 on page 38 where you said:

"... because Mr Patarkatsishvili and Mr Shvidler were not entering into this document in a personal capacity."

Where do I get that from this document?

MR SUMPTION: Your Ladyship does not. But the position

is -- it's best illustrated by reference to the position of Mr Shvidler. Mr Shvidler --

MRS JUSTICE GLOSTER: Is this common ground?

MR SUMPTION: No, it's not. No, this is a point which is made and it's largely a point of construction; indeed, as my learned friend puts it, it's entirely a point of construction.

But the position was that the actual signatories of this were listed at the beginning -- this was, so to speak, a home-made document -- and Mr Shvidler, if we can take him as the paradigm case, was not -- and nobody has, I think, suggested that he was -- a person who had any interest in the aluminium assets. So that a number of persons who were not intended to have any interest in the aluminium assets signed this.

Our case is that Mr Shvidler was one of those, who had no share of the property being acquired; another was Mr Patarkatsishvili, who, like Mr Shvidler, was involved in the negotiation of this document and in its execution but was not intended to be a beneficiary of any proprietary interest.

MRS JUSTICE GLOSTER: Yes, I see, thank you.

Yes, Mr Rabinowitz, obviously you're in dispute about that.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Does your dispute extend to  
Mr Shvidler as well as to the status of  
Mr Patarkatsishvili?

MR RABINOWITZ: Well, my Lady, I would rather leave that to  
explore in evidence with Mr Shvidler.

MRS JUSTICE GLOSTER: Right, okay.

MR SUMPTION: Now, we have seen a couple of days ago,  
Mr Berezovsky, that in the year 2000 you received  
payments from Mr Abramovich's companies to you or to  
your order, you and Badri between you, amounting to  
\$490 million.

A. I don't recollect that.

Q. Well, you may remember being taken through a Excel  
spreadsheet on the screen. It's not on the screen now  
and I'm not going to take you to it over again. Two  
days ago I was cross-examining you about the amounts  
that you had received in 2000 from Mr Abramovich's  
companies and I took you to a computerised spreadsheet.

A. Yes.

Q. I'm told it was Monday. Time flies.

I took you to a computerised spreadsheet and that  
showed \$461 million being paid in that year to you --

A. Yes.

Q. -- and \$28 million, in round figures, to  
Mr Patarkatsishvili.

A. Yes.

Q. It looks as if, therefore, \$490 million was paid to you and Badri between the two of you in 2000 from Mr Abramovich's companies.

A. It's according of Abramovich company information.

Q. Yes.

A. Good.

Q. Now, it's your case, as I understand it, that your total entitlement to Sibneft profits was even greater than that figure because you have to add to the \$490 million your half-share of a sum of some \$300 million that was payable in 2000 under these agreements. Is that right?

A. Mr Sumption, I already gave many times the answer; I will give the same my Lady also. Maybe it's unusual to think that I didn't calculate my money; Badri and Roman Abramovich calculated my money. I didn't know how much they put in my favour and then paid from my name because I did not operate with them. I was not involved in accounting at all.

I just knew that Abramovich is delivering his obligations because of Badri, Badri report me and Mr Abramovich report me as well, and you remember well that I really trust him. Even in Le Bourget Abramovich refer that, "Boris trusting me". That's it. This is the point. I never calculate my money, sorry to say

that.

- Q. If you are right that your share of the cost of acquiring the aluminium assets was going to be paid out of Sibneft profits --
- A. It's what Abramovich said.
- Q. -- you must have been receiving, together with Badri, a total amount in respect of Sibneft profits which was almost as large as the entire Sibneft profits for the year 2000. Are you aware of that?
- A. I don't know anything, I don't know anything about that, Mr Sumption, anything at all. I just know that Abramovich accept that we should buy this project and it means that Abramovich calculate how much money we have together with Badri, as I understand. That's it. This all my knowledge, nothing more.
- Q. And so can I take it that you are unaware of when the price of the aluminium assets was in fact paid?
- A. I just -- as I told you, I recollect the number, 500, 600, and then I remember the 575. Why? Because I think the same price we got from Deripaska when we merge. It means that, my Lady, what I told you before: that the deal was from business point of view amazing because we pay and got back quick the same money and we got a big stake in aluminium business. That's it.

This my understanding and this my recollection is:

that it was good from the business point of view but we took political risk that time and it was payment that we took political risk and the other were not able to take this political risk as well. It's happened with Sibneft as well like that.

- Q. At the time when the agreements were made for the acquisition of the aluminium assets, the merger hadn't even been proposed, had it?
- A. You are correct. I don't -- sorry, sorry, sorry. The merger -- yes, definitely, because in the first stage Abramovich insist, I would like to say, insist to manage again the company and Badri was against of that and that, for me, was surprising that in very short time Abramovich came with the idea that we should merge with Deripaska.
- Q. You see, Mr Berezovsky, I suggest that there was never any agreement that you would participate in these acquisitions; you never had anything to do with it and that's why you are unable to give any information about it.
- A. Mr Sumption, you create your logic, I create my logic, and only my Lady estimate who is correct on that.  
I can't answer -- I can't add more at this stage.
- MR SUMPTION: My Lady, I'm going to turn to the merger. It may be a suitable time to break.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.37 am)

(A short break)

(11.48 am)

MR SUMPTION: Mr Berezovsky, could you please be given

H(A)18/198. I think it's the bundle that you already have open. If so, perhaps you would turn to page 198.

A. Sorry, again the page?

Q. H(A)18/198. This is another extract from the published collection of your speeches and interviews.

A. Yes.

Q. And it's an interview with Vedomosti on 26 March 2000 --

A. Yes.

Q. -- about six weeks after the events we've just been discussing.

A. Yes.

Q. At the bottom of the first page, the correspondent asks you:

"... do you approve of the LogoVAZ decision to expand into the aluminium industry?"

Do you see that?

A. Just a second.

Q. Last bit on the page.

A. Yes. Yes.

Q. Your answer is:

"Believe it or not -- I was out of Russia at the time; I got a call from Badri Patarkatsishvili, who also manages my interests, and he said that a certain deal had just taken place. He informed me of the deal and asked if I approved. I said: 'Will this make money?' He said: 'This will make money.' [You] said: 'Then I approve.'"

Now, I'm just wondering whether you can help us on how we reconcile that statement with your suggestion that you were involved in the negotiation of these agreements.

- A. Exactly as I discussed -- as I explained before, it's my -- again, my interview to Vedomosti, it means that I'm very careful because we agreed that I will distance and why I should make the comment which I make in here to Vedomosti newspaper if we agreed that I will try to distance, as has happened in Sibneft as well?
- Q. I understood your evidence to be that when you agreed to distance yourself from it, that was to be achieved by having your holding held in the name of Mr Abramovich's companies. Are you now saying that you weren't even allowed to admit having participated in the negotiations?
- A. Mr Sumption, I already gave answer about my participation in negotiation and I was very precise with

that, that I didn't negotiate details. I initiate this business, me personally -- I was proposed, not anybody more -- to start with this business and my involvement limited the subjects which we discuss before the break; nothing new.

Q. Was the answer that you gave in this interview which I've just referred you to, was that answer true or untrue?

A. You know, it's hypocritical answer and that's it.

Q. Thank you.

Now, let's turn to the merger of the aluminium interests whose acquisition we've been discussing with those of Mr Deripaska. Now, leaving aside --

A. Could I leave that or...?

Q. You can shut that volume, yes.

A. Thank you.

Q. Leaving aside for the moment the Dorchester Hotel meeting, which I'm going to come to, you did not, did you, take part in these negotiations?

A. In which one?

Q. The negotiations for the merger of the aluminium interests with those of Mr Deripaska.

A. Definitely I was involved.

Q. You were definitely involved? Very well. Can you please tell us which meetings you participated in

between the Deripaska representatives and the recent acquirers of the aluminium assets?

A. I did not present in Deripaska before -- we discuss everything before Dorchester Hotel; correct? We discuss now -- I want just be clear, not to discuss what you don't like to discuss -- we discuss now that we already bought aluminium assets and that when Abramovich came the first time saying that he think that it will be good deal to merge with Deripaska and until the Dorchester Hotel; correct? We are discussing this period of time?

Q. Well, I'm just listening to your evidence.

A. If it's so, if it's so, I was very surprised when very shortly after we, let's say, bought the assets -- and again I try to be very correctly: I don't know the terms of payment for buying these assets -- but very shortly after that, Mr Abramovich came to me and Badri, as I recollect, and said that it will be very good deal if we make a merge with Mr Deripaska. I was a little bit -- not a little bit, I don't remember -- I was surprised because of several reasons.

Because the first one: because Abramovich insist, I would like to stress, insist that he will manage our aluminium business and it's a little bit strange that so quick he decide not to manage, referring that Deripaska has big experience in aluminium business and it's the

reason why it will be good for us to make this merge.

The second what surprised me was that Deripaska own the assets which were approximately half what we bought but nevertheless Abramovich propose to participate -- to participation Deripaska in the same proportions, in the equal proportions: it means that Deripaska should own 50 and we should own 50. And I did not even at the beginning understood how it could be, but Abramovich explained that Deripaska will cover the difference in cash for that. Definitely it's logical, it could be covered; the problem -- the point is how much.

And, as I already mentioned, the funny thing was that Deripaska will pay the same what we paid for the -- to buy assets. It means that we will get 50 per cent of the business in aluminium for zero and we'll share in the same proportions with Abramovich and Badri and so, like we discussed before.

Q. Mr Berezovsky, would you like to listen carefully to my question.

A. Yes.

Q. I am asking you about the negotiations for the merger agreement between the two sides.

A. Yes.

Q. There was a negotiation for this merger between the Deripaska camp and what I will loosely call the

Abramovich camp. It doesn't matter what we call it.

A. I don't know what means "Abramovich camp" but we accept your definitions.

Q. Listen, I don't want to get involved in that argument, Mr Berezovsky.

There was a negotiation between the Deripaska camp and the people who had just acquired the aluminium assets in February. All right?

A. I never participate in negotiations with Deripaska --

Q. Right.

A. -- before meeting in Dorchester Hotel about merger.

Q. I see.

A. It's -- everything was under Abramovich response and I explain you again why: because we agreed with Mr Abramovich after we bought the aluminium assets that Abramovich now is responsible for everything except of the principal points is concerned. And definitely merge with Deripaska was a principal point, definitely, and Abramovich need to get our confirmation that we accept that. And finally we accept that and, as I understand, as I understand, Badri participate in this negotiation. I don't remember well, I'm sorry to say that.

But me, as far as me is concerned, definitely I did not participate in any negotiations with Deripaska or Deripaska camp, as you said, before meeting in

Dorchester Hotel. It's correct.

- Q. Right. Now, what do you know about Mr Patarkatsishvili's participation in the negotiations for the merger?
- A. As I understand, as I understand, Patarkatsishvili participate in some negotiations; I don't recollect which one, what he said me, but my understanding is that he participate in that. But, again, as I told you before, Abramovich was responsible for everything what is concerning of merge is concerned, except of we discuss how will construct our relations, our relations.
- Q. You see, Mr Patarkatsishvili did not participate in the negotiations for the merger any more than you did, did he?
- A. I don't remember that. I don't recollect that. My impression is -- again, my impression is that Patarkatsishvili participate in negotiation but I don't recollect that.
- Q. Were you aware that there were negotiations for this merger agreement which took place at the Kempinski Hotel and at Mr Abramovich's house at Sareevo? Were you aware of that?
- A. At Abramovich -- no, I don't know. I don't recollect that?
- Q. Were you aware that agreement in principle was reached

in those places?

- A. With -- you mean between our group and Deripaska of merge?
- Q. Between the people who had just acquired the aluminium assets and Deripaska's group.
- A. I don't -- I don't remember that.
- Q. Right. Mr Patarkatsishvili did not participate in either of those meetings.
- A. Again, I don't recollect that. I just know perfectly that Abramovich inform us and we start to discuss how it could be, let's say, it could be organised. And that I remember. But the details, did Badri really participate or not, I don't recollect that.
- Q. Did you have any discussions with Mr Abramovich about the merger before the Dorchester Hotel meeting?
- A. Definitely.
- Q. Tell us when you had those discussions.
- A. I think we have these discussions -- I'm sorry -- maybe a week, maybe a little bit more, before meeting in Dorchester. Meeting in Dorchester we had 13 -- 14/13 March. I think week or a little bit more before, ten days maybe, before meeting in Dorchester Hotel.
- Q. And who else was present apart from you and Mr Abramovich, according to you?
- A. Badri present at this meeting, I think three of us.

Three of us present at this meeting and it was preparation for the merge in general terms again, in general terms. As I remember, we confirm all our obligations according of agreement '95, '96. We discuss about the law which will be implement in our general relations. I mean, what does mean "general"? In all concern, general, all relations.

We discuss about how will Abramovich will present our interests on the one hand. We discuss how will be -- will merge happen; I mean, again, under which way of law. And we also discuss that no one of -- because Deripaska, I never had business before with Deripaska except of this credit for \$13 million and definitely I didn't knew -- I knew him from the middle of '95 but -- and also what is important, I also know that he and Mr Fridman also were looking to buy the same assets which we bought from the other group, from the Chernoi and... that I know. I know that he was involved deeply really in aluminium business and even was looking to buy the same assets, yes.

And we also discuss about that no one party able to leave business without acception of other party. I mean, as far as Abramovich, Badri and me is concerned, about as far as this 50 per cent which we obtained together and agreement, we confirm agreement between us

of '95, '96; on the other hand, we required the same from Deripaska, that Deripaska would not be able to leave business without our confirmation.

Again, it's absolutely general terms what we were discussing before meeting in Dorchester Hotel.

Q. Mr Berezovsky, there were no discussions between you and Mr Abramovich on the subject of the merger before the Dorchester Hotel meeting, were there?

A. Mr Sumption, you put me the question; I gave you answer. That's it.

Q. Would you please look at bundle H(A)16/47. There's a Russian version of this and an English version at H(A)16/47T.

A. Yes.

Q. Now, the Russian version is the one with the signatures.

A. Yes.

Q. Now, this is the signed but undated preliminary agreement which recorded the terms of the merger in principle.

A. Yes.

Q. When did you first see this document?

A. I don't remember -- just a second. I'm not sure that I have seen even this document. Just a second. (Pause)

When it's signed?

Q. Let me ask you my question first. Have you seen this

document before?

A. I don't recollect that I watch this document before.

Q. Do you know anything about the circumstances in which it was prepared?

A. No. I know that before meeting in Dorchester Hotel it was prepared already preliminary document for the deal and, as I know also, that it was -- at the meeting in Dorchester Hotel we just -- it was meeting of principals and we just need to confirm the result of -- the result of negotiation Mr Abramovich and Mr Deripaska. This is my recollection.

Q. We're going to come to the Dorchester agreement.

A. Yes.

Q. Do you know anything about the circumstances in which this document was negotiated?

A. Again, I know that it was preliminary document which was discussed and even was discussed -- just a second -- and even was discussed in which terms, in which law terms. It's agreed with Deripaska between Mr Abramovich -- yes, between Mr Abramovich and Mr Deripaska, and that everything what we discuss with Mr Abramovich is already prepared for confirmation of principals, including, as I told you, that everything should be done in western way. Even more: in precise British, as I told that time, British law way. That's it. And we also discuss

our relations with Abramovich before meeting in Dorchester Hotel, that our relations also should be constructed in precise British law way.

Q. Mr Berezovsky, I'm going to ask the same question again until you answer it. Do you understand?

A. Yes.

Q. What do you know about the circumstances in which this document was negotiated?

A. What does mean "circumstances"? (Consults interpreter)

I know that this document was negotiated by Mr Abramovich and Mr Deripaska and I know -- according of our agreement with Mr Abramovich, and I know that this document was prepared before meeting in Dorchester.

Q. Right. And that's all you know; is that right?

A. No, I know as well that this document should reflect agreements which we agree -- which we accept together with Abramovich, which I mentioned before.

Q. Now, did you have any part at all in negotiating the terms of this document?

A. I didn't have any part at all except of Abramovich, as I told you. I negotiate just with Abramovich; I didn't negotiated that with Deripaska.

Q. Now, were you aware at the time of the arrangements which were made at the time when this agreement was drawn up for finalising its terms?

- A. As I told you, we agreed to meet in Dorchester Hotel -- no, in -- sorry, not in Dorchester definitely -- in London. We agreed to meet, as I told you, one week or ten days before meeting in Dorchester Hotel.
- Q. And were you aware at the time that a working party was set up to negotiate the final terms of the agreement?
- A. No, I just -- as I told you, Badri and Roman mainly were discussing but we had meeting three of us together, I mean Badri, Abramovich and me, and we agreed about the basic terms of agreement which will be done with Mr Deripaska. And I mentioned you which points we discuss during our meeting, three of us, Abramovich, Badri and me.
- Q. There was a working party which was responsible for preparing the final terms of agreement. Do you know that? Are you aware of that?
- A. No, I understand -- no, I didn't know anything about working party; I understood just well that there are people who on the next level are preparing the merge agreement. It's absolutely clear that it's not Badri or Roman himself. There are people who professional to do that.
- Q. Neither you nor Mr Patarkatsishvili had any involvement in the work of that working party, did you?
- A. As far as me is concerned, definitely not.

- Q. Now, the Dorchester Hotel meeting appears to have occurred on the afternoon of March 13, 2000. Do you agree?
- A. It's my recollection, yes. You are correct.
- Q. The evidence of every other witness in a position to give evidence who was present is that you turned up an hour after the meeting had begun. Do you remember that?
- A. My recollection is that I came later than others. Unfortunately I really very often was later than others and it's the reason why people were waiting for me.
- Q. You think they were waiting for you, do you?
- A. No, no doubts they're waiting for me because everybody understood that I am a key person, not anybody more.
- Q. In paragraph 274 of your witness statement --
- A. Can I close this one?
- Q. Yes. In paragraph 274 of your witness statement D2/17/255 you say that:
- "A meeting was arranged...
- This is the Dorchester Hotel meeting.
- A. Yes.
- Q. "... to finalise the agreement for the merger at the Dorchester Hotel in London."
- A. Yes.
- Q. A little further down, in the same paragraph, you say:

"This was a meeting of principals, the purpose of which, as noted above, was to finalise the key details of the deal to be made."

A. Correct.

Q. What were the key details of the agreement to be made which needed to be finalised at this meeting?

A. The key details, the key -- first of all, the main point, it was a first and, as I remember, the last meeting of principals and the key point were that first of all the proportions of merge --

Q. The proportions of...?

A. Of merge. Deripaska 50 per cent, Abramovich 25 per cent, Berezovsky/Badri 12.5 per cent, and that no one party able to -- by own to leave their -- to sell their interest anybody. This 50 per cent is one unit which presented -- which will be presented by Abramovich, he will present our group. Deripaska will present the other group, he also had some people who participate in that, and it's exactly why I was a little bit surprised, as I told you, about Chernoi position and so. Then we discuss about law.

And moreover, what does mean we discuss? Badri lead the negotiation, not Abramovich, not me, and I think this is the basic principles what we discuss. And we discuss and Badri announce what is the result of our

internal negotiations. We inform Mr Deripaska that our interests will be presented by Mr Abramovich. As I remember, Shvidler also present at this meeting, as I remember. Shvidler also present at this meeting. That our interests will be presented by Abramovich and Deripaska and his group interests will be presented by Deripaska himself.

That the agreement will be signed in -- by English law; and the same way as we understand, and as maybe Badri agreed, that agreement between parties, between Deripaska on the one hand and our party on the other hand, will be signed also in terms of English law. And also -- again, I think that's almost everything what we were discussing.

And as well we discuss about, as I remember, about the price. I don't remember we mentioned or not, but we discussed about the price that it should be paid Deripaska because of difference of the balance. I think that almost... And also we discuss, as correctly you remind me, about my debt to Deripaska, \$13 million, what I was really surprised because I didn't even know that time that it was not covered because several times I discuss that with Badri and --

- Q. I'm only asking you about the terms of the merger, Mr Berezovsky, the key terms that remained to be agreed.

A. Yes.

Q. Now, you have seen and may still have open the preliminary agreement which you were not involved in, as you told us.

A. I was not involved in the writing, definitely. It's correct.

Q. And I think you told us that you had not at the time seen this agreement; is that right?

A. I don't remember that I seen this agreement, you are correct.

Q. And you hadn't seen it at the time of the Dorchester Hotel meeting either, had you?

A. I think I did not -- again, I can't recollect. I don't remember that I have seen this document, you are correct.

Q. You see, you've mentioned four key details which you said remained to be finalised at the Dorchester Hotel meeting --

A. Yes.

Q. -- the proportions, the law, the management arrangements and the price.

A. And I mentioned also, as I told you before, that no one can leave the company without acceptance of others. It means it's connected to our agreement with Abramovich on the one hand, internally, like it was in Sibneft as

well, and on the other hand it's now spread to obligation of Mr Deripaska also not to leave the company without confirmation -- without, let's say, acceptance of other side.

Q. Well, you didn't actually mention that in the context of the Dorchester Hotel meeting; that was your evidence about a previous meeting with Mr Abramovich.

A. No, just a second, Mr Sumption. You ask me -- I am not able to recollect everything, yes? Definitely. It's long time ago. But I recollect what was agreed and Deripaska was absolutely perfectly knew and we -- no, no, we discussed that, Deripaska absolutely perfectly knew that we agreed not to leave any side without agreement with the others. It's absolutely natural. Deripaska, for me, was absolutely new in business, as I told you, and it's the reason definitely we discussed that.

Q. Mr Berezovsky, the proportions, the governing law, the management arrangement and the price had all been agreed already and been recorded in the preliminary agreement, had they not?

A. As I told you, I haven't seen the preliminary agreement. I knew that preliminary agreement is done in -- according of English law. I am sorry, my Lady, at that time we did not use the correct -- was sometimes

"English", sometimes "British", and even I read recently the reply of people who follow English people, they also refer to British law often.

But I already explain you what we agreed between three of us, I just want to stress you, between Badri, Roman and me, as far as law is concerned, and I knew that the merge agreement was done according of British law -- sorry, according of English law.

Q. Mr Berezovsky, the preliminary agreement was made at the beginning of March 2000: about ten days or a bit more before the Dorchester meeting.

A. Yes.

Q. You, as you have confirmed, had nothing to do with it. The point I am putting to you is very simple: these key details that you say remained to be finalised at the Dorchester Hotel meeting --

A. Yes.

Q. -- had in fact all been sorted out ten days earlier, in your absence, in the preliminary agreement, hadn't they?

A. As I told you before, Mr Sumption, I pay attention just to basic point and we agreed about this point with Abramovich, because that time I was a little bit more educated what we should discuss preliminary and I told you that we discussed with Abramovich that our relation should be done in -- as a trust, that already I learn,

and follow the -- and according of British law as well.

And this is my recollection.

- Q. What do you say was agreed about the management arrangements, for example?
- A. That -- you mean in merge?
- Q. Yes, at the Dorchester Hotel.
- A. That Deripaska will take power to manage, to manage the company; that Abramovich will present our group in this merge; and then that Abramovich will communicate directly to Deripaska and he will present to attention to Deripaska the problems which could arise or Deripaska will present the problem which could arise through Mr Abramovich to us. It was form -- it was not formally; it was just agreed between us that now it's responsibility of Mr Abramovich to care about our 50 per cent, yes? Our part.
- Q. What was actually agreed, and it's recorded in clause 7 of the preliminary agreement, was that the management would be carried out by a board on which each side had equal representation. Do you agree with that?
- A. Mr Sumption, you ask my recollection; I gave you my recollection. My recollection is absolutely clear. I don't recollect about the board, I'm sorry to say that. I don't recollect that.

I just recollect principal points: that Deripaska

will manage the company, how it will be organised, the board proportion 50/50 or Deripaska -- I understood that Abramovich has experience and he will not allow Deripaska to do something against of our interests. It means that we agreed that Deripaska managed the company, Abramovich will present our interest; and if Deripaska need, he will communicate to Abramovich; and Abramovich, if need, he will communicate to Deripaska. That's it.

Q. And what do you say was agreed about the price --

A. As I told you --

Q. -- at the Dorchester Hotel meeting?

A. -- I don't recollect exactly what we discuss about price. I just think that before that, before that meeting, it's already agreed at the initial stage that the price will be as I told you before.

Q. What was that?

A. It's 575, like that, 581, what you mentioned. I don't remember that.

Q. Mr Berezovsky, I think you may be getting confused with the negotiations about the original acquisition.

\$575 million was the price of the original aluminium assets and you gave some evidence about that earlier this morning.

A. No, I mean about compensation which Deripaska will pay us. Compensation will be around the same, as I told my

Lady before. Maybe I real confuse a little bit, I'm sorry, because I did not follow your way. We discuss about this just compensation which will be paid by Deripaska for -- because of the difference in what we own and what Deripaska own. This is the point.

Q. And how much was the compensation payment going to be?

A. And compensation, as I told you, is about 500 more, 575, because it's the same number what we paid for our assets, around that.

Q. And do you say that was agreed in your presence at the Dorchester Hotel meeting?

A. I think that yes, it was decided as well at my presence in Dorchester Hotel. You're correct.

Q. Well now, in fact the compensation payment was \$400 million; see paragraph 3 of the preliminary agreement.

A. Okay, it may be 400. I don't remember the number exactly. Show me, please.

Q. It's paragraph 3 of the preliminary agreement on H(A)16/48T.

A. Okay.

Q. Paragraph 3 refers to a payment of \$400 million which was in fact the compensatory payment to be paid by the Deripaska camp --

A. Yes, I see that. My recollection is different. My

recollection is that we were compensate exact number. I don't know how maybe in agreement it's 400, but my recollection is absolutely clear that we were paid finally the same amount which we pay -- were paid by Deripaska the same amount of money which we paid for obtaining these assets. This is my recollection.

Q. Do you recall actually negotiating that figure of \$575 million at the Dorchester Hotel?

A. Again, I don't remember well. I remember that it was mentioned that we will pay and it was the reason that we will be compensate the same amount what we paid for obtaining the assets, but I don't remember exactly how it was done. But my clear understanding and clear recollection is that we were paid the same amount what we paid for obtaining the assets.

Q. At paragraph 278 of your witness statement D2/17/255 you refer to this sum of \$575 million.

A. Just a second. In paragraph...?

Q. Don't put away that bundle, if you wouldn't mind.

A. Okay.

Q. Have a look at 278 of your witness statement.

A. Sorry. 27...?

Q. 278.

A. Yes, okay. It's written the sum 575.

Q. Right. Now --

- A. I give you just exact what I recollect. I told you I don't remember the other number. I don't remember.
- Q. Now, is it your evidence that that figure of \$575 million was agreed at the Dorchester Hotel meeting?
- A. It's my statement, yes.
- Q. Right. So you think that \$575 million figure --
- A. Yes, I think so.
- Q. -- was negotiated by you?
- A. It was negotiated and agreed, it was negotiated by me, yes?
- Q. At the Dorchester meeting?
- A. I did negotiate -- I'm sorry. In Dorchester Hotel we just want to fix our agreement which was done before, and the number 575 I recollect only because it's coincide with the number which we paid for assets. What is written in this agreement which you show me, I even did not recollect. I don't remember that because I maybe even hadn't seen that document and I told it from the beginning.
- Q. You see, the \$575 million figure wasn't in fact agreed until May, was it? More than two months after --
- A. I don't remember that.
- Q. It was actually agreed some two months after the Dorchester Hotel meeting, on an occasion when you were not present.

A. Mr Sumption, I just present my recollection. Definitely it could be the same. But my recollection from the very beginning -- I want to stress that again -- why I recollect that, because it was funny; not the other reason. The funny was that we paid the same amount for obtaining assets and we got back the same amount to participate. This is the reason why I remember this number.

I don't remember 400, believe me, I don't remember it and I told you I don't recollect that I have seen this preliminary agreement. I just knew the principal terms of what we were discussing with Mr Abramovich.

Q. You see, what I'm suggesting to you, Mr Berezovsky, is that you cannot have been concerned with or present at the negotiation of the \$575 million figure at the Dorchester Hotel because it was actually not agreed until two months later.

A. Mr Sumption, I present you my recollection. You may judge it like you want. I don't remember anything more. I remember that perfectly, what I remember. Could be -- but again, my recollection is just because I really was surprised of this funny thing. I'm sorry.

Q. Was any written agreement signed at the Dorchester Hotel meeting?

A. As I understand, in Dorchester Hotel nothing was signed.

It was -- as I told you, it was just meeting of principals to confirm what was prepared before, what we discuss in -- not in details, and I did not pay any attention to details. And, as I understand, the agreement of merger was signed later -- soon later after that, but not in Dorchester Hotel definitely.

Q. Did anybody produce a copy of the preliminary agreement at the Dorchester Hotel meeting which had been signed by the principals a few days earlier?

A. I don't remember that. I don't remember.

Q. Were any arrangements made at the Dorchester Hotel meeting for drawing up an agreement in writing?

A. Mr Sumption, I just present you what I recollect, yes? I know that we -- the meeting was just to fix between principals the basic point of agreement. Abramovich knows that perfectly well and Shvidler knows that perfectly well. Unfortunately Badri is not able to confirm it to us. That's it. Nothing more.

I don't remember, I don't recollect that anything was signed in Dorchester Hotel. I don't recollect that. I just know that the final agreement was signed later on, that's it, soon later on. And what I know well; that Abramovich paid to Deripaska this \$13 million also later on in May, I think, and so. This is the point.

Q. Mr Berezovsky --

- A. I remember -- I'm sorry. I remember also well that we agreed in Dorchester Hotel that Badri, because of his role in merge, will be presented by the plain(?). It's also discussed in Dorchester Hotel, I remember that well.
- Q. Mr Berezovsky, I'm going to put to you, so that you have an opportunity to comment on it, our case about what happened at the Dorchester Hotel meeting. I'm going to describe in summary what we say happened and this is to allow you to comment on it. Do you understand?
- A. To comment? No comment.
- Q. Well, you haven't yet heard our case, so I think you better wait until you do before commenting.
- A. It's the reason why I said that.
- Q. The terms of the merger had in fact been agreed in principle but in some detail between Mr Abramovich and Mr Deripaska several days before the Dorchester Hotel meeting, without any involvement on your part, and you were entirely ignorant of the terms and contents of that document.
- Well, let's pause there. What do you say about that?
- A. Nothing.
- Q. At the meeting, you turned up --
- A. I think this is absolute -- sorry, nothing.

Q. At the meeting, you turned up an hour late. There was some discussion at the meeting about the aluminium --

MRS JUSTICE GLOSTER: Well, just a second. I think if you're putting a question in relation to each statement to him, he should have an opportunity --

MR SUMPTION: Well, I've already asked him, my Lady about that and he has --

MRS JUSTICE GLOSTER: Well, you agreed you turned up an hour late, do you?

A. That I came later?

MRS JUSTICE GLOSTER: Yes.

A. Yes, I agree.

MRS JUSTICE GLOSTER: But whether it was an hour or not, you don't --

A. No, it's less than an hour, but -- and my impression, my Lady, is because I came from another court against of Forbes magazine and I was impressed so much and so-so. This I recollect.

MRS JUSTICE GLOSTER: But you don't think you were an hour late?

A. I think maybe a little bit less. But could be -- okay, it's correct to say in frame of hour.

MRS JUSTICE GLOSTER: Right. Next, Mr Sumption.

MR SUMPTION: At the meeting there was no negotiation of terms for the merger because those terms had already

been agreed in principle ten days earlier and the details were being hammered out by other people, the working party, elsewhere.

A. Wrong.

Q. What do you say about that?

A. Wrong.

Q. There was some discussion at the meeting about the aluminium wars. Do you agree?

A. Sorry, there were...?

Q. There was some discussion at the Dorchester Hotel meeting about the aluminium wars, the --

A. Not some. We discussed what we discussed with you before. I mentioned all points which we discussed at the meeting in Dorchester Hotel.

MRS JUSTICE GLOSTER: Can I be clear: when you say "the aluminium wars", did you discuss the aluminium wars specifically at the meeting?

A. We discuss about merge for aluminium between Deripaska and our group.

MRS JUSTICE GLOSTER: But was there any discussion about the aluminium wars, as Mr Sumption puts it?

A. Was -- I'm sorry.

MR RABINOWITZ: I think maybe Mr Sumption needs to make it clear what he means by that.

MRS JUSTICE GLOSTER: I think you need to explain further,

Mr Sumption.

MR SUMPTION: "The aluminium wars" is an expression used by witnesses on both sides of this case to describe the state of lawlessness and racketeering which had damaged the aluminium industry over the past few years. (Pause)

A. Again, I'm sorry, I didn't understand what is that.

I don't remember at all that we discussed that. What I remember, when Abramovich came the first time -- not in Dorchester now -- the first time with the proposal for us, he said, "Boris, why" -- argument of Abramovich was, "Boris, there are a lot of mess, a lot of fight" -- not "war" but "fight" -- "about aluminium and better to make this merge because we reduce the tension, we'll have fantastic business and we'll reduce the tension", and it's the reason why I also accept that.

Because, as you know, all the time I was for merge, like Yukos and Sibneft the first time when we merge, and I also support that. And it's one of the argument, I would like to say, mainly for me political argument, that we reduce the tension and we create one of the biggest in the world company which can compete on the world market.

MRS JUSTICE GLOSTER: Are you saying that the aluminium wars weren't discussed at the meeting at the Dorchester --

A. Absolutely correct: we did not discuss that in  
Dorchester Hotel.

MR SUMPTION: The evidence of others present was that you  
did.

A. Fine. What I can do with the other witnesses?

Q. Finally, there was, as I think you accept, discussion  
about the money that Mr Deripaska claimed you had not  
repaid to him.

A. We discussed that, it's true, and I said that in my  
reply as I remember.

Q. Now, the final agreement for the merger was drawn up and  
executed on 15 March, the terms having been negotiated  
by the working party that was working elsewhere. I'd  
like to ask you to look at bundle H(A)18/124.

A. Yes.

Q. Now, this was intended to be, was it not --

A. Is it possible -- it's just in English or in Russian as  
well this exist?

Q. This one I think is just in English.

A. Yes, because English lawyer. Okay.

Q. And the signatures appear on the English text. This is  
an agreement between Runicom, Mr Abramovich's company,  
and GSA (Cyprus), which was Mr Deripaska's company.

A. Yes. And what?

Q. Now, when you did you first see this agreement?

- A. I even don't recollect that I have seen this agreement.
- Q. Ever?
- A. I think so.
- Q. Until now?
- A. I don't recollect.
- Q. I see. Well now, this agreement followed the basic lines of the preliminary agreement that had been made at the beginning of March.
- A. Okay.
- Q. And if you look at -- first of all, I take it from the fact that you haven't seen this agreement that you were not involved in negotiating it?
- A. I was involved in negotiating, as I told you, as I told you precisely, between me, Badri and Abramovich before Dorchester Hotel. I was involved in negotiation in Dorchester Hotel directly between principals and I didn't was involved in any -- in this -- in the final stage of preparation and I haven't seen, I think, even this document before.
- Q. Now, this document was actually drawn up, do you agree, by a working party consisting of Mr Tenenbaum, Ms Panchenko, Mr Osipov and Mr Schneider on Mr Abramovich's side and Mr Mishakov, Mr Bulygin and Mr Hauser on Mr Deripaska's side. Do you accept that?
- A. I don't know anything about that. I know just that

Abramovich took responsibility to present our group, completely like it's happened in Sibneft for example, and Deripaska present his group. I'm sure that they create a working group but it absolutely does not contradict of our agreement with Mr Abramovich.

Q. The evidence that will be given is that the people who belonged to that working party and drew up this agreement knew nothing about any discussions at the Dorchester Hotel.

A. Mr Sumption, I don't know anything about this witness statement; I just know about what happened. I know what happened at Le Bourget, for example, where we discussing aluminium assets and how to share the profit from aluminium assets. It's reality. It's words of Mr Abramovich, which he accept; it's my words, which I also accept. Unfortunately Badri is not able to confirm that it's his words. But Abramovich confirm, I think, already that Le Bourget happened and it's absolutely clear that we own aluminium business 50/50, that we got a profit for that.

What we are discussing, I don't believe, I'm sorry to say.

Q. Look at page 126, please.

A. 126, thank you.

Q. Do you see there's a series of definitions at the top of

the page, including a definition of a term called the "Transfer Price"? Do you see that?

A. "Transfer Price", yes.

Q. The transfer price is the compensation payment that was payable by Deripaska's company to Abramovich's company.

A. Yes.

Q. And it's \$400 million, not 575.

A. Mr Sumption, I present you my recollection; that's it. It's my memory. I am sorry to say I don't remember 400 at all.

Q. You actually got the 575 figure from the May restatement of this agreement when the terms were amended, didn't you?

A. Mr Sumption, again my recollection is like that. I present you my recollection. I don't remember 400, sorry. My memory is not so good to remember 400. My memory just remember 575. What I can do with that?

Q. Are you aware that there was a renegotiation and restatement of this agreement in May?

A. I don't remember that.

Q. You don't remember that. So were you involved in any renegotiation and restatement of this agreement?

A. I don't remember that.

Q. At that stage there was a revaluation of the assets that were being contributed by each side and an addition of

the Bratsk assets and the compensation payment was therefore increased to --

A. Compensation payment?

Q. The compensation payment was therefore increased from \$400 million to \$575 million. Are you aware of that?

A. I don't remember that at all. I just remember, as I told you before, the principal assets which we bought, it's four, as I mentioned you before: it's Krasnoyarsk aluminium plant, it's Krasnoyarsk hydro station, it's Bratsk aluminium plant and it's Achinsk aluminium complex. And, as I recollect, later on, later on, we also bought the additional assets, I don't remember well which one, but it's happened that we bought more than -- already when merge happened, when merge happened we bought some additional assets. This I remember well.

Q. When was --

A. Nikolaevsky, I think -- not Nikolaevsky. I don't remember. Novokuznetsky, Novokuznetsky aluminium plant, as I recollect.

Q. When was it decided to include the Bratsk aluminium assets in the merger?

A. My understanding is from the very beginning.

Q. No --

A. We discuss --

Q. -- it was decided in May.

- A. No, I said you, my recollection, my recollection is that from very beginning we discuss Bratsk aluminium. My recollection, I say again.
- Q. There's no doubt that the Bratsk aluminium assets were acquired in February but they weren't included in the merger until May, were they?
- A. Mr Sumption, I can't comment that. I don't know. I know -- I recollect perfectly that there were four assets from the beginning which we accept -- which we propose to sell and we accept to buy. That's it.
- Q. You see, I suggest that the reason why you can remember so little about the terms of this agreement is that you had nothing whatever to do with their negotiation.
- A. Mr Sumption, I already gave in details what part, what was my role in this project; nothing more, nothing less. It's what I recollect and what I present to you.
- Q. I want to turn to what you say was agreed between you and Mr Patarkatsishvili and Mr Abramovich, okay? We've been talking about what was agreed between the buyers and sellers of the aluminium assets and between the two parties to the merger. I now want to turn to what was agreed between you, Mr Patarkatsishvili and Mr Abramovich.
- A. Yes.
- Q. Now, the first question I want to ask you is this: you

say that there was an agreement not to sell without the consent of the others and that that was a point that was important to you; that's your evidence, isn't it?

A. You are correct.

Q. Can you tell us why that wasn't included in your original claim form?

A. I don't know.

Q. Did you tell your lawyers that an agreement like that had been made?

A. If they ask me, I -- definitely I told them. If they don't ask, maybe I did not.

Q. Well, they can hardly have asked you, "Was there an agreement about whether the other people's permission would be required?" You must have taken the initiative and told them what this agreement was.

A. Mr Sumption, I gave my answer. Again, I precisely answer to questions of my lawyers, if I recollect that. If the question have been done, no doubts that I will give answer to this question.

Q. So is your position that in relation to these oral agreements, you just sat there in silence and waited for them to think of questions to ask you?

A. No, Mr Sumption. I tried to describe some points I could forgot, for example, and it's already the problem of how lawyers understand and what to put me

questions. Again, Mr Sumption, I told you that in the agreement concerning '95, '96, I don't already remember, we agreed with Abramovich about this point and we just repeat again the same position, nothing more.

Q. Now, Mr Berezovsky, I suggest that no agreement was ever made between you, Mr Patarkatsishvili and Mr Abramovich about whether it would require the consent of the others to sell.

A. I understand that I am not good in business but not so stupid. Definitely it was done.

Q. Now, I want to turn to another thing that you say was agreed, namely that English law --

A. Yes.

Q. -- was going to govern the relationship between the three of you, you, Mr Patarkatsishvili and Mr Abramovich. Do you understand?

A. As my recollection is that we -- I use the "British law", the word, and, as I recollect, this was in terms of "proper British law way" or "precisely British law way". In Russian it's (Russian words). I'm sorry for my --

Q. I'm going to use the expression "English law" because it is, as I think you acknowledge, more correct, but I'm not seeking to take a point on the difference between English and British. Do you understand?

A. I didn't understand the question.

Q. I am not going to trouble you with the difference between English and British.

A. Thank you.

Q. It may well be that you use the terms, if you use them at all, interchangeably. That's not a point I'm making against you.

A. Thank you, Mr Sumption.

Q. Right. I want to investigate with you the question whether any agreement was made about the governing law at all. Now, I understand your evidence that it was.

You say, as I understand it, that it was Mr Anisimov who suggested that you should make your arrangements among yourselves in what you call a very precise British way. Is that right?

A. Anisimov definitely was one of the person who spend a lot of time with Badri and he -- and it was -- and I mentioned that because he talked to Badri. Anisimov -- as I remember, Anisimov also told about the importance of western law; I don't remember that he mentioned me that.

But, as I told you already before, that starting from the end of '99/the beginning of 2000 we start to care more -- I mean Badri and me -- how we structurise our business. And we had already meetings with

different people, including Mr Samuelson -- I don't remember exactly the date, yes? But it's absolutely clear that we start to change -- that we progressing in our understanding what it should be done.

And, Mr Sumption, again, I'm sorry to return you back once and once to Le Bourget meeting. It's absolutely clear my understanding --

- Q. Mr Berezovsky, I'm only asking you about Mr Anisimov's suggestion.
- A. Mr Anisimov, Badri told me that Anisimov suggest him. Finish.
- Q. Mr Anisimov denies that. What do you say?
- A. Fine. Nothing. It's Mr Anisimov should answer to the question here and he will give answer.
- Q. Would you please look at paragraph 411 of your witness statement D2/17/287.
- A. 411.
- Q. Now, this is a passage in your witness statement which roughly corresponds to what you have told us on a number of occasions, including a couple of minutes ago: that you have:
- "... grown to understand the importance of formal records of our interest in... assets..."
- Is that correct?
- A. Just a second. Formal records, yes, correct.

- Q. So in early 2000, is it right you appreciated the importance of formally recording your interest in assets when you had acquired one?
- A. Correct.
- Q. Now, why then did you not formally record the arrangements that you say were made between yourself, Mr Patarkatsishvili and Mr Abramovich?
- A. It's absolutely clear why: because we just start this process, we had already experience with Mr Abramovich, he was correct partner, and step by step we decide to change, to more formalise. It doesn't happen in one day, it takes time for do that, and we start to move in this direction.
- Q. Mr Berezovsky, this is your introductory section introducing the Rusal sales. What you say is that:
- "From early 2000..."
- The period we've just been talking about.
- "... [you and] Badri... had both grown to understand the importance of formal records of our interest in... assets..."
- A. It's correct.
- Q. Did you appreciate the importance of having formal records of your interest in assets in February and March 2000?
- A. Definitely, yes. But the point is that it doesn't

happen in one day and we start to prepare that.

Q. It would have been easy enough, wouldn't it, if you had made an agreement of the kind that you allege with Mr Patarkatsishvili and Mr Abramovich, to record it in writing?

A. Mr Sumption, I was not in hurry that time. I have another problem, I tour(?) a lot, and we just took a decision, principal decision with Badri that we should change to more formal way our relations with whoever, but Mr Abramovich was the last in my agenda because I trust him that time. I trust him. This is the point. And he was last in my agenda to change to more formalise our relations. I already put, sorry to say, my two foote to him, yes? That's it.

Q. If you had in fact made the agreement which you allege, you would have recorded it in writing, wouldn't you?

A. No. No. Not, Mr Sumption.

Q. What did you know about English law trusts in February and March 2000, Mr Berezovsky?

A. Not a lot. I just understood that it's more defended as a structure, I understood a little bit what means "offshore". I just understood that I will give my assets to Mr Abramovich, some structure, western structure, as my shares and he will hold that, and he will give me back if I ask him to return me back under

my control and I will have --

- Q. My question was different, Mr Berezovsky.
- A. Just a second. Don't, please, interrupt me. I try not to interrupt you. And you asked me what I understand. It's my understanding.
- Q. What you understand about a specific thing.
- A. Specific, nothing.
- Q. I would like to know what you understood about English law trusts. I'm not asking you what you understood about what you had agreed with Mr Abramovich; I want to know what you knew in February and March 2000 about English law trusts.
- A. I understand about English law what I -- and my conclusion was just that it's absolutely fair laws, according of my experience in -- against of Forbes, and I think I was the most experienced Russian as far as English law is concerned because no one that time had this type of experience. I understood the trust, that trust is some offshore that could be managed by different law, and my preference was -- not preference -- my understanding was English law or British law trust. That's it; nothing more.
- Q. Ms Nosova tells us that you had in the past, ie before 2000, used offshore trusts for a number of specific ventures with Mr Patarkatsishvili and that you had

experience of such trusts in Delaware, Ireland, the Cayman Islands, the BVI and Cyprus. Is that true?

A. Believe me that it's only partially true because, if it's so, only Mr Badri -- Mr Patarkatsishvili provide this service, maybe together with Mrs Nosova, but not me. I did not participate at all in that.

Q. Now, you must have realised, Mr Berezovsky, that English law trusts set up in a precise British way were invariably created by a written document?

A. Mr Sumption --

Q. Did you realise that?

A. No, I did not realise that.

MRS JUSTICE GLOSTER: I'm not sure I understand that question because, as a matter of law, English trusts can be set up orally --

MR SUMPTION: They can, yes, but in practice --

MRS JUSTICE GLOSTER: -- so I'm not quite sure I understand the thrust of the question you're putting to Mr Berezovsky.

MR SUMPTION: In practice, Mr Berezovsky, English law and other common law trusts are invariably recorded in writing in commercial transactions. You must have been aware of that?

A. No, I did not.

Q. Every other aspect of the --

- A. Moreover, Mr Sumption, my experience here in this country is that shake hands, if you really have agreement shake hands, means a lot, even I think more than in Russia because I have some litigation here against of me and I lost this case. I mean in some -- I sold some assets, some property here and I was -- it was just shake hands, nothing more. We never -- we didn't sign anything and I lost the case here. I have absolutely different impression, I think that word in this country even value more than in Russia.
- Q. Every other aspect of the acquisition of the aluminium assets and the making of the merger agreement was agreed in writing, wasn't it?
- A. As my knowledge is, yes. It was in writing merger agreement, it was in writing when we sold -- when we bought our assets and we -- what else? It's additional reason why -- I don't understand why you don't believe that we discussed our relations with Abramovich in the same way. It's absolutely natural what we -- that we -- I had in my mind real impression of English or British way of law, according from personal experience, and definitely we discussed that, as I told you before, with Mr Abramovich exactly in that way.
- Q. If every other aspect of the acquisition of the aluminium assets and the merger were agreed in writing,

why not the arrangements between you and Mr Patarkatsishvili and Mr Abramovich?

A. I already state my position because, first of all -- not because first of all -- because Abramovich has reason not to do that and I accept these reasons because I have -- still I was in danger, you see, and it was political battle that time and later on. And I didn't have -- I didn't have doubt about that position but I start to change this position and I start to prepare to be absolutely fix -- to fix as agreement our relations and you know the structures which you have seen. But that time again, I trust Abramovich, he present the reason why I shouldn't be visible and I accept that.

Q. What do you say Mr Abramovich's reasons were for not entering into this in writing?

A. No, I think that again the same, that he afraid that our company would be more dangerous if it turn out that we have a written agreement. That's it.

Q. If you remember expressly agreeing with Mr Patarkatsishvili and Mr Abramovich that your arrangements were to be governed by English law, why didn't you say so in your original claim in this action in 2007?

A. Mr Sumption, I already gave answer to this question.

I gave answers to my lawyers when they put me direct question, I didn't pay my personally attention. Later on, definitely, I recognise that it's important but, again, I did not make any fact statement which controvert to the next events. It means that when I really was put a question, direct question, "What is your understanding and what was discussion, if it was, between you, Abramovich and Patarkatsishvili", I gave clear answer.

- Q. They must have asked you, at the outset of this action, probably several times, "What did you agree about these aluminium assets with Mr Patarkatsishvili and Mr Abramovich?" and you must have told them.
- A. Mr Sumption, my clear understanding is that I gave all the (inaudible) -- all the time picture and I make -- nevertheless I just want to mention to you that it's really a lot of examples but something I present to my lawyers and they did not write in proper way in notes. But when we were discussing in more details, it's turned out that they accept what I told.

Again, I didn't pay attention, particularly at the beginning, and it's absolutely truthful. What is important in legal system here? What is not important? When I was put -- when I was asked directly, I give direct answer. That's it.

MR SUMPTION: Well, we'll go through the things that you paid detailed personal attention to this afternoon.

My Lady, I'm afraid progress has been very much slower than I had hoped and I expect to be most, if not all, the afternoon.

MRS JUSTICE GLOSTER: Very well. 2 o'clock, Mr Berezovsky.

THE WITNESS: Thank you.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Mr Sumption, before you start I want to correct something I said this morning.

Apparently the photograph that was taken on the mobile phone was taken yesterday during the course of Mr Berezovsky giving evidence. I have taken steps to ensure that the photograph has been deleted and, as presently advised, I don't propose to take the matter further. But again I reiterate the point that I made this morning that no photographs are to be taken in court, particularly not when any party or any witness is giving evidence. If the matter happens again, if a similar incident happens again, I will regard the matter as very serious indeed and treat it as a contempt.

Yes, Mr Sumption, continue.

MR SUMPTION: Mr Berezovsky, I was asking you when her Ladyship rose at 1.00 about the absence of any mention in your original pleadings of an agreement that English law should apply. Now, I want to explore this a little further with you.

The notes that we have of interviews with Badri indicate that there were five days over 2007 when Badri was interviewed in your presence: just to remind you, on 29 April at Downside Manor --

A. Which year?

Q. 2007 -- on 11 and 13 June at Downside Manor and on 29 and 30 November in Tel Aviv.

A. Just a second. This is 2007 and in Badri house, yes?

Q. Well, the first three were in Mr Patarkatsishvili's house at Downside Manor; 29 and 30 November was at Tel Aviv.

A. When Tel Aviv? I'm sorry, again.

Q. 29 and 30 November was in Tel Aviv.

A. Which year, please?

Q. 2007.

A. You refer now only 2007?

Q. I'm referring only to 2007.

A. Good.

Q. There were five days on which the allegations that you have been making were discussed in 2007 in your

presence --

A. All of them?

Q. Yes -- with Mr Patarkatsishvili.

A. Mm-hm.

Q. Now, in particular, Rusal was discussed at the June meetings in the presence of Mr Gruder QC and at the Tel Aviv meetings.

A. Mr Gruder was in Tel Aviv, yes?

Q. No, Mr Gruder was at the June meeting at Downside Manor.

A. Mm-hm.

Q. Now, I'm not going to take you through these notes again in order to establish what they don't say, but at no point in the course of these meetings did you or Mr Patarkatsishvili mention that there was an agreement that this arrangement should be governed by English law. Can you tell us why that is?

A. I don't know why it was not putting in the notes and I even don't remember did I face this question. I just -- as I told you, when I face this question, I gave direct answer.

But, my Lady, I don't want definitely to say that everything what is written in notes is completely wrong but I just want to give you example which for me is very important: that, for example, these notes, as I understand, we never mentioned about Le Bourget

meeting, for example. It means that we forgot that and nobody ask us about, "Have you had the -- which kind of meetings you have after", yes?

I just again don't want to argue -- what is written in notes, it's written in notes and it's absolutely precisely -- but I just want to stress that it does not mean that I mislead somebody; it just means that I did not face direct question and it is reason why I didn't give the reply.

Moreover, definitely, I did not pay the attention which I understand important for this litigation and it's the reason why myself, my own, I did not present that. I just describe events; that's it.

MRS JUSTICE GLOSTER: Sorry, I don't understand that last point you're making. Can you just amplify it?

A. Yes, I just -- just a second.

MRS JUSTICE GLOSTER: You say, "definitely, I didn't pay the [in]tention...".

A. Definitely, I didn't pay attention of the law, you understand? It means that I didn't -- on the future proceeding, I mean. And it's reason that definitely I did not, let's say, myself made an accent of some points because I didn't understand what is important, what is not important; I just describe and answer to questions which my lawyers put in front of me.

MR SUMPTION: You are actually mistaken, Mr Berezovsky, when you say that the Le Bourget meeting was not discussed on these occasions. On 11 June the notes made of the meeting do refer to the Le Bourget meeting.

A. 11 June?

Q. Yes. It's a by-way, I'm not proposing to turn back to it, but in fact --

A. Could you show me please this, please?

Q. Very well: R(D)1/17/126.

A. It's a meeting of when?

Q. 11 June at Downside Manor. At the top of the page:

"Le Bourget airport/Sibneft.

"Roman last time met in chateau."

A. Just a second. (Pause)

Yes, I see that. I didn't see that before. You're absolutely correct.

Q. Would you please take bundle K2.

A. It's 2007 -- just a second. I just -- Mr Sumption, just one moment. My Lady, I just want to remind -- no, it's happened later that we got this tape, yes? Recording from Le Bourget we got later, yes?

Q. You tell me.

A. I don't remember when we got Le Bourget taping.

Q. Well, I can't give evidence, Mr Berezovsky, about when you got that tape. You tell us.

A. Sorry. My impression is that we got it later, just to understand for myself how I didn't recollect that we talk about Le Bourget.

Q. Yes.

A. Okay.

Q. Would you take bundle K2 and turn to flag 4. I'd like you to look, please, at K2/04/35.

A. Yes.

Q. Now, what you are looking at, as you can see from the first page on page 16, is your particulars of claim. This was in fact the second attempt to plead the case, the first one having been in the documents that you delivered to Mr Abramovich in Sloane Street.

A. Yes.

Q. It's got a statement of truth at the end.

A. Yes.

Q. And at paragraph 62 you'll see what you at that stage were contending had been agreed at the Dorchester meeting. You say it was agreed that there should be a trust; you don't say anything about English law.

A. Mr Sumption, I understand your point. As I present you just before afternoon, I remember what we discussing in Dorchester Hotel. My understanding of -- my comment, again, I don't -- I am not responsible to comment instead of the lawyer, but my understanding is that for

lawyers mentioning "trust" automatically means English or western law as a minimum, yes?

Again, you asked me to interpret, yes? I try to interpret. But again, my absolutely clear recollection, which I presented you before the break, that we discuss that as far as Mr Abramovich, between three of us, as far as the meeting in Dorchester Hotel. And my just, let's say, explanation, it's again explanation, would be that meaning "trust", they think that it's already western at least law and as far as we discussing about Dorchester, it means English law.

And it's not unusual because, as you have seen yesterday in -- Mr Curtis, who prepared the Devonian agreement, they put even that we are beneficiaries, yes? And I never told him that we are beneficiaries of -- that we are beneficiaries in trust as far as Sibneft is concerned but Mr Curtis understood like that.

This is my just explanation again, nothing more.

Q. Right. Would you please turn to the next flag, flag 6, which is the next version of your case --

A. Yes.

Q. -- where you, at paragraph 62 on page 64 K2/06/64, say exactly the same things as in the previous document about the Dorchester Hotel meeting.

A. 62?

- Q. Yes, paragraph 62 on page 64.
- A. Paragraph 62, sorry.
- Q. It's exactly the same as the paragraph I've just shown you in the previous document.
- A. Okay. Yes, I have seen -- yes.
- Q. This time you've added a bit about the governing law and you will find that at paragraph 75A on page 67 K2/06/67.
- A. 75?
- Q. 75A.
- A. Yes, 75A.
- Q. Yes.
- A. And then?
- Q. Now, if you look at 75A, you will see that what it says is this:
- "In the event that it is averred..."
- In other words, in the event that Mr Abramovich should say:
- "... that the proper law of the said claims is not English law, Mr Berezovsky [will say] that the proper law of the claims is British Virgin Islands law. Mr Berezovsky relies on [certain facts as pointing to that conclusion]."
- Namely, in summary, that the aluminium assets were going to be held by companies in the British Virgin

Islands and -- item 3 -- that in any event:

"the... intention of all parties... was that the entities which held [the] shares... [were to be] domiciled outside Russia.

- A. Okay. Again, Mr Sumption, it's just my interpretation. It's confirmed that we really discuss about how it will be hold as a trust, that it's trust, and my understanding is that when I discuss about that it will be trust, maybe on Virgin Islands and so and so on, and this was just convert what -- my lawyer convert that it will be law just Virgin Island. I don't remember that I discuss Virgin Island law. We discuss about that offshore company could be located in offshore zones, this is correct, and I definitely did not know which kind of law implied to offshore company which based on Virgin Island.

Again, it's just -- the just continuation of my understanding what they are looking for and what -- but again, I never put direct question from my lawyers. If you show me -- I'm sorry to say, if you're able to present me that I was put direct question during -- even in notes the other story. Just again my interpretation, nothing more.

- Q. What was your side doing suggesting that it might be the law of the British Virgin Islands if there had been an

express discussion and agreement that it should be the law of England?

- A. Mr Sumption, I follow just the way how my lawyers understand the problem. I don't understand. They understand the problem of law which we agree or the company which we put in the trust, where they're located and what law is there.

When I answer to direct question, you will find out simple that my answer is absolutely correct. Again, it's like I present my story, like lawyers understand the story and like they put on the paper; nothing more.

- Q. Do you remember a hearing before Judge Mackie in the Commercial Court on 28 April 2008?

- A. I don't remember but I try to recollect. It's Commercial Court about what?

- Q. About this case.

- A. I'm sorry, I don't remember.

MRS JUSTICE GLOSTER: Well, if he doesn't remember, Mr Sumption...

MR SUMPTION: Do you remember sitting in court in front of Judge Mackie with your legal team?

- A. Just a second. What is the event? What we discuss there?

MRS JUSTICE GLOSTER: What was the subject matter of the application?

MR SUMPTION: It was the very first hearing of the case and the subject matter being discussed was whether you should be allowed to change your pleadings in order to rely on the law of the British Virgin Islands.

A. Mr Sumption, I several times have been on the hearing and I think it's good to be in the court and show up that you are here, you don't afraid. Definitely I don't remember exactly this discussion. I remember that I have been several times and one time, the first time, I came by -- I think I should be polite to be present. One time I remember I was recommended by my lawyers to go there. But in any case I haven't stay all over the day, I don't remember that, and definitely I don't remember that what was discussed about, I'm sorry.

Q. Do you remember being represented by Barbara Dohmann QC?

A. I remember that Barbara Dohmann -- Barbara represent me and solicitor was Michelle Duncan as well.

Q. Now, there was only one hearing at which Barbara Dohmann represented you in court. Do you remember being present at a hearing when you were represented by Barbara Dohmann?

A. Mr Sumption, you may believe me, maybe not: it don't reflect in my memory. I remember Barbara well because I met her several times and she was my barrister and she was presented to me, as I recollect, by Michelle Duncan,

who become my solicitor. I don't recollect visual the picture that Barbara present something, but nevertheless, it doesn't mean that I would not recollect if I concentrate on that.

MRS JUSTICE GLOSTER: Anyway, you don't remember particularly being in court?

A. I don't remember.

MRS JUSTICE GLOSTER: No.

MR SUMPTION: I wonder if I may assist the witness with a photograph that may help.

A. In the court?

Q. No, and I didn't take it! (Handed)

This is a photograph which comes from the Getty Press Images library headed:

"Exiled Russian tycoon Boris Berezovsky arrives at the High Court in London, on April 28, 2008. Berezovsky is suing Chelsea boss Roman Abramovich over alleged claims that he was forced to sell shares in... Sibneft, aluminium giant Rusal and the country's central TV."

A. I definitely don't recollect -- don't remember this picture. You know well that even I already don't remember the pictures of this hearing because there are thousands of pictures. I'm sorry, my Lady, I really...

MRS JUSTICE GLOSTER: All you're being asked is: do you remember the hearing where Barbara Dohmann represented

you?

A. I don't remember.

MR SUMPTION: I would like you to look at the transcript of that hearing. Could you be given bundle J1/2.

I understand from Ms Davies, who was present, that you were present during this part of the hearing.

A. I can't exclude that, I told you from the beginning.

Q. Would you please take bundle J1/2.02/69.

A. Thank you.

Q. It's after flag 2. It's the first page after flag 2.

A. Yes.

Q. Now, the argument that was going on, just to help you by summarising the background, Ms Dohmann was applying on your behalf to be allowed to change your pleadings in order to rely in the alternative on the law of the British Virgin Islands. That's what the argument was about.

A. Yes.

Q. And the first part of the transcript is taken up with a long argument about whether the draft pleading was properly particularised, ie whether it had enough information in it to be properly understood --

MR RABINOWITZ: Sorry, before my learned friend continues, my learned friend started by saying Ms Davies remembers that he was there and I'm willing to accept that

generally, except that the first two lines of the transcript say that Ms Davies wasn't there.

MR SUMPTION: Sorry, my learned friend is quite right.

I had understood that she was, but she clearly was not.

THE WITNESS: Even your witnesses don't remember, how can I recollect all that?

MR SUMPTION: Ms Davies is not one of my witnesses.

MRS JUSTICE GLOSTER: Anyway, let's get on with the cross-examination.

MR SUMPTION: Could you please look at page 96 J1/2.02/96, where a discussion occurs after there has been an argument about whether your draft pleading is sufficiently precise. Now, above letter C --

A. Just a second. Page number?

Q. 96?

MRS JUSTICE GLOSTER: In the bottom left-hand corner.

THE WITNESS: Thank you.

MR SUMPTION: And letter C along the right-hand margin.

This is Ms Dohmann speaking on your behalf --

A. Yes, yes.

Q. -- and, as we understand it, in your presence.

A. Yes, thank you. (Pause)

Okay.

Q. Now, what she says is:

"We do not at this point face a strike-out" --

MRS JUSTICE GLOSTER: This is just below letter B, just above letter C. Do you have it, Mr Berezovsky?

A. Yes, I have letter C on the next page, 97.

MR SUMPTION: No, you should be looking at page 96.

A. Yes.

Q. Do you see letters B and C, if you start halfway between those two letters:

"We do not at this point..."

Just read that paragraph, if you will.

A. Just a second, Mr Sumption. Even with translator can't find it. But I will find it, definitely.

THE INTERPRETER: Sir, did you say between B and C?

MR SUMPTION: Between B and C on page 96 there's a paragraph that starts, "We do not at this point..."

A. Yes, I have it.

Q. I would like you to read that paragraph to yourself, please.

A. Yes. (Pause)

Up to which point I should read?

Q. You should stop at the end of the paragraph.

A. Yes, I stop at the end of the paragraph.

Q. Right. Now, Ms Dohmann is saying on your behalf that she has been working very hard with her team --

A. Yes.

Q. -- and she has put forward an amendment:

"... in favour of saying that the applicable law, which might well be Russian if you have shares in a Russian company and you are setting up certain agreements in Russia between Russians. But nonetheless it looks as though there is an argument for saying, 'No, everything was going to go offshore. Not only were all the individuals going offshore in due course, but their interests were run from offshore islands'..."

- A. I'm sorry, I'm sorry that I interrupt. It's discussion about aluminium or about Sibneft?
- Q. I'm just referring you to what your barrister is saying. She is talking here about the aluminium agreements and she's talking about the governing law of those agreements.
- A. I'm sorry that I -- maybe I was not attentively enough. I just want to -- please refer me to aluminium, where is written here? I just want to understand.
- Q. The whole of this argument, Mr Berezovsky, was about your application to amend your pleadings so as to say in the alternative that the agreement was governed by the law of the British Virgin Islands.
- A. It's again -- I'm sorry, because it's just part of the text. It's concerning aluminium, definitely, yes?
- Q. Yes.
- A. All right. This is the question. Thank you very much.

Again, I don't have any reason why Barbara is doing in this way. Again, as I told you before, I gave direct answer to all questions what they put in front of me but I don't know the reason why Barbara is operating like that.

Q. Now, what --

A. And this I think the reason why finally I was permitted to present my case and strike out, I won. It's one of the point which was under discussion. And I don't want to refer the previous decision, just I continue that my understanding.

MRS JUSTICE GLOSTER: What's the question on this point, Mr Sumption?

MR SUMPTION: The question I want to ask you is this. Your barrister is saying that although there was a deal between Russians about Russian assets, there was an argument that it was governed by the law of the British Virgin Islands. Now, why didn't you say, "No, no, we expressly discussed the governing law and we agreed it was going to be English law"? Why didn't you say that?

A. Mr Sumption, it's absolutely clear why: because during discussion with Barbara, she never ask me about that. And she has her way, I don't know the reason why she think that better to present that it's Virgin Island.

MR RABINOWITZ: My Lady, we are, I think, trespassing into

areas of privilege where there hasn't been --

MRS JUSTICE GLOSTER: Mr Sumption, I don't think

Mr Berezovsky can be regarded as responsible for what Ms Dohmann is submitting orally.

MR SUMPTION: My Lady, that is quite right, but he can be responsible for the absence of any instructions by himself. Ms Dohmann was submitting that there was an argument that it might be governed by the law of the British Virgin Islands. What I am asking the witness is why he didn't point out that this very subject, the governing law, had in fact been discussed and agreed back in March 2000.

MR RABINOWITZ: With respect to my learned friend, it's difficult to see how one gets into the answer to that without getting into areas which are covered by privilege.

MRS JUSTICE GLOSTER: Yes. Well, I don't think it's going to assist me, Mr Sumption, in my assessment at this point. It's a point you can easily make in submission.

A. My Lady, nevertheless, Mr Sumption start his logic from the point that I have been there, I have listened what they discuss and why I did not refer to her. This is the point what Mr Sumption started to base his position. And I answer -- my answer was clear: I don't remember that.

MRS JUSTICE GLOSTER: Fine.

A. This is the point. Thank you, my Lady.

MRS JUSTICE GLOSTER: Let's move on, shall we?

MR SUMPTION: There's one other document I want to refer you to, Mr Berezovsky.

I do need to do this, my Lady, because this is the basis of a submission that I shall be making to your Ladyship. If the witness has something to say about it, it's reasonable that he should be allowed an opportunity to do so.

MRS JUSTICE GLOSTER: Certainly.

MR SUMPTION: Would you please take bundle K2, flag 15, page 191 K2/15/191. 191 is the first page of this document which I'm showing you simply in order to identify what it is: it's your reply in this litigation served in October 2008.

A. Just a second. 2008 October, yes?

Q. Yes. And if you look at the last page, you will find your signature.

A. Mr Sumption, please, you are much more quicker than me in thinking. I am not so quick. It's reason why I want to identify. It's October 2008 and it's my reply --

Q. Yes.

A. -- during the strike-out?

Q. No, it's before that.

A. It's before --

Q. Yes.

A. Okay.

Q. It's in October 2008 and you will find your signature saying you believe that the facts stated in this reply are true on the last page, page 247 K2/15/247.

A. Yes, I see that.

Q. At page 238 --

MRS JUSTICE GLOSTER: Just a second. Page 246, you'll see that it was served on 2 October 2008. So that's when --

A. Yes, yes, yes. Yes, just a second. I believe --  
2 October, yes.

MRS JUSTICE GLOSTER: When you were still being represented by Ms Dohmann.

A. I don't remember.

MR SUMPTION: Well, she has signed this document.

A. Ah, okay. Not I signed this document?

Q. You signed it as well. You signed it with a statement saying that it was true.

A. Yes.

Q. Now, if you look at page 238 K2/15/238, you will see there's a paragraph --

A. Page?

Q. 238. There's a paragraph about the governing law.

A. Yes.

Q. It's the first paragraph on that page, paragraph 64.1.

A. Yes.

Q. What is said on your behalf is this:

"It is denied that the trust was governed by Russian law. Paragraph C75A is repeated."

That's the paragraph about the law of the British Virgin Islands.

"Further or alternatively, as Mr Abramovich admits... the concept of a trust, and in consequence a beneficial interest, does not exist in Russian law. Mr Berezovsky (and Mr Patarkatsishvili) as the settlors of the trust expressly agreed with Mr Abramovich... as set out at... C63..."

And then the next sentence says:

"By obvious inference, the... agreement required the governing law of the trust to be one which recognised the validity of such trusts."

And the conclusion of that paragraph is that in those circumstances:

"... the governing law of the trust is, alternatively should be deemed to be, British Virgin Islands..."

Which has now emerged as the front runner.

"... alternatively English, law."

Now, the first question I want to ask you is: when

you were asked to put your signature to this document saying that the facts stated in the reply are true, did you read it?

- A. Mr Sumption, the same answer, unfortunately: definitely I look it through and I am responsible for my signature, and I can't refuse that I am not responsible for that. But you want to know true? It's true that I have seen not definitely in details because I don't have even the time for that but I trust my lawyers and whatever they wrote, it's my responsibility, not them -- not only them.

But again I think, even reading that, I think that there's big mess around because on the one hand it's trust agreed with Abramovich and trust in offshore zone; on the other hand that we discuss that everything should be settled in English law. It's I think the mess -- and it may be in my head as well, but just my recollection -- in the head of lawyers that they don't understand what we are discussing, but they never put me direct question. When they put me direct question, I give direct answer.

- Q. Mr Berezovsky, why didn't you say, when you read this through, "Hold on a moment, this was a subject we actually discussed"? Because this is a document being served on your behalf. You could have said, "Well, it's

simpler than that: we actually agreed all this".

- A. Mr Sumption, I already gave this answer. I understand that whatever they asking my attention, I give reply. I didn't understand really which -- how it's connect a trust in Virgin Island with English law or not. This is the point. And they discussing about Virgin Island law, as I understand, here.

MRS JUSTICE GLOSTER: Yes. I think the simple point that is being made to you is that if you actually agreed expressly that there was going to be English law governing your arrangements, your relationships in relation to the aluminium interests, why did you let your solicitors or your barristers write in this document "by obvious inference"? Why didn't you say, "Well, hang on, we actually agreed it, you don't need to infer anything"? That's the point that's being made to you.

- A. Yes, I understand the point and my answer is very simple: because I didn't understand what the preference from them -- for them there is. I just present direct answer to direct question. I didn't want to mislead my lawyers because I did not understand why, I'm sorry to say, at that time it was very important, yes? And there's a reason why I just gave direct answer when they --

MRS JUSTICE GLOSTER: And is the point you were making earlier that there is a difference in your mind between the law that governs the trust --

A. Correct.

MRS JUSTICE GLOSTER: -- and the law that actually governs the whole arrangements between the parties?

A. Absolutely correct, my Lady.

MRS JUSTICE GLOSTER: That's the point you're making?

A. Absolutely correct, my Lady.

MRS JUSTICE GLOSTER: Thank you.

A. Thank you.

MR SUMPTION: Do you remember telling us this morning in your evidence that the agreement on English law was one of the most important points of the agreement that was made at the Dorchester Hotel?

A. Yes, because, as I told you, we just start at that time to focus on their structuring on the western manner. But again, in spite of we discuss English law, on the other hand we discuss that it will be trust offshore. And it is the reason why I did not understand well the difference between English law, which I present as our agreement, and the law which imply if it will be offshore for the trust.

It's exactly the point which maybe I mislead, but I didn't understand that well. And I think my lawyers

as well, they didn't understand that well, and step by step they start to recognise what is happening.

- Q. If there had been an agreement on English law and if this was an important point for you, as you have said, then you would have drawn that to the attention of your lawyers at the very latest when this document was drafted and probably earlier?
- A. Mr Sumption, now I recognise even a little bit more. Now, my Lady, maybe I even recognise why we use British law, not even English law: because British Virgin Island, as I could imagine that time, it had the same party, like England. It means that when we discussing about trust and when we discussing about English law or British law, for me it's the same, but I recognised them as an English law. And again, it's just because -- okay, definitely it's again my responsibility fully, but it's again because I didn't understand perfectly the trust law and the English law which we are discussing.
- Q. One month or so -- a bit more than a month -- after this reply was served, Mr Abramovich's solicitors applied to strike out your claim. Do you remember that?
- A. I remember that it was strike-out but I don't remember the date.
- Q. Well, I can tell you that it was in November.
- A. In November which year?

Q. November 2008.

A. 2008.

Q. About four to six weeks after this pleading was served.

A. Yes.

Q. One of the grounds on which they did it was that it was common ground that Russian law did not recognise the concept of a trust.

A. I didn't know that.

Q. Now, it was only when you were faced with the prospect of having your Rusal claim struck out that you, for the first time, said that there was an express agreement that it would be governed by English law; that's right, isn't it?

A. Mr Sumption, when I was faced with direct question, I gave direct answer, because I didn't understand. And it's only true that when we are discussing about trust, what is that? It's British Virgin Island; it's also, for me, British law. I'm sorry again to repeat the same point. And finally, and I think -- I don't know why lawyers didn't from the beginning focus exactly, but finally, as I understand, I'm sorry that I use the same argument, my Lady, but strike-out was strike out; it means that the court accept that. I'm sorry that I used the same argument again.

Q. You amended your pleading in response to the strike-out

application to allege that there was an express agreement, did you not?

- A. Mr Sumption, I just present the same position -- I'm sorry, my Lady, I present the same position to my lawyers and it's not my correction. It's correction of lawyers how they understood me, yes, or how they recognise importance of that; nothing more.
- Q. All that has happened, I suggest, in this case is that you have invented an agreement about the governing law in order to get round the possibility that your claim in respect of Rusal might be struck out.
- A. Mr Sumption, I gave my answer. I didn't mislead anybody; I just answer to questions of my lawyers. And I think they also had the same mess maybe at the beginning like I had, with the trust and with the English law. This is the point.
- Q. What I suggest to you is that there was in fact no agreement to create a trust at all and no agreement about any particular law.
- A. It means that you controvert yourself because your way of logic based that it was we discuss about trust.
- Q. Now, you say that you and Mr Patarkatsishvili received money from Mr Abramovich's companies after 2000 which you say represented your profit share in Rusal. That's part of your case, isn't it?

- A. Just a second, Mr Sumption. We switch to the other point?
- Q. Yes, I'm now dealing with what you claim to have been profit distributions after 2000.
- A. Thank you. Just a second. I can take away?
- Q. Yes.
- A. Thank you. (Pause)
- Now, what we discussing?
- Q. As I understand it, you say that you and Mr Patarkatsishvili received money from Mr Abramovich's companies after 2000 representing your profit shares in Rusal. Is that right? Is that your case or part of it?
- A. That we got money from Abramovich starting from 2000?
- Q. Yes.
- A. It's absolutely correct. We got money for Rusal and for Sibneft and, again, in Le Bourget we are discussing how to share the profit.
- Q. Why did you remain, on your evidence, a partner of Mr Abramovich in aluminium after 2000 if you regarded him as a blackmailer, which I think is your position about what happened in 2000 in December?
- A. Again, we are discussing about which time? We're discussing about 2000 or 2001 already?
- Q. I'm discussing the period after 2000, ie between 2001 and 2004 --

A. Yes, good. Finally.

Q. -- when your case is that you remained a partner of Mr Abramovich in relation to aluminium.

A. "Remained"? (Consults interpreter)

It's absolutely correct.

Q. Why did you remain a partner with Mr Abramovich in relation to aluminium if you regarded him as a blackmailer and no longer trusted him?

A. Do you think I have a lot of choice? It's not. First of all, he under threat took my shares -- my shares -- my interest in Sibneft, mine and Badri interest in Sibneft, and definitely after that we start to worry what -- how to solve the problem. And definitely, as I told you, I never met Abramovich more, but Badri continued relations with him and Badri tried to make everything quiet that finally to get a solution, not to lose everything.

And finally, as I remember, in 2000 -- Badri mentioned that we have problem long before but in 2003, as I remember, Badri -- me and Badri in 2000, even earlier, but we start to discuss several options for aluminium or to sell it to Abramovich because we knew that sooner or later we lose that or to -- with Abramovich together to sell to anybody because we -- as I told you, Badri keeps still relations with Abramovich

and met him, or -- that's it: two options which we had in our mind.

And, as I recollect, in 2003, but I just -- I'm sorry to say, my Lady, again, I should -- we should understand the events which happen in parallel. In parallel I try -- I concentrate of the killing of my two partners in politics in 2002 and 2003, Mr Golovlyev and Mr Yushenkov; definitely it was not my focus, yes? But nevertheless in 2003, as I recollect, Badri start to think how we settle that and, as I remember, had meeting in Georgia with Mr Curtis that time and he just present our position which -- I don't remember did he agreed with Roman or not or did he discuss with Roman or not -- that we want to sell our shares directly to Abramovich -- no, directly or indirectly, doesn't matter -- to sell Abramovich.

Q. What steps did you or Mr Patarkatsishvili take from 2001 onwards to discover what the profits of Rusal were?

A. You know, Mr Sumption, I was not responsible for that. I think that Badri communicate to Roman and he inform me that he has connections to Roman and he even met Roman. I knew that Badri had a telephone of his secretary, Marina her name, and Badri told me that, "This telephone which any moment I can communicate to Abramovich", and this is our connection.

But what Badri -- how Badri -- Badri didn't report me; Badri just report me that we -- it was already in situation with Sibneft that Roman stop to pay us our interest and it's happened, as I recollect, with Rusal as well that he didn't pay us what we are part of.

- Q. Did Badri ever tell you that he had taken steps to discover what the profits of Rusal were?
- A. I don't remember that, but I think that he have done that because of just logic, because he just inform me that Roman is not paying us what he must to pay.
- Q. Your case is that you no longer trusted Mr Abramovich in 2001 and later because he'd blackmailed and betrayed you in December 2000.
- A. I stop to trust him completely at all after our meeting in Cap d'Antibes and even in Le Bourget I already maybe have the same understanding. It's correct, I didn't trust him.
- Q. I understand that's your case. So you must have been particularly keen to ensure that you found out what the profits of Rusal were so that you got your 25 per cent?
- A. Mr Sumption, again and again, I never, never -- I want just to stress -- I never was trying to calculate, to check. Badri have done that and Roman have done that; I never do that. And I told you just now that I had amazing headache because my two friends were killed that

time. And you think that I go to calculate how much Roman should pay us? I am sorry, it's not.

Q. If you had actually reached an agreement which entitled you to 25 per cent of the profits in Rusal, you would have made sure that you found out what those profits were, wouldn't you?

A. Mr Sumption, again and again, Badri was responsible for that. I trust him, I trust him completely, like I trust before Mr Abramovich.

Q. Neither of you in fact, the evidence will be, made any enquiries on this subject at all.

A. Sorry?

Q. Neither you nor Mr Patarkatsishvili made any enquiries about the scale of the profit at all.

A. Mr Sumption, I am responsible just for myself. I didn't. As far as Badri is concerned, I am sure that he did.

Q. Now, one of the things that you say in your witness statement is that a sum of \$175 million in Rusal profits was paid over to you between 2002 and 2005. Do you remember that part of your evidence?

A. My evidence is that when we took a decision to make a second sale of 25 per cent, it was agreed that we'll get -- I don't remember exact number -- \$450 million and Roman will pay finally our dividends \$135 -- like

that -- million. This is my case.

Q. Let me just remind you of the relevant part of your witness statement. If you look at bundle D4, which you haven't got in front of you, but perhaps --

A. D4.

Q. This is your sixth witness statement. It's behind flag 9 in bundle D4.

A. Yes. Flag?

Q. Flag 9.

A. Yes.

Q. And if you turn to page 76 in the bundle numbering D4/09/76, you refer to some paragraphs of Mr Mitchard's witness statement in the strike-out proceedings.

A. Just a second. Mitchard strike-out. Who is Mr Mitchard? I'm sorry, I forgot.

Q. Mr Mitchard is a partner of the firm of solicitors representing Mr Abramovich.

A. Ah, thank you very much.

Q. He made a witness statement in the strike-out. I think I can help you by just summarising what this is about.

A. Yes.

Q. Mr Mitchard had explained that commission payments were made to Mr Patarkatsishvili in relation to this matter and they amounted to \$377 million.

A. I don't know anything about that.

Q. I understand. What you're saying, you then refer on paragraph 38 to Mr Marino's witness statement in the striking-out action.

A. Yes.

Q. And Mr Marino is saying that these amounts were not in fact commission payments but they were payments in respect of Rusal profit shares.

A. May I tell, Mr Sumption, I'm almost sure that this knowledge Mr Marino got not from myself directly; maybe he analyse papers and so.

What I remember well, in my witness statement which we are discussing -- I mean not reply but the fourth my witness statement -- that finally we agreed with Mr Abramovich, my Lady, that he will pay us 450 for our interest in Rusal and 155 like that, definitely. I didn't remember all those years; I just recollect when I start to prepare to -- to prepare for the litigation and step by step I recollect what was happening.

And it's the -- I don't remember the point which is in my witness statement but it's clear written here when we sold -- it was the second sale of 25 per cent Rusal, we will got \$135 million as our interest cover, our interest for Rusal. This is the point.

Q. I'm going to come to that. I'm talking about

a different sum here and it may well be that you can't help us on this.

A. I can't. Definitely I don't remember this number.

Q. But you will see that in paragraph 39 --

A. Yes.

Q. -- you adopt Mr Marino's explanation in his witness statement --

A. Okay.

Q. -- and you say that:

"... [you] believe that \$175 million was paid by Mr Abramovich in 2003 and 2004 in respect of... [Rusal profit shares]."

A. Mr --

Q. Can I just help you by putting the question to you.

A. Yes.

Q. I understand that this is not something which you know from recollection but that Mr Marino has deduced from all sorts of documents. Is that right?

A. I don't know. Sorry, Mr Sumption, I don't know.

I don't remember well what we discussed with Mr Marino, yes? And maybe we discuss about some sums. So definitely I didn't recollect 175 or something like that; it's absolutely correct.

Q. You see --

A. And it means that definitely it's the result of

Marino -- Mr Marino discussion with me and with the others and with documents which he obtain; nothing more.

Q. Right. I don't want to take up time asking you questions about something which Mr Marino had deduced from documents but you really don't know anything about.

A. Yes.

Q. Now, if the position is that you do not yourself know about this \$175 million, it was something that Marino deduced from documents, well, we can look at the documents ourselves in due course and I won't bother to ask you questions about it.

A. Yes.

Q. If, on the other hand, you claim to remember something about it, then I may have some questions. So what's the position?

A. The position is that I remember not everything definitely and I need time to remind better. I'm sorry, my Lady, I am not 18 unfortunately. But if I take time, I can remind; and if I presented some documents and so, some arguments, I can remind, definitely.

And it's happened not one time. It means that when Mr Marino signed documents, I don't remember did he present me some papers or not, but I accept the position. That's it.

MRS JUSTICE GLOSTER: So, looking at paragraph 39 --

A. Yes.

MRS JUSTICE GLOSTER: -- what was the \$175 million paid for,  
as you can remember now?

A. As I can remember now? It --

MRS JUSTICE GLOSTER: Now, yes. Forget about Mr Marino.

A. Yes, as I can remember now, it's our interest in Rusal.

MRS JUSTICE GLOSTER: For your capital interest in the  
shares or your interest in the profits?

A. No, no, no, no, no, not capital. It's as a profit.

MRS JUSTICE GLOSTER: As a part of the profits or the whole  
of the profits you were owed in relation to certain  
years which you can't remember?

A. Absolutely correct, my Lady. Absolutely correct, my  
Lady.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: Now, how do you know that?

A. Because I know that 450 is the other number and it's  
only number which my Lady put me the question if  
I remember that it was paid for Rusal as the shares or  
is it paid as our interest in Rusal, because I remember  
well what was paid for shares -- not shares -- for  
shareholder interest: it was 450.

Q. Mr Berezovsky, I think -- I'm quite genuinely trying to  
help you.

A. Yes.

- Q. I think you are getting confused between what was agreed in July 2004 and what was paid to you in 2003 and 2004. Now, I understand that you are saying that in July 2004 it was agreed to pay \$450 million for your shares and \$135 million for profits.
- A. Absolutely correct.
- Q. I understand that's your case and I'm going to come to that.
- A. Yes.
- Q. This is a different amount which was paid earlier than that: it's an amount of \$175 million which was paid to you between 2003 and 2004. Right? It's a different amount. It's not the same as the \$135 million agreed in July 2004.
- A. I think you're correct and it's give me additional understanding that it's just for my interest in Rusal, nothing more. Because what we got for our share or, sorry, for our holding of the shares of Rusal is concerned, it's just \$450 million. That's it.
- Q. How do you know that the \$175 million that you are talking about in paragraph 39 was a payment of Rusal profit shares?
- A. I think because we recollect together with the others, with Mr Marino on the one hand, with my assistant on the other hand, I was presented some papers and I accept

that it's payment for that.

- Q. Right. So do I understand you rightly: in relation to the \$175 million, your view -- is this right? -- was based on some documents that your solicitors showed you at the time that these strike-out witness statements --
- A. Not only documents but also, again, I have -- I was lucky that still people with whom I work in Moscow, they are still here, they can help me to recollect what is happening. And, as I understand, that time Mr Fomichev continue to serve me, who was more deeply involved compared with others, and maybe it's Mr Fomichev recollection. I don't just able to say this correctly.
- Q. Mr Berezovsky, in the light of what you have said about the way you operate, it wouldn't surprise anybody to know that you didn't go through these accounting documents in detail at the time. I am simply trying to establish: are you able to help us about the detailed mechanism by which this money reached you and to explain why it must be Rusal profits and not something else?
- A. Again, again, Mr Sumption, I knew perfectly that Roman has obligation to pay money to us because of Sibneft, but we sold that time, and also some continue to come, and Rusal as well.

And my understanding, when we start to present the case we just try to find out all paper which possible to

find, all arguments which possible to find, because, as I gave you in my statement, that a lot of documents were destroyed because of rates in Russia, in other places and so on, and I just need -- just use help of my assistants of papers which we have just to reconstruct what happened before. Nothing more.

Q. Right. The dispute about this \$175 million is that Mr Abramovich says that the \$175 million was part of a larger sum of \$377.5 million which was paid, at the request of Mr Patarkatsishvili, to compensate Mr Patarkatsishvili and yourself for the fact that you had lost so much money in --

A. Okay.

Q. -- getting the \$1.3 billion to England. That is one version: that's the version of Mr Abramovich.

Your version is that: no, this was nothing to do with compensation for the cost of getting the \$1.3 billion to England; your version is that it was Rusal profit shares.

Now, what I want you to tell us is: why do you say that this was not, in fact, a compensation for that cost --

A. Because --

Q. -- but was Rusal profit shares?

A. First of all, I completely, as you know, disagree that

Abramovich gave us -- gave, by his own will, some money to support our life abroad or in Russia, it doesn't matter. But again, it's my recollection, a recollection which is based on the papers which I was presented and with my employers (sic) which supply me this information. It's not my personal and only my recollection; it's recollection based on the documents and the other, let's say, facts which I was presented. But, my Lady, I told you -- really it's not a game what I'm playing -- I don't remember that myself.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: There's no criticism of this at all.

Does this mean that you are not able to help us on the question why this \$175 million was Rusal profit shares; we've got to look at the documents in due course?

A. Yes, I am sure that Mr Abramovich will help you when he will be in witness box.

Q. Let's turn to the sale of the second tranche of Rusal shares in July 2004. Did you have any personal involvement in the negotiation of that transaction?

A. Mr Sumption, give me one minute to switch from this point to the other one, okay?

Q. Yes.

A. Thank you.

Q. Do you want me to repeat the question?

A. Just -- no, I remember your question. Just a second. I want to recollect the events of this time and what happened.

Okay, definitely I did not have any direct involvement. Everything what happened based on Badri and lawyers' connections and with Roman as well. Only the real channel, as I recollect, I had that time was on the one hand my conversation with Badri, on the one hand; on the second hand, my conversation with Mr Fomichev, who assist me and Badri and who visited Georgia, where Badri based that time, to discuss about the sale after Abramovich breach our trust, our agreement of -- sorry, our agreement of '95, '96, and that's it.

But before even he breach, as I mentioned already before, we start -- Badri initiate to start negotiation to sell our shares. And it's happened in April, as I recollect again, 2003. It was meeting of Badri with Mr Curtis. I think Ruslan Fomichev as well -- I don't remember well -- present there. And they discuss the point how to sell our shares, our interest, our shares, in Rusal to Mr Abramovich direct -- to Mr Abramovich for himself.

I just remember one point why maybe I even remember

that better, that because I did not trust Mr Abramovich that time already: I gave proposal to have right to buy back half of what we will sell Mr Abramovich, if we will sell. And it's the point which I just -- it's what my idea for Badri because, as you correctly mentioned, at that time I already didn't trust Mr Abramovich.

- Q. Could you focus, please, on the sale negotiations for the second tranche --
- A. Mm-hm.
- Q. -- which ultimately went through in July 2004.
- A. Just a second. July 2004. Am I correct to recollect that Abramovich sold in 2003 his -- the first part of our shares, 25 per cent, and we signed the agreement in 2004 in July? Is this correct?
- Q. You didn't, but Mr Patarkatsishvili did sign certain documents on 20 July 2004.
- A. Yes, yes. Yes, correct.
- Q. Now, the subject that I'm asking you about is the negotiations for those agreements in July 2004.
- A. Yes.
- Q. You have already confirmed that you had no direct involvement; that it was Mr Patarkatsishvili who was involved.
- A. Yes. Moreover, I remember that there were -- that the party, I mean Deripaska, which, as I understand, was

presented for this deal by Mr Abramovich, as I remember, they insist that I even have -- that my name didn't have any record to this matter. At the beginning it was different: I was -- nobody hid, and Abramovich knew first of all himself well that I'm shareholder through him as a trust.

But you are correct: I didn't have any direct involvement in this negotiation.

Q. Understood. Did you have any knowledge of that negotiation otherwise than from what Mr Patarkatsishvili told you?

A. I had knowledge from Mr Patarkatsishvili definitely; I had knowledge from Mr Fomichev, as I recollect. That's it. I don't remember did Mr Curtis talk to me or not, I don't remember that well. But Badri and Fomichev definitely.

Q. Mr Curtis was dead.

A. I am sorry. At that time already?

Q. Yes, he died in March 2004.

A. Ah, it means that he just start to negotiate in 2003 in springtime and continued to negotiate in July -- June, July, August 2003, as well at the meeting with Mr Tenenbaum and Mr Fomichev and Badri as well. Yes, you're correct.

Q. You say your sources of information were

Mr Patarkatsishvili and possibly Mr Fomichev. As I understand it, it was Mr Patarkatsishvili who was in charge of the negotiations that led to the sale in July 2004. Is that right?

A. Definitely Mr Patarkatsishvili present his and my interests in that.

Q. Yes.

Now, did you see the various contractual documents that were agreed in July 2004 at the time?

A. No, I didn't see it.

Q. You didn't?

A. I have seen just the notes which were presented to me by -- made by Mr Curtis, but it's also later on. It's just when -- I didn't see the -- I'm sorry that it's too far. I didn't see it.

Q. You didn't see them. Now, were you interested in seeing them? Why didn't you look at them?

A. Because Badri was responsible for that and it is my usual way. It's not exceptional way. As you already put me many times question, correct question, have I seen this paper or this paper, and I absolutely truthful gave you answer: I didn't see that.

Q. So was the position that you trusted Mr Patarkatsishvili and if he was satisfied with the terms, then that was good enough for you?

A. If he explain me, if he explain me why he took this decision or not. I am not just puppet. It mean that if he take some -- if he discuss some way of settling the deal, he should report me and explain me why he make this step or another step. But I never went to the details.

But the principal problem was that -- and the principal problems mainly he discussed with me. One point which was absolutely new for me that he signed agreement with Abramovich not to have any claim against of Abramovich (inaudible). That never Badri discussed with me and it was surprise me when I have seen the first time already been in London.

But the other points maybe not also -- were also principal points, Badri discussed with me. The price, the condition that I will not be include in -- my name will be not mentioned: I accept that position because Badri told me that we don't have choice.

Q. You authorised him to contract on terms that only his involvement would be disclosed, not yours; that's your evidence, isn't it?

A. I accept the position that only his name will be in agreement and not -- and my name will not be at all.

Q. Now --

A. Initial -- again, initial discussion was different and

you will see, my Lady, from the documents which we have that they openly discussed that my presence and Badri present as well. Later on they formulate the other position and we accept it.

- Q. Now, your evidence is that you understood from Mr Patarkatsishvili that under the terms that he had negotiated, you were going to get \$135 million in outstanding Rusal profits and \$450 million for the capital value of your shares.
- A. It was my understanding of what Badri agreed with Mr, as I understand, Deripaska --
- Q. I understand.
- A. -- and Mr Abramovich, because it was dividends or profit.
- Q. Could you please take bundle M4. M4/02/3.
- A. What is that?
- Q. This is the points of claim in the Metalloinvest action which you have brought in the Chancery Division.
- A. Yes.
- Q. Would you like to turn to page 4 M4/02/4.
- A. Just a second, I just want to understand. I understand this is claim for Metalloinvest: it's the first point. The second point: what is this? It's particulars of claim?
- Q. That's right. It's your particulars of claim --

A. It's presented by whom?

Q. It's presented on behalf of you.

A. Yes.

Q. And in paragraph 6 on page 4 you refer to one of the defendants --

A. When it was done? When it was done?

Q. Sorry?

A. When it was done?

Q. The date?

A. Yes.

Q. This was amended on various occasions but the initial document was served in October 2009. It's been amended at various times but not so far as affects paragraph 6.

A. 2009 -- October 2009, okay. Paragraph 6?

Q. Yes. Now, you're talking here about one of the defendants called Cliren, okay?

A. Cliren, okay.

Q. You say:

"... ('Cliren') is a company incorporated in the British Virgin Islands... Until 13 July... Cliren was owned by the Fifth Defendant ('Coalco'). On 13 July... Coalco and Mr Patarkatsishvili executed a Share Sale Agreement under which Coalco sold Cliren to Mr Patarkatsishvili. Mr Patarkatsishvili held Cliren on behalf of himself and Mr Berezovsky and used it to hold

certain assets for himself and Mr Berezovsky in accordance with the Joint Venture."

A. Yes.

Q. Now, is that paragraph of your pleading true?

A. I think so. Again, definitely you understand well that I did not even maybe know the name of the companies. Coalco, as I now already learn that this company belong to Mr Anisimov and who -- and the case -- Metalloinvest is case mainly against of Mr Anisimov. But I can't ex -- but again, I confirm that it's correct.

Q. Well, I'm not asking about Coalco. But, as I understand it, you confirm that Cliren was a company which, after 13 July 2004, was acquired by Mr Patarkatsishvili to hold assets on behalf of both himself and you. That's your case, is it not?

A. Mr Sumption, I would like to be precise. This is particulars of claim. Definitely it's based on -- partly on information which I present and on the information which will become clear for us through the documents, through the witnesses and so. And definitely I just believe that it's true, I can't check that.

But again I'm responsible, my Lady, again and again, I'm responsible for that, but I want to explain how much responsibility I take. I am responsible for my signature, I am responsible for understanding that time

when I was explained; definitely I am not responsible for my memory that this was like that. I never even remember the company name which Badri own in our favour.

MR SUMPTION: My Lady, there's not going to be a convenient moment but would now be a suitable one?

MRS JUSTICE GLOSTER: Right. Well, I'll rise now for ten minutes.

(3.17 pm)

(A short break)

(3.29 pm)

MR SUMPTION: Now, Mr Berezovsky, since you have said that you didn't see the agreements that were concluded on 20 July at the time, I'm not going to take you through those agreements. I would, however, like to ask you this.

Did Mr Patarkatsishvili tell you that the \$135 million was the difference between what Mr Deripaska was prepared to pay for the 25 per cent second tranche and the amounts that Mr Abramovich had agreed to pay to him in commission? Did he tell you that?

A. My recollection is very simple: that it's money as dividends which Abramovich did not pay us -- not dividends, okay, interest -- which Abramovich didn't pay to us a long time -- I don't know what means "long

time" -- and it's money which Badri and Abramovich -- maybe Abramovich and Deripaska together, I don't know that well -- accept to pay us as our profit in Sib -- aluminium business.

And as far as \$450 million is concerned, it's a payment for our shares -- not for our -- for the second, because we never accept that Abramovich sold his shares. Yes, it's the reason why -- looking for terminology, I'm sorry to say, but the reality is so -- the second sale of 25 per cent and we got for that \$450 million. This is my understanding.

Q. Mr Abramovich's evidence will be that the price that Mr Deripaska was prepared to pay was \$450 million. He had agreed to pay a commission to Mr Patarkatsishvili of \$585 million. The \$135 million was simply the difference between the price that Mr Patarkatsishvili was able to get from Mr Deripaska and the amount of commission that Mr Abramovich had promised him.

Now, all of that was discussed on occasions you weren't present. All I'm asking you is this: did Mr Patarkatsishvili discuss that aspect of the transaction with you?

A. Mr Patarkatsishvili discussed with me very simple point: that we paid 450 million for our shares, let's say, in -- 25 per cent in --

MRS JUSTICE GLOSTER: Your beneficial interest that you say you had in the shares?

A. Absolutely correct. Absolutely correct.

And the rest is just what Roman is paying for and it's obligation of Deripaska to pay that and Roman Abramovich will cover -- will pay what we should be paid before for our interest as a profit in Rusal. That's it.

Q. Now, I want to ask you about a different aspect, which is the final stage of my cross-examination of you.

You have disclosed in this action the tape recording made at Le Bourget.

A. Yes, Mr Sumption.

Q. Is it right that you bought that tape from a third party last year in return for 5 per cent of whatever you win in this action?

A. Not only. I accept the proposal that I give 5 per cent of Abramovich if I win and that I also give a boat, Thunder B, to them because they want to pay immediately something, I didn't have cash enough, and Abramovich knows as well. I'm stopped by all parties which I fighting for. And I decide to propose them the boat and they accept the boat and they estimate the boat around \$20 million.

MRS JUSTICE GLOSTER: What's -- a boat, sorry?

A. Thunder B. The name of the boat is Thunder B.

MRS JUSTICE GLOSTER: Oh right, a boat. Yes, I see.

A. Which was arrested later by General Prosecutor Office when I already sold that.

MR SUMPTION: Right. Can you tell us: what other witnesses are due to be called by you in this action stand to gain financially if you win it?

A. Witnesses, I don't know anybody. I have obligation in front of my former wife, Galina, that she will be paid agreed amount of money. As far as witnesses is concerned, nobody, because it's bribing of the witnesses as I understand.

Q. Is it right that Mr Michael Chernoi stands to gain 5 per cent of your recoveries in this action and the Chancery litigation --

A. No, no, no, no.

Q. -- combined if you win them?

A. No. Definitely I didn't have any agreement with Mike Chernoi that he will be compensated. I try several times to accumulate our power talking to him but he decide to go his way, I decide to go his way -- my way, because of collision against of me is very big. And definitely Michael Chernoi, I know him much better now, because before I didn't know. I met him a lot, many times, after I start to -- he start also with this

trial. Definitely we discuss and I give statement even in his favour. And he, as I understand, also is my witness.

But Michael Chernoi is much richer than me, now at least, and it's the reason why I didn't have any agreement with Mike Chernoi and no one witness to be paid from the commission -- as a commission if I win this battle.

- Q. Did Michael Chernoi agree to lend you \$50 million to fund this litigation and the Chancery litigation in a transaction which, through Baltic Bank, in return for the repayment, interest and 5 per cent of your recovers in this litigation and the Chancery litigation?
- A. It doesn't coincide with reality completely. It's not a secret that Michael Chernoi help me not with litigation but, as I understand, one of the point of all the parties against of whom I'm fighting, they thought that I will not have enough money for my life even. And Mike Chernoi help me with my life, not with expenses for litigation, yes? It's also absolutely open point.

And moreover, I just want to confirm, my Lady, that we never discussed with Michael Chernoi the compensation as a result of my trial here. But on the other hand, I want just to stress that if I win and Michael will not have money enough for his life, definitely I will give

him money for his life like he gave it to me.

Q. Has Michael Chernoi lent you \$50 million or arranged for you to be lent \$50 million by Baltic Bank?

A. No, no, no, no, no. The number is different, I even don't remember which, but much less.

Q. I see. And have you got an understanding with him that if you win this litigation, he will benefit financially?

A. Again, again, he gave me that money even without guarantee. I didn't sign because I didn't have -- what to put as a guarantee? Sometimes I put guarantee to obtain money: I put, let's say, my house as a collateral to obtain money in banks; I put the other house as well to obtain money for the litigation.

But as far as Michael Chernoi is concerned, it's also exception and surprise for me a little bit that person who didn't have very close relations to me in former time, even I harmed him a little bit when we -- and Gusinsky as well, we describe the aluminium war so-called, yes? And in spite of that, he, at my surprise, help me with my life; and opposite, the people who were very close to me did not do that.

But it's usual story, life story.

MR SUMPTION: Thank you very much, Mr Berezovsky.

MRS JUSTICE GLOSTER: Yes, Mr Malek.

THE WITNESS: Mr Sumption, you have finished with me?

MR SUMPTION: Yes.

THE WITNESS: Thank you.

My Lady -- okay, later on. Because, Mr Sumption,

I just want to --

MRS JUSTICE GLOSTER: No, just a second. The court is --

THE WITNESS: Sorry, sorry, sorry.

MR SUMPTION: You might be wise to keep this point to  
yourself, Mr Berezovsky.

THE WITNESS: No, you'll love that.

MRS JUSTICE GLOSTER: No, court is not a social occasion.

THE WITNESS: I'm sorry. Sorry, sorry.

Cross-examination by MR MALEK

MR MALEK: Your Ladyship asked us, the Chancery defendants,  
to confirm whether or not we adopted lines of  
questioning, and the reference for that is Day 2,  
page 146, lines 12 to 14, and I confirm that I do adopt  
the line of questioning raised by Mr Sumption.

Mr Berezovsky, can we start off by going back to the  
acquisition of the aluminium assets and going back to  
February 2000, which we covered earlier today.

A. Just a second, okay. February 2000. Yes, yes, now  
I return back.

Q. Yes. Your case in substance is that the KrAZ assets  
were a portfolio of aluminium industry assets which you  
acquired with Badri and Mr Abramovich in February 2000;

that's your case?

A. KrAZ, it's Russian, it's Krasnoyarsky aluminium plant, yes?

Q. Yes, it's all those assets together.

A. Yes, because I already in English -- I forgot even in Russian. It's KrAZ, it's correct.

Q. I just want to clarify some aspects of this.

A. February 2000 you want to return back, yes?

Q. Yes.

A. Thank you.

Q. Can we just deal first of all with the question of the nature of the interests that you acquired.

As I understand it -- and confirm whether I've got this right -- the interests that you acquired was what? Was it against shares in companies? Was it in relation to claims against any person? Can you help us -- can you explain to us the nature of the interest which you acquired in February 2000, based on your understanding at the time?

A. Yes. That time we bought four companies which today present this position which -- just a second, February 2000 -- which we proposed to buy as far -- my recollection is that Mr Bosov the first person who presented to me and then Badri told me that he already knows about that and Mr Anisimov, the person who had

already long relations, made this proposal. And -- but the discussions start, as I told you -- as I told today, at the end of '99 -- at the end of '99 and discussion was initiated not by me, by people who worry about political instability, and that's it.

- Q. I'm just trying to clarify because you could have acquired shares in particular companies; you could have acquired assets in the companies; you could have acquired rights against the companies.
- A. As I understand, we finally got shares of the companies. I don't know how it was structured before; I just understand that we -- when we bought -- first of all, it was agreement, yes, between parties: between on the one hand Badri, Mr Abramovich, Mr Shvidler, what we discussed together with Mr Sumption; and on the other hand the owners of the assets of the company. I don't know how it was structured. And, as I understand, it was agreement first of all and then, on basing of this agreement, they sold their offshore company, I don't know how it was organised, but the owners of KrAZ and the other company owned that through offshore company, again, as my understanding is.
- Q. Now, the KrAZ agreement, 10 February -- and the reference is H(A)17/146T to 150T --
- A. Just a second.

Q. -- we know that you are not a signatory to that.

A. Yes, it's correct.

Q. You tell us in your evidence -- and could you turn to that, please, in your fourth statement, paragraph 262, which is D2, tab 17, page 251 D2/17/251.

A. D2?

Q. Yes, it's going to be taken to you. D2/17/251.

A. Yes. The paragraph?

Q. Yes, it's at 262.

A. Just a second. (Pause)

Yes.

Q. You say that you've been shown a copy of the contract --

A. Just a second.

I was shown during litigation, not shown before.

Q. Yes. And my question is: am I right in saying that the first time that you actually saw a copy of that agreement was in the course of the litigation?

A. You're absolutely correct.

Q. Now, the next question is about how you held your interest in the KrAZ assets that you say you acquired in February 2000. You've explained to us in the course of your evidence that you were considering in late 1999 asset protections and schemes.

My question is this: was the interest that you acquired in KrAZ an interest that you held personally or

was it held by a company or trust on your behalf?

- A. First of all, I can't recognise difference between how we hold KrAZ, I didn't think about that directly, yes, because for me it was just one deal about four companies, yes? I didn't specify it's KrAZ, it's Bratsk or something else.

And the way how we hold that, I also present today that finally we agreed between me, Abramovich and Badri conditions of our cooperations and then Abramovich and Deripaska prepare this document which we -- or team of Abramovich and Deripaska, they prepare that, and then -- and we discuss, as I present before, the terms, general our relations between Badri, me and Abramovich on the one hand and us and Deripaska from the other hand, and these terms we just as a principle confirm at the meeting in Dorchester Hotel. And, as I understand what was agreed, we hold that through the -- some structures which Abramovich create and keeping our interest as a trust.

- Q. The question is slightly different, Mr Berezovsky. You acquire assets but you normally hold them in a company. So, for example, the French property, it's not held in your own name; it's held in the name of a company. When you buy a boat --

- A. As I understand, it was holding -- moreover, in

Le Bourget Abramovich told us that he already created trust structures which hold the shares. I don't know the details of that.

Q. But your interest in the KrAZ assets that you've told us about, can you help us in terms of which trust or company held it?

A. I don't know the company which hold that.

Q. Now, what about Logovaz? Because one of your witnesses is going to give evidence that Logovaz was involved in a possible deal involving Mr Zhivilo of Mikom. Is that something that you're familiar with?

A. I don't familiar with that. I just familiar that later on, when we obtain interest in aluminium assets and later on Roman and Deripaska, they extend empire and they try to obtain the other assets, like this Novokuznetsky aluminium plant. But I heard no details about that, I just heard they're expanding, because that time I already left Russia.

Q. And this morning you told us about an article in the Vedomosti in March, I think, 2000 where you made reference to Logovaz's decision to expand into the aluminium industry. Do you recall that?

A. Yes, yes, I can use Logovaz because it's company which I funded from the beginning and which directly or indirectly presence and maybe it's just for -- if

I create some public -- maybe some publicly, me, my name, coordinate with Logovaz name because it's the story which I start from the beginning my own, yes? And that means when I say -- when I, let's say, present Logovaz, it means me, yes?

I did not know how it was organised in reality. I don't think that Logovaz was involved in that; at least I don't know anything about it.

Q. So did Logovaz acquire an interest in the KrAZ assets in February 2000?

A. Definitely not.

Q. So why were you reporting in March that --

A. Again, because people know me as Logovaz, yes? And it's reason -- maybe it's not special reason but -- I don't know why I said that -- but Logovaz itself was not involved in that.

Q. Misinformation?

A. Misinformation, if you like, like that.

Q. Could we turn to your statement again at 262, which is in your fourth statement at D2, tab 17, page 252 D2/17/252.

A. Just a second. Just a second. It's my witness statement, yes?

Q. Yes, at 262.

A. 262, yes, I have.

Q. What you say is:

"Although I was not a signatory to the agreement, I considered that I acquired interests under it as a result of the agreements with Badri..."

This is at page 252. You say that you:

"... acquired interests... as a result of the agreements with Badri and... Mr Abramovich that I have discussed above."

Do you see that?

A. Yes, yes --

Q. Do you see that?

A. The purchasers under the agreement are said to be Mr Abramovich, Mr Shvidler and Badri, yes?

Q. Yes. It's --

A. There are three signature -- all three are signed signature.

Q. Yes.

A. Yes, yes, okay.

Q. So the point is although you didn't sign the agreement, you acquired interest under it as a result of the agreements that you refer to?

A. Yes, I didn't sign that because of the reasons which I explain already today: because of the reason that, on the one hand, Abramovich insist and I accept that my political position is very exploded and it's the reason

why I should not sign.

On the other hand, I accept that because at that time I have -- I will have been a member of the Parliament, as Abramovich as well, and it was forbidden to participate in business directly. I participate in the meeting: it's not just breach of law because I start this negotiation about acquiring aluminium assets before I become member of the Parliament.

Q. Yes, I don't want to interrupt you, Mr Berezovsky, but my question is: when you say that you acquired interest under it, am I right in saying that you thought that you were actually a party to the contract although you didn't sign it?

A. No -- yes, yes, I absolutely understand that I am party.

Q. Yes. And what obligations did you assume under this contract, personally?

A. I think that I almost deliver my obligations because everybody knew, including Abramovich, including all the party, that I was the key person who made this deal happen because, as I told you, it's a little bit strange, and you accept that the price was not market price, it was lower than market price, I mean for the assets which they propose. And the reason why they do that was only one: they afraid of future political battles and they decide to sell it.

And I accept the risk because I understood well that we winning, yes? Elections, I mean. Not many people understood that so clear like me. And it's the reason why I have benefit from my knowledge, from my intuition and from my hard work to reach -- to win the elections. It means that I took this risk and it means that my obligations are almost delivered that time already, not exactly, but everybody understood that Putin will become president in March.

And it's the reason why I think that everybody understood my obligations and I already invested much more than anybody more that time.

Q. You say that you were "the key person who made this deal happen".

A. Definitely.

Q. Are you sure about that?

A. 100 per cent.

Q. Could we have a look at your statement at paragraph 256 D2/17/250.

A. Yes.

Q. In fact I think it's 257. Let me just get the reference. You say that:

"I should say that although I have mentioned Mr Bosov, it was Badri who was the deal-maker with regard to the purchase of the Bratsk and Krasnoyarsk

assets."

A. Yes.

Q. So what is your evidence: that you were the key person who put the deal together, or was it Badri?

A. I was the key person and it's clear why: because the initial point was people came to me asking -- proposing to sell. If they will not come to me, it means that it's no deal at all in the beginning.

It's in completion, I mean in negotiation later on, how to structure, how to -- and so-so, definitely Badri and Roman, they play amazing role in that. But as far as their generation of -- not generation -- as far as the beginning of everything, without being impossible to move forward, definitely I was the key person and everybody understood that.

Q. Yes, and I think you have told us that you were heavily involved in the negotiations and attended a number of meetings?

A. A couple -- in several meetings I was involved, as you know, for example Dorchester meeting, and I talk also with Mr Abramovich and with Mr Badri as well.

But again, if you ask me why I think that I'm key person, it's not because I talk with Mr Abramovich or with Mr Badri. It's not so. I key person just because people who propose that, they propose it to me; not even

to Badri, I would like to say. Because they understood that we -- they did not maybe believe so much like we believe that we'll create political stability in Russia, we'll win elections.

It's regular story: before elections all the time, people don't believe what -- are not sure what is happening. And after it's happened with Sibneft, for example, absolutely as well because a lot of speculation even during our discussion and even still in Russia that we bought just for \$100 million. We bought because nobody believe that Communists will lose. And next day after we won, I had proposal for \$1 billion.

It's absolutely clear that we won political battle and people who propose us understood that we understood better what is happening later than they.

- Q. Mr Berezovsky, my question is really focusing at this stage just on the aluminium acquisition in the KrAZ assets in February. We're not talking about Dorchester.
- A. Mm-hm.
- Q. You told us in answer to questions from Mr Sumption this morning -- and you don't need to turn to it but the reference is at [draft] page 15, where you say you participated in several meetings before the meeting in the Dorchester Hotel. Then at [draft] page 17 you say you recall meetings with Lev Chernoi and you refer to

meetings with Mr Anisimov.

A. Yes.

Q. And then you refer to meetings with the brothers and with -- with David Reuben.

A. Not brothers; with brother. With Mr Reuben.

Q. Yes, with --

A. Mr David Reuben, not with Simon.

Q. So it was just in fact David Reuben, not Simon?

A. Yes, yes, correct.

Q. So you've referred to a number of meetings.

Now, I just want to look at that in slightly more detail. So the point is that you, on your evidence, were heavily involved in the negotiations?

A. Not heavily, because people want to see me that I'm really real, I'm sorry to say that, and this was -- definitely they want to understand that it's really me who is part of this deal. I think particularly it was important for David Reuben because he was foreigner, he was not so hard involved in that. But on the other hand, as I told you, that time I had good relations with Mr Anisimov and who else who I mentioned.

Q. But the point is that you were involved in the discussions leading up to the agreement; that's what I think you're telling us?

A. Not -- yes, from general, general point that I'm the

person who is really in the project.

Q. Could you pick up M4 and go to tab 4.

A. I should keep that?

Q. No, you can put the -- that's the only file that you need to have open. Turn, please, to tab 4. Go to page 35 M4/04/35. Somebody should find it.

A. Yes, 35. What is that?

Q. I'll explain this to you now. It's the defence of the third, fifth and tenth defendants: that's Mr Anisimov and the companies related to him.

A. Yes.

Q. And what is pleaded there -- could you turn to paragraph 20 --

A. Yes.

Q. -- which is at M4/04/35. What is pleaded there, set out, is this:

"Mr Berezovsky was neither a party to the KrAZ Agreement nor was he present at any of the meetings at which the sale of the KrAZ Assets was discussed or agreed. And, as far as Mr Anisimov is aware, at no time did Mr Berezovsky have any interest in, or entitlement to, those assets."

What I would like to do is focus on the first sentence, which is that:

"Mr Berezovsky... was [not] present at any of the

meetings at which the sale of the KrAZ assets was discussed or agreed."

- A. Again, definitely I had a lot of meetings with Mr Anisimov and definitely it's absolutely not true what Anisimov try to present here.

As well you know, my Lady, that Anisimov said that he never have been my friend, that he doesn't even almost know -- doesn't know who is Mr Berezovsky. I just want to remind you -- this is in the papers -- that Mr Anisimov even present on my birthday when I celebrate in Cap d'Antibes. It was 2001, I celebrate 55 years, and it happened definitely after we already made a deal about Rusal is concerned. Anisimov, even more, he came even day before to celebrate birthday of my daughter, who was born 22nd January.

I just -- I'm sorry that is so long again. It's completely wrong what Mr Anisimov is presenting here.

- Q. And it's wrong because you were present at meetings at which the sale of KrAZ assets were discussed?

- A. I don't remember any meeting which I present. I just remember that I talk to Mr Anisimov about that or Mr Anisimov talk with me about that. I remember that Mr David Reuben talk with me about that. But I don't remember, I don't recollect meeting, formal meeting, where we are sitting together to discuss. I don't

remember that. Moreover, I'm almost sure that I haven't present on the meeting.

Q. I thought earlier you were telling us that you were at a lot of the meetings?

A. "Meetings" means for me -- I'm sorry, maybe it's the miscalculation in translation. "Meeting" for me is, for example, I meet Mr Anisimov; not formal meeting, just to discuss with him. Or I met someone, David Reuben. For me it's not meeting; it's just we met and we discuss.

It's not meeting with prepared the plan of the meeting, with presence there, the date there; I haven't been there, it's true. But as far as my meeting, personal meeting with Mr Anisimov to discuss that, with Mr Reuben to discuss that, it's happened like that. It's not formal meeting, it's true, because I was not a party of this type of meetings.

Q. Could you move on to, in the same bundle, M4/08/122. Somebody should find that for you, please.

A. Yes.

Q. In response to this, what you -- this is your document --

A. Yes.

Q. -- served on your behalf. As to the first sentence, the one that we've just been looking at --

A. Yes, yes. (a), yes?

Q. Yes.

A. Just a second. Just a second.

Q. Read it to yourself.

A. Yes. What is that, this paper?

Q. If you go to page 117, it's a reply and if we go to  
the --

A. This is reply of whom?

Q. It's your reply.

A. Yes, okay.

Q. If you turn to the last page of this at 134 --

A. Just a second, again I want just to be correct. Where  
is the end of this reply?

Q. It's M4/08/134.

A. 134, just a second. It's my reply, it's not Mr -- no,  
it's Mr Marino, it's not my reply, yes? It's pleading  
of Mr Marino, as I understand, correct?

Q. Yes --

A. It's not my reply, yes?

Q. It is.

A. No, I mean -- Mr Marino signed, it means my reply but  
through Mr Marino, yes.

Q. Yes, but just look at the statement of truth:

"The claimant [that's you] believes that the facts  
stated in the reply are true."

A. Yes, yes, no, no, I accept.

Q. You understand?

A. I just want to clarify. Nothing more.

Q. What you say at paragraph 10 --

A. Paragraph?

Q. At page M4/08/122, at 10(1).

A. Paragraph 8. I don't see paragraph 8, I'm sorry.

Q. Sorry, it's page M4/08/122 and it's paragraph 10(1).

What it says is:

"As to paragraph 20..."

And I'll read it:

"(a) It is admitted, subject to paragraph 9(1) of this Reply, that Mr Berezovsky did not participate in the negotiations in person. As set out above, Mr Patarkatsishvili had conduct of the negotiations on behalf of the purchasers..."

If we then go back one page, you can see that 9(1) reads:

"Mr Patarkatsishvili was asked" --

A. 9?

Q. 9(1).

A. Just a second.

Q. Page 121, going back one page.

A. Yes.

Q. What is stated there is that:

"Mr Patarkatsishvili was asked in late 1999 to

assist Mr Cherney and Mr Anisimov in resolving a dispute about control of aluminium production plants... Shortly thereafter, Mr Bosov approached Mr Berezovsky with a proposal that he purchase various aluminium plant interests in the Krasnoyarsk and Bratsk regions..."

A. Yes, it's absolutely correct what is written here.

Q. Yes, but the suggestion that you were involved in a number of discussions --

A. Again, number of informal, my Lady, discussions, which what I tell. It means that definitely they talk to me, they negotiate with me, I was not involved in formal discussion with a schedule and so, but definitely each of them who I mentioned, yes, they talk to me. I knew well that time, maybe even better than others except of Mr Anisimov, I knew well Lev Chernoi as well and I had already practise to cooperate with him on the other field, in politics and so, because he like to discuss that and so.

But again it was my participation as at private meetings, not in formal meetings. It means that I did not discuss exact terms and so-so, they knew that I'm one of the -- part of the party, that's it, and I am not -- not because of my status, not because of that, but definitely on the other hand I really had a lot to do but I met them privately and talked to them about

this deal because I knew that they are those people who sell their interests. That's it.

Q. So the statement, going back to paragraph 10(1) at page M4/08/122, that you did not participate in the negotiations in person, is that true?

A. Again, what means meeting? Let's -- okay, let's go to the point. What means meeting and what means negotiations? Meeting for me is formal meeting; negotiations, it's negotiations during this formal meeting. I never participate in formal meeting, it's true, but I met them, each of them I knew, each of them well, and I discuss with them. Just, again, as I told you starting to answer to your question, I just show up that I am here. It's true that we are going to buy and I am part of this deal. That's it.

Q. What discussions did you have with Mr Anisimov about this deal in terms of --

A. Anisimov just -- I don't recollect definitely which kind of discussion I had with him but Anisimov was close friend of Badri and I didn't recollect that I met Mr Anisimov separately for that. I met him together with Badri and I don't recollect exactly what we were discussing.

At the same time I don't recollect exactly what we discuss with Mr Reuben David. And you remember that

even in my statement, because I really forgot, even in my statement I think, which I present here, I did not mention Reuben and so but here I mentioned because that time I remembered this, that I had these meetings, yes. And that's it.

Q. You remember it today, is that right?

A. What do you mean today? Today, definitely I don't remember well.

Q. Yes. If we can turn to your statement at paragraphs 254 to 257 of B4 D2/17/250.

A. Just a second, can I keep that or you don't need it anymore?

Q. I don't need it anymore, you can put it away.

A. 25?

Q. Yes, 254. It's right that --

A. Just a second. I just need to remind because a lot of jumps from one point to another point.

Q. Yes, let me just pose a question and then you can answer it. There's absolutely no mention here of any discussion or meeting with Mr Anisimov, is there?

A. No, again, it's even did not mention here discussion with Mr Reuben as well, as I understand, but on the other hand I remind that, okay, in some moment, I present that today, my recollection, yes, that I met definitely Mr Reuben, I met definitely Mr Anisimov.

It's not possible without Anisimov because, as I said, Badri -- Anisimov was very close to Badri and it's Anisimov who was one of the shareholder, as I understand, the assets which we bought.

Q. Mr Berezovsky, it's very difficult, isn't it, to make things up as you go along? About ten minutes ago --

A. Sorry?

Q. It's difficult to make things up as you go along.

A. Yes.

Q. Ten minutes earlier, and this is at [draft] page 156, you said:

"Again, definitely I had a lot of meetings with Mr Anisimov and definitely it's absolutely not true what Anisimov tried to present here."

A. Absolutely correct, because I have meeting with Mr Anisimov not because of this deal as well. As far as this deal is concerned, I had meetings with Mr Anisimov in Badri presence. I don't remember that -- I can't recollect that I had separate meetings with Mr Anisimov. I recollect that with Mr Badri. What is wrong with that?

MR MALEK: My Lady, I was about to move on to something else.

MRS JUSTICE GLOSTER: Very well. I'll finish there for the day. The court is not sitting tomorrow. Monday,

Mr Rabinowitz, 10.15?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: Mr Malek, are you content with that?

MR MALEK: Yes, absolutely.

MRS JUSTICE GLOSTER: Mr Sumption, are you content with  
10.15.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well. 10.15 Monday.

Again, don't talk to anyone about --

THE WITNESS: Yes, my Lady. Thank you.

(4.15 pm)

(The hearing adjourned until  
Monday, 17 October 2011 at 10.15 am)

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Monday, 17 October 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR BORIS BEREZOVSKY (continued)

Cross-examination by MR MALEK (continued)

MR MALEK: Mr Berezovsky, on Thursday, I was asking you questions about the acquisition of the KrAZ assets in early 2000. You gave evidence about your role in the negotiations in relation to those assets which you contend you acquired.

There's one point I want to clarify: in your oral evidence you said that you had a lot of meetings with Mr Anisimov and you made the point that there's a distinction in your mind between meetings and discussions and personal meetings and formal meetings. Now, Mr Anisimov disputes all of this and I'm not going to go into that, but I have one question and that is this: did you ever indicate to Mr Anisimov that you were one of the acquirers of the KrAZ assets?

A. I never talk to Mr Anisimov about KrAZ assets. I talk to Anisimov, and it's definitely, I talk about that I part of the deal of all four assets together. I didn't discuss that KrAZ or Bratsk or the other one, all of that. I never -- at least I don't recollect that I discuss especially about KrAZ. We discuss about all

deal together and it's definitely correct.

Q. So the answer to my question is that you never indicated to Mr Anisimov that you were one of the persons acquiring the KrAZ assets; am I right?

A. Completely wrong. Anisimov absolutely knew perfect that I acquire four of them, including KrAZ as well.

Q. My question is: did you tell him that?

A. Definitely, because we discuss all assets together. Anisimov absolutely perfectly knew about KrAZ; and not only about KrAZ, about the other assets as well.

Q. Could we then turn to the pleadings in the Metalloinvest action and turn, please, to -- and you'll be provided with this -- M4, tab 04 at page 35 M4/04/35.

A. What is that?

Q. If you go back to page 28 of this bundle, you will see that it's the amended defence of the third to fifth and tenth defendants: that's Anisimov defendants.

A. This is Anisimov defendants, yes?

Q. Yes.

A. Okay.

Q. We focused on Thursday on the first sentence and let me just read it --

A. Which point, I'm sorry?

Q. Paragraph 20 at page 35.

A. Yes.

Q. "Mr Berezovsky was neither a party to the KrAZ Agreement nor was he present at any of the meetings at which the sale of the KrAZ Assets was discussed or agreed."

Then the second sentence:

"And, as far as Mr Anisimov is aware, at no time did Mr Berezovsky have any interest in, or entitlement to, those assets."

A. Mm-hm.

Q. Now, you dispute that and I think what you're telling us in relation to the second sentence is that you had a conversation with Mr Anisimov where it was clear that you were one of the acquirers of the KrAZ assets; that's correct, isn't it?

A. Yes, my Lady, first of all, last time we finish with a little bit misunderstanding of the word of "meetings", yes? Because I never pretend -- I never claimed that my English is so bad that I didn't understand the sense, but it's important to concentrate because "meetings" mainly, in my feelings of English, is mainly business meetings, yes? I discuss mainly about not social but not with plans, with paper, the date and so. I met many times Anisimov because, as I told you before, he was close friend of Badri.

And moreover, as I told before, Anisimov for Badri was key person who was involved in that business. For

me, at the beginning it was Bosov, Mr Bosov, but Badri refuse that, saying that Bosov is just playing game and so-so. And I had a lot of meetings in Badri's presence with Anisimov as well, yes? And --

MRS JUSTICE GLOSTER: You're saying these weren't formal meetings with agendas and boardrooms and --

A. Yes, absolutely correct. But all the time the point arise because it was big deal. And Anisimov and Bosov they discuss, moreover, I remember well that Bosov insist that he is the dealer who provide for us a deal, and Anisimov to the contrary said he is the person who made this deal happen.

And, moreover, Bosov later on even tried to -- I invite him in the court here. If he wants to be paid, as he told, commissions, I said, "No problem, come to the court and prove that you are person who really made this deal happen", yes? And definitely I met Anisimov as well, definitely I met Chernoi as well.

And, for example, I give you clear example that Anisimov was the person who came even to Kharacheyevo-Cherkessia when I fight for election campaign there, and it was late December/middle December '99. And Anisimov -- I have even picture. I forgot about that, I'm sorry to say. But we have even picture of Anisimov, who today claim

that he hate me, but he came to support my election campaign in Kharacheyevo-Cherkessia. It's not -- and at that time we also discussed, in spite I was very much involved in elections campaign definitely. But Badri had been there, Anisimov had been there, Badri support me a lot also in election campaign, and definitely we discuss about this future deal.

Yes, it's not -- we just -- but -- and only -- also after, in 2000, it's happened the same. Time to time we met and we discuss that, with Bosov, with Anisimov, with Lev Chernoi, as I told before; not Michael Chernoi, Lev Chernoi.

MR MALEK: Have you finished?

A. Yes, thank you.

Q. Can we go back to my question.

A. Yes.

Q. Paragraph 20, which we're just looking here at M4, tab 4, page 35 M4/04/35:

"... as far as Mr Anisimov was aware, at no time did Mr Berezovsky have any interest in, or entitlement to, those assets."

And your evidence today is that you told him?

A. Absolutely.

Q. Now, let's see how you responded to that allegation.

A. Yes.

Q. And if you could turn in the same bundle, which is M4,  
to tab 08 and then go to page 122 M4/08/122.

A. Yes.

Q. We can see from page 117 M4/08/117 that this is your  
reply. So this is your pleading --

A. Just a second. This is my reply?

Q. Yes.

A. Just a second.

Q. 117.

A. Yes, just a second.

Q. And look at 134.

A. Just a second. 122, the page, yes?

Q. Yes.

A. Just a second, I just want to have a look to the end.

And I signed that, yes?

Q. It was signed on your behalf.

A. On my behalf. Who signed that?

Q. Mr Marino?

A. Mr Marino, okay. Where is his signature?

Q. 134 M4/08/134.

A. Okay, thank you.

Q. If we then turn back to 122 --

A. Just a second. Yes, I am on 122.

Q. It starts off:

"As to paragraph 20" --

A. "As to paragraph 20", yes.

Q. We've dealt with the first part but go to subparagraph 2:

"As to the second sentence..."

And then you just read that to yourself.

A. Yes.

MRS JUSTICE GLOSTER: This is (b), is it?

A. (b), it's (b). 10.1(b); correct?

MR MALEK: 10, subparagraph 2?

A. Ah, 2, not 1.

Q. Yes?

A. 2?

Q. (a), (b), (c) and (d).

A. (a), (b), (c) and (d), yes. But (d) is on the other page; correct?

Q. Over the page at 123.

A. Yes.

Q. So if we could go to the first point at (a), that's a reference to --

A. I'm sorry, 2(a), yes?

Q. Yes. The first statement of Pietro Marino refers to Mr Reuben's account, and then the second point:

"Under the circumstances, it was common knowledge among the vendors that Mr Berezovsky was one of the purchasers..."

A. Yes.

Q. Point (c) is:

"It was... widely reported in the Russian and Western press that Mr Berezovsky and Mr Abramovich had together acquired the KrAZ Assets."

A. Yes.

Q. Then over the page at (d):

"In the circumstances, the second sentence of paragraph 20..."

A. Yes.

Q. It's right to say that there is no mention here of any conversation that you had with Mr Anisimov; that's right, isn't it?

A. I gave my answer: I had a lot of conversation with Mr Anisimov as well and Mr Anisimov perfectly knew that I am there, those ones who is acquiring to buy KrAZ as well. I don't remember that I discussed KrAZ separately from the other assets, but I remember well that we discuss not one time all assets which we are looking to buy.

Q. It's right to say that the first time that you made an allegation, whether in a pleading or witness statement, that you had discussions with Mr Anisimov to the effect that you were one of the acquirers was in your evidence last week?

A. Again, it's definitely not. It's -- again, it's -- as he done the pleading, decide Mr Marino how he understood me and I am responsible only what I am presenting you now. I repeat again and again: I talked with Mr Anisimov not one time, many times; not in formal meetings, in informal meetings, in presence -- I don't remember one to one, because Mr Anisimov was close to Badri, but many times in presence of Badri at least. And I never -- I don't remember that we discuss KrAZ separately from the other assets but we discuss KrAZ as part of the deal in general. This my memory is.

Q. The truth is, Mr Berezovsky, you had no discussions with Mr Anisimov about the acquisition of the KrAZ assets by you?

A. Definitely yes, again. Yes, yes and yes.

Q. I want to pick up a point that you make in this pleading, if we could just look at it again in your reply at paragraph 10, subparagraph 2(b) at the bottom of M4/08/122 where you make reference that:

"It was... widely reported in the Russian and Western press that Mr Berezovsky and Mr Abramovich had together acquired the KrAZ Assets."

In that context, could you turn, please, to your statement at D2, tab 17 at page 250 D2/17/250.

A. 250?

Q. Yes.

A. Just a second.

Q. Please just read to yourself paragraph 258 towards the bottom there. (Pause)

A. Okay. 258, yes?

Q. Yes, it's the last sentence that I would like to ask you some questions, where you say this:

"For this reason, we agreed at Mr Abramovich's request that Badri's and my interest in the aluminium assets subsequently acquired on behalf of the three of us would not be made visible and would instead be held by Mr Abramovich through offshore corporate vehicles."

A. Yes.

Q. If we can follow, using your phrase, the logic, that would mean that your name should not be referred to in the contractual documentation; is that right?

A. I think that is correct.

Q. And if you're right about that, could you explain why Mr Badri's name appeared in the KrAZ agreement of 10 February and other agreements?

A. I already gave you explanation: because Badri was not in the same area of risk like me. Badri also had been in the area of risk because he manage ORT, the main political leverage, but definitely it was absolutely different as far as me is concerned.

And moreover, you know well that even when I was in strong conflict against of Putin already, he propose Badri to stay in Russia because in spite of everybody understood well that we close friends and partners, but nevertheless they understood that we have different involvement in politics. And when I came and I already left Russia and Putin nevertheless invite Badri to talk to him -- I don't remember left or already was planned with Putin at least -- he invite Badri to propose him to stay in Russia and forget about me.

It means that definitely the understanding of the risk for Badri and for myself was completely different.

- Q. But looking at paragraph 258, where you say that Mr Abramovich made the request "that Badri's and my interest in the aluminium assets subsequently acquired on behalf of the three of us would not be made visible", the logic of what you're saying here would indicate that Mr Badri's name should not appear either in any contract documentation.
- A. It's happened what happened and, as you know, Badri signed agreement when we bought assets and me not. And this is the story, that's it. But again, I didn't sign for two reasons. One of the reasons, as I mentioned you, was much more involvement in politics than Badri.

On the other hand, I have been a deputy of

Parliament and, according of that, I was not allowed to sign these documents. Abramovich signed, but it's his choice to go against of law. I continue participating in negotiation, again on the basis of not meetings, business meetings, because I start this before I was elected in Duma and it's the reason why I continue to participate in some kind of not precise negotiation how it will be concluded but general terms, what we discussed long time with Mr Sumption the last day, Thursday. It's exactly the way how I participate in discussions.

- Q. But if your interest was not to be made visible using the language in your witness statement, why were you giving interviews to the press in March 2000 referring to the fact that you had acquired an interest in aluminium?
- A. In March 2000, situation was a little bit different that time because, as you remember, Putin won elections and it was not -- at that time everybody calculate risk, at least me, less than before. It's turned out that very quick our relations were broken and nevertheless this was a little bit new time. And moreover, as you know well, we in spring 2000, we start to work to prepare the structures on the west which should structurise and put absolutely, let's say, in proper western way our

interest in all our assets, including aluminium assets.

Q. Could Mr Berezovsky be provided H(A) volume 18, opened at page 198 H(A)/18/198.

A. Could I keep my evidence?

Q. Put it aside. We may need to go back to it.

A. And this one, Anisimov?

Q. You may put that away.

A. Thank you.

Q. Just putting it into context, you were elected to the Duma in the middle of December 1999?

A. I think 17 December '99.

Q. It was clear that President Putin was going to be elected by the end of 2000?

A. It was -- no --

Q. 1999?

A. No, Putin was elected in March 2000, in March 2000. But as far as me is concerned, for me, definitely understanding was much better than for the others and my prediction was that Putin will be elected and it's the reason why I took so much risk to myself.

Q. And the KrAZ assets, the documentation we see was in February, middle of February? We've seen the documentation.

A. I just want again to stress that I don't have in my mind the difference between KrAZ documentation, between the

other plants' documentation. And, as I told you, I haven't seen the document which Badri, Shvidler and Roman Abramovich signed. I have seen this document just later, but that's it. This is my recollection.

Q. But President Putin had been acting president on 31 December 1999?

A. Ah, he become acting but he was not elected.

Q. Yes, but he was acting president --

A. Yes.

Q. -- on 31 December?

A. Yes. But, as you know, again, it was big battle who win elections, Communists or Putin again. And you know that even up to the last moment before elections on 7 March it was a big discussion: will we have the second round or not? We won in the second -- in the first round it's good. But you're absolutely correct that from 1 January 2000 Putin was announced [by] Yeltsin as the acting president.

Q. And if we now turn to 198, this is the interview that we looked at --

A. Yes.

Q. -- in your questions with Mr Sumption and that was an interview with Vedomosti on 24 March.

A. Mm-hm.

Q. What had changed between February and March which meant

that you couldn't be visible in relation to the contractual documentation on 10 February and yet just about a month later you were quite happy to give press statements indicating that you were interested in the aluminium?

A. I think that I already gave the answer: because 10 February, Putin was not elected still. It was -- election was in front of us. And mainly people really, and particularly maybe Roman Abramovich because he doesn't feel well like me what happened later, everybody afraid that Putin will not be elected and I had -- but when he become elected, definitely it was much more predictability, much more clear what happen. At least many people think that we continue reforms; it's happened opposite, it's the other point. But that time completely different from the time of 10 February. It was before elections and after elections. This is the main point.

Q. Mr Rabinowitz told us on Day 1 that in March/April 2000 you were basking in the glory of having been involved in Putin's election victory. He went on to say political exile was some way off. Was that a fair summary of the position?

A. Just a second. Could you help me? (Consults interpreter)

I think it's not very correct what is written here. Maybe it's impression which I create to Mr Rabinowitz and partly it's correct, partly it's not.

First of all, I am not -- I don't -- I am not ambition man. I just follow my personal way, and my way is absolutely clear: I try to move Russia to democracy. And definitely I enjoy that we won elections in spite of no one believe in autumn '99 that Putin could become president -- if you open the press, he was absolutely unknown -- and I really was absolutely happy with that, it's true.

On the other point -- what is the second point mentioned here?

Q. Yes, I said --

A. Just a second. And as far as my prediction --

MRS JUSTICE GLOSTER: Just a second. I think the point was: were you basking in the glory of having been involved in Putin's election victory?

A. Again, my Lady, my point not was to be unique among others, yes? I just follow my way and I have done everything what I can do that time to reach -- to move Russia to democracy. And I understand that Putin -- you remember Putin came to power as successor of Yeltsin, yes? It means that he should continue reforms. But Putin --

MRS JUSTICE GLOSTER: So you weren't basking in any glory?

A. Absolutely. I was happy with that, but --

MR RABINOWITZ: Perhaps -- I'm not sure that he understands precisely that English phrase. I think that may be a problem with this.

MRS JUSTICE GLOSTER: Right. Well, maybe we needn't trouble about it.

MR RABINOWITZ: If someone perhaps tries to rephrase the words that I used in order to make clear what is being suggested, it may be a more clear answer.

A. On the other hand, my Lady, I just want to tell that as far as future is concerned, I didn't have any doubts what means power. And even when Putin was my close friend and when I support him and when he become on the top of his already acting president, I was -- it had been one interview when I was asked, "What do you think, does it mean that Putin forever your friend?" And so I said, "Not at all, because if Putin being in power decide that important for him to crush me, he will do that". I told that in the moment when we had fantastical relations with Putin because I understood what means politics and I understood that Putin decide that it's helpful for him to push Berezovsky, he will do that.

MR MALEK: The reality is you said in your evidence that

you'd been involved in assisting Governor Lebed in the aluminium wars, you were elected to the Duma in the middle of December, President Putin at the end of December was acting president, ORT had supported President Putin in his election campaign. That was the reality. In the spring of 2000, things were looking good?

A. What is the question?

Q. The question is: at that point in time you were enjoying the political arena, you were on the stage --

A. That's correct.

Q. -- and you were very happy to make statements about your interest in aluminium although --

A. I didn't --

Q. Let me just finish.

A. Sorry.

Q. -- although the reality is that you had no interest at all?

A. The reality is that I have, and I create this company, one who -- the key person, as I told you, to create this company because it was proposal given to me, not anybody more, at that stage, at the beginning I mean. And reality is that definitely I understood that we are more protected because Putin is elected and, as I told you before, we start to prepare, Badri and me, the structure

to visualise our interest and we were on the way; that's it.

And I decide that at that time -- again, a lot of emotions and so, but I don't see any controversial and illogical what is happening because I really think that time it's just the beginning of Putin become elected president -- not acting, elected president -- and I think that it's -- okay, it's time maybe for more openness and so. But still I already having experience in politics that everything change quick, what happened later, and maybe that I was -- I have been too enthusiastic with Putin -- who is Mr Putin, I'm sorry to say. That's it.

Q. Could you please go back to your witness statement at D2, tab 17, at page 251 D2/17/251.

A. Yes, I remember that.

Q. And turn, please, to paragraph 262.

A. 262. Yes.

Q. And I would like to look at the passage at page 252 D2/17/252.

A. Just a second. Passage? 252, sorry.

Q. "Another formal reason for not signing this personally was that I was a member of the Duma at this time, and I was aware that under Russian law I was not allowed to be directly involved in business and could not put my

signature on this agreement."

A. Yes.

Q. And that's the agreement that you referred to at the beginning of paragraph 262, the document of 10 February 2000 that we've already looked at.

Now, is this another reason why you could not acquire an interest in the aluminium assets, the KrAZ assets? It couldn't be the situation that although you could not sign the contract, there was no objection to you being a party to the contract, as you've contended in your evidence to us last week?

A. You see, Mr Abramovich become party of the contract, being member of Duma; I am not. It's a little bit not logical what you present to us now.

The reason is that I didn't want to put -- to be directly involved, yes? As I told you, this deal start before I was elected, yes? Before. It means that, for me, it's absolutely legal at that time to negotiate about acquiring of assets; as far as Abramovich that time as well. But later on to put the signature was illegal. What Abramovich have done, it's illegal according of Russian law. Direct involvement in acquiring under his name the assets, it was illegal again.

As far as me is concerned, definitely it was

hypocritical what I have done, but I didn't put my signature.

Q. Now, let's just look at one other point as to why you say that your involvement could not be visible and turn, please, to page 246.

A. Of my statement?

Q. Yes, at D2, tab 17 at 246 D2/17/246. Sorry, page 246.

A. Yes, page 246.

Q. And in fact it's at 247 D2/17/247.

A. 246 or 247?

Q. Let me just check my... It's page 247, at the bottom there, where you say this:

"Our use of offshore structures."

A. Just a second. Which point? Which paragraph?

Q. It's paragraph 246 at the bottom there:

"By late 1999..."

A. Yes.

Q. "... Badri and I had begun discussions aimed at creating more formal offshore structures to control and protect our major business interests in oil and aluminium... outside Russia, against politically motivated attacks and political opponents..."

A. Yes.

Q. Is this the position: that the investigation that had taken place in relation to Aeroflot had concerned you

and you wanted to conceal your assets?

- A. Just a second. It was 199 -- late '99. I don't remember that time was investigation of Aeroflot still or not just -- ah, I think at that time it was already closed investigation; later on Putin open again. At that time it was closed.

Again, I was -- I already -- to give direct answer to your question, I was already more experienced in politics; I knew that everything could change in a second. And definitely, as I told my Lady before, that even when Putin was my close friend, I understood that he fighting for political position and he may tomorrow say that Berezovsky is enemy. Yes, if it's useful for him, that's it. It's exactly in '99 the same point; nothing new.

- Q. But if the intention was that you were going to have an interest in the KrAZ assets, why not use an offshore company which you controlled to hold that asset?

- A. I'm sorry, the point is that I didn't know what I control. Everything was Badri responsibility and Roman Abramovich responsibility. And the reason why they don't use that, I don't know, I don't know, because I was not a person who construct the structures. I just present my general position that I was in big risk area, this is the point, in much bigger than Badri was. Badri

also have been in risk area. That's it. This is the point.

Q. Now, let's move on to the Dorchester meeting.

A. Yes.

Q. And just following up the point that you made earlier, when we were looking at the Vedomosti article towards the end of March 2000 --

A. Yes.

Q. -- and you were explaining that there was less of a problem, you didn't have to be visible.

My question is this: why did you not ask at the Dorchester meeting to have the shares in your own name, if visibility was not a problem?

A. I already gave explanation that on the one hand we start to prepare the visible structures; on the other hand I understood well that everything could happen even in nearest future. Because that time, as I told you before, I already have some confrontation with Mr Putin as far as Chechnya is concerned, starting at the end of '99, and it means that on the other hand I told precisely that I will not be surprised if Putin start fight against of me.

It means that my position was a little bit controversial. On the one hand I understood that we are in position to win elections, and even we won elections.

On the other hand, having experience -- having negative experience before, I understood that everything could happen. It means that a lot of uncertainty have been in January and a lot of uncertainty for me personally as to what to do as a next step.

On the other hand I want to be visible and make everything in proper western way which conform directly, yes? Not indirectly, directly. Our discussion with Mr Abramovich in Le Bourget where I insist to make everything visible, yes? And Abramovich is refusing that, saying that it's impossible, yes? But it's already the other story.

But my explanation is like I have presented here.

- Q. But the Dorchester meeting took place six days after President Putin's election, didn't it?
- A. You're absolutely correct, it happened 13th and Putin was elected on the 7th. But the situation for me still have a lot of uncertainty. Still I understood well that if it will be some reason to -- as Putin said later, to beat me by stick on the head, it's happened finally. Again, it's on the one hand I was happy what happened; on the other hand I understood that it's a lot of uncertainty as well.
- Q. But you told us at [draft] page 17 of the transcript:
- "The reality is that I have, and I create this

company, one who" --

A. Just a second. What was the page?

Q. I'm just reading the transcript of what you told us a few minutes ago.

A. I see.

Q. I'm just reading it aloud:

"... the key person, as I told you, to create this company because it was [a] proposal given to me, not anybody more, at that stage, at the beginning I mean. And [the] reality is that definitely I understood that we are more protected because Putin is elected..."

A. Yes, it's correct. Moreover that it does not mean that I can't predict that could happen in different way, what has happened as a reality, because, as I told my Lady, that time I already had some point of conflicts with Putin, yes? Chechnya first of all, and it happened very quick when we, okay, took different ways to move forward, yes?

It means that I already was not so naive like before, when I start just political career, yes, and already had experience that everything could change quick. And I had, let's say, in my head as well not the clear vision that everything is fine. In spite of many days I think that it could be fine. But it's happened opposite and I was correct in my doubts.

Q. Now, as far as the Dorchester meeting is concerned, it's right that Mr Anisimov had no involvement in that meeting as far as you're aware?

A. I can't recollect Mr Anisimov even in any stage of merger with Mr Deripaska. I just know that as far as Badri is concerned, he was more involved. And as far as Anisimov told all the time to Badri and to me, I think, yes, but mainly to Badri, that he has a big experience in British -- in precise British way of law and he said that we should do the same -- the same way. But as far as Dorchester is concerned, Anisimov hadn't been there.

Q. Can we turn to your statement at D2, tab 17 at 253 D2/17/253.

MRS JUSTICE GLOSTER: Is that page or paragraph?

MR MALEK: Sorry, page 253.

A. Yes.

Q. What I would like to do is ask you a question arising out of what you say between paragraphs 267 and 269. I'd ask you --

A. 267 and 200...?

Q. To 269. Could you just read those paragraphs to yourself. (Pause)

I'm sorry, I'm told that you may be looking at the wrong place.

A. I'm looking only at the place which you point me,

nothing more.

Q. You may be -- well, let's start again. It's at page 253 in the bottom there.

A. Yes, just a second. 253, I have it.

Q. Yes, and could you look at paragraphs 267, 268 and 269.

A. Yes. You point me correctly, I have seen before the same. (Pause)

Yes, okay.

Q. It's a conversation involving Mr Badri and Mr Anisimov about British law that I would like to look at.

A. Just a second, I would just to remind: it's happened before our meeting in Dorchester? It's happened before our meeting within Dorchester? Yes, correct. Okay.

Q. Now, it's right to say that you were not a party to this alleged conversation between Badri and Mr Anisimov?

A. I don't remember that I have been the party of exactly this conversation because, as I point here, Badri said that Mr Anisimov, yes? But on the other hand I was a party of conversation with Badri and Anisimov as well, I don't know exactly this party, when Mr Anisimov personally told in front of us that he -- as I remember, that time he based -- he had the business in Switzerland. And being even in Switzerland, Anisimov, as I recollect, told us that he use first of all western laws but even British law, yes, being in Switzerland.

And this is my recollection. It means that I don't refer exactly to the meeting, yes, I think, but I had meeting as well in my presence with Badri and Anisimov, and Anisimov talk about the way to use the western or British -- he said British law, I don't remember.

Q. Mr Berezovsky, this is all new to us. When do you say this conversation happened?

A. I told you, I told you that I don't recollect exactly, but we have -- except of that I said: this I refer to Badri. But as well me personally, I also talk to Mr Anisimov not one time and my recollection is that he also in my presence also talk about a positive experience with western law, which maybe is British law.

MRS JUSTICE GLOSTER: So you had one of your informal meetings with Anisimov --

A. Absolutely correct, my Lady.

MRS JUSTICE GLOSTER: -- where he mentioned this point?

A. -- absolutely correct, my Lady.

MRS JUSTICE GLOSTER: I see.

MR MALEK: That's untrue, Mr Berezovsky. You had no discussions with Mr Anisimov about whether British law, Swiss law or Chinese law should be applicable?

A. It is absolutely true, I don't remember about anything Chinese law, you're absolutely correct, but I remember well about western law and absolutely -- and about the

British law.

Q. Can we just look at this advice that you say Mr Anisimov gave to Badri that you're referring to in this section of your statement that we're looking at.

A. Yes.

Q. Am I right in saying this is in the context of your proposed merger with Mr Deripaska in relation to Rusal? Is that right?

A. It's correct to say that, as my recollection is, that Anisimov recommend Badri -- and this is the reference because my connections to Anisimov was much less, and it was part of a lot of other points -- but Anisimov recommend Badri all arrangements, all arrangements which we plan or start to do, to execute, should be in proper English -- proper British law or precise British law.

It's concerning the acquisition of that, it's concerned the merger itself and it's concerned our relations with Mr Abramovich. There are all arrangements here as -- and Badri, as I understand, present exactly this position in Dorchester Hotel.

Q. So when you are referring here at 268 -- you refer to:

"There was a similar discussion... in the context of the proposed merger with Mr Deripaska."

That's at 268.

A. As I remember, this is -- this point is in frame of

preparation to Dorchester Hotel meeting before the --  
I'm sorry, before Dorchester Hotel meeting. It's the  
preparation for the merger. But nevertheless,  
nevertheless it was discussed -- again, as my  
recollection is that Badri refer to Mr Anisimov position  
about all three steps and acquisition and merger and our  
relations with Roman.

As far as me is concerned, I definitely don't  
remember that Anisimov told me that, "Boris, you should  
do, let's say, acquisition and merger and relations with  
Roman by British law", and so. We discussed the general  
position, my recollection is. As far as Anisimov, my  
meeting with Anisimov, general recollection that  
Mr Anisimov mentioned his experience in western law  
because of his business in Switzerland and particular in  
British law, as my recollection is concerned, but not  
precisely: this, that and that.

This I don't mention that Anisimov, let's say,  
I talk -- I met Anisimov and he told me that. It's the  
reason why I told he met Badri, because I don't  
recollect that he discuss exactly those points with me.

Q. So is this what you're telling us, Mr Berezovsky: that  
this discussion between Badri and Anisimov about British  
law --

A. Yes.

Q. -- was in the context or the frame of the Dorchester meeting; it had nothing to do with the original acquisition of the KrAZ assets?

A. No, no, no, no, no, completely wrong, because it's -- as I told you, all arrangements and as I understand arrangements and it was -- I think mainly it was -- Badri understanding how he should do the arrangements of acquisitions was initiated by Anisimov because already from this point -- because as you remember, I think, you remember that, that Anisimov was one of the seller of the assets.

And, as you remember, the deal was done between offshore companies, as I understand. One offshore company become, I don't know, will be created the new offshore company or they just sold the same offshore company where all aluminium assets already were registrated.

It means that discussion between Badri and Anisimov start not just before Dorchester Hotel meeting but even on the stage of buying assets.

Q. When you look at paragraph 269:

"Badri said that Mr Anisimov... had told him that we should make all our arrangements, including those as between ourselves, 'in a very precise British law way'."

A. Yes.

Q. "Badri said that Mr Anisimov had had positive experiences of using 'British law' in his dealings. Mr Abramovich, Badri and I agreed that the agreements we made regarding our aluminium interests, including those between ourselves, would be subject to British law. Today I understand that the correct word is 'English' and not 'British', but then we did not see the difference."

This appears to be a reference, does it not, to the arrangements in relation to what become Rusal? This is what you're referring to, is it not?

A. Again, sorry, Mr --

Q. Malek.

A. I'm sorry. I already precisely explain that understanding of what we should use came on the stage of acquiring and later on on the stage how should be fixed the deal of merger and our relations and the relations between us and Mr Abramovich as well. This is the point. Nothing more.

Q. Could you be provided, please, with bundle M5 and turn to tab 01, page 11 M5/01/11.

A. Vedomosti I should keep still?

Q. No, that one can go.

A. What is that?

Q. This is an affidavit, a statement, if you turn to

page 1, from Mr Kelleher of --

A. Mr...?

Q. Kelleher. Page 1. M5, tab 1, page 1 M5/01/1.

A. What is that? Mr...?

Q. He's one of your solicitors.

A. Yes, okay.

Q. If we turn to page 11.

A. Just a second. Where is the last page where he put signature?

Q. The signature is at page 27.

A. Thank you. Yes, okay. October, the end of October 2009, okay.

Q. On paragraph 39 --

A. Yes.

Q. At paragraph 39, subparagraph 1, he says this:

"Mr Patarkatsishvili told Mr Berezovsky that Mr Anisimov had told him that the arrangements for the sale of the aluminium assets referred to in paragraph 22 above should be made 'in a very precise British law way'. These agreements were governed by English law."

A. Yes.

Q. And if we turn back to paragraph 22, you can see that these were in relation to the acquisition of the KrAZ assets; it's not in the context of Dorchester and the merger.

- A. Okay, and I don't understand what is wrong what I said.  
Please -- just explain it please.
- Q. Well, let me just ask you to turn to one other document  
before I ask you a question.
- A. And we fix that it's not my presentation: it's just  
Mr Kelleher, how he understood at this stage. This  
again is the end of October 2009.
- Q. But he was your lawyer, wasn't he?
- A. No, no, I don't argue, I just want to fix that, yes?  
That's it. He's my lawyer and even now he's my lawyer.
- Q. If we then turn to bundle M2. You can put that bundle  
away.
- A. I can take it away?
- Q. Yes.
- A. Thank you.
- Q. And turn, please, to tab 10. M2, tab 10, page 61  
M2/10/61.
- A. Tab 10?
- Q. Yes.
- A. What is that?
- Q. This is a document which you can see from M2, tab 10 at  
47 M2/10.47 is claimant's response -- that's your  
response -- to a request made by the third defendant for  
information. This is a document in one of the Chancery  
proceedings.

A. Just a second. Who signed this document?

Q. This was signed by Mr Marino --

A. Okay. And when it was done?

Q. -- with a statement of truth, and that was in  
November 2009.

A. Okay.

Q. I would like you to turn, please, to page 61 of this  
document, where it says that:

"Mr Anisimov had himself advised AP..."

That's Badri.

"... and Mr Berezovsky to ensure that a written  
agreement was drawn up between them and Mr Abramovich  
recording their business arrangements relating to RusAL  
'in a very precise British law' way."

A. Okay. And what is wrong?

Q. Well, first of all, the statement that Anisimov had  
advised Badri and you, was that right, or was he just --

A. It's right because it's my impression of our discussion,  
general impression, and it's impression I present to  
Mr Marino and Marino reflect like that. Nothing wrong.  
Not maybe too precise like we are trying to find out  
now. It's happened ten years ago, even more. What is  
wrong? I don't understand. What is the point? What  
wrong the point? What I made wrong say?

Q. It's your statement at paragraph 269 of your evidence --

A. Just a second.

Q. -- at D2, tab 17, paragraph 269, at 253 D2/17/253 --

A. Yes, okay.

Q. -- that Badri said that Mr Anisimov had told him.

A. Yes, okay. Again, it's Mr Marino how he accept that.

Generally it's absolutely precise what he accept: that

Anisimov was the person who supply me and Badri

information of proper -- of useful -- how useful --

MRS JUSTICE GLOSTER: Can I just cut across you,

Mr Berezovsky.

A. Yes.

MRS JUSTICE GLOSTER: What I need to understand is in

paragraph 269 of your witness statement you seem to be

suggesting there that the conversation about British law

was just between Mr Patarkatsishvili --

A. I understood the point.

MRS JUSTICE GLOSTER: -- and Mr Anisimov. In this paragraph

we're looking at, or I'm looking at on the screen, at

page 61, your case seems to be that Mr Anisimov had

spoken not only to Mr Patarkatsishvili but also to you

as well directly to --

A. Clear. I understand that, my Lady.

MRS JUSTICE GLOSTER: I'm a bit confused. So could you just

explain to me: did you have meetings, informal meetings,

direct with Mr Anisimov yourself --

A. Yes.

MRS JUSTICE GLOSTER: -- where you had these sort of conversations or not?

A. No. I don't recollect my direct meeting with Mr Anisimov when he discuss about British law, yes? Correct. But I recollect -- and it's the reason why I did not refer to my meeting but I recollect well meeting with Badri when he refer to Mr Anisimov or British law.

But I recollect well meetings with Mr Anisimov when he discussed the word about useful to use western law because of his experience in Switzerland. This I recollect well. I can't recollect well that he discussed directly British law; I have this impression. But I have 100 per cent impression when Badri told me about that.

MRS JUSTICE GLOSTER: Yes, okay.

A. This is the point.

MR MALEK: The position is this, Mr Berezovsky: that you never had any discussion with Mr Anisimov about using British law, did you, whether in 2000 or any time?

A. Again, I remember well my discussion with Mr Anisimov about western law, 100 per cent. I have not 100 per cent recollection, let's say, about British law but I have 100 per cent recollection that Badri told me

about Anisimov with British law. But again, I can't say that I am sure that I never had any discussion with Mr Anisimov, not about only western law but as well British law. I don't recollect that so well.

But as far as Badri referring to Mr Anisimov that he had discussion with him about British law, I recollect well. It's the reason why I use here the referring to Badri. This is the point.

Q. But you've never said in a pleading or a witness statement that you had a conversation with Mr Anisimov about British law; that's right, isn't it?

A. I never said that I had this discussion, again, as I recollect; but again, it doesn't mean that I did not. I present my recollection to Mr Marino and he present his understanding of my recollection. This is the point.

Q. And it's --

A. Again, I can't say that I had never had discussion with Mr Anisimov about British way of law. I can't say that. I just said that what is my recollection is clear, as far as Badri's discussion with Mr Anisimov, and referring to Mr Anisimov of recollection of precise British way of law. This --

MRS JUSTICE GLOSTER: Mr Malek, I think we've covered this point now.

MR MALEK: Yes.

Now, the next and final topic that I would like to cover is the second Rusal sale. You can put --

A. Just a second.

Q. You can put M2 away.

A. Just a second, because I destroyed the... take, please.

Try to fix that. Thank you.

The second Rusal sale, yes.

Q. So we're now moving forward to June and July 2004.

A. Just a second. June/July, because the first -- my Lady, can you allow me to return back to the time. It was -- we start the sale of our 20 per cent to propose to Abramovich himself. It was the April meeting -- it was the April fixed meeting with Mr Curtis and Mr Badri in Georgia, it was April 2003; correct? And then we propose to Abramovich to sell it together to Deripaska and then --

MRS JUSTICE GLOSTER: Just wait, Mr Berezovsky, because you haven't actually been asked a question.

A. Yes, yes, sorry. I just try to remind for myself. I'm sorry, my Lady.

MR MALEK: So we're now dealing with the second Rusal sale.

A. Yes.

Q. It's right to say that you played no part in the conduct of the negotiations relating to the second Rusal sale

that took place in July 2004; that's correct, isn't it?

A. Just a second. It's the reason, my Lady, why I want to return back to this time. It was -- we sold it in -- I don't have any direct connection to this, you're correct. I didn't have any direct involvement in negotiation.

Q. And it's also right that you tell us that you didn't see any of the agreements that were entered into and nor did you see any drafts?

A. I didn't see -- I did not see any agreement; you're absolutely correct. I was just informed by Badri about that and it's happen finally when Abramovich without -- breached our agreement and sold himself 25 per cent; it's correct. I didn't have any involvement directly in negotiation of that. It was just Badri, as I understand, Mr Anisimov and Mr Abramovich -- Mr Anisimov assist him, Mr Abramovich -- Mr Deripaska, as I understand, and Mr Fomichev as well.

Q. And Badri kept you informed of any key developments in the negotiations?

A. Badri kept me informed, yes.

Q. We can see from the documentation that a number of persons were involved in the transaction, including solicitors Bryan Cave and Akin Gump, and it's right to say that you didn't have any contact with those

professionals, did you?

A. I don't remember that I have any connection to any professional except of -- I don't remember, maybe Mr Curtis. Mr Curtis just participate in negotiation of the last -- with Badri in June/July/August, yes.

I didn't remember any connections to any professional with that.

Q. Mr Curtis was dead by this time.

A. Yes, yes, and I already learned that.

Q. In the course of these negotiations in June and July, it's right to say that you never wrote a letter to anyone involved in the negotiations stating that you had an interest in the shares being sold?

A. I didn't write any letter; this I remember well.

Q. And it's also right to say that not only did you not write anything, you did not have any conversation with anyone concerned with the negotiations to the effect that you had an interest in the Rusal proceeds; that's right, isn't it?

A. No, I -- as I told you, I negotiate to Badri, definitely, and I negotiate, as I remember, to Mr Fomichev as well, who was involved in this negotiation, and I think that's it.

Q. And you didn't speak to Mr Deripaska, did you?

A. No.

Q. And you didn't speak to Mr Anisimov about this either?

A. Not at all.

Q. Now, as far as Mr Anisimov's involvement is concerned, were you aware that he had been approached by Badri to assist in the sale of the second Rusal tranche of shares?

A. What do you mean? Again, who was -- just a second. Could you help me with the last question. (Consults interpreter)

Yes, I knew that; I knew that Badri cooperate with Mr Anisimov. Moreover, as I understand, it was even some conflict of interest between Salford. Now, this is an investment company which Badri and me, we created, and Mr Anisimov, as I understand, came because, as I understand, Salford, they want to organise this deal happened, my Lady, and Anisimov -- my recollection is that Anisimov propose to Badri his help and Salford, on the other hand, propose their help, and it was some competition there. And finally, as I understand, Badri took a position of it's not -- the conflict was solved without my participation. It was Badri's decision that he will go with the help of Anisimov.

Q. By early 2004 it's right to say that Badri was in exile in Georgia and was --

A. I think so. Badri --

Q. -- unable to travel to Russia?

A. Yes, Badri left Russia in 2003, I think, in March, approximately, yes? And after that he stay long time in Georgia and finally he start to move, I don't remember, I think maybe 2004, 2005 even, and as I remember the first my meeting after long term we didn't see each other abroad, I mean, it happened in Israel. I don't remember, 2005, I think, like that.

Q. I want to ask you a question about Badri's relationship with Mr Deripaska. Mr Anisimov will be giving evidence to the court that Badri did not have a good enough relationship with Mr Deripaska to feel able to negotiate with him over the phone or to ask Mr Deripaska to visit Badri in Georgia.

Now, what you say in your evidence -- and perhaps you could turn to this, please. It's at D2, tab 17, at page 290 D2/17/290.

A. Just a second, 290, yes.

Q. At paragraph 420 you say this, and this is the penultimate sentence there:

"Badri had a good relationship with Mr Deripaska whom he had known for a long time."

A. Yes.

Q. I just want to focus on that. What made you think that Badri had such a relationship with Mr Deripaska?

A. First of all, Badri was different from me: Badri had good relations with almost everybody. At least given that when Badri died and a lot of people fight against of me, see me as an enemy, as I know, even FSB generals made sympathy to his widow, saying that they -- they have sympathy to him. And Badri definitely had very good relations with Deripaska.

Q. And that was in June and July 2004 as well?

A. All the time. Badri never broke any relations with anybody. This is -- was Badri way. It's completely different from my way, but it's so. And Badri had good relations with -- even with Abramovich he continued to have relations, understanding that Abramovich betrayed us. But Badri is like he was; it's different from me.

Q. Could you, Mr Berezovsky, be provided with H(A) volume 89, opened up at page 262 H(A)89/262.

A. This I can move a little bit away?

Q. Yes. You should have open in front of you a document headed "Boris Berezovsky: Asset Requisition":

"Visit to Georgia Tuesday 28th June... to Thursday 30th June 2005."

A. Just a second. Which is the line?

Q. Lines 3 to 4.

A. Line 3, yes.

Q. And at line 8 you see:

"The following is the proof of evidence taken from Badri Patarkatsishvili... during a meeting which took place at his residence..."

And those present included Andrew Stephenson, who was at Carter Ruck, your lawyer; that's correct, isn't it?

A. Yes.

Q. And also Jim Lankshear --

A. Yes.

Q. -- who was assisting Mr Stephenson, and he's at Streathers?

A. And what is that -- this is notes, yes?

Q. Yes, it's a draft --

A. This is notes -- draft notes of Mr Stephenson, yes?

Q. Well, I'm not sure which one. But it's notes of a -- it's basically a proof of evidence based on the interview that took place with Badri.

A. Just a second. Again, this is notes of solicitor, yes?

Q. Yes.

A. Thank you.

Q. Then if you turn, please, to page 272 H(A)89/272, at line 357, under the title "Sale of Rusal" and then at 363:

"RA entered into negotiations direct with Deripaska for the sale of his 25%. The sale to Deripaska went

through despite the agreement we had with RA that neither party would sell his 25% independently. After the sale had been closed, RA came to Tbilisi at my invitation to talk about the future."

And this is the sentence I would like to look at --

A. Which one?

Q. At line 366:

"I said to him" --

A. Just a second. "I said to him"; to whom?

Q. "I said to him that I did not want to stand alone with Deripaska."

So that's Badri --

A. Yes.

Q. -- saying that he did not want to stand alone with Deripaska.

A. Okay.

Q. "I wanted to sell."

Do you see that?

A. Yes, I see.

Q. Now, there's another passage:

"I did not want to deal with Deripaska direct."

Do you see that?

A. "I did not want..." Yes.

Q. And is that something that Badri had told you at the time?

A. I don't remember that at all.

Q. Now, if we then turn on to the next document --

A. Just I understood that Badri like that as far as Roman destroy our trust, he breach our trust, I understand that Badri position was to use Roman to help to organise at least what is possible to organise. And I think that maybe Badri understood that Roman feel not so comfortable what he have done and it's the reason why he think that involvement of Roman will help to make a deal happened.

And it's the reason why he maybe didn't want to stay face to face to Deripaska because in any case it was not possible to do because still Roman hold our shares or the second, let's say, 25 per cent. It means that without Roman, I don't think that Badri could do anything at that time.

Q. Could Mr Berezovsky be provided H(A) volume 95.

A. This is -- we are finished with that?

Q. Yes, it's finished.

A. Thank you.

Q. The question I have on this will come after this document. It's at page 247 H(A)95/247. These are the typed-up notes of Michelle Duncan --

A. When?

Q. -- of Cadwalader. She went to Tel Aviv and had an

interview --

A. 2007, yes?

Q. Yes, November 2007.

What I would like to look at with you is at 247.

A. Yes, I have it.

Q. And then if you look at 247 then halfway down, where there's a discussion that -- notes of this discussion, it's a column starting "Badri".

A. Just a second. Could you help me? (Consults interpreter)

Q. Where it appears to say that --

A. Just a second. In the middle, at the end; where is it?

Q. It's the middle of the page.

A. Yes. How it start, the sentence?

Q. "After this no divs, no relat w OD..."

Which I read as "no relationship with Mr Deripaska".

A. It's Badri said?

Q. Yes.

A. Yes. "After this no" --

Q. No --

A. No dividends.

Q. Yes, but no --

A. No dividends.

Q. Yes, and then it's the phrase:

"No relat[ions]..."

It appears to --

A. I can't comment that. I don't understand.

Q. Where it says:

"No relat[ionship] w[ith] [Mr Deripaska]..."

A. I don't understand what Badri mean, I don't understand what Michelle Duncan. Badri had good relations with Mr Deripaska.

Q. Well, isn't that consistent with what Mr Anisimov will be saying: that there was no relationship --

A. Anisimov -- definitely Anisimov will comment himself.

I think that Anisimov absolutely wrong saying that Badri didn't have good relations with Deripaska. He had good relations with Deripaska.

Q. Now, it's right to say that Mr Anisimov was not instructed by you to do anything, was he?

A. He was not instructed by me, definitely.

Q. And he wasn't negotiating on your behalf, was he?

A. Anisimov?

Q. Yes.

A. No.

Q. And it's right to say, as I think you've confirmed earlier, you had no conversations with Mr Anisimov at this time about the sale of the shares, did you?

A. About sale of the shares of --

Q. Rusal.

A. -- of Rusal? I don't recollect that.

Q. Now, the --

A. I just recollect that at the end of the deal or when we have done the deal, Badri told that he is going to buy shares in -- not in Metalloinvest, that time it was Mikhailovsky GOK, yes, Mikhailovsky GOK which produce -- okay. And he said that it will be deal which Anisimov brought for us and that --

Q. We're talking about Rusal, just about Rusal.

A. No, no, because, as I told you -- what is the question again, sorry?

Q. You had no discussions with Mr Anisimov in June or July about the sale of any Rusal shares?

A. I can't -- I can't recollect that.

MR MALEK: My Lady, I've got another 15 minutes. I don't know whether that's a convenient moment to take the break?

MRS JUSTICE GLOSTER: No, I'll sit on to 11.45.

MR MALEK: Right.

As far as the transactions developed, you've explained how you didn't see any of the contractual documentation. But if we could turn to your statement at D2, tab 17, at page 290 D2/17/90.

A. This finished with that now?

Q. Yes.

A. Thank you. Which page?

Q. Page 290.

A. Yes, I have it.

Q. Paragraph 423.

A. Yes.

Q. Your evidence is to the effect that there would be no formal recognition of your interest, where you say "my interest was not expressly recognised", that's line 9, and at line 4 you refer to this, because of your "continuing political involvement".

Now, it's right that at this time, in June 2004, at the time the negotiations were taking place, you were making statements to the press indicating that you had an interest in Rusal; that's right, isn't it?

A. I don't remember. Maybe. I don't remember.

Q. Could you turn, please, to H(A) volume 74, at page 123 H(A)74/123. There's a number of documents but I think one will be enough. It's at 123. This is a document, an article, June --

A. In Kommersant.

Q. Yes -- 2004, 2 June 2004. And then over the page --

A. Just a second. Do I have Russian version here? This one?

Q. Yes, it's at page 223.

A. 223, I have it.

Q. Sorry, 123.

A. 123, I have it.

Q. Then over the page at 124 there's a --

A. Just a second -- is it in Russian or it's in --

Q. This is in English.

A. Just in English, yes?

Q. Yes.

A. Okay.

Q. And over the page it is said that:

"... the... oligarch told Vedomosti that he and  
Badri... owned all 25% of [the] RusAl shareholding..."

A. Yes.

Q. And then it goes on to say that you hold the possibility  
of challenging the deal in court.

A. Yes, okay. I don't remember that, but it could be.

Q. It appears you did say that to Vedomosti.

A. Yes, yes. No, no, no, I just -- I don't argue.

Q. Now, what was the purpose of you making these statements  
to the press?

A. I don't remember that, what was the purpose.

Q. Well, was it because you were not prepared to assert  
a claim to the parties negotiating the deal because you  
wanted, in any event, the shares to be sold for whatever  
reason?

A. I don't remember that. I don't remember why I made this

interview. But I think I had some reason, but I don't -- I can't recollect it now.

Q. And you tell us that Mr Badri kept you informed on key developments relating to the negotiations?

A. It's correct.

Q. Did you know that Badri had confirmed on a number of occasions to those involved in the negotiations that you were not involved?

A. It's completely wrong. You know well that there are a lot of evidence that in the first stage, on the initial stage, my name mentioned many times as Badri and -- "B&B". And I was also presented some papers, I'm not so good in papers, but I was presented enough to understand that it was clear understanding of Roman Abramovich and Deripaska as well, and definitely Mr Anisimov as well, that I am a party of that.

And later on they tried to hide me, let's say, deeper and deeper, and finally Badri said, "Boris, they will not accept if your name will be mentioned even", and I said, "Fine". As I told you, what I was not ever informed from Badri, that Badri signed that he never -- it happened already later on when I have seen this paper, I think during disclosure somewhere, I don't remember well -- that Badri even signed the paper that he will not go to court to fight for that. This never

Badri mentioned me.

But all the rest, I was informed. I was informed that they start negotiation with clear pointing me as a part of the sale and later on, step by step, they require not to mention my name at all. And Anisimov knew well that even when we sold, it was our money, Badri and mine together, because we together invested in Metalloinvest this money -- not Metalloinvest, Mikhailovsky GOK this time.

Q. You said a moment ago, and the reference to the transcript is [draft] page 50, that you were:

"... also presented some papers, I'm not so good in papers, but I was presented enough to understand that it was clear understanding of Roman Abramovich and Deripaska as well, and definitely Mr Anisimov as well, that I am a party of that."

My question is this: those are not documents that you saw at the time, are they?

A. No, no, no, it's not documents; it was papers during the preparation for the trial. I just remind -- I just want to remember. It's just negotiations between parties and so, where my name was mentioned at the beginning as a party which are selling their second tranche of 25 per cent.

Q. Now, Mr Anisimov and Mr Streshinsky --

A. Who?

Q. -- Mr Streshinsky of Coalco will say that Badri told them that he was acting alone and that you were not involved in the deal. You're aware of that?

A. It's completely -- it's complete lie.

Q. It's a lie that Badri had that conversation?

A. Badri never had this conversation in front of Anisimov, in front of anybody from Anisimov, because everybody knew well that we were partners 50/50 and it's absolutely impossible that Badri could tell that to anyone.

Q. And it's also --

A. Moreover, if you return, as I propose to you, to papers where they start negotiation about selling our -- selling the second tranche of 25 per cent, it's absolutely clear that everybody, and first of all maybe Anisimov better than anyone, maybe Abramovich as well at the same level, understood well that who are really sellers of the second tranche.

Q. And it's right that in the contractual documentation Badri gave a declaration, a representation, a warranty to the effect that he alone held the beneficial interest in the shares being sold?

A. What I know, that Badri told me that they don't accept the position if I will be seen in any way. It means

that everybody what Badri have done, he have done alone, but with clear understanding that for himself and for the other, that he is doing that under mine and his interest. This is the point.

Q. Could Mr Berezovsky be provided with H(A) volume 84 at page 2 H(A)84/2. Now, this is headed "Beneficial Owner Deed of Release" and you can see that it's signed by Badri, Cliren, Rusal and Eagle. And if we then go --

A. Just a second. Signed by Badri?

Q. Cliren, Rusal --

A. Cliren? Just a second. What is that, Cliren?

Q. Yes.

A. Cliren, what is that?

Q. It's the second company.

A. And Badri?

Q. Is the first party. He's the beneficial owner.

A. I see. Okay, good.

Q. I'm not going to ask you anything about contractual provisions --

A. Yes.

Q. -- but I just want you to look at paragraph 3 on page 4 H(A)84/4, where it says:

"The Beneficial Owner" --

A. Just a second.

Q. "[Badri] represents and warrants to the Purchaser and

the Company that as of Completion" --

A. I'm sorry, I'm sorry, I didn't find that. Where is that?

Q. At the bottom of page 4, paragraph 3.

A. Just a second. Page 4, paragraph 3, yes.

Q. There's a representation and over the page there's an indemnity.

A. Ah, okay.

Q. And my question is: did you know that Badri had made a representation to this effect, that he was the sole beneficial owner?

A. I absolutely was surprised when I have seen the first time -- was referred to the first time that Badri signed an indemnity and it's really what he didn't discuss with me. If he would discuss with me, definitely I don't have clear, let's say, answer what I would do. My -- definitely my reaction was not to accept that.

And, as I understand, that time Nikolai already was not in jail. It's 2004: Nikolai was released in March, in March 2004. And I don't know what I would do.

Definitely I would not -- I think I would not accept that, yes? But what is the truth, that Badri never told me anything about that, never.

Q. So he never mentioned that he was signing this type of clause?

A. Never. He never mentioned me about that.

Q. Are you sure of that?

A. 100 per cent, because it's a principle position because, as I told you -- sorry, not you, as I told to Mr Sumption that I took a principle decision finally to go to court one day. It means that definitely it would not be useful if I would have that signed.

Q. Just two documents we would like you to look at. Can Mr Berezovsky be provided with J2, tab 2.11 at page 218 J2/2.11/218.

A. This I may take away?

Q. Yes.

A. Thank you.

Q. If we start off by looking at 171, so that you're aware --

A. I'm sorry, I still don't have that.

Q. I'm sorry.

A. Yes.

Q. Just behind tab 11 at page 171, J2/2.11/171, you'll see this is the first witness statement of Mr Mitchard.

A. Just a second. I have J2, flag 1, yes?

Q. J2 and then can you go to -- yes, J2, then 2.11, and it's at page 171.

A. Just a second, I have different one. J2/2, yes?

Q. J2/2.11/171.

A. Just a second. It's not J2/1, which I was given, no?

Q. J2/2.11/171.

A. J2/2.11. Just a second. Okay, 11. What is that?

Q. This is a statement of Mr Mitchard, who was a lawyer,  
a solicitor acting --

A. For Abramovich?

Q. Yes. What he says -- this is at page 218 J2/2.11/218,  
and what he says is --

A. Just a second.

MRS JUSTICE GLOSTER: Do you want page 171 or some other  
page?

MR MALEK: I want page 218 and I want to go to paragraph 78:

"It is notable that Mr Berezovsky gives no evidence about the July 2004 settlement arrangements in his own witness statement. However, in paragraphs 467 and 469 of Mr Marino's Witness Statement, Mr Marino effectively says that Mr Berezovsky's evidence is that Mr Patarkatsishvili misrepresented in the settlement documentation that Mr Berezovsky had no interest in Rusal Holding Limited. However, and again notably, this is not a matter which Mr Marino suggests Mr Patarkatsishvili himself confirmed at any time in any of the various interviews with him to which Mr Marino refers in his statement."

A. Just a second. Can I read, because I'm not so quick in

English like you. Just a second. (Pause)

Q. If we then go forward to J2/2.19, page 240  
J2/2.19/240. So go to tab 19, same volume.

A. Yes, same volume. Tab 9?

Q. 19.

A. We keep that, yes? We keep that.

Q. Yes. 19, so you're going the other way.

A. Okay. 19, what is that?

Q. This is Mr Marino's second witness statement in the  
Commercial Court action. Could you please read --

A. Just a second, I want to... Okay.

Q. Then go to page 257 J2/2.19/257. Do you have that in  
front of you?

A. Yes, I have -- just a second. Yes, I have it.

Q. And then at the bottom of 257 --

A. This is Mr Marino, yes?

Q. Yes.

A. This is Mr Mitchard and this is Mr Marino?

Q. Exactly, and we're looking at Mr Marino. Mr Marino was  
your solicitor, wasn't he?

A. Yes, yes, at that time.

Q. And what he says is this --

A. In which paragraph?

Q. Paragraph 94, at the bottom of the page.

A. Yes.

Q. "I am informed by Messrs Stephenson and Lankshear and by Mr McKim that Mr Patarkatsishvili explained the following to them..."

A. Yes.

Q. Then at (e), at the bottom:

"The sale documentation..."

A. Just a second. (e)?

Q. Yes. I'm going to read it aloud:

"The sale documentation was prepared by Mr Deripaska's lawyers. It contains no reference to Mr Berezovsky's name and it contains a warranty that Mr Patarkatsishvili is the beneficial owner of 25% of Rusal and an indemnity to cover the position if anyone else were to claim to have a beneficial interest in the shares sold."

A. Mm-hm.

Q. Then paragraph 95:

"I am informed by Mr Berezovsky that shortly before the sale of the 25% interest in Rusal to Mr Deripaska, Mr Patarkatsishvili discussed with Mr Berezovsky the proposed terms of the sale and mentioned the warranty and indemnity referred to above. Mr Patarkatsishvili explained to Mr Berezovsky that these terms were insisted on by Mr Deripaska. Mr Berezovsky agreed with Mr Patarkatsishvili's view that they had no choice but

to accept these terms -- in the same way as they had no choice but to accept the price offered -- or risk not getting anything for the interests."

A. I see. I don't remember that at all. I don't remember that I have seen -- only after I have seen the paper which Mr Patarkatsishvili signed. I was informed -- I got information that it was condition of indemnity and before I never knew about that. This is the point, and definitely it should be explanation why Mr Marino referring to me, saying that I was informed about that. Definitely I was not informed about that.

Q. So when Mr Marino, your solicitor at Addleshaw, says that, "[Badri] discussed with Mr Berezovsky the proposed terms of the sale and mentioned the warranty and indemnity referred to above", is that true or not?

A. Again, I'm sure that I never discuss that with Mr Marino because I did not know that. I knew that only the documents were disclosed, the first time I have seen them. I never have seen that before.

Q. Now, the reality is this, is it not, Mr Berezovsky: that you were content for Badri to tell everyone that he was the only person involved and it was only his interest that was being sold?

A. It will be absolutely clear from the papers which are disclosed that as -- from the very beginning everybody

understood who are real owners of that and that Badri and me the people who prepared to sell -- not prepared -- who want to sell, nothing more, and it's absolutely clear from all discussions and every parties knew that perfectly.

- Q. And it's right that you were content for Badri to contract on the basis that you had no interest in the Rusal shares; that's correct?
- A. I told Badri that he is absolutely free to do everything what he like to do. If they want to hide me, they may hide me. But, again, Badri never mentioned me that it will be indemnity to sell that shares, if we sell the shares. This is the point. Because as I told you -- Mr Sumption at the beginning, that from the very beginning I took a decision to go to court against of this threat and intimidation.
- Q. And you were content for Badri to give the warranty and indemnity that we've just --
- A. Absolutely correct.
- Q. And you knew that you had no interest in the Rusal proceeds and that is why you did not notify anyone of your interest?
- A. I knew that I had interest which presented by Badri and which later on we sold -- we invest to Metalloinvest. This my knowledge is. And my knowledge is that we have

25 per cent of Rusal on the equal basis with Mr Abramovich and Abramovich breached the trust. This my knowledge is.

Q. And the reason why you were saying to the press, the media, that you had an interest is that you wanted to remain on the stage and you wanted everyone to think that you had an interest, in exactly the same way as you'd done in relation to the KrAZ assets earlier?

A. Again, I don't remember the reason why I gave this interview. We may go into details and definitely take some time but I will remind. But the reality is what I described to you now: we owned on the equal basis with Mr Abramovich 50/50 Rusal and the rest Deripaska owned. And Mr Abramovich breach our trust and absolutely in terrible way because we start to discuss with Abramovich the first stage: as I told you before, it was the stage when we discussed to sell our shares to Mr Abramovich. It was the first stage. The second stage, to sell together to Mr Deripaska.

Abramovich didn't pay attention to that and one day just decide to sell himself. And I knew that, I knew that from Badri, which knew that from the news. It's incredible what Abramovich had done. And moreover Abramovich, as I understand now, already later, when it was disclosure, that Abramovich signed that the rest

25 per cent are not able even to influence -- to dilute the shares, what Abramovich signed in his agreement with Deripaska. But I think that Abramovich will have chance to explain that in witness box what he have done.

MRS JUSTICE GLOSTER: Right. I'll take the break now. Ten minutes.

(11.50 am)

(A short break)

(12.04 pm)

MRS JUSTICE GLOSTER: Have you finished, Mr Malek?

MR MALEK: I have finished, yes.

MR ADKIN: My Lady, I propose, if your Ladyship is happy for me to do so, to cross-examine from the back. If Mr Berezovsky can hear me properly and if your Ladyship can as well, it will save logistical difficulties.

THE WITNESS: Excuse me, my Lady, I'm sorry that I interrupt. Mr Adkin, it's not good --

MRS JUSTICE GLOSTER: You can't hear?

THE WITNESS: Yes, yes. Not correct.

MR ADKIN: Let me try that.

MRS JUSTICE GLOSTER: Is that any better?

MR SUMPTION: If Mr Adkin wants to come here and I'll replace him back there, I'm perfectly happy with that.

MRS JUSTICE GLOSTER: The trouble is he's got all his files there, haven't you? I was slightly hoping you were

going to move, if you needed to move.

MR ADKIN: I'm happy to move if that would assist. If Mr Berezovsky cannot hear me, then clearly I have to move.

MRS JUSTICE GLOSTER: How long are you going to be?

MR ADKIN: Not very long. Half an hour, I would think.

MRS JUSTICE GLOSTER: Right. Well, let's start, Mr Berezovsky, and if there's a problem, I'll take an early lunch and Mr Adkin will have to shift forward to the front, okay?

THE WITNESS: Thank you, my Lady.

Cross-examination by MR ADKIN

MR ADKIN: Mr Berezovsky, I want to ask you some questions about the acquisition of the aluminium asset which led up to the agreement of 10 February 2000. Do you remember that agreement?

A. As I told you, I read this agreement only after that. I did not participate in preparation of this agreement and definitely I just know that the basic -- that this agreement of buying assets in aluminium and, as I understand, agreement itself between parties --

Q. Mr Berezovsky, sorry to interrupt you. I don't want to ask you about that agreement at this point.

A. Yes.

Q. I just want to make sure you understand what I am asking

you about.

A. You ask me about agreement 10 February; correct?

Q. Correct.

A. Yes.

Q. Now, when it was suggested to you, do you recall, during cross-examination last week that Mr Abramovich had been approached in late 1999 by the vendors of the aluminium assets, you suggested in response that the idea was funny, so preposterous as to be amusing, and --

THE WITNESS: I'm sorry, my Lady, it's not good connection here.

MRS JUSTICE GLOSTER: Okay. I'll ask you to move to the front and I'll ask the usher to come and collect me when you're ready.

(12.06 pm)

(A short break)

(12.10 pm)

MR ADKIN: My Lady, I'm extremely grateful.

Mr Berezovsky, the question I was asking you was this: do you recall when it was suggested to you during cross-examination last week that Mr Abramovich had been approached in late '99 by the vendors of the aluminium assets that you responded by saying that the idea was funny and that Mr Abramovich was nobody at the time? Do you remember that?

A. I remember.

Q. Could you go to D2, tab 17, page 257 D2/17/257. This is your witness statement.

A. Yes.

Q. Would you mind reading paragraph 285, please, and 286.

A. 255?

Q. 285, please, and 286.

A. Yes, I remember that well.

Q. Yes, Mr Berezovsky. You say here, don't you, that by the end of 1999, Mr Abramovich's influence over the president and his circle had surpassed your own; that he went to Mr Putin's birthday party, which you did not?

A. Yes.

Q. Yes.

A. It's correct.

Q. Mr Berezovsky, you are not suggesting in these paragraphs that Mr Abramovich was a nobody, are you?

A. You are absolutely correct. And when I said that Abramovich is nobody, maybe it was not -- it was just part of the truth, because that time Abramovich really already took influence and he become known. Definitely not a lot of people understood that time. I just mention that his influential power just start to grow and he really was -- for many, many people he was nobody at that time and definitely his power, his power become

strong only after Putin sat in the -- came in the chair of president.

But it's not correct what I said, that Abramovich not -- was nobody. But his influence just start to grow that time.

Q. Mr Berezovsky, do you remember the oath that you took at the beginning of your evidence?

A. Sorry?

Q. Do you remember the oath that you took at the beginning of your evidence?

A. Definitely.

Q. Can you remember what it said about the truth --

MRS JUSTICE GLOSTER: I don't think we need to go into the terms of the oath.

MR ADKIN: Mr Berezovsky, Mr Abramovich was not a nobody at the end of 1999, was he?

A. I would like to insist that for -- from the common point of view, from the -- sorry, from the general point of view he was nobody and it's absolutely correct. For the small circle of people, it was clear understandable that his power is growing.

And again, I just want to remind you that his position which he took of growing of power, it's made by me because his request to introduce him to Tatyana, to Valentin and later on to Putin. It means that

I understood that he is growing, but nevertheless not a lot of people at that time really recognised that he's so powerful become.

And you mentioned correctly he was invited to Putin's birthday. What do you know? How many people knew that Abramovich have been on Putin birthday party at that time? I'm sure that even very small circle understood that he become close to Mr Putin.

Q. Now, you said last week, didn't you, that the vendors of the aluminium assets wanted to sell their assets to you and that the reason for this was because of their fear of political instability as a result of the upcoming elections? That was your evidence, wasn't it?

A. You're absolutely correct, my understanding.

Q. And you suggested that that's why they had come to you and you were prepared to accept the risk because you knew that you would win the elections, by which I assume you meant President Putin would win?

A. It's correct what you said. But on the other hand, as you know, in my witness statement as well, already in '98/'99 I was invited [by] people from aluminium industry to solve the conflict between them on the one hand and on the other hand with the governor of Krasnoyarsk, General Lebed. And I just want to remind you that in 2000 Lebed continued to be governor.

It means that they came to me because of two reasons: because my influential power on the federal level and my influential power on the regional level. What is absolutely important that you understand if you build business in some region and I think they came to correct address.

Q. Mr Berezovsky, I suggest that the explanation that you have given as to why the aluminium vendors came to you and why they sold their assets is nonsense because everyone knew, from late '99 at the latest onwards, that President Putin was going to win.

A. It means that you didn't know Russian history at all because when Putin was appointed prime minister, even leading Russian politicians said that it is absolutely nonsense, Putin never will be elected. And it was a common view if you open what politicians, at that time famous politicians, like Nemtsov, like Chubais, like many others, told about Putin: they didn't believe at all that he would win elections. Even when he was appointed as the acting president from 1 January, it was common point that definitely he will -- he could lose the election to Communist.

It's absolutely wrong to say that everybody understood that Putin will become president. Me, yes, I understood; maybe five people more understood well,

but not more.

Q. Mr Berezovsky, could you take up, please, bundle G(B) and turn to tab 1. Bundle G(B)1, sorry, I should have made that clear. Bundle G(B)1/1, tab 1.

I assume that you would accept that your Russian history expert knows about Russian history?

A. Sorry?

Q. I assume that you would accept that your Russian history expert knows about Russian history?

A. Definitely he knows. Much less than me, but knows.

Q. Would you look at paragraph 83.

A. Because I made the history; he just learned the history.

Q. Indeed.

A. Sorry?

Q. Would you look at paragraph 83, please; that's page 25 G(B)1/1.01/25.

A. Which paragraph?

Q. Paragraph 83.

A. The page 83?

Q. Page 25, that's on any of the numbering, page 25, and paragraph 83 on that page.

A. Yes.

Q. "Putin became Russia's acting President on the resignation" --

A. Just a second. Which is the --

Q. Would you please read --

A. Paragraph 83, yes?

Q. -- paragraph 83.

A. Yes. (Pause)

Okay.

Q. That's what your Russian history expert says.

I now want to show you what you say in your witness statement. Would you take up your witness statement, please --

A. Yes.

Q. -- at page 244, paragraph 228 D2/17/244.

A. Yes.

Q. Would you read that paragraph, please. (Pause)

A. Yes. And what of?

Q. It's a matter of record, isn't it, that the Duma elections were held on 19 December?

A. Yes.

Q. So what you're saying here is that it was already by this time that Putin would succeed President Yeltsin.

A. Yes.

Q. Is that paragraph true?

A. Again, it was -- again, where is that?

Q. Paragraph 228.

A. No, no, where is it that Putin succeed -- ah, here. It was obvious for me, it's correct. For me it was

obvious.

Q. It was obvious for you?

A. Yes, it's my statement.

Q. Can I remind you of what you said during  
cross-examination.

A. Yes, definitely.

Q. That was on Day 6, page 145 --

A. Could you show me that?

Q. I think you will need to get that online, Mr Berezovsky,  
on the screen, if that can be done.

MRS JUSTICE GLOSTER: Well, he'll need some help.

THE WITNESS: Yes, I have it. Thank you.

MRS JUSTICE GLOSTER: You can do it.

MR ADKIN: If you could get it, Mr Berezovsky, that's fine;  
if you can't, then I'm sure you can be helped.

THE WITNESS: Yes.

MR ADKIN: At page 144 you were being asked by Mr Sumption  
about your relations with --

MRS JUSTICE GLOSTER: Hang on. Let him get the transcript  
up.

THE WITNESS: Page 44?

MRS JUSTICE GLOSTER: Day 6, page --

THE WITNESS: Yes, I have it. 44?

MR ADKIN: Page 144 we'll start at.

THE WITNESS: Yes, okay. Yes.

MR ADKIN: I'm using the page numbers -- I assume it's the  
manuscript page numbering. I'm looking at it on the  
screen.

MRS JUSTICE GLOSTER: If you look at it on the screen, the  
page number is the number on --

MR RABINOWITZ: He has a hard copy, my Lady.

MRS JUSTICE GLOSTER: Fine.

MR ADKIN: At line 21 of page 144, you are asked a question  
by my learned friend Mr Sumption and would you read,  
please, from that to page 145, line 8.

MRS JUSTICE GLOSTER: That's starting, "And your relations  
with Mr Putin as I understand it...?"

MR ADKIN: My Lady, yes.

THE WITNESS: Where I should start? Line -- page 144 or  
line which one?

MRS JUSTICE GLOSTER: Page 14 --

THE WITNESS: 144, yes, and which line?

MR ADKIN: Line 21, please.

THE WITNESS: 21 line.

MR ADKIN: 21, and you should see there the question --

THE WITNESS: Yes, thank you, now I see that.

MR ADKIN: Hold on a moment, Mr Berezovsky. I'm just going  
to tell you what you should be reading. You should see  
at line 21 the question:

"And your relations with Mr Putin, as I understand

it, were initially very good..."

Do you see that?

A. Yes, I see that.

Q. If you would read on, please, from there to page 145,  
line 8. (Pause)

A. Yes, it's correct.

Q. The reason you said that, Mr Berezovsky, and you didn't suggest it was only your own views, and the reason you said what you said in your witness statement, to which you've just been taken, is because when you were giving your evidence you were agreeing, weren't you, with what your expert has said, which is that it was obvious to everybody that from late 1999 President Putin was going to win?

A. You're absolutely wrong. It's terrible how you are wrong because I tell you that even to the last moment when presidential campaign start, it was up to the last day of election campaign, it was a lot of doubts for many, for majority, the biggest majority, that we'll have the second round. And in second round, what we afraid, that in the second round Communists really took -- had chance to win.

It means that it's -- again, it's my direct speech and it's absolutely correct what I'm saying here: for me it was obvious, definitely. For the others it wasn't so

obvious. Like, for example, I'm sorry, my Lady, to say that for me in '96 also it was obvious that Yeltsin win, having rating 5 per cent against of Communists. But it was -- and it is the reason why Mr Soros said that I will be killed next day after Communists will take power, but I was sure that it's wrong. Exactly the same situation here.

And believe me, Mr Adkin, believe me that I'm really expert on Russian politics.

- Q. I'm going to suggest to you that your explanation for your previous evidence and for the aluminium sale and your involvement in it is completely false.
- A. It's completely wrong what you tried to present here, and you may be wrong(?).
- Q. Now, Mr Berezovsky, you gave evidence last week also, didn't you, that you assumed obligations to the vendors of the aluminium assets under the 10 February 2000 agreement despite the fact that you were not a named party to that agreement?
- A. Yes, it's absolutely correct that my role was from the beginning --
- Q. Mr Berezovsky, forgive me. I'm not asking you now about your role; I'm just reminding you of your evidence and I want to ask you some questions about that evidence.
- A. Which kind of obligation you mean?

- Q. Well, presumably very significant obligations: for example, to pay for their assets.
- A. Definitely I did not. Definitely I understood, after Roman Abramovich calculate money and said we have enough money, it was already obligations of Mr Abramovich, but in front of people who took -- who had proposed me that. I gave answer only after Abramovich said that we want to pay -- to buy.
- Q. Mr Berezovsky, you said you assumed obligations under that agreement. What obligations do you think you assumed?
- A. I think that my obligations was that we are proper buyers, that we are prepared to take risk and to buy that and that we able to pay for that. That's it.
- Q. I understand. So were you assuming the obligation to pay?
- A. After I met Abramovich and he said that he like idea to buy these assets.
- Q. Mr Berezovsky, forgive me, I'm going to ask the question again. Do you say under the 10 February 2000 agreement you were assuming an obligation to pay for the assets?
- MRS JUSTICE GLOSTER: When he says "you", he means you personally. That's the question that's being put to you.
- A. Definitely people understood that I'm one of the owner

of Sibneft. They didn't have any doubts. And it's the reason why they -- when I said that we buy that, they understood that I took this obligation in front of them.

MR ADKIN: And it's right, isn't it, that the Reuben brothers, who were on the other side of this transaction, were not Russian, were they?

A. As I understand, they are English.

Q. They are English. And it's also right that the Trans-World Group was a metals trading company based in the UK, isn't it?

A. I don't know that.

Q. And it is also right, is it not, that you were at the time of this agreement a highly controversial figure and that several public accusations of dishonesty had been made against you?

A. Could you tell that in more details?

Q. Well, you'd been charged with fraud, hadn't you, Mr Berezovsky?

A. That time, in December '99?

Q. Well --

A. I think you're absolutely wrong because it's -- again, the same story was Aeroflot and that time the investigation against of me was closed because I support Putin and I don't know who made this happen. But that time no one, as I remember, no one charge was against of

me.

Q. No, the charges had been dropped in advance of this agreement, hadn't they, in 1999? But you had previously been publicly accused of fraud, hadn't you?

A. Nobody paid even attention to that.

Q. Nobody paid any attention to that?

A. Me as well.

Q. That was completely ignored, was it, publicly?

A. Absolutely.

Q. Nobody --

A. Because I knew from the beginning that it's completely falsified.

Q. It would not have had any impact on the way people behaved, would it?

A. You know that if people came to me that day, it did not influence at all for that people. We know the answer.

Q. I'm sorry, I didn't catch that.

A. The fact that people came to me and gave this proposal demonstrate that they did not believe in that.

Q. I see.

A. Good.

Q. So it's your evidence, is it, that nobody with whom you contracted in February 2000, or with whom you say you contracted, was in the least bit worried about the fraud allegations that have been made against you?

A. At least nobody mentioned me that. I don't know what they feel. They never mentioned me and I'm sure that if they felt like that, they never came to me.

Q. Why couldn't the agreement with you be in writing then, Mr Berezovsky?

A. Many times I gave answer to this question. I just can repeat the same: because of -- first of all because of request of Mr Abramovich and I accept his worry that we -- I still in very dangerous political -- in very dangerous area and as far as I trust him, I accept his position and, you know, in spite of Badri. As I told you, Badri fight -- not fight -- Badri propose that he will manage the assets, the company, aluminium, and definitely if Badri took this responsibility, it's absolutely clear that I'm the same.

And again, my argument was because of two reasons: because of also political involvement of Badri; but maybe the main reason, because that time, in front of election, presidential election, I need to be sure that the main TV channel of Russia will play their decisive role in elections on our side.

Q. What has that got to do with your agreement? What has that got to do, Mr Berezovsky, with not having an agreement in writing?

A. I just told: because Roman Abramovich, who I trust,

insist that it should be just oral agreement; that's it.

Q. What has the running of ORT got to do with not having an agreement with you in writing?

A. I'm sorry, I had even more exposure position than Badri and Badri also had exposure position running ORT. We discussed a lot about that. And it's never changed in my understanding that we have a lot of reasons. And moreover, in '99 I understand -- on '99 and beginning of 2000 I understood much better than in '95/'96 when I also accept position of Roman that we shouldn't be visible.

Q. Mr Patarkatsishvili was named on the agreement, wasn't he? So your evidence is, is it, that Mr Patarkatsishvili, who was running ORT --

A. Yes.

Q. -- and publicly known to be doing so, could have his name on the agreement; but you, who were not running ORT, could not? Is that your evidence?

A. We already -- I already answered to Mr Malek to the same absolutely question. The point is that Badri also had a lot of reasons but Badri risk was much less than my risk, on the one hand. On the other hand, as I told you again, answering to Mr Malek, to his question, Badri was very flexible, very flexible person, and he had good connections even with those who I have been enemy.

Q. What reason do you give, Mr Berezovsky, as to why these western businessmen were prepared to accept from you very significant contractual obligations without having them in writing?

A. I think because they understood Russian history -- Russian reality a lot. Because it was not just businessmen who came just months ago to Russia. Mr -- brother -- Reuben brothers, they had big experience in Russia and they learn a lot about Russian history that time and they understood that my position, in spite of very exposure on the one hand, on the other hand, what I predict, it's happened.

And I think that they understood that I'm the person, first of all, who really -- I take obligations to buy, I deliver these obligations, because they knew well that I'm -- I own Sibneft. It's just today, after ten years, Abramovich decide to insist that I haven't been shareholder of Sibneft, I didn't own Sibneft. But that time everybody understood that. I have a lot of money to pay for that.

Q. I'm going to suggest to you that if there was any truth in your claim to have been a party to the contract made with those people in February 2000 --

A. Yes.

Q. -- you would have been named as a party to that

contract?

A. The reality is different.

Q. Mr Berezovsky, I want to move on to the merger which you say you participated in with Mr Deripaska and I want to move on in particular to the meeting or meetings which you say you had with Mr Patarkatsishvili and Mr Abramovich before the Dorchester Hotel meeting.

A. Yes.

Q. Now, do you recall it was your evidence last week that the three of you -- that is you, Mr Patarkatsishvili and Mr Abramovich -- made an agreement some time before the Dorchester Hotel meeting about the proposed merged aluminium business?

A. Just a second. Could I take --

Q. You can put that away.

A. Yes.

Q. Do you recall giving evidence on that subject?

A. Yes, before --

Q. And do you recall also that it was your evidence that the three of you agreed that the arrangements made between the three of you would be governed by English or British law? And I'm not taking a point on any difference between the two.

A. Yes.

Q. And do you remember giving evidence that the three of

you agreed that you would not sell without the consent of the other two?

A. Yes. Yes.

Q. And you also say in your witness statement, don't you, that it was agreed that Mr Abramovich would hold your interests and those of Mr Patarkatsishvili on trust?

A. It's correct.

Q. Yes.

A. Moreover, I also presented my surprise because --

Q. Mr Berezovsky, I haven't asked the question I want to ask you yet.

A. Sorry, no.

Q. Your case, as I understand it, is that you did not make any written record of the agreement between the three of you. Is that right?

A. It is right.

Q. And is it also your case that you did not consider it necessary to make such a written record because you completely trusted each other and it did not cross your mind that you would fall out?

A. No, it's completely wrong. It's wrong because I would -- definitely I want to have written agreement. And moreover, as you know well, that we start to move to this direction, starting creating the different structures on the west which fix in proper way our

relations.

But the situation was, like I was describe many times already, that it was really risk for me to show up. I accept -- it was not my idea, it was idea of Abramovich, with whom we agreed that he manage. If he will feel comfortable doing like that, I accept that because I trust him; you are correct.

Q. So you did trust Mr Abramovich? Remember the question, Mr Berezovsky.

A. I did trust Mr --

Q. My question was -- well, let me put it differently so it's easy.

A. Yes.

Q. Did you completely trust at that time Mr Abramovich and Mr Patarkatsishvili?

A. 100 per cent.

Q. And did it ever cross your mind that the three of you might fall out about this and end up in court?

A. Again, my understanding of my relations with Mr Patarkatsishvili and Mr Abramovich was absolutely the same: I trust them 100 per cent. And moreover, it was very comfortable for me because I may spend my time for the purpose which I like to spend. And this is the reason on the one hand I trust; on the other hand, they helped me to do my business and they made their

business.

Q. Mr Berezovsky, please can you help us with one thing.

If you completely trusted Mr Abramovich and Mr Patarkatsishvili and if it never crossed your mind that you would end up in court, why was it necessary for the three of you to agree a system of law to govern your relationship?

A. It's clear again why: because one day -- as I told you, at that time we already start to think about that: that one day I want to create absolutely structure which will not depend on Abramovich, which will not depend on Badri, but it takes time.

And it's the reason why already that time, understanding that Russia is political -- it's not stable enough even after the coming elections, which, as I told you before, I was sure that Putin will become president, but it doesn't mean that Russia will become stable just in one second. And it's the reason why we discuss about the proper legal way finally to have our interest, to fix our interest.

Q. Mr Berezovsky, you suggest that you might have wanted at some stage in the future to put everything into some sort of western structure. That is not what I'm asking you.

A. Mm-hm.

Q. What I'm asking you is about your evidence --

A. Yes.

Q. -- that the three of you agreed that your arrangements would be governed by British law.

A. Correct.

Q. That is your evidence, isn't it?

A. Correct. Correct.

Q. Why did you need to make that agreement?

A. Because, again, because we step by step move to the proper direction, to the final stage. It means that what we have done in '95/'96, when we just have oral agreement in Russia and so, and I understood that Russia is not the place where it is simple to realise your rights; it means that I decide step by step to move to much more protected area. That's it.

Q. Mr Berezovsky, an intention to put assets into western-style trust structures would not require, would it, the three of you to agree a system of law to govern your arrangements?

A. I already mentioned, absolutely correctly, that because of my personal experience on the one hand and because of the Mr Anisimov relations and influence and so-so on Badri on the other hand, I had absolutely clear understanding of British way of law. That's it.

Q. My suggestion to you, Mr Berezovsky, is that if you

trusted each other enough not to write your agreement down, it was entirely unnecessary to agree a system of law to govern your agreement.

A. Your suggestion is wrong.

Q. The only reason why you would have needed to agree a system of law to govern your agreement, I suggest, is if you contemplated that you might fall out and that agreement might not be honoured. That's right, isn't it?

A. Okay, I gave my answer: your suggestion is wrong.

Q. And the suggestion that the three of you sat down, without writing anything down, and agreed that your relationship -- that your agreement would be governed by British law is a nonsense, isn't it?

A. It's not.

Q. Now, it was your evidence last week, wasn't it, that you knew almost nothing about English trusts at the time of making what you say was your agreement with Mr Abramovich and Mr Patarkatsishvili? That's right, isn't it?

A. No, I knew -- definitely I didn't know that time that settlor, then the protector; on this level how it's structurised I didn't know. I just knew that many people start to use the trust. I understood well that I gave my shares to Roman as a, I would like to say,

nominee, yes? And he will hold my shares and anytime I'd like to get it back, by my request, he will return me back. That what I know.

We discussed last time that really, for me, the governing -- the law of what we discuss, Virgin Islands and so, I have in my mind that it's English law like that, and I had a little bit messed what we are discussing and what is separate for trust.

But again, I understood well that it is western protected structure what is the most important for me.

Q. Yes. You understood, did you, that it was a western protected structure?

A. Yes.

Q. My question is different. Did you understand what the English legal consequences were of a trust?

A. No. No.

Q. No?

A. No, I didn't understand.

Q. And you didn't take --

A. I understand that British -- I'm sorry to say -- even more British protected structure, as I explained last time, because I was impressed and I stressed many times the experience which I personally have.

Q. You took no advice, did you, from English lawyers on the agreement that you say you made with Mr Patarkatsishvili

and Mr Abramovich?

A. I didn't get any advice.

Q. You didn't get any advice?

A. At least I don't remember that I took any advice.

Q. Presumably therefore, knowing nothing about the legal consequences of English trusts and not having taken any legal advice from an English lawyer, it's your case, is it, that you did not know what the consequences were of what you were agreeing under English law?

A. I knew well that this structure is more protected than any structure in Russia because many people already had experience, as I understand -- which I didn't know, but as I understand -- who also use these structures. Me personally, I didn't have this experience, but we already use. And it's absolutely clear from my conversation at Le Bourget that my understanding of western protection is perfect enough.

Q. Have you ever come across a structure such as the one that you are describing which wasn't written down?

A. No.

Q. No. Did you know -- well, you've already given evidence, haven't you, that you did not know what the consequences were of the trust that you say you were agreeing?

A. I knew the consequences. I knew that if I -- if better

protected that just verbal agreement which were made in Russia with Mr Abramovich on the one hand. On the other hand I knew that many people start to use that structures; only because of reason that they don't feel protected in Russia, they start to use trust structure abroad. And if you go into statistic what Russian businessmen were doing that time and how they moved from Russia to the west, you will recognise clearly that I was just one of them. Nothing more, nothing less.

Q. I'm going to suggest to you, Mr Berezovsky, that you had no idea, as I think you've admitted, as to what the legal consequences were of an English trust --

A. I --

Q. -- and therefore that your suggestion you agreed to form an English trust relationship without knowing what the consequences of that agreement were is completely absurd.

A. You see, you know the logic, if assumption, is not correct; and implication even correct, that conclusion could be wrong or could be correct. Your case, the conclusion is wrong.

Q. Now, you say, don't you, that Mr Anisimov had told Mr Patarkatsishvili that you should make the arrangements between yourself, Mr Patarkatsishvili and Mr Abramovich in a very precise British law way. That's

your evidence, isn't it?

A. Yes.

Q. I suggest to you that if it had indeed been said that you should make your arrangements in a precise British law way, you would have understood that to mean that you should write them down?

A. We discussed this point with Mr Sumption the last time and Mr Sumption accept the position that verbal is enough, that it's exceptional but it's enough. And maybe you were not present at that time here.

Q. Did you know that? Did you know that?

A. No, definitely --

Q. Did you have any idea?

A. I just said, I did not know that, I just understood that English law more comfortable for me, yes? And definitely later on only I learned that shake hands means more than Russia. That time I didn't know that. But I knew well that even in Russia it's valued. It means that in England definitely it was valued with much more power than in Russia.

Q. My question was a different one. Did you know in March 2000 that you could create a trust under English law without doing it in writing?

A. My understanding here is that I can.

Q. You knew that, did you?

A. My understanding, that I understand that.

Q. You understand that. What do you mean, Mr Berezovsky?

A. Yes, I understand that. Sorry?

Q. What do you mean by saying you understand that?

A. It means that I understand that if we have verbal agreement with Abramovich and Badri, between the three of us, and if we agree that it will be trust, I can go to court and to insist that I gave Mr Abramovich my shares to hold. This was my understanding.

MRS JUSTICE GLOSTER: The question that Mr Adkin put to you was:

"Did you know in March 2000 that you could create a trust under English law without doing it in writing?"

A. Yes.

MRS JUSTICE GLOSTER: And your answer was:

"No, my understanding here is that I can."

Can you just explain to me, did you know in 2000 or is it just as a result of knowledge you subsequently acquired?

A. I didn't have knowledge from lawyers about that. My understanding was --

MRS JUSTICE GLOSTER: Well, looking first of all in March 2000, what was the state of your knowledge then?

A. Ah, looking back to March --

MRS JUSTICE GLOSTER: Yes.

A. My understanding was that it's enough verbal agreement with Mr Abramovich about trust, that I can go to court and to prove my rights. This is the point.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: Mr Berezovsky, I'm going to suggest to you that that's not what you said and that was not your understanding at all.

A. You may -- you may have your personal vision. I just present my understanding and my vision that time.

Q. You had a good understanding of English law, did you, Mr Berezovsky?

A. Again, I didn't understand in details English law. I just understood well that, if I have a verbal agreement with Mr Abramovich and saying that we discuss in terms of British law, it's enough for me to go to court. This is my understanding.

Q. So if it was to be suggested to you that you had been told that you should write -- that in order for something to be in a precise British law way, it should be written down, that would be untrue, would it?

A. Again, I just understood that it's enough for me to have verbal agreement in proper British -- in precise British law way. That's enough for me to understand that I can go to court. This is the point.

Q. That's something Mr Anisimov told you, is it?

- A. I told you that I had discussion with Mr Anisimov but I did not learn this from Mr Anisimov.
- Q. Well, who did you learn it from?
- A. I talked a lot with Badri about that and, more than that, I learned that from the experience of others, Russian, who moved to fix the deal in frame of British law. As far as verbal agreement, again, I tell you that I have clear understanding like I have right to go to court. This is the point.
- Q. Mr Berezovsky, moments ago, you told us that you hadn't come across any single British law or other trust that wasn't in writing, so where did you get this understanding?
- A. My personal experience with British court confirm me that here the system of law is much more protected for people than in Russia. And it means that my understanding was, again -- and again just to stress that -- that my understanding was clear that I can go to court to fight for my interests. This is the point.
- Q. Mr Berezovsky, by this time, as I understand it, your experience of the English courts was a defamation case against Forbes, that's right, isn't it?
- A. It's absolutely correct but --
- Q. That's got nothing whatsoever to do with oral or written agreements, has it?

A. Mr Adkin --

Q. Do you agree with that?

A. You are absolutely correct.

Q. And it's got nothing whatsoever to do with trusts either, has it, Mr Berezovsky?

A. In the court, nothing.

Q. No, and you told us moments ago that the only experience that you'd had of trusts of a western style was that they were in writing, yes?

A. Sorry, again?

Q. You told us moments ago that the only western style trusts you had come across were in writing?

A. No, again, I didn't have my personal experience with trust at all.

Q. You had no personal experience in trusts at all?

A. I didn't have my personal experience. I knew that, later on, that many companies which were created in offshore zone were created like a trust but I didn't have my personal experience. I had my personal experience just that I start to believe in this system in general. This is the point, not because of trust exactly.

Q. Mr Berezovsky, I suggest to you that the evidence that you have just given about understanding that English law trusts did not need to be in writing at the time is

completely fabricated. You have just made it up.

A. It's completely wrong your conclusion.

Q. You were asked last week about the instructions -- sorry, you were asked to explain why you had not said that you'd agreed British law to govern your arrangements with Mr Patarkatsishvili and Mr Abramovich in relation to Rusal until after Mr Abramovich issued his strike-out application against you. You were asked about that.

A. I told absolutely precisely. The first time when I was asked about that, I gave clear answer.

Q. Yes, and your answer was that you simply hadn't been asked about it by your lawyers. Do you remember that answer?

A. Yes, correct.

Q. Is that true?

A. Is it true? It is true.

Q. Would you please go to D1, tab 7 D1/07/92. This is the witness statement of Michael Lindley. He is married, as I understand it, to Ms Nosova?

A. Correct.

Q. And he has been instructed by you on various matters. He's a solicitor.

A. When it was? May 2011?

Q. This is the witness statement that he has produced in

this action. He explains at paragraph 2 --

A. Just a second, when he produced this statement?

Q. In May 2011, you see that from the top right-hand. He explains at paragraph 2 that he's making the statement --

A. Just -- in the paragraph?

Q. In paragraph 2. You can take it from me, Mr Berezovsky, he explains that he's making the statement because of the order of my Lady that you produce certain notes and records of meetings you and your lawyers had with Mr Patarkatsishvili about the case against Mr Abramovich.

A. Yes.

Q. At paragraph 10 D1/07/94 he explains that he attended some of those meetings in June 2007.

A. Yes.

Q. And in fact we know from the witness statement of Mr Stephenson of Carter Ruck solicitors, who initially acted for you in your claim against Mr Abramovich, that the purpose of those meetings was to discuss the claim against Mr Abramovich so as to ensure that your solicitors had sufficient information to prepare the particulars of claim.

A. Yes.

Q. That's right, isn't it?

A. Yes.

Q. For the transcript the reference to Mr Stephenson's evidence is D1/11/255, paragraph 31. Would you please go, Mr Berezovsky, to paragraph 17 of the statement you're in, which is Mr Lindley's statement D1/07/95.

A. 17?

Q. 17, where he talks about a meeting that he attended on 13 June at Mr Patarkatsishvili's house.

A. Mm-hm.

Q. It was attended, he says at paragraph 18, by Mr Stephenson who was of Carter Ruck, your solicitor, Mr Geoffrey Gruder who was your counsel, yourself, Mr Patarkatsishvili, Ms Nosova and Dr Dubov.

A. Yes.

Q. Yes?

A. Yes.

Q. At paragraph 19, he refers to notes that he took --

A. Just a second. Paragraph 19?

Q. Paragraph 19, he refers to notes that he took of that meeting on 13 June.

A. Mm-hm.

Q. And could you please be passed bundle H(A)94, which is where we find those notes. There are typed-up versions of those notes at page 212 H(A)94/212 --

A. Just a second. What I can move away?

MRS JUSTICE GLOSTER: He has too many files there.

MR ADKIN: I think you can move everything, please, but D1  
and H(A)94.

A. D1. And my witness statement as well?

Q. I think you can remove your witness statement as well  
although we may need it back but you can remove it for  
the time being.

A. And H(A)94, where to open?

Q. H(A)94, well, there are certain -- if you turn to  
page 212 H(A)94/212, this is -- we see from  
Mr Lindley's statement, if you keep that open as well --

MRS JUSTICE GLOSTER: He's given that back now, has he?

MR ADKIN: You should still have D1, I hope.

A. D1 I have.

Q. Yes. We see from Mr Lindley's statement at paragraph 19  
that this is a copy of the notes that he took of the  
meeting on 13 July 2007.

A. Mm-hm.

Q. There are redactions and these redactions -- you will  
see blanked-out sections -- were made by your  
solicitors.

A. I don't know anything about that.

Q. Well, you may not therefore recall but you can take it  
from me that we obtained an order from Mr Justice Mann  
for your solicitors to provide us with unredacted

versions of these documents --

A. Yes.

Q. -- on the basis that privilege against Badri could not be maintained. I want to put these unredacted versions to you and I've raised this with your solicitors. Can I hand up -- my Lady, these will be uploaded on to the database. (Handed)

MRS JUSTICE GLOSTER: Mr Rabinowitz, is there any objection to the redacted passages being put to --

MR RABINOWITZ: The unredacted -- there is no objection to my learned friend putting the unredacted passages to this witness.

MR ADKIN: I'm grateful.

My Lady, it's proposed to put these behind the redacted versions of the same documents. Now, some parts --

MRS JUSTICE GLOSTER: Well then, in that case they need to be hole-punched please.

MR ADKIN: We will make sure that that's done at lunch.

MRS JUSTICE GLOSTER: I think what I'll do is I'll rise now so that that can be done and I'll sit again at 2 o'clock.

(12.58 am)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Adkin.

MR ADKIN: My Lady should have two inserts into the trial bundle: they're both to go into bundle R(D), one behind tab 24 and one behind tab 25.

MRS JUSTICE GLOSTER: I don't have the hard copies, I operate on the electronic system. So no doubt they will be loaded on to that in due course.

MR ADKIN: We will make sure of that.

What they are, Mr Berezovsky, is unredacted portions of the documents behind those two tabs. Do you have bundle R(D)?

A. No, I have redacted, I don't have unredacted.

Q. Here we are. You can put away the H bundle that you've got there and take up, please, bundle R(D) and turn to tab 24 R(D)2/24/30.

Do you have that? Tab 24, and you should have a document the first word of which is "Meeting". Yes?

A. This is -- again, remind, please. This is meeting of who?

Q. This is a meeting which was attended by you, Mr Patarkatsishvili, Mr Lindley, Mr Jeffrey Gruder, your counsel, Mr Andrew Stephenson, your solicitor, and I think it's also said by Natalia Nosova.

A. That was when?

Q. That was a meeting, you will see from the top of the

page I just referred you to, on 13 July 2007, and it's a meeting which your solicitor --

MR GILLIS: June, it's a typo.

MR ADKIN: I'm so sorry. 13 June 2007. I'm confident nothing turns on that. But it's either 13 June or 13 July 2007.

That is a meeting which your solicitor, Mr Stephenson, says was set up or at least was conducted in order to obtain information to finalise the particulars of claim in your action against Mr Abramovich.

A. Mm-hm. It's strike-out, yes? It's that?

Q. No, the particulars of claim: that's your pleaded case in your action against Mr Abramovich which you issued --

A. Before strike-out?

Q. No, your claim. The action, the claim that you have brought, and it is now being tried, against Mr Abramovich. Yes? Do you remember that that claim was initiated with a written document --

A. Yes, yes, I understand. Letter -- the first was letter of --

Q. Yes.

A. Yes, clear.

Q. And if you would turn, please, to page 37.

A. Of --

Q. This is using the R(D) numbering.

A. Of 24, yes?

Q. Yes, so tab 24 and it's R(D)2/24/37.

A. 37, yes?

Q. Yes.

A. Thank you.

Q. You will see there reference to -- or a notation of the word "Sibneft", various discussions.

A. Yes.

Q. And over the page at the top you will see the words:

"Law which govern agreement

"- What law governed --"

A. Just a second. On page 37, yes?

Q. On the top of page 38 you will see the words:

"Law which govern agreement.

"- What law governed --"

A. Yes.

Q. Now, the reason I've shown you page 37 is because

I don't want to mislead you, but I am going to suggest that the question of what law governed your agreement in relation to Sibneft was under discussion at this meeting.

A. I can't comment that, definitely I don't remember that.

And again I just want to repeat the same point what we discussed many, many times: when I was put direct

question, I gave direct answer. I don't remember that here was direct question which law and so-so.

Q. And if you turn now to the new page, which is page R(D)2/24/41.001. It may be that you can be helped with that. Do you have that?

A. Yes.

Q. This is the unredacted portion of the documents which your solicitors had previously redacted.

A. Yes.

Q. I want to look at the unredacted words.

A. Yes.

Q. They start five lines down:

"Jurisdictions -- resident in the UK 1 June '07."

A. Just a second, seven lines --

Q. So five lines down from the top, it starts with the word "Jurisdictions". Do you have that?

A. Yes.

Q. Then the word "Contract", then the words:

"Sibneft contract governed by English law."

Then the following words:

"Rusal important. BB -- place where the deal was done."

A. And what?

Q. What I'm going to suggest to you, Mr Berezovsky, is that it is clear that you were discussing the governing law

of the contracts upon which your claim would rely and one of those contracts and one of the things in respect of which you were discussing the governing law was Rusal.

- A. Again and again, first of all, definitely I don't remember that, yes? It's like Michael Lindley reflect or put on the paper what he think is a point for discussion but, my Lady, again I -- first of all, I don't remember that.

The second: again and again, when I face the question which laws, I give direct answer. This is the point. I don't know why my lawyers all the time put that between lines or somehow, I don't understand that. The point is absolutely clear. Like you also today was asking me -- okay, I don't want to return back, sorry.

- Q. Well, can you help us with this: are you able to explain why whoever wrote this document, Mr Lindley, considered that it was important in relation to Rusal where the deal was done, the place where the deal was done?

- A. I don't have any idea of that. I don't have any idea of that.

- Q. Well, I'm going to suggest to you that the reason that was written down is because the issue of governing law in relation to Rusal was raised at that meeting.

- A. Again, I don't remember that first of all and I don't

know why Mr Lindley wrote like that. It's notes.

I don't know. I haven't seen that even until you show me now.

Q. Well, can I show you then, please, the document behind tab 25 R(D)2/25/45. It's the next tab along. Perhaps you could be helped with that.

A. Yes.

Q. This is a single-page document: it's an attendance note of the same meeting drafted by Mr Lindley.

A. Yes.

Q. And he says he drafted it shortly after the meeting?

A. Yes.

Q. And you'll see that the first three paragraphs have been redacted and I want to ask you to turn the page, where you should find the unredacted version of the same one-page document. Do you have that?

A. The next page?

Q. Yes.

A. Okay.

Q. Do you have that?

A. Just a second. It's page 45.001; correct?

Q. Yes.

A. Thank you.

Q. I'd like you to read, please, the first three paragraphs, which are the unredacted paragraphs.

A. And who wrote that: it's also Lindley, yes?

Q. Yes, Mr Lindley as well.

A. What is "AS" and "GG"?

Q. Well, we understand that "AS" means Andrew Stephenson and "GG" means Jeffrey Gruder, although I think in fairness to Mr Gruder that would be wrong, a wrong use of the G on his first name, but I can't think of anybody else it could be. Yes?

A. I don't know.

Q. Yes.

A. You made assumption, it's -- okay, fine.

Q. Now, as we understand it, the case that's articulated in the first paragraph is not actually the case you make today but we don't need to pursue that. I'm interested in the third paragraph, which is that:

"[Mr Stephenson] and [Mr Gruder, we believe] said that the difficulty in relation to this partnership..."

That's the partnership referred to in the first paragraph whereby you have a share of all of Mr Abramovich and Mr Patarkatsishvili's assets.

"... was jurisdiction as everything pointed to the partnership being a Russian partnership."

A. Yes.

Q. Now, Mr Berezovsky, when that was said, why did you not say, "Hold on. We agreed, at least in relation to

Rusal, that our arrangements would be subject to English law"?

MR RABINOWITZ: My Lady, that is -- I'll call it a confusing question but it certainly doesn't arise from the document which is being put to the witness, the point about jurisdiction. It's now being suggested, as I understand it, that this raises a proper law point.

MR ADKIN: Do you understand the difference between jurisdiction and governing law?

MRS JUSTICE GLOSTER: Well, just a second, Mr Adkin. An objection has been made. Can you put the question more simply, please, remembering that the likelihood of Mr Berezovsky remembering what was said or not said at this meeting must be pretty slight.

MR RABINOWITZ: And indeed Mr Lindley is coming to give evidence.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Well, indeed, but I --

MRS JUSTICE GLOSTER: Put your question and then I'll rule whether it's legitimate.

MR ADKIN: When the question of jurisdiction was raised, why did you not say anything about you having agreed English law as the governing law of your Rusal arrangements?

A. Just a second. It's completely mess.

MR RABINOWITZ: My Lady, in order to be fair to the witness,

as Mr Adkin concedes and indeed as is obvious from the page, the jurisdiction point here related to Sibneft. If he wants to put it like that, then that at least may give the witness a fair opportunity to answer the question. But he says "jurisdiction" and then he slides into Rusal.

MR ADKIN: Well, with respect to my learned friend --

MRS JUSTICE GLOSTER: Well, can we just work out -- which document are we on?

MR ADKIN: We are on R(D)2/25/45.001.

MRS JUSTICE GLOSTER: Right. And that's the attendance note made up as a result of the earlier notes, is it?

MR ADKIN: I can't say, it would be going too far to say that it was made up as a result of the earlier notes, but it's an attendance note of the same meeting.

MRS JUSTICE GLOSTER: Yes. And what is the paragraph you're wanting to ask Mr Berezovsky?

MR ADKIN: I've taken the witness to the first three paragraphs. The first paragraph talks about a partnership. It is not, with respect to my learned friend, solely concerned with Sibneft. As I read the first paragraph, what is being said is that they operated a partnership whereby it was agreed they would share all assets 50/50.

Then the second paragraph says that consideration

was given to a possible action and the third paragraph raises the perceived difficulty of jurisdiction in relation to that partnership, and it is said that Mr Stephenson and Mr Gruder articulated that difficulty.

The short question I want to put to the witness is: if such a difficulty was articulated, why did he not refer to his English law agreement in relation at least to Rusal?

- A. Several points here. First of all, I don't have here at least any evidence that we discuss about Rusal. I don't see any evidence.

The second point is that we're discussing, as I understand here, about not a law but about jurisdiction. It's completely different story. Even I already learned that, I'm sorry to say.

And definitely the last point: I don't remember that at all. And I don't want my Lady to refer to Mr Lindley, who will give evidence, but really I am not able to comment even that, that point.

MRS JUSTICE GLOSTER: Yes, thank you.

MR ADKIN: Mr Berezovsky, I want to ask you some questions about the period after the meeting that happened at the Dorchester Hotel agreement.

Now, it is your case, isn't it, that Mr Abramovich forced you to sell what you say was your interest in

Sibneft to him at a gross undervalue during the course of 2001? That's your case, isn't it?

A. Is it connected to Rusal now or -- we discuss now Rusal or already Sibneft we discuss?

Q. I'm asking you whether that is your case. That is, as I understand it, your case?

A. It's my case. It's my case, part of my case, because the second part of my case is Rusal.

Q. Yes, indeed.

A. Can I move that away?

Q. Yes, you can take that away.

A. Thank you.

Q. Therefore, as I understand it, it is your case that Mr Abramovich was the sort of person who was prepared to intimidate, to force you to sell your interest at Sibneft at an absolutely knock-down price in 2001?

A. It's absolutely correct.

Q. Why didn't you do the same with Rusal?

A. Ah, because Abramovich already understood that he is so big man he doesn't -- even Putin not supported him, not with his help or just keep them as a --

MRS JUSTICE GLOSTER: Sorry, I don't understand the question, Mr Adkin. When you say, "Why didn't you do the same" --

MR ADKIN: Why didn't he do the same, my Lady. Why

didn't --

MRS JUSTICE GLOSTER: How can this witness speculate about what Mr Abramovich's alleged intentions were?

MR ADKIN: Well, I want to suggest to the witness, so that he can comment on it, if he has any comment to make, that if Mr Abramovich was able and willing to force him to sell his interest in Sibneft in 2001 at a vastly reduced price, he would have been able and willing to do that in relation to Rusal as well. I wanted to give the witness an opportunity to comment on that.

MRS JUSTICE GLOSTER: So the question is you want him to speculate why Mr Abramovich didn't intimidate him in relation to Rusal as well? That's the question, is it?

MR ADKIN: Yes.

MRS JUSTICE GLOSTER: Right. What's your answer to that?

A. My Lady, I answer to this question I think from the very beginning when I said that impossible to think -- to understand what Abramovich was doing without three points together: ORT, Sibneft and Rusal as well.

At the first case, Abramovich came as a messenger of Mr Putin and said, "If you will not give, Mr Glushkov will stay in jail forever". I just very shortly make story.

The second time he came, for his benefit -- not for Putin; Putin benefit was to get under control ORT, what

happened -- the second he came and said, "If you will not sell to me with this low, low price, Nikolai will continue to stay in jail forever".

But after that he already came without anything preliminary discussion even. He just sold like he likes because he knew we don't have choice. It means that crime of Abramovich was growing step by step; nothing more.

This is my speculation, as my Lady correctly mentioned. It's not my knowledge; it's my speculation about that.

MR ADKIN: And are you able to explain why Mr Abramovich, having done what you say he did in relation to Sibneft, continued, as you say, to pay profits from Rusal to you from 2001 to 2004?

A. Because formally he didn't get under control; the first point. The second point: he didn't pay. As we know later on, maybe he paid something, I don't know, but Badri worry was that he stopped to pay or paid not what we -- I expected. And, as you remember, when we settle the deal it was 135 -- I don't remember -- amount of dividend which Abramovich had obligation to pay us and did not pay.

Q. Well, I suggest to you that if Mr Abramovich was the sort of person who would do what you say he did in

relation to Sibneft in 2001, he would have done the same in relation to Rusal and you would not have seen a penny in profit from it.

MRS JUSTICE GLOSTER: Well, that's a speculation, Mr Adkin, and a point that can be made in submission.

MR ADKIN: My Lady.

My final piece of cross-examination relates to the Rusal proceeds. Would you please go to bundle B(F).

MRS JUSTICE GLOSTER: Tab?

MR ADKIN: At tab 11.

MR RABINOWITZ: We're going to have to get a file from somewhere else. We don't seem to have the B(F) series behind.

MRS JUSTICE GLOSTER: Can you read the document on the screen, Mr Berezovsky?

THE WITNESS: Yes, I'm fine with that.

MRS JUSTICE GLOSTER: Let's have it flashed up on the screen.

MR ADKIN: Would you please then go to page 84 B(F)/11/84.

THE WITNESS: Could you help me? Ah, yes.

MRS JUSTICE GLOSTER: It should be flashed up on the screen.

THE WITNESS: My Lady, don't you mind, I need a hard copy: I want to understand what is that.

MRS JUSTICE GLOSTER: Okay.

MR ADKIN: I think we may have a spare copy on our side of

the court, Mr Berezovsky, and to assist I'm going to turn straight to the page I want to take you to.

(Handed)

A. It's not falsified.

Q. So you should have page 84 of this document.

A. What is that document, please?

Q. This document, I'll tell you, is your solicitor Mr Marino's affidavit and it was sworn by him in the main Chancery action.

A. When?

Q. In October 2009.

A. Yes, okay. Fine.

Q. Would you read, please, paragraphs 40 to 43. (Pause)

A. Till 43 include or not?

Q. Till 43, that's absolutely right.

A. 43 include?

Q. Including 43. (Pause)

A. Okay. Thank you, my Lady.

Q. I want to help you by summarising what I understand your lawyer to be saying in those paragraphs. I understand him to be talking about the \$585 million generated from the various agreements entered into in July 2004 which was paid, or at least meant to be paid, to Cliren's bank account at the Parex Bank in Latvia.

He's saying three things: first that there appear

from the Parex bank schedules that you had obtained to be considerable sums missing; yes? Second, that you had not received your share of the \$585 million, or what you claim was your share. And third, that there was a stark contrast between your lack of knowledge as to what had become of the Rusal profits and proceeds and the position of what was known by others.

Now, you had in fact obtained the Parex bank statements not, as it were, directly but by paying some employee of Parex bank to produce them. I don't want to make a point about that but I just want to establish that you hadn't, as it were, got them through formal channels, had you?

A. I don't remember anything about -- I know that Parex Bank is Latvian bank which was closed two years ago. I don't know anything that we had accounts in this bank, or maybe I don't remember. I had accounts in the other --

MRS JUSTICE GLOSTER: Just a second. Is this a matter going to credit?

MR ADKIN: No, not at all. Just to --

MRS JUSTICE GLOSTER: Well, then let's leave that point.

MR ADKIN: I can tell you now, because this is common ground in the Chancery actions, that the reason you thought the monies was missing was because you believed the

Parex Bank schedules were denominated in dollars whereas they were in fact denominated in lats.

But the point I want to put to you is this: other than the investment that you say was made with Mr Anisimov in Metalloinvest, at the beginning of these proceedings you had absolutely no idea, did you, of what had become of the \$580 million paid under the July 2004 agreement?

- A. No, what I know that Badri from the very beginning propose to invest with Mr Anisimov to Mikhailovsky GOK, which later on become Metalloinvest, one of the largest in the world metallurgy company. I had a lot of doubts about that because recently we just gave -- went out from Russia and Badri propose again to go to Russia. For me it was surprising.

But Badri said that, as I already report to you, my Lady, that Badri has special relations, not like me, he was very flexible, and he said that it's not because just Anisimov; it's because Usmanov, who that time already was growing, and he really -- was common knowledge his relations with Mr Yastrzhembsky on the one hand, member of presidential administration, and on the other hand with Mr Medvedev, who later become president of Russia, yes? And with, as I understand, support of Mr Medvedev at that time, it was back finally Mr Usmanov

and Mr Anisimov and we, as a part of that, bought Mikhailovsky GOK.

As I understand now, from the knowledge which I have of disclosure, only we, Badri and me, put real money, cash, which we got from Rusal, yes? And then Anisimov and -- but mainly Usmanov got credit from the VTB Bank, Russian bank, yes --

Q. Mr Berezovsky, I hesitate to interrupt but I asked you a question and I want to return you to it. I understand that you say you knew all about the Metalloinvest and the GOK investment, and that's what you're talking about now.

My question was this: other than that, I'm suggesting to you that you had absolutely no idea what happened to the remainder of the \$585 million.

A. I don't have any idea.

MR ADKIN: Thank you.

MRS JUSTICE GLOSTER: What was the balance?

MR ADKIN: My Lady, that is a subject of some dispute but we will take your Ladyship to it in due course.

MRS JUSTICE GLOSTER: Very well.

MR ADKIN: My Lady, other than adopting formally the lines of cross-examination taken by Mr Malek and Mr Sumption, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much.

MR MUMFORD: My Lady, I have no questions for this witness.

MRS JUSTICE GLOSTER: Thank you very much. Mr Rabinowitz.

MR RABINOWITZ: I do have some questions.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Berezovsky, I'm going to show you some materials and then ask you a question. Do you understand?

A. Yes, I try to understand.

Q. Now, please could you be given bundle N1, which contains the transcripts for the first few days of the trial, and for those trying to get it on the screen, N1, tab 4, please: the transcript for the fourth day of this hearing.

A. Yes.

Q. You should have -- if you go to -- what you will find is that there are on each page four pages' worth of transcripts. You have a manuscript. So could you please go to page 90 of the transcript.

A. Yes.

Q. And the first line of page 90, just to check you are looking at the right page, says:

"Again, I just want to stress, again, voluntarily."

A. Yes.

Q. You see that at line 2 Mr Sumption took you to the document at H(A)06/124. Do you see that?

A. Yes.

Q. Can you please be given bundle H(A)6, page 124, so that you can see what that document is. Keep the transcript with you.

You should have there the certificate prepared in connection with your appointment as deputy secretary of the Security Council of Russia.

A. Yes.

Q. Then if you go back to the transcript -- I just wanted to make sure that you knew which document we were talking about -- on Day 4, if you look at page 92 of that. It should be on the transcript, Mr Berezovsky.

A. Ah, 92, sorry, sorry, sorry. Yes, I see.

Q. Do you see between lines 21 and 23 you say that:

"... according [to] the decree, you should show only direct owners of shares."

A. Yes, yes, yes.

Q. You were having a debate with Mr Sumption about why this didn't show your Sibneft holding.

A. Yes. Yes.

Q. Now, can I ask you next, please, to go to bundle L(2011)18. It's a correspondence bundle. Someone is going to have to get it on the screen for you; we don't have those in court. If we go --

A. Just better to have the hard copy.

Q. We don't have a hard copy.

A. Sorry.

Q. L(2011)18, page 63, please L(2011)18/63.

Now, you should have --

A. Just a second, Mr Rabinowitz.

Q. It should be a letter from Skaddens, Skadden Arps, dated 16 September 2011. Do you have that?

A. Just a second. 16 September 2011, yes.

Q. That's right.

Now, just so you understand, Mr Berezovsky, this is a letter from Skadden: they were responding to requests from your solicitors, Addleshaw Goddard, in respect of Mr Abramovich's tax documentation and also his declaration of interests in connection with his political appointments.

A. Yes.

Q. Then can I first ask you to look at the two paragraphs of the letter concerned with tax returns and not with his --

A. Which letter?

Q. The letter that you're on. I want you to look, if you could, at the paragraph marked paragraph 1 on page 63.

A. Just a second.

Q. You see it says:

"It is common ground that Mr Abramovich's interests

in Rusal and Sibneft were, at the relevant times, held indirectly through separate corporate entities (save for a very small personal shareholding). Accordingly, his interests in Rusal and Sibneft (and dividends paid by those companies) would not be expected to feature on his personal tax returns (save in an immaterial respect). Moreover, and in any event, Mr Abramovich's interests in those companies are not in issue in these proceedings and it is extremely difficult to see how or why, even if his tax returns made reference to his own indirect interests in those companies, that would reveal anything about the extent of Mr Berezovsky's alleged interests in those companies."

Then there is another paragraph dealing with tax returns --

A. Which paragraph?

Q. If you go to page 4 of this letter, it's page 66 of the bundle L(2011)18/66.

A. Just a second. It's -- I have just electronic copy.

Q. Someone will get you to the right page.

A. Page 4, fine.

Q. There is a paragraph at the top of the page which says:

"In relation to the Russian equivalent of our tax returns, our client does not have copies of these within his current possession or immediate control for the

relevant periods. We understand that Russian tax returns would consist, so far as Mr Abramovich is concerned, of declarations to the tax office both as an individual and as a state 'employee'. We further understand that neither declaration would record shareholdings not registered in the person's own name or receipts of income from such shareholdings. We do not anticipate, therefore, that they would contain anything of relevance to these proceedings. However, we are prepared in principle, should you insist, to make requests of the relevant authorities for copies of these documents and to review them on receipt."

So, just pausing there, what Mr Abramovich's lawyers are saying is that Russian tax returns would not record shareholdings not registered in a person's own name or receipts of income from such shareholdings, then they go on to say that's one of the reasons why they're unwilling to provide Mr Abramovich's tax returns.

So that's just dealing with tax returns.

Now, can I ask you next to look at the third paragraph on this page, the paragraph beginning, "In relation to any declarations of interests..."

A. Yes.

Q. "In relation to any declarations of interests made by Mr Abramovich in connection with his appointment to

political office which you refer to in section 1.2 of your draft Order, we believe that this is the first time that you have raised this. For the same reasons as explained in relation to the tax returns, we would not expect these documents to contain information relevant to this dispute."

Then they go on to say that they will make enquiries.

So what we have Skadden saying is that declarations of interests in connection with the appointment to political office would not record shareholdings not registered in the person's own name or receipts of income from such shareholdings unless they're registered in the person's own name. Do you follow?

A. Yes, I follow that.

Q. Does that assist you now in answering Mr Sumption's questions about why the document that you have open, which was your certificate of your interests, did not show any interest in Sibneft?

A. Yes, moreover we -- unfortunately we concentrate, my Lady, when we start to discuss the document, this is natural or not because the date of my birthday, as I understand, is wrong here. But when we start to discuss about the meaning of this document, I mentioned that, for example, ORT is not mentioned here, yes? The

company which everybody knew that is 49 per cent no doubt, no doubtful, belonged to Badri and to me. And it's not written here because the same reason: because ORT were owned not directly, were owned through ORT-KB and Logovaz.

And here I mentioned only the company -- again, not me; it was recommendation of lawyers who made this paper, yes? And, as I understand, they calculate exactly the reason why to include something or not include in this paper. And it's the reason why I never had any problem with this paper in spite of a lot of investigation against of me in Russia. It means that this is not problem, how they present my --

MRS JUSTICE GLOSTER: Can I just make sure I've got your answer correctly. Are you saying that if you only have a beneficial interest in shares, as opposed to having your name on a share register, you don't have to include it --

A. Correct.

MRS JUSTICE GLOSTER: -- for the purposes of some certificate or for tax?

A. Correct. Correct.

MRS JUSTICE GLOSTER: Thank you.

A. Thank you, my Lady.

MR RABINOWITZ: Thank you, Mr Berezovsky.

Can I ask you next: you still have the transcript bundle in front of you; I hope you have that open at tab 4 for Day 4. Can I ask you to go to page 119 of that transcript. So you can put that away.

A. At all?

Q. Put it away entirely.

A. And to go?

Q. To go to page 119 of -- no, in the same transcript for Day 4. Again you have four to a page, so we're looking for page --

A. 119.

Q. -- 119.

A. Yes, I have it.

Q. All right.

Now, starting at line 10, you give to my Lady an answer about what Mr Shvidler wrote somewhere and you are comparing what he said in his witness statement to what was said in a particular document.

A. Yes.

Q. Can I just ask you, please, to be given the document that you were being asked about, which is at H(A)07, page 34 H(A)07/34.

A. Yes.

Q. So Mr Sumption was asking you questions about this document and in particular about the part of this

document that was underlined.

A. Yes.

Q. You were making the point, if I can ask you to look back to the transcript at page 119, from line 10 on page 119 to line 6 on page 120.

A. Just a second. Starting from where?

Q. If you read from line 10 on page 119 --

A. "Because, my Lady"; yes?

Q. Yes, to yourself, if you read from there to line 6 on page 120.

A. Yes, clear. Just a second. (Pause)

Yes.

Q. So Mr Sumption was asking you questions about this document. You were making the point that there were inaccuracies in this, including the passage underlined.

A. Yes.

Q. And the particular bit that you were referring to in the evidence that I've just asked you to look at, at H(A)7, page 34 H(A)07/34, related to what this said about you and NFK. You see that if you go to the document at H(A)07, page 34, about four lines from the bottom, where, as you noted, Mr Berezovsky, it is said that you were the "chairman of NFK when it won the right to manage 51% of Sibneft's shares". Do you see that?

A. No. Where is that? What page?

Q. You're looking at the wrong --

MRS JUSTICE GLOSTER: What page is it?

MR RABINOWITZ: H(A)07, page 34. It's the part which is underlined.

A. It's the certificate?

Q. Exactly.

A. Yes.

Q. And you see it says about you:

"... Boris Berezovsky, who is currently the Deputy Secretary of the Security Council of the Russian Federation, served on Sibneft's board of directors until 1996 and was chairman of NFK when it won the right to manage 51% of Sibneft shares..."

Do you see that?

A. Yes.

Q. What you were saying at page 119 of the transcript for Day 4 was that one should compare this to what Mr Shvidler had said in his witness statement about this?

A. It's absolutely correct.

Q. Can I then ask you, please, to be given bundle E3 and go to tab 10. E3, tab 10, page 14 E3/10/14.

A. What is that?

Q. E3, tab 10, page 14. This is from Mr Shvidler's witness statement.

A. The paragraph?

Q. Paragraph 49. The paragraph which says:

"I understand" --

A. I'm sorry, paragraph 49?

Q. Page 14.

A. Ah, page 14, not -- because we opened the page 40. This is the point. Okay, sorry.

Paragraph?

Q. 49. Mr Shvidler says this here:

"I understand that it has been alleged that NFK was a company which Mr Berezovsky and Mr Patarkatsishvili controlled in equal measure with Mr Abramovich.

I disagree. Mr Berezovsky was on one occasion called Chairman of NFK solely to justify his position on the board of Sibneft. However, he was never appointed as Chairman of NFK."

Now, can you say whether this is the passage in the witness statement of Mr Shvidler that you were referring to in your evidence?

A. Yes, it's correct.

Q. Thank you. You can put away bundle E3, please.

Back to the transcript, Day 4. Can you go to page 151, please.

A. 151, yes.

Q. Now, again, just to give you the context of this part of

the transcript, you were being asked by Mr Sumption about the creation of Sibneft and about the respective roles played by yourself and Mr Abramovich in that creation. Can I ask you to read to yourself lines 17 to 22, where, as you'll see, you referred to a statement made by Mr Viktor Gorodilov.

A. Page 151?

Q. So you're at page 151.

A. Yes, just a second.

Q. Can you read lines 17 to 22. (Pause)

A. Yes.

Q. So you're referring to a statement by Mr Viktor Gorodilov --

A. Correct.

Q. -- in front of the Prosecutor General of the Russian Federation.

A. Correct.

Q. You say he made some comments about the creation of Sibneft and the role of Mr Abramovich.

Can I ask that you be given bundle H(C)08, please, and go to page 110T H(C)08/110T.

Just so you can see what this document is --

A. Do we have in Russian that?

Q. The Russian text you will find at page 110 of the same bundle.

A. Yes, I got it.

Q. Right. So you see this is the minutes of an interview conducted by the senior investigator of the Prosecutor General of the Russian Federation with Mr Viktor Gorodilov.

A. Just a second. When it was?

Q. 27 May 2009: you see that at the top right-hand corner.

A. Yes, fine.

Q. If you go over the page in the English to 111T, the Russian 111.

A. Yes.

Q. Towards the bottom of the page you should have the first question, "Question by investigator". Do you have that towards the bottom of that page?

A. Yes. Yes, the first question of investigator, yes.

Q. The question:

"Would you describe how Siberian Oil Company was created?"

A. Yes.

Q. Can I ask you just to read to yourself that first question and the whole of that answer, please.

A. Just a second. (Pause)

All the paragraph to read, all the paragraph?

Q. If you read down to, "My son, Andre Gorodilov, had nothing to do with the creation..."

A. Yes, yes, just a second. Yes.

Q. In fact if you just read to the paragraph:

"I am not aware of the role that Roman Abramovich and Mr Patarkatsishvili played in the formation of Sibneft. I think that Abramovich appeared at Sibneft later."

A. Yes.

Q. Can you say whether this is the statement that you had in mind?

A. Absolutely correct.

Q. Thank you. Next can I ask you to go to the -- you can put those files away.

A. It's when I mentioned that now I learned that Abramovich was just middleman because my impression was completely different when he connect to me.

Q. You can also put away that before it falls as well, the other document file that you have over there.

Now, can I ask you next, please, to go to the transcript for the next day, so it's behind tab 5, and can we look at the transcript for Day 5, page 85, please. Do you have page 85?

A. I have.

Q. Thank you. Now, on this page -- do look at it -- you will see that you were being asked here about the funding of NFK's bid in the auction of 1995 and where

the funding came from for the \$103 million.

A. Yes.

Q. Can I ask you, please, just to read to yourself lines 2 to 25.

A. 2 to 25?

Q. Yes, so really the whole page.

A. Just a second. (Pause)

Yes.

Q. Do you see, Mr Berezovsky, there at lines 14 to 17 you refer to Mr Smolensky's statement to the General Prosecutor Office when they cross-examined him? Do you see that?

A. Correct.

Q. And you say that Mr Smolensky in his statement to the Prosecutor General gave some evidence about the circumstances in which he or SBS Bank agreed to advance the \$100 million to NFK.

A. Correct.

Q. Can I ask that you be given, please, bundle H(C)08 and go to page 119 in the Russian, 119T in the English H(C)08/119T.

A. In Russian 119 and in English?

Q. At 119T. Again, I've just taken you to 119 so that you can see what the document is.

A. Yes, sorry. Yes, I've got it.

Q. You see it's minutes of an interview with Mr Smolensky?

A. No, I'm sorry, I didn't get.

Q. 119 or 119T, depending on whether you want the Russian or the English.

A. 119T, yes?

Q. 119T for the English.

A. We don't have -- I don't have... yes, this one. Yes, I got it.

Q. Okay. So, just to show you what the document is, it's the minutes of Mr Smolensky's interview, again with the Prosecutor General of the Russian Federation, the senior investigator from that office.

Can I ask you to go to page 122. If you want the translation it's at 122T H(C)08/122T. The translation always is at T.

A. Yes, but where was Russian? 122T, yes?

Q. That's right.

A. And now I just need to find -- and Russian on which page?

Q. 122.

A. Excuse me, could you help me. (Consults interpreter)

MRS JUSTICE GLOSTER: Not all these documents are on Magnum.

I couldn't find 119T. I've got this one but

I couldn't --

MR RABINOWITZ: You've got 122T but not 119T?

MRS JUSTICE GLOSTER: Yes.

THE WITNESS: Okay, I don't see in Russian that. Okay, in English I have.

MR RABINOWITZ: I'm told it's after page 125, which is a little bit odd.

MRS JUSTICE GLOSTER: Oh, thank you.

MR RABINOWITZ: As one would expect if one were reading Hebrew.

A. Okay, I don't have Russian.

Q. Okay. Let's try in the English version, Mr Berezovsky.

A. Yes, fine.

Q. So 122T. Do you see question 3?

A. Yes.

Q. It's probably better if you just look at one page rather than trying to look at two at the same time.

A. Yes.

Q. Can I ask you just to read -- there's a number 3, that's question 3. You can see:

"3. Question by investigator..."

Can I ask you just to read the question and the answer number 3 to yourself, please.

A. Thank you. (Pause) Yes.

Q. You've read, presumably, the last sentence:

"But in as far as Berezovsky asked me to finance the purchase of the Sibneft shares, I can say definitively

that Berezovsky was controlling Oil Finance Corporation. He lobbied for the resolution of this issue at the highest level. SBS-AGRO Bank financed the purchase of the Sibneft shares against Berezovsky's personal guarantees."

Can you say whether this was the interview that you were referring to at lines 14 to 17 of the transcript we have just looked at?

A. Absolutely correct.

Q. Thank you. You can put away H(C)08 now and if you go back to the transcript for Day 5 at tab 5. Can you go to page 104 of that transcript, please.

A. Yes.

Q. If you look at lines 11 to 21, Mr Sumption was asking you questions here about whether you were interested in what happened to the shares that were being sold in the 49 per cent auctions and you refer at line 12 to a prospectus "which written Runicom to Boris Berezovsky in English". Do you see that?

A. Yes, correct.

Q. Please could you be given bundle H(A)02 and go to page 194 H(A)02/194.

A. Yes.

Q. Can you say whether this is the document that you had in mind when you were referring to this?

A. Yes, absolutely correct.

Q. Thank you very much.

Can I ask you next, please, just go back to the transcript --

A. Just a second. Yes, exactly this document, yes.

Sorry?

Q. Put that away and go back to the transcript for the following day, which is Day 6. It should be behind tab 6.

A. Yes.

Q. If you go to page 21 of that, please, it's at Day 6, page 21.

A. Yes.

Q. You were talking here about a Russian concept of "kinut".

A. Yes.

Q. Can I ask you to read for yourself from line 10 to line 18, please. (Pause)

You see you refer to kinut being -- I think you said "it's [a] well-known example", I think you meant well known practice, in Russia not only in the 1990s but also now.

A. Yes.

Q. Can I just on this ask you to go to G(B)1/1.01.

A. Sorry?

- Q. You're going to be given a file. G(B)1, and then at 1.01, page 76. Now, just so you know what this is, Mr Berezovsky, it's the report of Professor Fortescue, the Russian historian. We all know you know more history than him.
- A. To whom we refer today already.
- Q. We've referred to this already today but I'm not going to take you back to that.
- A. Yes, just understand the same person, yes.
- Q. This is, as I say, part of the report of Professor Fortescue. Can I ask you to look at paragraph 278 of this and read it to yourself, including the interview with Vladimir Potanin which was given in 2010.
- A. Mm-hm. Just a second.
- Q. Do glance at footnote 167, please.
- A. Just a second. (Pause)
- Yes. This is 76, yes?
- Q. 167, footnote 167. Do you see?
- A. 16 --
- Q. Footnote 167. The little note at the bottom of the page.
- A. Yes. This, yes.
- Q. On the same page.
- A. Yes, I see it. My Lady, this -- when you interrupt me one day, when you said that it's social to discuss, but

I exactly want just to -- as far as we spent so much time --

MRS JUSTICE GLOSTER: Can you speak up a bit or into your mic.

A. As far as we spent so much time on this word "kinut", Russian word, to help you and to help Mr Sumption for better understanding what it is, as far as Mr Sumption is one of the best intellectual in England, according to an interview, I just want to mention that I correctly construct the mathematical modelling for better understanding what does mean "kinut".

If you know the cooperative games, theory of games, cooperative games and noncooperative games, cooperative games when all players connected with binding agreement and if you breach binding agreement, game become noncooperative. In Russian, it means "kinut": it means transformation of cooperative game to a noncooperative game. It's the correct mathematical model the word what means "kinut". It's just thought when I have free time to explain it in better words.

MRS JUSTICE GLOSTER: I'm not sure that I know what a cooperative game is. Can you just explain?

A. Cooperative game when all players connect to each other with binding agreement, like we had with Abramovich agreement '95: this is binding agreement.

MR RABINOWITZ: Binding agreement?

A. Binding agreement. We had with Abramovich binding agreement and when he breach binding agreement, cooperative game become noncooperative game. It means kinut. And this is another way of game which is not noncooperative.

MRS JUSTICE GLOSTER: Yes, I see.

A. This is the point. For the future, because I'm sure you will have a lot of Russian in your court and they will use the same word.

MR RABINOWITZ: Yes, I'm sure.

You can put that away now, Mr Berezovsky. I think you've dealt with the point I wanted to raise with you, I think.

Can you next, please, go back to the transcript for Day 6, which you should have open in front of you.

I want you next to go back to page 47 of that transcript.

A. Yes.

Q. Now, at page 47 and really for a few pages going forward, you were being asked by Mr Sumption about a note of your evidence given to the French investigating magistrate which you gave by video-link to Marseilles.

A. Yes.

Q. Can I ask you to read to yourself lines 19 to 23.

A. 19 to 23, yes.

Q. It takes you to the document which contains your evidence.

A. Just a second. Question -- there is question first, yes?

Q. And the question. (Pause)

Just lines 19 to 23 there, please.

A. To 23, yes.

Q. All right.

A. Only the question, yes?

Q. Yes. I'm going to ask you next to go to page 52 because the line of questioning goes on for a while. If you go to page 52 and you look then at, on page 52, lines 5 to 6, you were told to look at page 188 of the note.

A. Yes.

Q. And then you see at line 10 you were referred to the statement from the French judge, "Maitre Temime has given me a document..."

A. Yes.

Q. Then if you go to page 53 and you look at lines 7 to 11, you see Mr Sumption quotes the following from the French judge:

"Once again according to documents from Maitre Temime. There were payments of 80 [million dollars] in

96, 50 [million] in 1997 and 50 [million] in 1998."

Do you see that?

A. Yes.

Q. Then at lines 15 to 18 --

A. Yes.

Q. -- same page, you were asked again by Mr Sumption about the document from Mr Temime that had been handed to the French judge which showed that there were payments of \$80 million in 1996, \$50 million in 1997 and \$50 million in 1998. Do you see that?

A. Yes, I see.

Q. Then if you go to page 54 and you look at the following page --

A. Yes.

Q. -- there was some issue as to what the document was. And if you look at lines 8 to 12 you'll see that --

A. 8 to 12?

Q. Lines 8 to 12, you will see I tried to assist Mr Sumption about what these documents were but he doesn't want to be assisted in relation to that. Do you see that?

A. Yes, I see.

Q. Then if you go on to the following page at lines 2 to 4 --

A. "Following", it means 55, yes?

Q. On page 55.

A. And?

Q. Look at lines 2 to 5.

A. Yes.

Q. At lines 2 to 5, Mr Sumption asks you:

"... what were the documents which your lawyer gave the judge which showed you that you had received payments of those amounts?"

A. Yes.

Q. Now, can I ask that you please be given a document which I think is in the process of being loaded on to Magnum but hasn't got to the right place yet. Apparently one can see it on the automated Magnum screen but you won't be able to find it on your own Magnum database.

Do you have in front of you, Mr Berezovsky, a note sent to the French magistrate by Maitre Temime on 16 June, a few days before the hearing on 20 June H(C)08/150.001T?

A. Yes.

Q. Can I ask you to turn over the first page to look at section 2.1 of this note.

A. Yes.

Q. And if you could read to yourself the whole of 2.1, starting on page 2 and going to the second paragraph on page 3.

A. It means everything -- all the paragraph 2.1, correct?

All the paragraph?

Q. Well, until you get to page 3. You can stop before it says, "In paragraph number 58", which is the third paragraph. Do you see? So you --

A. Yes, yes, yes, yes. Sorry, I see. (Pause)

Yes.

Q. All right. And do you see on the top of page 3 it starts by saying, "According to Mr Abramovich..."

A. Yes.

Q. And then in the second paragraph on that page it says:

"Concerning the amount of these payments, he mentions in paragraph number 69..."

Do you see that?

A. Yes.

Q. Can I ask, please, that you be given Mr Abramovich's third witness statement, which you'll find in bundle E1, behind tab 3, at page 55 E1/03/55. Now, you should have this open at paragraph 69 of Mr Abramovich's third witness statement. Can I ask you to read paragraph 69 to yourself, please.

A. Yes, just a second. (Pause)

Q. You may want to focus on the second half of it rather than the first half.

A. Again, what is that? This is Abramovich statement?

Q. This is Abramovich's statement.

A. Yes. (Pause)

Yes.

Q. Now, having seen that, Mr Berezovsky, can you say whether this assists you in answering Mr Sumption's question, the question that he put to you about what were the documents that your lawyer, Maitre Temime, gave to the French judge containing references to these payments?

A. Yes, I'm sorry to say I never have seen Abramovich witness statement and this money -- these numbers coincide completely with what was mentioned by French lawyer.

MR RABINOWITZ: Thank you.

My Lady, I have a quite a few more questions for Mr Berezovsky. I wonder if it's a convenient --

MRS JUSTICE GLOSTER: Yes, okay, I'll take the break now.

Ten minutes.

(3.17 pm)

(A short break)

(3.29 pm)

MR RABINOWITZ: Mr Berezovsky, can I ask you -- I think you probably have Day 6 of the transcripts open in front of you.

A. Yes.

Q. Can you go to page 149.

A. 149?

Q. 149.

A. Yes.

Q. Now, at page 149 you were being asked by Mr Sumption about Mr Voloshin's evidence in relation to what happened at the meetings that you had with him and Mr Putin in 2000 concerning ORT.

A. Yes.

Q. Can I ask you just, please, to read to yourself what you said at lines 14 to 25 of page 149. (Pause)

A. Yes, I remember that.

Q. You see at line 16 you are referring to an open interview that you gave where you blamed him personally and you say:

"... why he decide deny today but not immediately after [your] open interview..."

A. Yes.

Q. Can I ask, please, that you be given bundle H(A)21 and go to page 162, please H(A)21/162.

A. Yes.

Q. Now, on this page you should see set out a report that appeared in Kommersant on 5 September 2000 in which appears to be set out an open letter from you to President Vladimir Putin dated 4 September 2000.

A. Do we have that in Russian?

Q. Do we have that in Russian? Page 167, thank you.

A. Yes, I got it.

Q. And at paragraph 1 of this letter you say:

"Last week a top official in your administration gave me an ultimatum: I should transfer the block of Russian Public Television [ORT] shares I control to the state within two weeks or I could go the same way as Gusinskiy -- clearly a reference to Butyrka Prison. The reason for this proposal was your dissatisfaction with the way in which ORT has covered the events relating to the Kursk submarine accident. 'The president wants to run ORT himself,' your representative told me."

Can you say who that representative was?

A. Sorry?

Q. Who is the representative you are referring to there?

A. No, it's Mr Voloshin and he accept that, as

I understand, in his witness statement, that we met with him exactly this day and the day after I met with him and the president. I mean, Mr Voloshin himself who -- to whom I refer to this article -- to this interview --

Q. Can you say whether this is --

A. -- to this letter, I'm sorry.

Q. And is this what you had in mind when you referred to the "open interview" which Mr Voloshin never

contradicted?

A. Correct. Absolutely correct. Absolutely correct.

Q. Thank you. You can put that away.

Can you go back to the transcript at tab 6, again for Day 6, and if you go to page 154, please.

A. Yes.

Q. You were still being asked by Mr Sumption here about ORT and the circumstances in which you decide to sell ORT and discussions between Mr Abramovich and Mr Patarkatsishvili about this.

A. Yes.

Q. Can I ask you just to read to yourself lines 13 to 19 on page 154, please.

A. Yes.

Q. So you're referring here to an interview with President Putin published in Le Figaro in which he said something like "State has cudgel in his hand and the State will hit at the head but once".

Can I ask you that you be given bundle H(A)22, page 260 H(A)22/260.

A. But I think I made mistake here. It's not 26 December; I think it was in October.

Q. In October. Thank you for that.

A. I think so. Yes, it was on October. Just a second. I don't remember. Just a second. Maybe December.

Q. Mr Berezovsky, perhaps if you look at the document that's being shown to you, that will help.

A. It's October, it's correct.

Q. Thank you. And as you see, this is a report from the Moscow Times.

A. Yes.

Q. "Putin Warns Oligarchs With 'Cudgel'":

"President Vladimir Putin warned Russia's powerful oligarchs that the state would beat them with 'a cudgel' if they stood in the way of reform.

"In an interview with Le Figaro newspaper ahead of a visit to France, the Kremlin leader said business bosses who amassed vast fortunes in the immediate post-Soviet era were trying to use the media to intimidate political institutions.

"The state has a cudgel in its hands that you use to hit just once, but on the head,' Putin told the newspaper, which published the interview Thursday.

"We haven't used this cudgel yet. We've just brandished it, which is enough to keep someone's attention. The day we get really angry we won't hesitate to use it,' he said.

"It is inadmissible to blackmail the state. If necessary, we will destroy those instruments that allow this blackmail.'.

"Putin was responding to a question about criticism of him by Boris Berezovsky, a business magnate with substantial media interests who quit parliament in July after accusing Putin of trying to turn Russia into a Latin American-style regime."

Can you say whether this is the interview that you had in mind in your evidence?

A. Absolutely, absolutely correct. And moreover I just want to stress to Mr Sumption that it's not just abstract, "We give to any head"; even in translation in English it's correct, "the head", because he refer to -- answer to -- he gave his answer referring to me personally. It's the reason why I accept that as a personal as well.

Q. You can put away bundle H(A)22 now, Mr Berezovsky, and I want you, once that's been put away, to go to the next day's transcript: that's Day 7. I want you to go to page 94 of Day 7, please. Mr Berezovsky, tab 7.

A. Yes, 7.

Q. So Day 7, if you go to page 94.

A. Yes.

Q. Can I ask you, if you're at page 94, to read lines 21 to 25 to yourself, please.

A. Hmm. (Pause)

Q. Just tell me when you've read that, Mr Berezovsky.

A. Yes.

Q. So you're referring there to a statement given by Mr Abramovich's press secretary, Mr Mann --

A. Correct.

Q. -- in 2010. I wonder if I could ask that you be given bundle H(A)98 and go to page 245, please H(A)98/245. There's a Russian translation at 245R.

A. And this I don't need as well? No.

Q. You don't need that.

A. Yes. Yes, correct.

Q. Can I just ask you, please, to glance at the first two pages of that. (Pause)

Perhaps I can just ask you, you see on the second page Mr Mann has asked:

"-- You deny that then, in 2001, this transaction between Roman Abramovich and Boris Berezovsky was purely political?

"-- We confirm that it was a divorce between partners -- Berezovsky and Abramovich. And there was nothing political in it."

A. Yes. Between partners, correct.

Q. Then if you go further down, there is a question around halfway down the page --

A. Yes.

Q. -- where they're talking about the amounts.

A. Yes.

Q. And if you can just read to yourself what he says,  
beginning:

"No. But it was a complicated story."

(Pause)

A. Just about amount to read?

Q. Just read, "No. But it was a complicated story", down  
to, "Incidentally, two years ago Ernst repaid this  
loan".

A. Yes.

Q. It's talking about the figures.

A. Yes.

MRS JUSTICE GLOSTER: You're not speaking into the  
microphone, Mr Rabinowitz, so I'm having a bit of  
a problem hearing you.

MR RABINOWITZ: Sorry.

A. Yes, I remember that well.

MR RABINOWITZ: Can you just say whether this is the  
statement given by Mr Mann in 2010 that you were  
referring to?

A. Absolutely correct.

MR RABINOWITZ: I don't know whether this mic is actually  
on. That may be the problem.

THE WITNESS: Try to touch like that.

MR RABINOWITZ: Thank you, Mr Berezovsky.

MRS JUSTICE GLOSTER: It's working.

MR RABINOWITZ: Can I ask you next to go to the transcript -- you can put that away. I want you to go to the transcript for Day 8.

A. Yes.

Q. Now, on -- sorry, at Day 8, page 12, please.

A. Yes.

Q. So from Day 8, page 12, going on to page 13, you were being asked by Mr Sumption --

A. Page 13?

Q. From page 12 on to page 13.

A. I see.

Q. Don't worry about it yet, Mr Berezovsky. You were being asked by Mr Sumption about the date when you first had discussions with Mr Samuelson of Valmet.

A. Yes.

Q. And Mr Sumption showed you a document -- I'm not going to take you to it; it's the one at H(A)19, page 10 H(A)19/10 -- he said that the document was dated 5 September and there was then a discussion as to whether this was the first occasion on which you had met Mr Samuelson.

A. Yes.

Q. Can I ask, please, that you be given bundle H(A)20 and go to page 135, please H(A)20/135. So at page 135,

you should see an email from Mr Samuelson to someone called Hans dated 22 July, it says 100 but presumably they meant 2000.

A. Just a second. Where is that? I don't see.

Q. At the top of the page.

A. Ah, yes. "Dear Hans", yes.

Q. You see the date is 22 July, probably 2000 rather than 100.

A. Yes.

Q. Can I ask you to just read the very short email to yourself. (Pause)

A. Yes.

Q. Then if I can just -- do keep a finger in that document -- ask you to go forward to page 239, please.

A. Just a second. Yes.

Q. Again, it's an email exchange between Hans de Kruijs to Christopher Samuelson dated 31 July 2000.

A. Yes.

Q. And after the apology in the first paragraph you see the second paragraph:

"As far as your query is concerned, I understand from our brief telephone conversation that the (Russian) client is looking for an intermediary company to hold Russian assets/shares in Russian companies. It is hereby assumed that the ultimate corporate owner will be

an offshore entity/trust, because of non-disclosure aspects."

Can you help us with this, Mr Berezovsky: can you say whether you think that the two Russian families referred to -- two prominent families referred to in the first email --

A. I think so.

Q. -- and the Russian client -- I haven't asked you a question yet.

A. Sorry.

Q. Can you help us identify who you think they may have been? Who was being referred to?

A. I think it's referred to Badri and to me.

Q. Right. And does this help you in terms of trying to identify more accurately when you first met Mr Samuelson or when Mr Samuelson was --

A. Again, my impression, because there were -- we discuss about what is date: it is American way or European way? It's 09/05. I don't... It's -- again, it's -- this written in July, yes?

Q. Yes.

A. 31 July. And it looks like that he already met us or not? I don't understand that.

Q. Well, does this help you in terms of saying whether or not September was around the time you first met or do

you think it would have been earlier, having seen this?

A. My impression that it was earlier. It does not help me to understand better.

Q. Thank you very much. You can put away bundle H(A)20 and can I ask you, once you've put that away, to go to the transcript for Day 9 of the trial, page 83.

A. Yes.

Q. Mr Sumption, at this part of the transcript, was asking you about your case that there was an oral agreement between you, Mr Patarkatsishvili and Mr Abramovich and Mr Deripaska that none of you would sell your shareholding without the consent of the others.

A. Yes.

Q. Can you just read from line 25 --

A. But what is the page?

Q. You should be on page 83.

A. 83, yes.

Q. And if I can ask you to read from line 25 on page 83 to line 4 on page 86.

A. To the point -- which point? Which line?

Q. Just read to the top of 86, if you would.

A. Top of page 86, yes?

Q. That's right. (Pause)

A. Just a second. I just reading 85, I finish.

Q. Perhaps if you just read 85 and then let me know when

you've done that.

A. Yes, I read just 85. I don't need to read --

Q. All right, that's fine.

A. Yes, fine.

Q. Can I just direct your attention to the fact that at page 84, between lines 5 and 6, the point is made to you by Mr Sumption that no mention was made of any oral agreement --

A. Yes.

Q. -- to the effect that no one would be able to sell their shareholding without the consent of the others in your original claim form. Do you see that at lines 5 to 6?

A. Yes, yes, yes.

Q. And then Mr Sumption goes on to ask you about whether you told your lawyers this and then it leads up to Mr Sumption saying at around page 85, lines 5 to 6, that you've really made this up.

Now, on the question of whether anything was said to your lawyers, please could you be given bundle H(A)89 at page 220 H(A)89/220.

A. Yes.

Q. You'll remember these. These are notes of a meeting with Mr Patarkatsishvili on 30 June 2005 and they were made by Mr Stephenson. This is the typed-up transcript of that.

A. 2005?

Q. 30 June 2005.

A. I don't remember -- where is that?

Q. Top right-hand corner, you can see the date.

A. No, the date is fine, but where is that?

Q. This was, I believe, in Georgia, Tbilisi.

A. In Georgia. Okay, thank you. And who was there?

Q. I'm not sure that matters for the moment. You were there.

A. Yes, sorry.

Q. Mr Stephenson and Mr Lankshear were there.

A. Okay.

Q. And Dr Nosova was there.

A. Okay.

Q. If you can then glance forward to page 224 H(A)89/224.

I just want to show you this.

A. Yes.

Q. You'll see that below the line, the bold line in the middle of the page, there's a discussion about Rusal.

Do you see that?

A. Yes. Rusal, yes.

Q. Then that goes on for a while. But if you then glance at page 229 H(A)89/229, please, there is a further discussion about Rusal and the whole of this page is what is being said to your lawyers.

Can you look, please, at the third paragraph under the heading "Rusal":

"Roman breached usual principles -- in Russia -- if go into project together shares jointly -- can't dispose at time -- in breach of oral contracts [and] normal principles in nothing written -- oral."

A. Yes.

Q. Does that assist you about whether there was an oral agreement that no one should be able to sell --

MR SUMPTION: My Lady, with great respect, (1) to ask a question relating to what Mr Berezovsky has told his lawyers by reference to something that Mr Patarkatsishvili said in Mr Berezovsky's absence can't possibly be appropriate; secondly, one of the most unacceptable forms of leading question is to say, "Here's a document that gives the desired answer, now what's the desired answer, please?"

MRS JUSTICE GLOSTER: Mr Rabinowitz, the document is there; you can make the point.

MR RABINOWITZ: I can make the point.

MRS JUSTICE GLOSTER: Again, it's all a long time ago; one has to look at the documents.

THE WITNESS: Yes, absolutely.

MR RABINOWITZ: Let's move on.

You can put that away now, Mr Berezovsky. Can you

be given bundle H(A)84, please, page 4 H(A)84/4. Now, you were taken to this document this morning, if you start of page 2.

A. Page?

Q. It's H(A)84. If you start at page 2, you'll see what the document is: it's a deed of release.

A. Just a second. What is that? Just explain there.

Q. This is one of the agreements that was made by Mr -- it was one of a suite -- a group of agreements which was made by Mr Abramovich and his companies, Mr Patarkatsishvili and Mr Deripaska whereby the second tranche of the Rusal shares were sold.

A. I see.

Q. This is one of the agreements that was made and one of the parties to this was Mr Patarkatsishvili.

A. Yes. July 2004, it's correct.

Q. Exactly. Mr Malek took you to this this morning: he took you to paragraph 3.1 at page 4.

A. Yes.

Q. At paragraph 3.1 he showed you a provision which has two parts to it. The first part is Mr Patarkatsishvili representing to the other parties to this contract that during the period -- and the period was one that began at, I think, 15 March 2000 -- he, that's Mr Patarkatsishvili, was the sole and ultimate

beneficial owner of the business interests.

A. Yes.

Q. So it was a representation he was making that he, Mr Patarkatsishvili, was the only person who had the beneficial ownership of the Rusal shares.

A. Yes.

Q. It goes on to say that those shares were not held for the benefit of any other person.

A. Yes.

Q. And then it goes on to provide an indemnity.

A. Yes.

Q. Now, you were asked a variety of questions by Mr Malek about this: first, the statement, the representation about who did and didn't have a beneficial interest, Mr Patarkatsishvili saying he and he alone had a beneficial interest; and then, following this, there was a reference to an indemnity.

A. Yes.

Q. Do you understand what an indemnity is?

A. My understanding is that it's -- it means that no -- that the person who sold that is not able to go to the court to fight that he did something wrong. It means that he is responsible what he is doing.

Q. Do you recall that when Mr Sumption was cross-examining you, he showed you a provision -- well, when Mr Sumption

was cross-examining you, he didn't show you this provision. You were talking to him about a release whereby if someone had done something wrong, you couldn't go to court?

A. Yes, I mean exactly that it's releasing from the responsibility.

Q. Now, I want to ask you what it was that you were told about by Mr Patarkatsishvili and what it was that you were not told about by Mr Patarkatsishvili.

A. I don't remember at all that Mr Patarkatsishvili discuss with me that -- the point that I will not able to go to the court against of Mr Abramovich because, as I explained before, from the very beginning when we decide finally to sell Sibneft, I already never changed my position. And my point is that to do maximum what is possible to do: on the one hand to sell our -- somehow to sell our interests; on the other hand to have opportunity to go to the court.

And it's correct that it's just -- as I understand, in any case it is responsibility of Mr Patarkatsishvili. But again, I don't remember that ever Mr Patarkatsishvili discuss with me that.

Q. All right. So that's what you were not told about.

Now, what I want to ask you again, because your evidence in this was not entirely clear, can you say

whether or not you were told by Mr Patarkatsishvili that you were being required to say that he was the only beneficial owner and that you had no --

A. Yes, this is correct. He was required to say that he was just only beneficial owner. It means that he was required that -- no, not in these terms. It was said that I would not be mentioned at all in any papers.

Q. My question to you was whether you were told about that by Mr Patarkatsishvili.

A. I was told that I will not be mentioned in any papers by Mr Patarkatsishvili. It's definitely correct.

Q. Thank you for that.

Now, can I then turn to the very last line of questioning that Mr Sumption put to you. This is at Day 9. If you can go to Day 9 at page 147 --

A. Just a second. I don't need that more, yes?

Q. You don't need that anymore.

A. Page?

Q. Page 147, please.

A. I don't have -- I have 10 something here.

Q. You don't have anything behind tab 9?

A. I don't have 10 day, 10th day.

Q. So do you have Day 9 though?

A. Yes, I have just --

Q. It doesn't matter that you don't have Day 10 because

we're not going to look at Day 10. We're going to just look at Day 9, page 147.

A. Yes.

Q. Now, at Day 9, page 147, between lines 5 to 15, can I just ask you to look at that very quickly.

A. Yes. Ah, I already read that on the weekend.

Q. Right. So, as you can see, the questions relate to whether any of your witnesses stand to gain financially if you win this action.

A. Yes, correct. Correct.

Q. And the majority of your evidence in the paragraphs that follow, the pages that follow --

A. I remember that well.

Q. Let me put the question to you first.

A. Sorry.

Q. The majority of your evidence was directed to the position of Mr Cherney and you can see that at pages 148 and 149.

A. Yes.

Q. I just want to come back, if I may, to page 147 between lines 8 and 12 because there you say that none of your witnesses stand to gain financially if you win the action. Do you see that?

A. Yes, I see that.

Q. My question is this: is Mr Lindley one of your

witnesses?

A. Yes. My Lady, I have read this transcript on the weekend and I am not correct here because my reflection was that did I give somebody -- Mr Sumption put correct question, no problem with that at all, but my reflection was that: did I pay money for witness, yes? Not witnesses. But it's not my English, my English is okay. My reflection was wrong. And when I read that, I just -- and if you wouldn't put me this question, I in any case arise this question. My -- now -- and I return to this point and try to recollect what's happened.

I have agreement with four people more as a beneficiary if I win against of not only Abramovich, against of anyone: Abramovich or Anisimov or Salford or family, yes? And, as I -- as we discussed now, that I have obligations to pay 5 per cent of this tape, for this recording. But additionally to that I have obligations in front of two witnesses and two who are not witnesses, the same obligation. And the reason why I have this obligation because those people participate in all my events which we're discussing here.

MRS JUSTICE GLOSTER: Okay. I think I need to know who the witnesses are.

A. Yes. The witnesses are Mr Lindley, the lawyer, and Mrs Nosova or Mrs Lindley, his wife, and they're

witnesses. And there are two who are not witnesses:  
it's Mr Cotlick and Mr Motkin. Those people, each of  
them have 1 per cent and --

MRS JUSTICE GLOSTER: When you say "each of them", each of  
the four people you've mentioned?

A. Yes, correct: Mrs Nosova 1 per cent; Mr Lindley  
1 per cent; Mr Cotlick 1 per cent; and Mr Motkin  
1 per cent.

MRS JUSTICE GLOSTER: 1 per cent of what?

A. Of any benefit which I'll get as a result of the  
hearing -- as a result of the judgment.

MRS JUSTICE GLOSTER: Gross or net of legal fees?

A. We just discuss that it will be 1 per cent from  
everything what I will get.

MRS JUSTICE GLOSTER: Right.

A. We even didn't discuss to deduct, for example, my  
expenses for litigations, yes? We just discuss about  
1 per cent of everything what will happen.

MRS JUSTICE GLOSTER: Can the court be quiet, please.

Yes, thank you.

MR RABINOWITZ: Can I just ask you these questions as well  
about what you've just said.

When did you make the arrangement first with  
Mr Lindley?

A. I don't remember well. I think it's 2008 or 2009, when

we just -- when we spent mainly -- as I understand, Mrs Nosova, Mr Lindley and Mr Cotlick mainly spent time to prepare litigation. As far as Mr Motkin is concerned, it's different story because I didn't have time more to continue any my business and I ask Motkin to take power to control everything and I promise him 1 per cent if I win.

Q. Can you just explain to the court -- and I'm dealing at the moment just with Mr Lindley. I'm interested only in the witnesses rather than the other people --

A. Okay.

Q. -- unless you think that telling us about the other people helps to make clear what your answer is.

Can you just please explain to the court why you entered into this agreement, first, with Mr Lindley?

A. I think I came together with Mr Lindley and Mrs Lindley as well, both of them.

Q. When you say "Mrs Lindley", you mean Dr Nosova?

A. Mrs Nosova, his wife. Because it was my proposal, I proposed them that, that way, and it's because they start to pay almost all their time for preparation of my trial. And moreover we have very small team for prepare all litigations and as far as each of them is very complicated, I think that Lindley, Nosova, they spent 100 per cent time to help me.

MRS JUSTICE GLOSTER: Do they get other fees, time fees, or just a percentage?

A. As far as Mr Lindley is concerned, I think he has; I don't know exactly. As far as Nosova is concerned, no.

MR RABINOWITZ: Can you just say, Mr Berezovsky: was your agreement to pay the money in any way connected to the fact that Mr Lindley might be a witness?

A. Not at all, and it's the reason why I didn't think about that and maybe it's the reason why I didn't react correctly. And I'm sorry, Mr Sumption: that question was correct; the answer was not correct.

Q. Can I just ask you the same question about Dr Nosova. Was the fact that you agreed to --

A. Not at all. And it's --

Q. Just for the transcript, let's just be clear what the question is.

A. Sorry.

Q. We know what your answer is, but let's see what the question is. Was, in relation to Dr Nosova, what you were agreeing to pay her in any way connected to the fact that she might be a witness?

A. Absolutely not and my reflection is exactly that I calculate -- again, the question was correct, but I calculate that the question is: do I pay because they

make this witness statement? And this was my reaction;  
it was wrong. And -- but the question was correct.

MR RABINOWITZ: Thank you, Mr Berezovsky. I don't have any  
more questions.

MRS JUSTICE GLOSTER: Thank you very much.

Thank you, Mr Berezovsky.

THE WITNESS: Thank you, my Lady.

MRS JUSTICE GLOSTER: I have no questions for you.

THE WITNESS: Thank you, my Lady.

MRS JUSTICE GLOSTER: You are now released from the witness  
box and you can talk to your team or anyone else about  
the case or your evidence.

THE WITNESS: Thank you very much, my Lady.

I may leave, yes?

MRS JUSTICE GLOSTER: Yes. You may leave.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: You don't have to but you may.

Mr Rabinowitz, are you going to call another witness  
this afternoon? I'm happy to sit to 4.30 if you wish  
but it's up to you.

MR RABINOWITZ: It may be better just to begin tomorrow  
morning with a fresh witness. Everyone may be a little  
bit fresher.

MRS JUSTICE GLOSTER: Mr Sumption, I think that's a sensible  
course. I'm happy to sit to 4.30 if you all wish --

MR SUMPTION: Absolutely. I am quite happy that we should start tomorrow, not least as we have only just -- literally about three quarters of an hour ago -- been given another substantial document concerning Mr Glushkov which I would like an opportunity to study.

MRS JUSTICE GLOSTER: Very well. Do you want me to start at 10.00 tomorrow or are you content with 10.15?

MR RABINOWITZ: As far as we're concerned we're very content 10.15.

MRS JUSTICE GLOSTER: Mr Sumption, are you happy with 10.15?

MR SUMPTION: I'm perfectly happy with 10.15.

Before your Ladyship rises, may I just mention two points of concern. The first is that we are still, as the example I mentioned a moment ago indicates, receiving significant documents at a very late stage by way of disclosure. Now, formally speaking, Mr Berezovsky has been released but one of the problems about late disclosure of documents is that it may necessitate the recall of particular witnesses. We regard it as a matter of really considerable regret that we should be put in that sort of position.

MRS JUSTICE GLOSTER: I endorse that, Mr Sumption, but we all know it's one of the things that happens in litigation of this sort.

MR SUMPTION: I quite understand that.

MRS JUSTICE GLOSTER: I'm not sure there's anything I can do about it --

MR SUMPTION: No, there is not.

MRS JUSTICE GLOSTER: -- other than express my concern that it's happening.

MR RABINOWITZ: My Lady, I can only say that it's not deliberate and we will obviously try to ensure that the document -- we have an ongoing obligation in relation to disclosure and, if a document comes along, it's our responsibility to give it to my learned friend and I can also only apologise when it comes late.

MRS JUSTICE GLOSTER: Right. Well, if Mr Berezovsky needs to be cross-examined on any additional documents, he'll have to go back into the witness box.

MR RABINOWITZ: Indeed. I entirely accept that.

MRS JUSTICE GLOSTER: I'm sure he understands that.

MR SUMPTION: My Lady, the second source of concern arises out of the last question that was asked in re-examination. I understand -- I have not actually been able to locate the actual document -- that we have written to Addleshaws on two occasions to ask them to tell us whether any, so to speak, contingency fees were being paid to witnesses and that we have received the answer that they had not. We were concerned about that because we had in fact heard that payments had been made

to a number of witnesses and that is why we wrote that letter. No doubt Addleshaws will in due course -- provided I can lay hands on this document -- explain to us why that was not supplied. I would also ask that my learned friend arrange to have disclosed to us any written documents recording the agreement with Mr Lindley and Ms Nosova.

MRS JUSTICE GLOSTER: Yes. I mean, I'd like to have references, Mr Sumption, to the correspondence that's relevant to this issue before --

MR SUMPTION: As soon as I have that, I will give it. If it turns out that I'm wrongly informed about those letters, I will make sure that your Ladyship is told that.

MRS JUSTICE GLOSTER: Very well.

Mr Rabinowitz, obviously, if there are any written agreements relating to contingency fees or even just ordinary pay-as-you-go fees, I think it's right that they should be disclosed. They normally are in this sort of case.

MR RABINOWITZ: I follow, my Lady.

Can I just say this about the witnesses tomorrow. It's not intended to suggest that Mr Glushkov will not be giving his evidence first. We also have Mr Jenni coming to give his evidence. Now, I don't know how long my learned friend is going to be with Mr Glushkov but

Mr Jenni, I think, has to be on a plane back to Switzerland on Wednesday. This is as much for your Ladyship as for my learned friend. What we would propose to do, subject again to my learned friend being ready to deal with Mr Jenni, is to interpose Mr Jenni after Mr Glushkov tomorrow.

MR SUMPTION: We're perfectly happy with that, my Lady.

MRS JUSTICE GLOSTER: Good.

MR SUMPTION: Ms Davies will in fact be cross-examining

Mr Jenni, I will be cross-examining Mr Glushkov.

I expect, with all the reticence that one employs when predicting the length of any cross-examination, to be about an hour with Mr Glushkov.

MRS JUSTICE GLOSTER: Right. Very well. So we'll have

Mr Glushkov, followed by Mr Jenni tomorrow.

Very well. 10.15 then tomorrow.

(4.12 pm)

(The hearing adjourned until  
Tuesday, 18 October 2011 at 10.15 am)

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Tuesday, 18 October 2011

(10.15 am)

Discussion re housekeeping

MR SUMPTION: My Lady, can I just take up the last words of your Ladyship yesterday evening.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Can I hand up the documents I was referring to when I spoke about assurances that we have sought.

(Handed)

Just to take your Ladyship very quickly to this, we originally made enquiries about the position as a result of the disclosure of the agreement relating to the Le Bourget tape. In the first letter your Ladyship will see that at paragraph 1.6 on page 2 we asked for confirmation:

"... whether or not Mr Berezovsky had paid for any further evidence. If so, please identify what the evidence is and the nature of the payment promised, including whether it is contingent on his success."

MRS JUSTICE GLOSTER: Yes. I suppose the words "paid for any further evidence" might be construed as ambiguous but there we go.

MR SUMPTION: That is right, but your Ladyship will see that further up we referred to 11.07 of the Solicitors Code of Conduct and that, which is one of the last documents

in the clip, provides:

"You must not make or offer to make payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case."

MRS JUSTICE GLOSTER: Yes. So the second limb, you would say, is engaged or might be.

MR SUMPTION: Indeed. There was subsequently an application supported by a witness statement of Mr Larizadeh which refers to 11.07 of the Solicitors Code of Conduct and the application was for an order in the terms of 2.5 of the draft that follows:

"... full details of any payments made by the claimant for evidence and/or to potential witnesses."

That application we did not press as a result of a witness statement from Mr Hastings which follows in which, on the last page -- much of this is concerned with the tape supplier, but on the last page Mr Hastings says at (e):

"I can confirm that no other payments have been made by Mr Berezovsky for evidence in these proceedings."

And at (f):

"Finally, Mr Berezovsky has agreed, in line with the rules set out in the CPR, to compensate certain witnesses for their time lost in assisting him with the preparation of witness statements to be served in due

course to support his case and the provision of conduct money in the event that they are called to give evidence."

On 13 July, just before the extract from the Code of Conduct, in response to an enquiry from us, we were told by Addleshaws:

"We confirm that the position set out in paragraphs 39(e) and (f) of the fifth witness statement of Mark Hastings remains correct."

We have no doubt that in the light of the rule of the Code of Conduct, Addleshaws themselves have not been involved in the payment of these witnesses. We have, however, written to them in order to enquire, first of all, how these statements came to be made and what steps were taken, particularly with Mr Berezovsky, to verify that the statements made by Addleshaws were accurate; and secondly, how it has proved possible for Mr Lindley, who is a practising solicitor, actually to take a contingency payment himself.

We will obviously report further on the outcome of that correspondence.

MRS JUSTICE GLOSTER: Yes. Thank you.

Mr Rabinowitz, as and when Addleshaws respond to the letter, this may be something I'll need to be referred to --

MR RABINOWITZ: I understand, my Lady.

MRS JUSTICE GLOSTER: -- at a later date.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, we call the next witness, who is  
Mr Nikolai Glushkov, please.

MR NIKOLAI GLUSHKOV (sworn)

MRS JUSTICE GLOSTER: Mr Glushkov, please sit down if you  
would like to but if at any time you want to stand up,  
please feel free to stand.

THE WITNESS: Thank you, my Lady.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr Glushkov.

A. Good morning.

Q. Before we begin, can you confirm that you don't have  
with you a mobile phone or any other electronic  
communication device?

A. I confirm.

Q. You have in front of you bundle D2. Can you open that  
at tab 13, please D2/13/1. It's the first tab. Do  
you have in front of you a document entitled "Witness  
Statement of Nikolai Alexeevich Glushkov"?

A. Yes, "Amended Witness Statement".

Q. That's right. If you go to page 53 of the bundle, so in

the bottom right-hand corner there's a number 53 --

A. Yes.

Q. -- you see, if you come back a page, do you see a signature there?

A. That's my signature and I put it on exactly the same piece of paper but not yellow but white.

Q. All right, thank you for that.

I understand that there are some corrections that you wish to make to this statement. Can I ask you first, please, to go to page 53 of the bundle D2/13/53. It's page 52 of the statement itself. It's the page we were looking at with your signature.

A. Yes.

Q. Come back a page, please. Now, paragraph 255, as I understand it, is a paragraph that you want to make a correction to.

My Lady, I think the position is this has been changed on the Magnum version but not on the hard copy.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Mr Glushkov, you should have in front of you a piece of paper, just to your right, "Correction to Nikolai Glushkov's First Witness Statement". Do you see that?

A. Yes.

Q. And is it right that the correction you have made to

paragraph 255 is shown in this document?

A. Yes, it is correct.

Q. Now, Mr Glushkov, I understand that there is another correction that you wanted to make. Can you go, please, to page 25 of the bundle D2/13/25. Now, at paragraph 121 you say:

"Boris was not involved in Aeroflot (either as a director, shareholder" --

A. It's 24, page 24.

Q. Okay. It's 25 of the bundle, page 24 of the witness statement. Do you see at paragraph 121 you say:

"Boris was not involved in Aeroflot (either as a director, shareholder, employee or otherwise)."

Is that a sentence that you wish to correct in any way?

A. Yes. My Lady, may I give you some explanations to that effect?

MRS JUSTICE GLOSTER: Yes, please.

A. Actually after Boris Berezovsky provide -- that was my recollection and after Boris Berezovsky gave evidence here, I was requested by my solicitors whether I have any trace of the registry of Aeroflot. I said that I don't know but I will try to find out and I found it only last Sunday -- actually I have the bundle of files much greater than you have here in this courtroom at my

place, and I found extract. It was located in volume 93 of the materials of the case -- of the criminal case against me in Russia.

Unfortunately it's just the only extract that I have and definitely they confirm that I was wrong in this statement that Mr Berezovsky was a shareholder of Aeroflot.

MR RABINOWITZ: Can you explain in which years?

A. In 1996 this register shows that Mr Berezovsky was, through Consolidated Bank, 1996 through -- he was a shareholder of 0.109 per cent of Aeroflot. Mind you, my Lady, this is not a small share; at that time it was number ten shareholder in Aeroflot.

Later on -- and I think that's where Mr Shvidler was telling false statement -- it was acquired together with other shares by Laren Trading, a company of Roman Abramovich. But he acquired not only this share but also additional shares of Aeroflot, thus increasing the shareholding in Aeroflot to 2 per cent, which disappeared somehow in 1999.

Q. That's 1996. Can you say whether that shareholding was still there in any other year?

A. I couldn't say that. I couldn't say that. That's what I saw on Sunday and I sent these documents to Addleshaws because I found them.

MR RABINOWITZ: I can tell my learned friend we have  
a Russian version only of the share register --

THE WITNESS: But I can give comments to that version.

MR RABINOWITZ: -- which we got late yesterday afternoon.  
I'm happy to show my learned friend.

MRS JUSTICE GLOSTER: Perhaps you could take that --  
Mr Sumption, if there's any disagreement about access to  
that...

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Presumably you would like a copy right  
now?

MR SUMPTION: Certainly I shall not be able to make much use  
of the Russian version, I'm afraid. We had absolutely  
no notice of a correction to 121 and that is not the  
normal practice in dealing with witness statements; the  
normal practice is to give notice when a change is to be  
made.

MRS JUSTICE GLOSTER: Well, I don't know why you weren't  
told yesterday.

MR SUMPTION: I was not. We will look at that document.  
It's unlikely to be material because, as I understand  
it, the shareholding had gone by 1999.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: In those circumstances it probably isn't going  
to be pursued, but we better have a copy of it.

MRS JUSTICE GLOSTER: Well, Mr Glushkov has been here; if he has to come back, he has to come back.

MR RABINOWITZ: Mr Glushkov, subject to that correction, can you confirm that your witness statement is true to the best of your knowledge and belief?

A. Subject to this correction, my statement is true to the best of my knowledge and belief.

MR RABINOWITZ: Can you wait there, please.

THE WITNESS: Thank you.

Cross-examination by MR SUMPTION

MR SUMPTION: Mr Glushkov, you have, I think, been a close personal friend and business colleague of Mr Berezovsky for many years. Is that true?

A. That was true. I was his first partner in his life and, as I consider, first his true partner, honest partner and trusted partner, and I can prove that with documents that I supplied to the Addleshaw Goddard.

Q. You are also -- is this right -- a strong supporter of Mr Berezovsky's political opposition to the present government in Russia; is that right?

A. Yes, that's true.

Q. When you left Russia for England in 2006, did you for a time live in Mr Berezovsky's house?

A. No. I lived in his house only for one night, the first night, and then I lived in apartment at -- near

Knightsbridge.

Q. Yes, I see. Did you, after your arrival in England, work for Mr Berezovsky?

A. Never in my life I worked for Mr Berezovsky or for anyone else apart from the state enterprises. I work only for myself.

Q. Right.

A. And I didn't work for Mr Berezovsky ever in my life.

Q. You worked, however, for companies which Mr Berezovsky controlled, did you not?

A. These were the companies where I was the shareholder as well.

Q. Yes. Did you have an office in Down Street after your arrival in England?

A. No. For time of my preparation of asylum I had a table allocated to me in one of the rooms in the office of Down Street due to convenience, because it's very close to the Ghersons office. But after the death of my other dear friend Badri, I stopped visiting this office and I don't even remember when I was there last time.

Q. Could I ask you to be given, please, bundle D2. It's the same bundle as your own witness statement is in, so you've probably got it. It's after flag 14, where you'll see a witness statement from a gentleman called Ian Patrick McKim D2/14/55.

A. Mm-hm.

Q. Now, you probably haven't seen this before --

A. No, I haven't seen it.

Q. -- but just to explain, Mr McKim was a solicitor who was engaged at certain stages on the preparation of Mr Berezovsky's case and in particular in certain meetings with Mr Patarkatsishvili.

If you look at paragraph 10 of this statement D2/14/57, he describes the process by which he looked into the facts and he said that:

"... [he] had access to Mr Stephenson at Carter Ruck, and to others including [Mr] Dubov, [Ms] Nosova and [yourself] who were assisting Mr Berezovsky with the claim."

Were you assisting Mr Berezovsky with the claim at any rate in 2007?

A. Yes, I was helping Mr Berezovsky in many things here in UK, but I never worked for him.

Q. Yes.

A. And I was never paid by Mr Berezovsky for this help.

Q. I see. So you had, you say, a table in Down Street?

A. Yes.

Q. The work that you did in relation to the present claim, was that done in Down Street?

A. I must definitely say, my Lady, that I don't even

remember when last time I was in Down Street.

MRS JUSTICE GLOSTER: Yes.

A. I would say that the last time that I remember, it was a few meetings after the death of Badri on 12 February where I visited this office with -- in -- and maybe on a couple of occasions on the birthdays of some of the employees there. But I never worked on this claim on the -- in the Down Street.

MR SUMPTION: You worked on it elsewhere; is that right?

A. No, this claim I was not involved at all; I was giving only evidence.

Q. Well, I understand that you accepted Mr McKim's statement that you were assisting Mr Berezovsky with his claim. What form did that assistance take?

A. At the beginning I was helping him to gather the facts and data.

Q. And when was that?

A. In 2007/2008 maybe, beginning. 2006 -- sorry, it started in 2006.

Q. And continued to 2008?

A. Yes, at the beginning, yes.

Q. Understood.

Did you also help him on other legal problems, for example his negotiations with the United Kingdom Inland Revenue?

A. No, not in negotiations, but I helped him definitely with -- in provision of two documents: one was provided by Ruslan Fomichev and the other from Joseph Kay, and only as a technical person, as a person who has relationship -- good relationship, as I understood at that time -- with both of them, with Ruslan and Joseph, and who were in agreeance to communicate with me and not with Boris.

Q. Did you help Mr Berezovsky in relation to the money-laundering enquiries of the Dutch public prosecutor?

A. No, I don't remember that.

Q. I see.

Have you received sums of money from Mr Berezovsky since your arrival in England?

A. I will tell you, I arrived here in England and my friends both Badri and Boris helped me, which is more -- it's legally confirmed and I have documents, it's the gift -- deed of gift. Officially it was provided by Badri but in fact I understood totally that it was the help from both of my friends.

Q. Now, do you have any arrangement with anybody under which you will stand to gain financially if Mr Berezovsky wins this action?

A. No.

Q. Mr Anatoly Motkin, is he a counsellor to Mr Berezovsky so far as you know?

A. No, I cannot comment that.

Q. You do not know anything about him?

A. No. No.

Q. Mr Motkin --

A. No, I know about Mr Motkin but I do not know whether he's helping Boris in this issue.

Q. I see. Mr Motkin we understand to be participating in the management of this litigation. Is that your understanding or do you not know anything about that?

A. No, I cannot say.

Q. I see.

Have you recently borrowed a large sum of money from Mr Motkin?

A. Yes.

Q. And is the terms of that loan in any way dependent on the outcome of this litigation?

A. No. I can provide the court, in case of need, both with the loan agreement and with the mortgage, because it was done against the mortgage of property.

Q. Understood.

Now, I would like to turn, please, to the circumstances of your arrest on 7 December 2000. You were represented, I think, in the criminal proceedings

in Moscow at that stage by Mr Borovkov. Is that right?

A. Yes.

Q. Could I ask you, please, to be given R(E)7/132/195 which I hope has by now been loaded up on to the Magnum system, but you'll be given a hard copy. What you are, I hope, looking at is the first page of Mr Borovkov's statement in your asylum proceedings in England.

A. Yes.

Q. I would like you just to confirm one or two points that he makes.

Could you turn to paragraph 31, please, which in the bundle numbering is R(E)7/132/209 --

A. I have it.

Q. You have it, thank you. Mr Borovkov is here providing some background information to your arrest and at paragraph 31 he says:

"I was due to attend the GPO..."

That's the Prosecutor's Office.

"... with Mr Glushkov on 7 December. Although it was not official, Mr Glushkov knew in advance that he was going to be detained on that occasion."

Now, that's correct, is it?

A. That's the opinion of Mr Borovkov.

Q. Is it correct?

A. The probability of me being arrest was high but even

higher was the probability that I would be killed on the way to the General Prosecutor's Office. That's why I had -- my Lady, may I give some details here? Because it's very important.

In fact I received the notification from two of my friends that there was a threat to my life on my visit to the General Prosecutor's Office on the day of 7th. That's why I had to rent a separate apartment -- in fact I was even told the way it would happen: I would be run over by a truck. And I had to rent an apartment through an intermediary and it's well known, I can provide even the exact address: it was in the Kutuzovsky Prospekt in the same house where the Puglachev's theatre is located. Mind you, Mr Sumption, I have fantastic memory: that's what I am famous for. In this house I spent the last night before I was arrested.

But I would like to make a difference between the -- being definite and being in the field of high probability. That's very essential. The probability was high, since it was announced on 13 November, but at the same time when I was giving interview to Kommersant I pointed out that I am sure that I will be some day arrested but it didn't happen until that time, and it happened -- I gave interview in November. So the probability was high, that's why I had to call my

lawyers, and I would have -- and I had to say that.

As it turned out, on 7 December I moved through a different route in a different car, arrived separately from my lawyer to the General Prosecutor's Office and that's how I reached there unnoticed. I entered the building without anyone even expecting me there.

Mr Borovkov joined me there, we entered the General Prosecutor's Office and then there was a turmoil. The turmoil insisted of the fact that they didn't know what to do with me.

MRS JUSTICE GLOSTER: Mr Glushkov, I'm going to stop you there because you're going to have a lot more answers to give, please.

MR SUMPTION: Mr Glushkov, could you please turn to 202 of your witness statement.

A. Of my...?

Q. Your witness statement.

A. My witness statement?

Q. Yes, your witness statement.

Paragraph 202, on page 43 of the bundle numbering D2/13/202.

A. I'll find it. Yes.

Q. Now, you've just referred to the Kommersant article and you refer to it here. In the second sentence on that paragraph you say:

"From then on, I knew I would be arrested and detained."

Is that true?

A. Yes.

Q. Could you look back --

A. But I never said that here or that on 7 December.

Q. Could you look back at Mr Borovkov's statement, please, and turn to paragraph 34 R(E)7/132/210.

A. Yes.

Q. "On 5 December..."

Mr Borovkov says:

"... (personally served on Mr Glushkov on [the 7th]), Investigator Filin issued a decree to select detention as the measure of restraint... The decision was taken on the same day as the decision to charge Mr Glushkov under Articles 159(2)(a), (b) and (c) and 159(3)."

So what Mr Borovkov is saying there is that on 5 December the decision was taken within the Prosecutor's Office to charge you and detain you. Do you accept that?

A. No. What is said here is completely different, legally different thing: that this decision was dated 5 December, which is completely different from the fact that it was signed on 5 December. The signing of this

order took place two hours while I was smoking and I know from my experience with General Prosecutor Office that they can date any documents any date whatsoever.

In fact, the decision -- from my point of view, the decision was taken there and then during two hours that I was waiting in between the first meeting with Prosecutor Filin and this decision being produced to me. We were waiting in the corridor smoking: I smoked half a pack of cigarettes waiting for this decision.

Q. Mr Glushkov, Mr Borovkov is saying that the decree was issued on 5 December and that the decision was taken on 5 December to charge you. Do you have any information which enables you to say that that is wrong?

A. In fact on many occasions, at least on 50 occasions during the course of court proceedings, I indicated that the documents of the General Prosecutor's Office were falsified, even the signatures were falsified, and that was proved by the expert reports prepared by expertise, independent experts.

Q. You're talking about other cases?

A. I am talking about this particular case.

Q. Would you look back at paragraph 31, please

R(E)7/132/209:

"On 6 December..."

This is Mr Borovkov's statement:

"... I met Mr Glushkov, together with my colleague, the lawyer Semyon Aria. There were others present at the same time, including the Kommersant journalist, Renata Yambayeva. Mr Glushkov told me that he knew that he would be arrested the following day."

Now, is that true?

A. That was my supposition, yes.

Q. Well, it's not supposition as expressed here; it's a recollection of what you said to him.

A. No, the recollection is wrong because I went to the General Prosecutor's Office even without the simplest necessary things that I would have taken if I knew that for sure. I went there in one suit, without anything that was of necessity. I was dressed like that -- I'm sorry, my Lady, without bowtie but with an ordinary tie. Bowties I am wearing here at this particular occasion because I like being present in this audience and I want to be in good state to hear other people's lie in front of this court.

Q. Mr Glushkov, you did tell Mr Borovkov on 6 December, didn't you, that you knew that you would be arrested on the following day?

A. No matter how many times you will repeat this question, Mr Sumption, my answer will be still the same. I will never give you the answer that you will require from me.

I will give you only truthful answer because I gave a vow to say truth and nothing but the truth.

Q. Would you please be given bundle R(E)7, flag 1

R(E)7/127/1. This is your own account of the position as at 6 December. It appears in your witness statement in support of your application for asylum.

Now, did you regard it as important to give truthful statements --

A. Definitely.

Q. -- in this document? Would you turn to paragraph 79, please, page 26 of the bundle R(E)7/127/26:

"Immediately after I left the hospital (before the required time to remove the stitches), I was summoned to the General Prosecutor's Office where I was arrested on 7 December. In order to avoid 'accidents' I stayed in separate rented apartments on 5 and 6 December. Knowing that I would be arrested on 7 December, I had a meeting with my lawyers the day before and I also met the correspondent Renata Yambayeva of Kommersant whom I told to cancel the press conference that we had planned for the following next week."

Is that statement true?

A. Yes, definitely, and it doesn't contradict my previous statement.

Q. So you did know that you were going to be arrested on

7 December?

A. I'll repeat once again: the probability was high.

Q. Mr Glushkov, you're simply fencing with the facts. You knew perfectly well you were going to be arrested?

A. Mr Sumption, I'm not fencing with -- I'm not being fenced with something. I am telling you my recollection of the facts and you cannot substitute probability with the fact. The fact is arrested. The probability of being arrested is a different thing.

Q. Now, you have undergone two trials in Moscow, the first between 2002 and 2004 and the second -- is this right -- between 2004 and 2006?

A. That is correct.

Q. Now, was the result of the first trial that you were convicted of abuse of your authority as deputy director general of Aeroflot?

A. That's it.

Q. And of failing to repatriate Aeroflot foreign currency to Russia?

A. That is correct.

Q. And of attempting to escape from custody?

A. That is also true.

Q. You were acquitted at that trial of money-laundering?

A. Yes.

Q. Was the result of the second trial that you were

reconvicted of failing to repatriate foreign currency  
and also convicted of theft from Aeroflot?

A. No.

Q. What do you say the result of the second trial was?

A. You see, Mr Sumption, I'm not going to indulge with you  
in the legal argument on the correct statement but the  
accusation and conviction never had relate -- was  
related to theft, which is Article Number 158 of the  
Criminal Code of Russian Federation, but of the  
Article 159, which is fraud, of the Criminal Code of  
Russian Federation. If the Criminal Code of Russian  
Federation makes a difference between these two things,  
I make the difference as well.

Q. I'm perfectly happy with the word "fraud" if you would  
prefer that.

A. Yes.

Q. Understood. So were you convicted at the end of the  
second trial of fraud against Aeroflot?

A. Exactly.

Q. Right. And also -- is this right -- of failing to  
repatriate foreign currency?

A. That's correct.

Q. Now, is it right that a number of other persons have  
been convicted in Russia of offences concerning the same  
transactions involving Aeroflot?

A. That's correct.

Q. Can you tell us who they are?

A. They were Mrs Kryzhevskaya, Mr Krasnenker and Mr Sheinin.

Q. What about Ms Dubanskaya: was she convicted of offences as well?

A. No.

Q. She was not. Okay, three other people then were convicted of offences relating to these transactions. Can you confirm that those three persons were people of no political significance: they weren't politicians or engaged in politics?

A. No.

Q. That's correct, is it?

A. Yes.

Q. And --

A. And they were never in jail.

Q. And they also -- is this right -- had no connection with Mr Berezovsky?

A. No.

Q. Sorry, when you say "no", are you confirming that they had no connection with Mr Berezovsky?

A. To the best of my knowledge.

Q. Understood.

A. Apart from Mr Krasnenker, who worked in Logovaz.

- Q. Now, I fully understand that you say you were wrongly convicted on all of these charges and that your two trials in Russia were unfair.
- A. That's correct.
- Q. I'm not going to go into that aspect of matters. What I would like to ask you is this: do you go so far as to say that there wasn't even a case worthy of investigation by the public prosecutor into the transactions involving Aeroflot?
- A. Which public prosecution?
- Q. The one in Russia. Do you say that there was not even a case which was worthy of investigation by the prosecutor?
- A. I think that it was instigated and I know exactly who instigated it and when, and I exactly relate this in my asylum claim statements and in all documents related to that. I was not hiding anything, not anything related -- actually all the materials of the case, my Lady, were provided to asylum tribunal, to the High Court here and to all the other instances that requested it, and I faced a fair trial in asylum court and I was giving evidence for quite a number of days in this respect.
- Q. Mr Glushkov, I think you have missed the point of my question. I understand that you say -- and I'm not

going to challenge you on this -- that your trial was unfair and that you should not have been convicted.

A. My Lady, may, before I answer this question, I can answer this --

MRS JUSTICE GLOSTER: Let him put the question first.

MR SUMPTION: I haven't asked you the question yet.

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

It's important, Mr Glushkov, that you listen to the question. If you then have an objection to it, or Mr Rabinowitz does, then Mr Rabinowitz can get up.

Put the question, Mr Sumption, please.

MR SUMPTION: Now, what I would like you to tell us is this:

do you say that there wasn't even anything suspicious enough to warrant being investigated by the public prosecutor?

A. Once again, my Lady, to answer to this question I have to give you explanations. If you look at my witness statements, there are quite a number of pages crossed out: that was done at the request of the other side that said that these events have nothing to do with this particular case. I did that at this request because my lawyers said that that side is correct.

Now Mr Sumption is asking me a question that deals exactly with those crossed-out parts and if he insists on those questions, I will have to ask your Ladyship to

reinstate those crossed-out pages.

MRS JUSTICE GLOSTER: Okay. Well, just answer the question first.

A. I think that they have nothing to do -- this prosecution had nothing to do with the necessity to prosecute me, which is more -- as was recognised by the High Court here, it was not prosecution but persecution.

MR SUMPTION: Mr Glushkov, the parts that you have deleted related to the question who was responsible for having you arrested, and that is not the question that I am asking you about. I am interested in the transactions about which you were subsequently tried in Moscow. That's what I'm interested in.

A. The transactions were --

Q. I haven't asked the question yet.

A. Okay.

Q. What I want you to tell us is: do you say that there was not even something sufficiently suspicious about those transactions to be worth investigating by a prosecutor? Do you understand the point that I am making?

A. Yes, I understand the point --

Q. I'm not asking you who got you arrested. I'm just asking you: do you accept that there were sufficiently suspicious circumstances to warrant being investigated?

A. And the investigation took place -- there were, and the

investigation took place in 1997 and 1998 and all the accusations were dropped out in 1998, in June 1998, by the general prosecutors.

My Lady, what Mr Sumption is saying is the new renewal of those accusations that started in 1999 and that has direct relationship to who caused those renewals.

MRS JUSTICE GLOSTER: Okay. So can I just summarise, Mr Glushkov, and if I've got it wrong, tell me.

You accept that there were circumstances of such a nature that justified the initial investigation?

A. Yes.

MRS JUSTICE GLOSTER: Once that investigation was dropped, you say there were no circumstances justifying the repeated investigation or the continued investigation?

A. Exactly. Exactly, my Lady.

MR SUMPTION: I understand.

The matters investigated on the second occasion, in December 2000, were they the same matters as the matters in respect of which the investigation had previously been dropped?

A. No, but those matters were never dropped as well.

Q. I think you may have misunderstood my question, Mr Glushkov. What you've just confirmed is that you accept that there were matters that were worthy of

investigation on the earlier occasion but there was no justification for reopening the investigation later.

All that I asked you is this: were the matters that were being investigated the same on the two occasions?

A. No.

Q. What was the difference?

A. The difference that fraud appeared.

Q. Sorry, the difference...?

A. Fraud appeared.

Q. Fraud appeared --

A. The accusation in fraud.

Q. -- on the second occasion?

A. On the second occasion, yes.

Q. And what had appeared on the first occasion?

A. Illegal commercial activity and money-laundering.

Q. Right.

Now, if you would just turn to paragraph 78 of your witness statement D2/13/17, Mr Glushkov, you give some evidence here about a company called Andava.

A. Mm-hm.

Q. Now, Andava was a Swiss company, was it not?

A. Yes.

Q. And I think you tell us that it was originally established in 1994 as a joint venture between Andre and AVVA International and was connected with a project to

manufacture a good-value popular car?

A. Exactly.

Q. Now, that venture had come to an end, hadn't it, by the end of 1995?

A. Didn't come to an end but it was slowly dying, let's put it this way.

Q. And is it right that at the end of 1995 Andava had effectively no business?

A. No, it had business.

Q. What was its business at the end of 1999?

A. It had some business with Avtovaz, with Transaero, with other companies.

Q. No, I'm not talking about afterwards; I'm asking you about the position at the end of 1995?

A. I'm saying about the end of 1995.

Q. I see. Well, now, in September 1996 I think you tell us that Andava became a wholly owned subsidiary of Andava Holdings SA, a Luxembourg company?

A. Yes.

Q. And before that transaction occurred, were you and Mr Berezovsky shareholders in Andava?

A. Yes.

Q. And did you and Mr Berezovsky then, in September 1996, exchange your shares in Andava for shares in Andava Holdings?

A. We transferred those shares to Andava Holdings.

Q. Yes, and you took shares in Andava Holdings?

A. That is the difficult situation that I'm not yet definite about that.

Q. Well --

A. Yes, but there is a statement like that. Actually the registry indicates that I was the shareholder of Andava Holding and that is correct.

Q. Yes. I mean, you appear to confirm that --

A. And I stopped being shareholder officially of Andava Holding in 1997, yes.

Q. Right.

Well, if you look at your witness statement at paragraph 83 D2/13/18, what you say is that:

"On 18 June 1997, Boris and I transferred our shares in Andava to Andava Holding SA, and obtained shares in that holding company."

I assume that that's true?

A. That's a formal registration that took place, yes.

Q. Right.

Now, were the directors of Andava in 1996 you, Mr Berezovsky and Mr Jenni?

A. Yes.

Q. And did you perform your duties as a director of Andava until June 1997?

A. Until June 1997, yes.

Q. And did you formally resign as a director of Andava in November 1997?

A. No, I submitted the -- I submitted my resignation in May but it was registered in November.

Q. I see.

Now, you became the first deputy director general of Aeroflot -- is this right -- in January 1996? I've taken that date from your witness statement.

A. Yes, that is correct.

Q. Is it right that one of the first things that you did was to cause Aeroflot to enter into a contract with Andava to manage its foreign currency holdings?

A. This is not correct because the first -- I've done many things that were first.

Q. One of the first things.

A. One of many things, Mr Sumption.

Q. Of course.

A. And one of them was this.

Q. Right. Now, did Andava begin to operate as Aeroflot's international treasury in April 1996?

A. No, it became operating as international treasury in May 1997 but it was -- it started holding the deposits for Aeroflot in -- at the end of May 1996.

Q. If you look at paragraph 132 of your witness statement

D2/13/29, you say that:

"Andava became Aeroflot's international treasury centre in April 1996."

Is that not right?

A. Yes, in a way, in a way, correct, but I give the correct definition.

Q. Yes, I see. Well, I'm not so much interested in the title or definitions. In substance that's what happened from April 1996 onwards, isn't it: it operated as Aeroflot's international treasury centre?

A. Not from -- yes, yes, let's put it this way.

Q. Now, Mr Jenni, in his witness statement, tells us that that was Andava's only business from that time onwards. Is that correct?

A. I think that if he says that, that's correct.

Q. Now, is this right: that as first deputy director general of Aeroflot you caused Aeroflot to contract with a company of which you were an active director and part-owner? Is that correct?

A. Yes.

Q. Would you accept that at the very least you had a significant conflict of interest?

A. Of which I reported to the board of directors and to the general manager.

Q. Yes. You had a --

A. And Central Bank.

Q. Yes. You had a significant conflict of interest. You may have reported it, but you did have that conflict, didn't you?

A. Yes.

Q. Now, you're obviously aware, I take it, that Mr Jenni, who was one of your fellow directors at Andava, was convicted in Switzerland of assisting you to act in criminal breach of your duties to Aeroflot?

A. No, this is not correct definition because -- in this case I would like to have this conviction in front of me because I know it almost by heart and I would like to have -- to draw attention, my Lady, to the statement of facts A and 1.5.3, where it is indicated the reason why I was involved in this accusation.

Q. Could you please turn to bundle H(A)97, which somebody will find for you. You need to turn to page 192, where the document starts H(A)97/192.

Is this the document that you referred to a moment ago when you said that you knew it by heart? We're looking at an English translation of it, which may not be the one that you looked at.

A. I think either I was given a wrong --

Q. Page 192.

A. Oh, sorry, sorry. Oh, yes.

Q. This is the document you were referring to, is it?

A. Yes.

Q. Understood.

Now, is it right that the charges against Mr Jenni related to the period between April 1996 and June 1997?

A. Mm-hm.

Q. And did it also relate to the system by which Andava paid foreign currency bills on behalf of Aeroflot?

A. Mind you, you're asking me the questions: my Lady, I must definitely draw the attention of High Court that I was never a party to those hearings --

Q. I understand.

A. -- and I was not even the witness to those hearings; which is more, I was not even invited to participate in those hearings, no matter what is said here, because I received no official invitation. But what you say is correct, judging from this document.

Q. Right.

Now, in the proceedings against Mr Jenni, is it right that the facts were substantially undisputed; the argument was about whether they were dishonest or not?

A. No, it is not correct statement and, my Lady, I must definitely say that Mr Jenni was finally accused as an assistant, accomplice, to the person -- that is myself -- that is convicted guilty of abuse of

authority, and that is exactly what he is convicted of. And the reason -- but mind you, I was never convicted of abuse of authority. And the reason why I was found guilty by the court, not being a party to this court, guilty of abuse of authority, is if you look at paragraph A of the facts of case. It's page 197 H(A)97/197. (Pause)

Q. Yes?

MRS JUSTICE GLOSTER: Yes. (Pause)

A. Here it's indicated the reason, the initial reason what was used by the Swiss court. It's four pages -- four lines above the end of the last page. It says:

"This verdict was also not appealed" --

MRS JUSTICE GLOSTER: Just a second. Are we on page 197, 198?

A. It's H(A)97/197. It's statement of facts of case, A.

MR SUMPTION: Right.

A. If you look at the line number four from the end, it starts with the in absentia:

"This verdict was also not appealed by the sentenced individuals."

And above that is written:

"The prosecutor's office appealed against this verdict; Nikolai Glushkov did not appeal."

Which is intentional untruth. I will tell you all

the parties appealed the decision of the court and judging based on this later -- and if Mr Sumption allows me, I will turn to the other page and we'll show that based on this assumption, the court made a judgment that as soon as Nikolai Glushkov didn't appeal against the first ruling of the court that made me guilty of the abuse of authority, I agreed with my guilt, of being guilty of abuse of authority. It's 1.5.3 here in the same decision of the court. And this is not true.

Which is more, by my information -- and I provided Mr Jenni with the copies of my appeal and appeals of all the parties -- these appeals were submitted to the court -- to the Swiss court and they had it at its disposal.

So this assumption is taken as an untrue assumption for basing me -- for sentencing me as an accused of a guilt that I was not accused of.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Mr Glushkov, what I'm concerned with is the facts which were found by the Swiss court, which I'm going to take you to.

Now, first of all, could you look, please, at page 224 H(A)97/224.

A. Mr Sumption, once again, I must definitely draw a fact that they are based on the wrong assumption.

Q. Mr Glushkov, let's just have a look at the facts and you can discuss the facts when we look at them.

First of all, I would like to establish with your assistance exactly what Mr Jenni was convicted of that related to you.

A. Mm-hm.

Q. At page 224, you will see a heading, 4.2.3:

"Aiding and abetting Nikolai Glushkov's neglect of duty by the accused."

And if you look two pages further on, you'll find the conclusion at 4.2.4, page 226 H(A)97/226:

"The accused..."

That's Mr Jenni.

"...is therefore to be found guilty of aiding and abetting unfaithful management."

Now, do you accept that Mr Jenni was convicted of aiding and abetting unfaithful management by you?

I know you don't agree, but do you accept that that's what the Swiss court convicted him of?

A. Yes, but I think that this conviction is wrong. You cannot accuse person of being guilty of aiding and abetting unfaithful management if the person who he is abetting and aiding was not accused and guilty of this crime.

Q. Would you please turn back to page 209 H(A)97/209,

where you'll find the basis on which I suggested to you a few minutes ago that the facts were not contested; it was only the implications.

A. Were not contested by whom?

Q. By Mr Jenni.

A. I'm afraid that I didn't have the chance to contest those facts.

Q. If you have a look at paragraph 2.1, the judgment says, second line of 2.1 -- well, start at the first line:

"The objective facts of the case, as described in the bill of indictment in relation to the documented contracts and business transactions, the firms and individuals involved and the movement of funds, are uncontested in respect of the essential points. The accused confirms that the relevant elements relating to the facts of the case are of fundamental importance and that the payments, especially those mentioned in Addendum 2 to the bill of indictment, are roughly correct."

If you then look at the next paragraph, that begins by saying:

"However, the assessment of the business transactions as making no business sense and thereby detrimental -- since incurring only costs for the civil claimant..."

That was Aeroflot.

"... which forms the basis of the indictment, is contested in full."

Now, what I suggest to you is that Mr Jenni did not contest the actual transactions; he simply disputed the suggestion that those transactions were artificial and unfaithful. Do you agree?

A. I can neither agree nor disagree with this because Mr Jenni is here and you have every possible chance to cross-examine him on this effect. I cannot be answerable for what Mr Jenni said or assumably said in court.

Q. Well, I'm not going to seek to make you answerable for what Mr Jenni said. That appears to have been the position, what the issues were, according to the Swiss court.

A. I do not agree with this decision of Swiss court.

Q. Well, now --

A. And no court can accuse a person that is not tried in this court and rule it guilty.

Q. Let's have a look at what the transactions were and I'm going to ask you whether you accept that such transactions occurred.

The terms -- correct me if I'm wrong -- on which Andava settled foreign currency bills were that it paid

to the supplier and then charged Aeroflot taking payments out of the foreign currency balances under its control; is that correct?

A. No, that is not correct.

Q. Right. In what --

A. Which is more, what is correct is described in the -- in 1848 in the very famous hearing here in London in House of Lords by Lord Cottenham when he described what sort of relationship becomes -- and it's valid since then in every financial institution between the client and the financial institution. It's the famous case of *Foley v Hill*. So I was teaching this in the university. So what do you want to tell me?

Q. Mr Glushkov, I'm not trying to debate law with you. Lord Cottenham unfortunately died about 130 years before the facts of this case and I'm asking you about the facts of this case. What I want to explore with you is the transactions which led to Mr Jenni's conviction and your involvement in them.

Now, do you accept that Andava settled foreign currency bills on behalf of Aeroflot?

A. The whole statement is wrong because it describes the whole of the transaction wrongly. Which is more, the court didn't accept the expert report of independent expert provided by Mr Jenni and you will have a chance

to question him about that. But I do not agree with anything that is said in this report.

Which is more, I do not agree with the report of expert Bardola who prepared the report for this because it was not based on the Russian accounting system and whereas it made the conclusions on Russian accounting system.

Q. Well, Mr Glushkov, the way I'm going to deal with this is as follows: I am going to summarise what I say the Swiss judge found. Now --

MRS JUSTICE GLOSTER: Just before you do that, Mr Sumption, could you just explain to me, if you don't agree with how Mr Sumption summarised the transactions, what were the terms on which Andava settled foreign currency bills, if it did so at all? Just explain to me the system, very shortly, please.

A. Then -- no, no, it cannot be done very shortly. I can spend a day on that and I am prepared, my Lady, to do that.

MRS JUSTICE GLOSTER: Well then don't answer the question.

Mr Sumption, you continue please.

A. But I can -- my Lady --

MRS JUSTICE GLOSTER: No, I don't want to have a day on it. All I wanted was a headline answer summary. If that's not possible --

A. You see, we had the relationship in rubles, Aeroflot had relationship in rubles, and that's the currency that was to be devalued and it devalued in 1998, and we had the deposits in hard currency. But that's how the whole thing -- the payments were done via the agreements and the promissory notes in rubles and that took the account of the exchange rate difference.

And that's why I say that the Russian accounting accounts, the grand livre, the big book of accounting book, was to be delivered to Bardola. Russian Prosecutor's Office refuse to offer this book to the expert, Swiss expert, and that's why --

MRS JUSTICE GLOSTER: Just stop there, Mr Glushkov, please.

Scroll back, if you can, to [draft] page 39 on the LiveNote screen and see Mr Sumption's summary. I'll read it to you again. It's [draft] page 39, line 1. I just want to understand why you say Mr Sumption's summary of the terms on which Andava settled foreign currency bills is a wrong summary.

A. Because it's wrong in everything.

MRS JUSTICE GLOSTER: Okay. Well, you just say in six lines what were the terms on which Andava settled foreign currency bills.

A. My Lady, then I will say the following.

Andava settled the debts that Aeroflot had in front

of United Financial Corporation. The debts of Aeroflot before United Financial Corporation were made in rubles and there were promissory notes issued in rubles for this debt. Andava then paid these promissory notes at the exchange rate of that time -- that's the essence of this transaction -- but it paid it in hard currency. And that's why the exchange difference was playing the trick -- you understand what I mean? It was the sort of exchange rate -- it was insurance against the exchange rate drop of ruble. That's how it was projected.

Whatever is said in the Bardola report, whatever is said now in the statement of Mr Sumption, does not correspond the truth.

MRS JUSTICE GLOSTER: Thank you.

Go on, Mr Sumption, please.

MR SUMPTION: Now, the result of the transactions was that the supplier of services, the hard currency supplier of services, got paid out of the Aeroflot foreign currency treasury; wasn't that right?

A. That is not correct. Once again, Mr Sumption -- you see, my Lady, I'm not going to indulge into that very famous speech of Lord Cottenham who died, helpfully, 138 years ago, but definitely that's the basis of the whole thing. When you go to the bank you don't say that and you don't say that you are being paid out of your

funds; you are being paid out of the bank's funds.

So to be on the legally correct terms, what you are saying is not correct, Mr Sumption.

Q. When Andava charged Aeroflot, it added, during the first part of the period covered by this judgment, interest at the rate of 65 per cent for late payment, didn't it?

A. Mr Sumption, it's not correct everything. Andava didn't add anything. Why do we discuss this? It has nothing to do with me apart from the fact that it accused me of something. I was -- it made me guilty of something I was never guilty before.

Q. And in the second part of the period Andava charged a flat rate penalty of 15 per cent on the total amount of every item settled by Aeroflot more than 150 days late; that's right too, isn't it?

A. And this is not right too.

Q. Now, the Swiss court held, did they not, that those were the transactions that occurred and that they had no rational purpose other than to divert money from Aeroflot's foreign currency treasury to Andava? That's what they found, isn't it?

A. My Lady, if we are going to discuss all the issues, I suggest, then I am prepared to deal with the substance of Aeroflot/Andava case. I then demand that we are not reciting the judgment of Swiss court but we go to the

substance, and I'm prepared to answer to every single question of the substance of the matter. I was answering these questions for two months in Russian court.

MRS JUSTICE GLOSTER: Look, Mr Glushkov, I'm the one who decides at the end of the day what is relevant.

THE WITNESS: Sorry, my Lady.

MRS JUSTICE GLOSTER: It may be that I decide that all these questions have no relevance to Mr Berezovsky's case. At the moment, though, I take the view that it is appropriate for you to answer the questions that Mr Sumption is putting, so please do your best to do that, even though you take the view -- which you clearly do -- that the Swiss decision is not reliable.

THE WITNESS: I'm sorry, my Lady.

MRS JUSTICE GLOSTER: It doesn't matter. It's for me to decide at the end of the day whether this has any relevance to anything; what the status, if anything, is of the Swiss court judgment; what relevance it has. So don't worry about that; just answer the questions.

THE WITNESS: My Lady, I didn't want to intrude in your judgment.

MRS JUSTICE GLOSTER: No, no, fine. Okay.

MR SUMPTION: Do you accept that the Swiss court found, rightly or wrongly, that these were artificial

arrangements with no rational commercial purpose other than to divert money from Aeroflot's foreign currency treasury to Andava? Do you accept that is what they found?

A. That was decision of Swiss court.

Q. Right. Now, do you accept that that was, in the view of the Swiss court, because although Andava settled the suppliers' bills, Andava was never in fact out of pocket because they settled them with Aeroflot's own money? That was what they decided?

A. That's what they decided and to which I do not agree 100 per cent.

Q. Right.

And they also decided, did they not, that because Andava controlled the time at which Aeroflot was charged and delayed the charging of Aeroflot for long enough to ensure that the interest and penalties were always payable, that also was an uncommercial and unjustifiable transaction? That's what they decided, is it not?

A. That's what they decided and to which I do not agree at all.

Q. I understand.

Now, they also decided, did they not, that the result of these operations over the period in question was that Andava made a profit at the expense of Aeroflot

of 53.4 million Swiss francs? Do you agree they decided that?

A. It could be, but I do not know this.

Q. They decided, did they not, that the profits made by Andava in this period were paid out to a number of companies? And I want to just confirm with you who owns these companies.

One of them was Anros. They decided, did they not, that the 53.4 million had in part been paid out to Anros, did they?

A. Could be. Cannot comment that.

Q. Was Anros a company whose owners included you with 32 per cent?

A. No, that's not true. In 1995 I transferred all my ownership in Anros to Boris Berezovsky.

Q. When do you say that was? In 1995, I see.

A. Yes, in June 1995. In November it was put on the document, signed, and I think that it's in the bundle of the court.

Q. You do say that in your witness statement at paragraph 70 D2/13/16. So is the position that Mr Berezovsky had 28 per cent before you gave him your shares and your share of 32 per cent was then added to that 28 per cent?

A. I don't know what happened then. I gave a gift to

Boris Berezovsky of all my shares in Anros, Forus and other companies.

Q. Now, there was also a company called Forus. Do you say you gave your shares to Mr Berezovsky in that company at the same time?

A. Exactly.

Q. And what about Ruco Trading, which was another company which was the recipient: were you ever interested in that?

A. Yes. Ruco, I was the beneficial shareholder and the two amounts were indicated in the Ruco Trading, it's 3-point -- if we are speaking about Swiss decision -- 3.06, and Ruco paid out of this amount 3.246 to Laren Trading and that was recognised by the Swiss court as well, and that was a case because the -- due to -- according to the information of my Swiss lawyers, the judge was not satisfied with the fact that I was not shareholder of Laren Trading, because she accepted Laren Trading being the recipient of that amount but was not satisfied that I was not shareholder of that company. As it turned out later, shareholder of that company is Mr Abramovich.

Q. I think the correct figure for transfers from Ruco Trading may be 41.5 million Swiss francs.

A. That's to my account, yes. That's exactly -- that's the

only amount that was ever accepted as the amount transferred to my account: 41,000 Swiss francs or US\$32,000, yes.

Q. It's 41.5 million Swiss francs, wasn't it?

A. No, thousand.

Q. I see. Well, I'll check that figure.

A. You'll have to.

Q. Now, in another document we've looked at, which you won't have seen before and I won't take you to, Ruco Trading is said by Mr Berezovsky to be a company belonging to himself and Mr Patarkatsishvili. But I think your evidence is that you were the beneficial owner?

A. Also beneficial owner.

Q. Also, I see; not instead of them, as well as them?

A. No.

Q. I understand.

Now, you say, I think, that the treasury transactions that give rise to this judgment were honest transactions with a proper commercial justification?

A. Yes, exactly.

Q. Now, would you not agree with this: that they were at least transactions which it was right and proper to require you to explain?

A. To explain to whom?

Q. To a prosecutor, for example.

A. Definitely.

Q. And looking at the matter just before November 2000, you say that you were confident of being able to justify your conduct?

A. Yes, definitely.

Q. But you can't seriously suggest, can you, that there was nothing which needed justifying?

A. I can confirm the following thing: I was never questioned about this between the period -- by the prosecutors between the period I was arrested and the period the criminal -- the court started being heard in 2002; not a single question. The only thing that I was able to transfer to the prosecutors is my written submission that I transferred on 7 December 2000. That's it. Nothing -- I was not ever questioned about this after.

Q. But these transactions were, were they not, part of the basis on which you were ultimately convicted in Moscow?

A. Unfortunately, due to the political circumstances. But mind you, Mr Sumption, that during court hearing the first time I made -- I gave evidence, I was giving it during one month, full month, every day, eight hours, and I explained to the court the exact nature of this, including the Lord Cottenham rules of the game, and the

result was that they drop -- the charge of fraud was dropped. There was something to be replaced.

Mr Sheremetev, the Judge Sheremetev found this ruling. We objected to this ruling. I was thinking and I was most definite that I was not guilty of the crime and we appealed this ruling.

Q. But you were convicted of it on the second occasion? It was the same transactions, I think you've confirmed that.

A. Yes, but it was completely unfair trial.

Q. I understand.

A. If my Lady will be interested, I can relay the details that make me being sure of that unfair conviction.

MRS JUSTICE GLOSTER: Well -- just a second -- I would be interested but I don't think that it's appropriate for you because we're under quite tight time constraints.

THE WITNESS: Thank you, my Lady.

MR SUMPTION: I want to ask you about a different matter, Mr Glushkov, but, my Lady, I'm not going to be more than, I should think, about five or ten minutes at the most. Would it be sensible to --

MRS JUSTICE GLOSTER: Well, shall we continue, Mr Sumption, or do you wish for the break?

MR SUMPTION: No, I would suggest that we continue and take the break between my cross-examination and any

re-examination.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: Mr Glushkov, would you please take bundle R(E)7 at page 1 R(E)7/127/1, which will show you what this document is: it's your asylum witness statement.

A. Yes.

Q. If you turn on to page 27 R(E)7/127/27, paragraph 83, you say that:

"[You are] aware from Boris that, in January 2001, [Mr Berezovsky] had a meeting in France with Roman Abramovich, and it was put to Boris that if he were to sell his shares..."

This is the shares in ORT.

"... then I would be freed."

Mr Berezovsky told you that that meeting happened in January, did he?

A. No, he couldn't tell me. I'm aware from Mr Berezovsky, that's what I was retold by Mr Borovkov to me, because I couldn't be told by Mr Berezovsky because he was in England and I was in jail.

Q. No, I understand --

A. But Mr Borovkov -- let me explain to you. You asked me a question. Definitely I received this information and I was most aware about this and that's what I wrote

here, what corresponded the fact, despite of the other fact which is also part of my asylum claim, my Lady: it's a statement of Mr Patarkatsishvili that he made in 2001 that they started negotiating my release on 7 December.

Q. I'm going to ask you about that episode in just a moment, Mr Glushkov.

What you were talking about here is not the knowledge that you had when you were in jail. You are saying:

"[You are] aware..."

That's at the time of preparing this witness statement.

"... from Boris..."

That's Mr Berezovsky.

"... that, in January 2001, Boris had a meeting in France with [Mr] Abramovich."

Now, all I'm asking you to confirm is that when you spoke to him about this, presumably after your arrival in England, he told you that the meeting with Mr Abramovich was in January 2001, didn't he?

A. Mr Sumption, I would relieve myself of your assumptions because they do not correspond to what I said before and I said to you before exactly what is written here. I am aware until now, Borovkov, I can tell you, I can repeat

in this court, Borovkov relate to me the fact from Boris Berezovsky that this happened in January 2001, but this is not a direct knowledge.

Q. Mr Glushkov, why did you write in this statement that it was Boris who told you that? That's Mr Berezovsky, not Mr Borovkov.

A. No, that's -- I always understood that that -- Mr Borovkov can have no information of his own.

Q. I'm not asking you about Mr Borovkov. Why did you write in this witness statement --

A. I explain.

Q. -- that you were aware of that from Mr Berezovsky?

A. I explain.

Q. Yes.

A. I explain: because that was what was told to me by Mr Borovkov.

Q. Mr Glushkov, that simply cannot be right. You wrote this because Mr Berezovsky had said so when you discussed this matter with him after arriving in England, didn't you?

A. Mr Sumption, I don't remember you being present at our meeting with Mr Berezovsky and the statement that you are making does not correspond with the truth.

Q. I am simply reading your evidence, Mr Glushkov.

A. No.

Q. What has happened is that you have sat in this court during parts of Mr Berezovsky's evidence and you are seeking to avoid parts of your own evidence that do not appear to accord with his; that's right, isn't it?

A. No, that's not correct. Which is -- Mr Sumption, why are you just pulling one string and the other strings? Please refer then to the statement of Badri Patarkatsishvili that I supplied as the evidence to this December point, where 7 December is exactly the day that is indicated there. I have it -- if you find difficulty in finding it, I have it in my briefcase.

Q. I'm not interested in what Mr Borovkov said to you, Mr Glushkov because, as you rightly say --

A. What about Mr Patarkatsishvili?

MRS JUSTICE GLOSTER: Just a second. Don't interrupt the question, please.

MR SUMPTION: -- as you rightly say, Mr Borovkov had no direct knowledge. I am interested in what Mr Berezovsky had told you and I have suggested to you that in fact he told you what you record in paragraph 83.

You deny that, do you?

A. Directly, no, he didn't.

Q. Could you please look at the next paragraph, paragraph 84.

A. In fact, answering your question, I don't even recollect

discussing the date of these negotiations with him directly.

Q. Now, if you look at paragraph 84, you say at the end of that paragraph that:

"[You are] aware that... [Mr] Patarkatsishvili, tried to negotiate further and had discussions with, Ivanov, the Secretary of the Security Council with the aim of securing my release but to no ultimate avail."

Now, is that a reference to negotiations between Mr Ivanov and Mr Patarkatsishvili in Moscow between January and April 2001?

A. That is correct.

Q. Could you look back at Mr Borovkov's statement --

A. I have it here.

Q. -- at paragraph 66 R(E)7/132/222. He summarises, not from personal knowledge but from what he had been told, some of the facts about those negotiations.

Now, does that confirm the evidence that you've just given about the date at which this negotiation occurred, namely that it started in January and ended in April?

A. Of Mr Patarkatsishvili?

Q. Yes.

A. Yes. That's what he confirmed in his statement.

MR SUMPTION: Thank you. I have no further questions for you.

MRS JUSTICE GLOSTER: Thank you. I'll take the break now, ten minutes. You mustn't talk about your evidence or the case with anybody.

THE WITNESS: Thank you, my Lady.

(11.38 am)

(A short break)

(11.50 am)

MRS JUSTICE GLOSTER: Mr Malek?

MR MALEK: I have no questions, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin?

MR ADKIN: My Lady, no questions.

MRS JUSTICE GLOSTER: Mr Mumford?

MR MUMFORD: No questions.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Glushkov, just a few questions for you.

Towards the end of your evidence in answer to questions from Mr Sumption, you referred to a statement by Mr Patarkatsishvili referring to the date of 7 December.

A. Indeed so.

Q. Can I ask that you be given, please, bundle H(A)97 at page 157, please H(A)97/157.

A. My Lady, as just a short remark of the consistency of everything that I say, this statement is also part of my asylum claim.

MRS JUSTICE GLOSTER: Yes, fine. Thank you.

MR RABINOWITZ: Can I ask you just to read, if you would,  
Mr Glushkov, the first part of this statement at least.

A. I'm doing my homework quite well: if I'm referencing something, I read it. I read it.

Q. Can I just ask this about the statement. Towards the bottom of page 157 there is a date which looks like 2008. Do you see that?

A. Yes. 17/7/2008: is that the one that you reference?

Q. That's right. But on the following page, there seems to be a date: December 2005.

Can you help us with when you think this --

A. Sir, I'm looking through the Russian.

Q. Are you able to help, Mr Glushkov, as to when --

A. I found. This is the date where the -- the interview of Mr Patarkatsishvili was given in 2001 but the notarised statement was made -- it's a notary stamp, it's a notary stamp, and the statement -- actually I have the original of this statement of Mr Patarkatsishvili. It was presented to the court in Moscow. It was -- it's in the materials of the court in Moscow. It's the notary stamp which is made by notary, public notary in Georgia, because Mr Patarkatsishvili couldn't leave Georgia at that time and he notarised his statement.

Q. Thank you for that.

Can I then just ask you this. Mr Sumption spent some time with you today --

A. Sorry, and 2008 is the date of translation, I'm afraid.

Q. Thank you very much.

Mr Sumption spent time with you this morning going through a series of court proceedings in foreign jurisdictions, including in Russia and in the Swiss courts. We obviously don't know what relevance he places on it. But given that, you mentioned when Mr Sumption brought up the second Russian proceedings that the trial was unfair.

A. Yes.

Q. Now, as I say, we don't know if this is relevant or how, we are pressed for time, but if you can give a short -- can I ask you, only if you can give a short explanation, can I ask you to explain why you say it was unfair?

A. My Lady, just in few sentences if possible.

MRS JUSTICE GLOSTER: Yes, of course.

A. All parties appealed. Cassation court, which is Moscow City Court, ruled out -- and this is very important, that's where the unfairness started -- that the prosecutors didn't provide sufficient evidence of guilt of me whereas the defence didn't provide sufficient defence of my innocence, which is a ridiculous statement in a judgment of this sort by itself because if the

prosecutors didn't provide the sufficient evidence of guilt, I should be acquitted of any guilt. That's by law.

And also it was said that the audit by minister of finance was done with the violations of the criminal procedural law. That's why it returned for a second hearing although by all means it should be dismissed and I should be ruled non-guilty.

The second hearing started with the fact that the judge started hearing the case in fair way and, naturally, hearing it in a fair way, dismissed the audit report on which all the accusations were based. Without this audit report -- and it was a very well-based ruling of a judge, based on the facts that it was really done with violation of legislation.

And then, by the end of the proceedings of the second court hearing, when she was pressed by the prosecutors and she was pressed, she complained openly in the court -- and this is witnessed by my lawyers here in UK -- that she was pressed and she complained in the court that they are pressing her, that they are threatening her. She was complaining to us, to all the audience that was sitting in the courtroom. And finally she readmitted this audit report without any grounds, just at the request of prosecutors, full stop. The

whole ruling is a few sentences long.

And after that, the whole thing started quite in a funny way, everything started moving. And the ruling itself, if Mr Sumption was reading it, is ridiculous. In fact, in 90 per cent it is one-to-one copy of the prosecutor's document, one-to-one copy, even in typing, even in bold. It's just as if a computer copy was taken from one computer to the other and she just signed it. And the other thing, had no consequence to whatever, and then the ruling, full stop.

MRS JUSTICE GLOSTER: But initially she refused to admit the audit report, did she?

A. Yes. Yes.

MRS JUSTICE GLOSTER: Did she give reasons for that refusal?

A. Yes, it was many pages reasons because it contained -- you see, before she refused we questioned all auditors and the main question that we asked the auditors, "What is debit and what is credit?" None of the auditors stood this question. My Lady, none of the auditors could answer this question. They couldn't answer why in the debit they were counting credit.

And we have submitted to asylum -- immigration, asylum court, all the notes, minutes of this cross-examination. And one of the auditors simply said that she never signed -- she never did this calculation;

she just signed, at the request of prosecutor, the audit report.

MRS JUSTICE GLOSTER: Yes, I see.

A. So that was the reason why she dismissed this audit report. It is in the materials of asylum case, my Lady.

MRS JUSTICE GLOSTER: And did the judge complain that she had been physically threatened?

A. You see, she even explained how: because she adopted a child, a daughter, and she started complaining to us that they started investigation on how she accepted the daughter, with the aim to take it away -- to take her away from her.

MRS JUSTICE GLOSTER: Yes, I see. Thank you. I need no more than that. Thank you.

MR RABINOWITZ: Now, Mr Glushkov, Mr Sumption spent a long time with you on the Swiss court proceedings and again you made clear that you regard this as unreliable. Again, one doesn't know why this was relevant. But only if you can do an explanation which is certainly no longer than the one that you have just given in relation to the Russian proceedings and why you say that was unfair, can you explain, please, why you say the Swiss court's decision was unreliable in your view?

A. The Swiss court decision was unfair on major three issues.

First, it ruled me guilty, guilty of abuse of authority, without me being tried, based on the fact that I didn't appeal the ruling of the first court. And it's written there; it's black and white.

Second, it didn't accept the expert report of the opponents of the prosecutors, of Mr Jenni, expert, which were different from the one produced by Mr -- by the expert report of prosecutors.

Third one, they refused to provide the big book, accounting book of Aeroflot that could prove that there was an exchange difference that was accounted for and that was giving benefit to Aeroflot.

And these three things made the whole thing ridiculous, my Lady.

MRS JUSTICE GLOSTER: Yes, thank you.

MR RABINOWITZ: Now, one more question.

In the context of dealing with the Swiss proceedings you mentioned a company called Laren Trading. Can you explain what it is that Laren Trading did which created a problem, as it turned out, for you in these proceedings?

A. You see, I don't know exactly because everything is covered more or less in documents. I'm sure that Mr Abramovich might tell us, or Mr Shvidler, who knows everything about Laren Trading, or maybe they will tell

untruth. But the truth is that Mr Abramovich accepted that Laren Trading is his company.

Laren Trading transferred certain amounts of money to Ruco that were used later to increase the capital of Andava Holding and Andava, and later this money was reimbursed to Laren Trading. That was the whole transaction. It's -- I can draw a picture how it was done.

I don't care what Mr Shvidler wrote in his witness statement because they're not true, but the thing -- because I have documents that support this. But the thing is that it shows either that -- either -- that was the first question that I asked Badri: was he a shareholder of Laren Trading? Because from my knowledge Badri was the shareholder of Andava Holding and I was wondering whether Laren Trading became a shareholder of Andava Holding. That was my first question. He couldn't answer; he said that he didn't know. But the instructions to transfer the funds were coming from Badri. And then -- the fact that Badri was the shareholder of Andava Holding creates no doubts.

And then when the money came -- it was 2,856,000 and then smaller amounts to Ruco -- they were transferred in turn to Laren Trading. So it was one-to-one transfer, amounts coming from Andava and from Andava to Ruco.

I showed this to Russian court so that, my Lady, you don't doubt that I can indicate the pages of the court hearing, the volumes where it is all relayed.

I gave my evidence to that and that's what made Judge Sheremetev dismiss the accusation of money-laundering of this transfer, but he was not convinced. He asked me whether I was a shareholder of Laren Trading. I definitely said that I was not, but he was not convinced because I couldn't prove anything otherwise. As far as all other companies were concerned, I could provide evidence; but this company was completely in darkness for me and I didn't know at that time who was the owner of this company.

That was the whole thing.

Q. Do you know now who was the owner of this company?

A. Yes, Abramovich.

Q. On what basis do you say that?

A. Because he provided this document and I was sent by lawyers a copy of statement concerning this. But this is also confirmed by Mr Shvidler in his statement.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: No further questions. Thank you,

Mr Glushkov.

MRS JUSTICE GLOSTER: Thank you very much indeed,

Mr Glushkov, for coming along.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Mr Sumption, subject to the point about the registration, can this witness be released, or is it possible that you might wish to cross-examine him further about the registration document relating to the shares?

MR SUMPTION: I think it's almost inconceivable that I will because of his evidence as to when that came to an end. I think the right working assumption is that we will not require him anymore unless some surprise emerges.

MRS JUSTICE GLOSTER: Right.

You may be released. There's a very small possibility that you may be recalled. But thank you very much for coming to give your evidence.

THE WITNESS: Thank you very much.

(The witness withdrew)

MR SUMPTION: My Lady, for the assistance of your Ladyship and for my learned friend, I should perhaps make it clear that it is not part of my case that the proceedings in Russia against Mr Glushkov were fair; I take no position on that one way or the other. Of course, we are as well aware as anyone else of the issues about the fairness of controversial Russian political proceedings. We do, however, contend that the Swiss proceedings were fair.

Secondly, it is not part of my case that Mr Glushkov was guilty as charged. It is, however, part of my case that there was what in English legal terms one would call a prima facie case against him and that that is a sufficient legal justification for his arrest.

MRS JUSTICE GLOSTER: Yes, thank you.

Mr Rabinowitz.

MR RABINOWITZ: Can I call the next witness, my Lady, and that is Mr Jenni.

MRS JUSTICE GLOSTER: Yes.

MR HANS-PETER JENNI (sworn)

MRS JUSTICE GLOSTER: Do sit down if you would like to.

THE WITNESS: Thank you, my Lady.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Jenni.

A. Good afternoon.

Q. Mr Jenni, again, before we begin, can you confirm you don't have any mobile phone or any other communication devices?

A. Yes.

Q. Thank you very much.

Can you be given, please, bundle D1 -- that will be brought to you -- and can that be open at tab 10, please D1/10/186.

Now, at tab 10 you, I hope, see a document entitled

"Witness Statement of Hans-Peter Jenni"?

A. Correct, yes.

Q. Can I ask you to go to page 245 of the bundle; it's page 58 of your statement D1/10/245.

A. Yes.

Q. You should there see a signature. Can you confirm that that's your signature?

A. It's my signature, yes.

Q. And can you confirm that this is your first and only witness statement in these proceedings?

A. It appears so, yes.

Q. Can you confirm that the contents of this, your witness statement, are true to the best of your knowledge and belief?

A. It is so, yes.

MR RABINOWITZ: Thank you very much. Can you wait there, please, Mr Jenni.

Cross-examination by MS DAVIES

MS DAVIES: Mr Jenni, you have been a legal and business adviser to Mr Berezovsky since 1991; is that right?

A. I'm -- I know Mr Berezovsky since 1991 and I have been a legal adviser to him. However, in the last years it was not -- up to now I was not a legal adviser; I was just a friend.

Q. In fact you'd given up your legal practising certificate

in 1998, when you moved to Cyprus?

A. Exactly, yes.

Q. You also acted as a legal and business adviser to Mr Patarkatsishvili between 1991 and 2008; is that right?

A. I -- occasionally, yes.

Q. And also as an adviser to Mr Glushkov?

A. Yes.

Q. And during that period it would appear you acted for the three of them in relation to a wide variety of matters.

A. Yes, correct.

Q. You identify some of them in your statement; in particular you refer to Anros, Andava and Forus.

A. Yes.

Q. Those were all Swiss and Luxembourg companies in which they each held interests; is that right?

A. Yes, adding some offshore companies.

Q. Anros from 1991 was the 50 per cent owner of Logovaz?

A. Yes.

Q. And Forus and Andava were financial service companies who provided initially services to Avtovaz?

A. Forus SA in Switzerland and Andava SA in Switzerland, yes.

Q. And after Mr Glushkov had moved to Aeroflot, Andava provided financial services to Aeroflot?

A. Correct.

Q. And in the mid-1990s your role was to manage those interests on Mr Berezovsky's, Mr Glushkov's and Mr Patarkatsishvili's behalf?

A. We should precise the term "manage".

Q. Well, you had a detailed involvement in the affairs of those companies?

A. I had involvement in it, but I was not a manager.

Q. You were a director of each of them?

A. I was one of the directors.

Q. And for Andava, for example, you had signing authorisations for the companies in the group?

A. All the directors had signing authorisations.

Q. And you were aware of the contracts between Andava and Aeroflot?

A. I was.

Q. And you monitored the activities of Andava?

A. The board of directors monitored the activities of Andava, yes.

Q. During the 1990s you also managed some other companies on their behalf which are not mentioned in your witness statement, didn't you, such as Ruco Trading?

A. Yes, I mentioned offshore companies, yes.

Q. Ruco Trading was a company registered in the Grand Cayman Islands; is that correct?

A. Yes.

Q. And initially it was a company beneficially owned by Mr Glushkov and Mr Berezovsky; is that correct?

A. Yes.

Q. And did Mr Patarkatsishvili subsequently obtain an interest in Ruco?

A. Yes.

Q. That company, Ruco, itself received payments from Andava from time to time; is that correct?

A. Yes.

Q. Including payments of dividends from Andava?

A. Yes.

Q. Now, in 1996 --

A. From the Andava group, yes.

Q. The Andava group, yes.

In 1996 and 1997 you also assisted Mr Berezovsky in the acquisition of two properties in the south of France?

A. Correct.

Q. The Chateau de la Garoupe and the Clocher de la Garoupe?

A. Yes.

Q. You assisted thereafter in the arrangements for the maintenance of those properties?

A. My office and Christian Stiefel, who was my partner, yes.

Q. Is it fair to say that during the mid-to-late 1990s you were centrally involved in Mr Berezovsky's financial affairs outside of Russia?

A. I'm not sure about that.

Q. Could you be given bundle S2/1, please, at tab 12 S2/1.12/238. This is the transcript of the evidence that you gave in the North Shore proceedings.

A. Yes.

Q. You can see at page 105 you being sworn.

A. Yes.

Q. And you're being cross-examined by Mr Swainston.

A. Yes.

Q. At page 107, line 18 -- sorry, start at line 13.

A. Line 13, what -- page 107, line 13, yes?

Q. 107, yes. Mr Swainston is asking you:

"Question: It's right, isn't it, that you were at the centre of Mr Berezovsky's and Mr Glushkov's affairs in Switzerland?"

A. In Switzerland, yes.

Q.

"Answer: It's correct that I treated with affairs of Mr Berezovsky and Mr Glushkov in Switzerland, yes.

"Question: You were centrally involved in those affairs and Mr Fomichev was not. That's also true, isn't it?"

A. Yes.

Q.

"Answer: As far as Switzerland is concerned, that is true..."

A. Yes.

Q. Now, is the point that I put to you, you're suggesting, too broad because I said it was offshore?

A. Yes.

Q. But we know from Ruco it also covered other offshore companies, not just Swiss companies?

A. Yes, but this was all that it was centred around these companies in Switzerland. I do not know what was around other companies.

Q. I see. Now, in the mid-to-late 1990s, when you were managing the companies Forus, Anros, Andava and Ruco and the French properties on Mr Berezovsky's behalf, did that occupy most of your time?

A. No.

Q. No. What sort of percentage of your time?

A. About -- maybe 20 per cent.

Q. Now, you tell us in your statement that in 2000 you were appointed as super-protector of all the trusts within the Hotspur and Octopus structures --

A. Yes.

Q. -- those being trusts that were established by Valmet in

2000?

A. Yes.

Q. And you were subsequently appointed in December 2002 as the trustee of the Itchen Trust?

A. Yes.

Q. That was a trust established by Mr Berezovsky in 2001 by Dentons in Gibraltar; is that correct?

A. For me it was -- how is it called? -- Stephen Curtis.

Q. Stephen Curtis?

A. Yes.

Q. Do you recall what sort of size of fund the Itchen Trust was at the time you took over --

A. Well, I don't --

Q. -- as a trustee?

A. I don't remember how much funds there were when I took over. I know that this trust has been funded by monies that were received from the sale of participation in Sibneft.

Q. Would you agree it was a substantial fund?

A. It was substantial fund, yes.

Q. And would I be right in understanding that you must be someone who has or at least did have a close professional relationship with Mr Berezovsky?

A. Professional relationship, yes.

Q. And you'd describe him as a good friend?

A. I describe him as a good friend, yes.

Q. Now, given the extent of your involvement in Mr Berezovsky's affairs, you must have seen or spoken to him frequently over the 20-year period that you have acted on his behalf?

A. That's evident, yes.

Q. And also to Mr Patarkatsishvili?

A. Yes, of course; I would even say even more so.

Q. And you've also, in the past, been in regular contact with other advisers of Mr Berezovsky, such as Mr Fomichev?

A. I met Mr Fomichev from time to time when there were questions that we had to discuss together, following Mr Berezovsky asking me to take up things with Mr Fomichev.

Q. You said in the North Shore action that you met with him almost every two or three months. Is that correct?

A. Yes, when I went to Moscow I met him because -- well, at a certain period of time, not for the 20 years.

Q. No, but he was Mr Berezovsky's principal financial adviser from 2000 for several years, so during that period.

A. From 2000 I think it was already less.

Q. You also continue now to advise Mr Berezovsky on business and personal matters from time to time?

A. No. As a friend but not as a legal adviser.

Q. But as a friend you do?

A. Well, if he asks me something, I give him my opinion.

Q. And does that mean that you maintain regular contact with Mr Berezovsky to this day?

A. Yes.

Q. Do the matters on which you are advising him include this case?

A. No.

Q. But you have no doubt discussed this litigation with him since it was started?

A. No.

Q. Sorry?

A. No.

Q. Not at all?

A. No.

Q. What about --

A. I have discussed with him my Swiss -- my case in Switzerland, yes. These things I have discussed, but not this litigation.

Q. What about Mr Glushkov, who you describe as a close friend?

A. We didn't discuss this either.

Q. You tell us in your statement that you first met Mr Abramovich in the summer of 1995.

- A. Yes, I think so. It was 1995.
- Q. And that thereafter you regularly saw Mr Abramovich and Mr Berezovsky together when you visited Russia.
- A. Yes, correct.
- Q. Am I right in understanding that you did not yourself have any direct professional relationship with Mr Abramovich or his companies?
- A. Correct.
- Q. So is essentially what you're describing that you came across Mr Abramovich when you happened to be meeting Mr Berezovsky?
- A. Yes.
- Q. Through your involvement in Mr Berezovsky's offshore businesses you also had some involvement with some of the Russian companies in which he had an interest, didn't you?
- A. Yes.
- Q. In particular you tell us you became a director of Consolidated Bank for a time.
- A. I was sometime a director of Consolidated Bank, yes.
- Q. Now, you tell us in your statement that you think that that was for a short period in 1999. That's paragraph 62 D1/10/201 if you want to...
- A. It's, yes, possible.
- Q. In fact it seems from the documents that are now

available that you might have been mistaken about that date.

A. It's possible.

Q. And I just want to establish the facts with you, Mr Jenni. So if you --

A. Yes, because I don't have any documents left with me and I couldn't really establish this.

Q. If you could be given bundle H(C)2, at page 4T, you should find some minutes of Consolidated Bank from 23 May 1995 H(C)2/4T.

A. Yes.

Q. You weren't present at this meeting but you can see on the first page that Mr Mayor was then representing Forus Holding SA.

A. Yes.

Q. And if you turn forward to page 5T --

A. 5T, yes.

Q. -- you see at the top of page 5T there's a decision to elect board members of Consolidated Bank --

A. Yes.

Q. -- and you see your name, Hans-Peter Jenni?

A. Yes.

Q. And that was adopted by the board.

A. Okay.

Q. And the next meeting that we have documents for is in

October 1995, which, if you go forward to page 26T, you see at that meeting you were present -- 26T for translation H(C)2/26T.

A. It's further down.

Q. It's after the end of page 32.

A. I have to see which numbers are which.

Q. Yes, it's not quite obvious, but it is after page 32.

A. 26T, yes.

Q. You see on that occasion, in the third indent, you were present as the director on behalf of Forus?

A. Yes, yes, yes.

Q. And if you go forward to page 117T, which you will find after page 121 H(C)2/117T, that's some minutes of a meeting of Consolidated Bank on 29 May 1996.

If you go forward to page 118T, we can see the board is reorganised on that date and it appears --

A. 118T, yes.

Q. At the bottom, and it appears that you ceased to be a member of the board --

A. Yes, that's possible.

Q. -- in May 1996 and would you take it from me you were reappointed, it appears from the documents, by June 2001.

A. That's possible, yes.

Q. So it does, would you accept, looking at those

documents --

A. Yes, I accept this because I -- my memory was...

Q. You were a member of the board of Consolidated Bank between the summer of 1995 and May 1996?

A. Yes, yes, yes, yes.

Q. You tell us in paragraph 67 of your statement D1/10/202 that:

"[You] recall being aware that Consolidated Bank did at one stage have an interest in Sibneft..."

A. Yes, by discussions, yes.

Q. And you refer in that connection to a company called NFK.

A. Yes, Neftyanaya Finansovya Kompaniya.

Q. Is that indicating that your recollection is that Consolidated Bank's interest in Sibneft was held via NFK?

A. Yes.

Q. And was your understanding that such interest as Mr Berezovsky had in Sibneft was also held through Consolidated Bank via NFK?

A. Well, that's possible, yes.

Q. Is that what you understood, Mr Jenni?

A. Yes, I understood that NFK was the vehicle by which Sibneft -- participation to Sibneft was held.

Q. And you fairly point out in your statement that you were

never provided with details about the shareholding structure and were not personally involved in the acquisition of Sibneft.

A. Correct.

Q. Would you be prepared to take it from me that NFK never itself owned any Sibneft shares; rather it just obtained a right to manage 51 per cent of Sibneft shares in December 1995? You're not in a position to disagree?

A. No.

Q. As you were not directly involved in the acquisition of Sibneft, your understanding of what happened must be dependent on what you were told by others, mustn't it?

A. Correct, yes.

Q. And were those others principally Mr Berezovsky --

A. No.

Q. -- and Mr Patarkatsishvili?

A. Mr Berezovsky, Mr Patarkatsishvili, Mr Fomichev, Mrs Nosova; maybe others.

Q. From what you tell us in your statement, it doesn't sound like you were given many details about the acquisition of Sibneft.

A. That's correct.

Q. That wasn't a matter, would I be right in understanding, that really concerned you?

A. No, because I was concerned about the Swiss tranche of

the activities and not of the activities taking place in Russia.

- Q. The point, would I be right in understanding, that really mattered to you was that Mr Berezovsky and Mr Patarkatsishvili were going to receive money as a result of the creation of Sibneft?
- A. Well, that was their concern. My concern, my concern was the activities of the companies in Switzerland and if they took obligations, that they fulfilled these obligations.
- Q. That's what they conveyed to you, was it, that they were going to receive money?
- A. Yes, they told me that they should receive money from Sibneft.
- Q. Given how frequently you saw Mr Berezovsky and communicated with him over the years, it must now be difficult to differentiate any one conversation you had with him with any other?
- A. Of course.
- Q. It's not a criticism, Mr Jenni.
- A. Of course. Of course.
- Q. If you could turn to paragraph 114 of your witness statement --
- A. My witness statement?
- Q. -- at page D1/10/213.

A. Wait, wait. You said which page?

Q. D1/10/213.

A. 213, yes.

Q. You see you say there that:

"On one of my visits to Moscow to receive an update from Boris and Badri regarding business, in around 1996, they told me that they had entered into an agreement with Mr Abramovich whereby 50% of Sibneft was acquired for them and 50% of Sibneft was acquired for Mr Abramovich."

A. Mm-hm.

Q. Now, given what you've just said about how difficult it is to differentiate conversations, it must be possible, mustn't it, that you're remembering a conversation that took place later than 1996?

A. No, I don't think so, because starting with the meeting I had first when I got acquainted with Mr Abramovich in 1995, from there on there was always discussion about Sibneft. And, well, it was not only Sibneft; it was the oil businesses, let's say like this, because Sibneft in that form didn't exist in 1995 yet. And there was discussion also how to participate in this business.

And then we had the situation of the elections in 1996 and we had this situation with the auction. That was for seeing the money against sales of state

property. We had with Mr Berezovsky, I remember, discussions where he tried to interest Mr Soros in participating in purchase of shares of oil company. And following this came the situation where they said, "Now we have purchased a stake in Sibneft".

Q. Mr Jenni, I'm not disputing that you had conversations in 1996 about --

A. No, I just want -- I just want to recall, when I say that I heard about this in 1996, I want to recall to you why I come to the conclusion that it was in 1996.

Q. I'm not disputing you may have had conversations in 1996 about Sibneft.

A. Yes.

Q. What I would like you to focus on is the suggestion that you were told in 1996 that Mr Berezovsky had acquired a 50% interest in Sibneft. What I would suggest to you is that, given how many conversations you've had with Mr Berezovsky over the years, it's quite possible --

A. Well, I cannot say it was on this date and on this conversation, okay.

Q. Were you told by Mr Berezovsky or Mr Patarkatsishvili in around 1996 that they had transferred any shares they owned in Sibneft to Mr Abramovich?

A. I don't remember that.

Q. Could you be given bundle J2/2, please, tab 9

J2/2.09/26. Tab 9, please, J2/2. This is a statement of Mr Marino that was served on behalf of Mr Berezovsky's behalf.

Have you seen this before, Mr Jenni?

A. No.

Q. Do you remember speaking to Mr Marino before April 2009 about Mr Berezovsky's case?

A. Before 2009, no.

Q. Could you turn to page 81 in this statement.

A. Page 81?

Q. Yes, of the bundle. So it's J2/2.09/81.

A. 81, yes.

Q. Paragraph 201:

"I also understand from Mr Jenni..."

Now, just stopping there, it does appear you must have spoken to Mr Marino?

A. It's possible, but I don't know what date. What was the date? I don't remember at what date I spoke to Mr Marino.

Q. The background was, just if that might assist you, Mr Abramovich was applying to strike out Mr Berezovsky's claims and evidence was being produced to seek to overcome the strike-out.

A. It's possible, because I have been discussing with Mr Marino in a large scale of questions.

Q. So you've had discussions with Mr Marino over some time, have you? Is that --

A. Yes.

Q. Yes. You see he says there:

"I also understand from Mr Jenni that, in 1996, he was told by Mr Berezovsky and Mr Patarkatsishvili that they had 'transferred shares' in Sibneft to Mr Abramovich..."

Sorry, if you shake your head, it doesn't get on the transcript.

A. I do not remember that I said this.

Q. You don't remember you said that, right.

Did you yourself monitor or have any knowledge about Sibneft's financial performance?

A. I had no knowledge about Sibneft's financial performance.

Q. Did you know, for example, it didn't declare any dividends until 2000?

A. No, no.

Q. Do you have yourself any direct knowledge of the total amounts paid by Mr Abramovich to Mr Berezovsky over the period 1995 to 2000?

A. No.

Q. Or the total amount paid by companies controlled by Mr Abramovich to Mr Berezovsky during that period?

A. No, no.

Q. Given your relationship with Mr Berezovsky, you presumably were aware that from 1995 one of his main interests in Russia was ORT?

A. Yes.

Q. Although you tell us in your statement that you were never personally involved with ORT either as a director or as a legal adviser.

A. Yes.

Q. If you could turn to paragraph 69 of your statement --

MRS JUSTICE GLOSTER: Can we put Marino's statement away?

MS DAVIES: Yes, my Lady. Yes.

A. Which one?

Q. You can put J2/2 away, yes.

A. My statement?

Q. Paragraph 69 of your statement --

A. 69 of my statement, yes.

Q. -- at D1/10/203.

A. You are moving too fast for me. 69, yes.

Q. In the last sentence you say you:

"Understood from conversations that I had with Boris and Badri at the time that ORT ran at a substantial loss and so all of these oligarchs provided finance for the television station from their own financial-industrial groups of companies."

A. Yes.

Q. When you're talking about conversations you had at the time, do you mean 1995/1996?

A. Yes.

Q. You've told us about Ms Nosova a moment ago.

A. Yes.

Q. You presumably know her?

A. Yes.

Q. By 1994 she was the first deputy director general for finance of Logovaz --

A. Yes.

Q. -- and a member of the supervisory board of Consolidated Bank?

A. Yes.

Q. Those were the two companies who initially took shares in ORT on Mr Berezovsky's behalf?

A. Yes.

Q. Now, she says in her statement that the other private investors were willing to buy into ORT because they were not expected to pay much for their shares in ORT and as a favour to Mr Berezovsky.

A. If -- well, I don't know. Maybe.

Q. And she goes on to say that the other investors didn't want to fund ORT from their own resources.

You're not in a position to disagree with Ms Nosova,

are you?

A. No, no.

Q. Did Mr Berezovsky or Mr Patarkatsishvili subsequently tell you that the other oligarchs had decided they didn't want to continue funding ORT?

A. Maybe it was more general, not funding, but they wanted to get out.

Q. They wanted to get out?

A. Yes.

Q. And he agreed to reimburse them the amounts they had funded in exchange for the shares that they had acquired.

A. Yes.

Q. Did you know that?

A. No, I don't know, but I know that these shares, they went over to him.

Q. That's what he tells us in his statement?

A. Yes, yes.

Q. And again you're not in a position to disagree?

A. No.

Q. You're not able to assist, are you, on how much Mr Berezovsky paid to those oligarchs for their shares?

A. No, no, no.

Q. Or how much he contributed to ORT in total over the period 1995 to 2000?

A. No, no.

Q. No.

You tell us you produced a written assignment of certain interest from Mr Glushkov to Mr Berezovsky in November 1995.

A. Wait, I didn't understand the question. Please repeat.

Q. You tell us in your statement that you produced a written assignment of certain interests from Mr Glushkov to Mr Berezovsky in November 1995.

A. Yes.

MRS JUSTICE GLOSTER: What paragraph?

MS DAVIES: That's paragraph 88, my Lady, page D1/10/207.

Could you be given bundle H(A)03 at page 25

H(A)03/25.

A. Yes.

Q. Is this the written assignment that you're referring to?

A. Yes.

Q. And that covers, am I right in understanding, shares in Profor, Anros, Forus and, by reason of the written amendment at the bottom of the page on page 27, Logovaz?

A. Of Logovaz, yes.

Q. Was your perception that Mr Berezovsky and Mr Glushkov were close at the time that this written assignment was entered into?

A. What was your assumption that...?

- Q. Was your perception -- did you understand that Mr Berezovsky and Mr Glushkov were close at the time that this written assignment was --
- A. Yes, yes, yes.
- Q. And would you say from your observation of their relationship that they trusted each other totally at this time?
- A. Yes, yes.
- Q. In paragraphs 97 to 98 of your statement at page D1/10/209 you tell us that once Mr Berezovsky was appointed as the deputy secretary of the Security Council in 1996:
- "Under Russian legislation, [he] was no longer allowed to hold interests in commercial enterprises."
- That's the last sentence of paragraph --
- A. Yes, yes, yes.
- Q. You're not a Russian qualified lawyer yourself, are you, Mr Jenni?
- A. No.
- Q. So what is that sentence that, "Under Russian legislation, a person in such a position was no longer allowed to hold directorships or interests in commercial enterprises", what's that based on, Mr Jenni?
- A. On the independence of the person in the -- when it is -- he is holding an official in the -- let's say high

official post, yes.

MRS JUSTICE GLOSTER: No, I think you're missing the question.

A. Yes.

MRS JUSTICE GLOSTER: Ms Davies is saying: what is your knowledge of the statement? What knowledge on your own part are you basing your assertion on?

A. Ah. I had -- the knowledge I had from Russian lawyers. When Mr Berezovsky was appointed deputy secretary of the Security Council in Russia, I had contacts with lawyers and they all said that he had to get rid, in a sense, of all his participations and of all his duties he had in private enterprise.

MS DAVIES: He had to get rid of his management duties in relation to private enterprises, but are you saying you were also told that he had to get rid of his ownership of shares?

A. Yes.

Q. And do you know what Russian legislation was being referred to in that context?

A. No, I didn't.

Q. You see, Mr Rozenberg, who is the expert in Russian law being called by Mr Abramovich, says that there's no such prohibition on owning shares.

A. Mm-hm. That would be good, yes.

Q. That's not the advice you were given at the time?

A. No, it was not the advice I had at the time and I was trying to fulfil what I was told: that we had to separate Mr Berezovsky from his holdings.

Q. You go on to say that it was therefore necessary, as you say in your statement, for Mr Berezovsky to divest himself of his shareholdings --

A. Yes.

Q. -- and that your understanding was he decided to transfer ownership of all his shareholdings to Mr Patarkatsishvili?

A. Correct, yes.

Q. And did those shareholdings include Andava?

A. They included Andava.

Q. And how long was the transfer intended to remain effective for?

A. It was intended to remain as long as he was in a position that would prevent him from having these assets.

Q. So for at least as long as he remained in political office?

A. At least as long as he was in this office, yes.

Q. Do you recall -- and it's not intended to be a memory test -- but Mr Berezovsky was dismissed from his post on the Security Council on 5 November 1997?

A. Yes.

Q. And so until that time your evidence is you were holding all Mr Berezovsky's shares in the offshore companies in Badri's name, Mr Patarkatsishvili's name, not Mr Berezovsky's name?

A. Yes, but Mr Badri always confirmed to me that these shares were also Boris's shares.

Q. Could you be given bundle H(A)06 at page 95 H(A)06/95. Is that a document you prepared in May 1997?

A. Yes, that's correct.

Q. It's a power of attorney in relation to Mr Berezovsky's 937 shares of Andava.

A. Yes.

Q. And he's authorising you to represent him at the meeting of shareholders to be held on 29 May 1997.

A. Yes.

Q. If you could just turn forward to page 97 H(A)06/97.

A. Yes.

Q. Is that another agreement you prepared?

A. Wait, wait, wait, wait. Yes.

Q. And that's between you and Mr Berezovsky and he's transferring, according to this agreement, to you --

A. Yes.

Q. -- share certificates in Andava --

A. Yes.

Q. -- on your undertaking to hold them on trust --

A. Yes.

Q. -- and then to return them to him after the shareholding meeting?

A. It is not quite what happened there. This was the exchange of the shares of the SA to the shares of the holdings. So the shares of the SA were put into the holding company and from the holding company were received shares of the holding company.

Q. So you were transferring back to him shares in the holding company, not the shares you received?

A. Exactly, yes. Exactly.

Q. But these were shares, if I understood your evidence a moment ago, that had been transferred to Mr Patarkatsishvili in 1996? Because this is May 1997: it's while Mr Berezovsky is still a member of the Security Council.

A. So the shares in Andava were -- I don't know. I have to think now. No, the shares in Andava -- I can't remember. But as I -- as you see here, the shares have been of Boris and also of Nikolai, because it was the two persons that were holding the shares in Andava SA, and they gave me the power of attorney to put them into the holding and then to take the shares of the holding. So it's -- they were ownership of these two persons.

- Q. It looks, doesn't it, as if the Andava shares had not been transferred --
- A. No, no.
- Q. -- to Mr Patarkatsishvili?
- A. At that time at least, yes.
- Q. Now, your evidence, if I've understood it, is that in the period prior to 1997 Mr Berezovsky was keen to keep Mr Abramovich close to him as a business partner and a friend?
- A. I stated that they were -- they were close to each other and they were -- in my view they were friends, yes.
- Q. In late 1996 you'd been involved in the acquisition of a substantial property on Mr Berezovsky's behalf, Chateau de la Garoupe?
- A. Yes.
- Q. Soon after that property had been purchased in early 1997, a neighbouring property, the Clocher de la Garoupe came up for sale?
- A. Yes.
- Q. And you were told that Mr Berezovsky was also interested in purchasing that property; is that correct?
- A. Yes.
- Q. Were you also told not to tell anyone apart from Mr Bordes, the French property agent, and his associate Maitre Heinzen that Mr Berezovsky was interested in

purchasing that property?

A. No, I don't remember that.

Q. Could you be given bundle H(C)3 at page 77T H(C)3/77T.

This is -- just to tell you what it is, Mr Jenni -- a translation of a fax that was sent to you on 6 May 1997 from Mr Bordes. The original French version starts on page 77 if you would rather look at that.

Do you see the first paragraph of that in the translation says:

"I met with our client this weekend. It seems that he is personally interested in the neighbouring villa but this course of action..."

Then in bold:

"... should only be known to you, [Maitre] Heinzen and myself, but not to Mr Ro... A... not even his partner."

"Mr Ro... A..." must be Mr Abramovich, mustn't it?

A. Yes, probably.

Q. So it does look, doesn't it, as if you were told --

A. No, I have not been told anything. I see this fax --

Q. It's a fax to you, Mr Jenni.

A. Yes, yes, yes.

Q. And Mr Stiefel was in your office, wasn't he?

A. Yes, yes, yes.

Q. And you were being instructed by Mr Bordes that the

course of action of acquiring the property was not something you should communicate to Mr Abramovich?

A. He asks so, yes. It looks so, yes.

Q. If you turn forward to page 83T H(C)3/83T, it's a translation of a further fax from Mr Bordes to you, this time on 16 May.

A. Yes.

Q. The French original is at page 83. In the first paragraph in the translation:

"The client, to whom I spoke the day before yesterday, seems to want to go ahead at the level required by the vendor of 95 including furniture, and to keep this purchase confidential in relation to everybody."

So again you were being instructed to keep the purchase confidential, weren't you?

A. Well, confidentiality was always a question in deals.

Q. Is that a "yes", Mr Jenni?

A. To keep it confidential from somebody, from somebody concrete, I don't know. I had no contact to Roman Abramovich at any time so it was no -- there was no -- for me it was clear that it was -- everything was confidential.

Q. And then the next paragraph:

"We mentioned to the client that GII could grant

a lease to Mr [Abramovich] for four months in return for a rent of around 2.5."

A. Mm-hm, yes.

Q. Now GII was a company owned by --

A. Of Mr Bordes.

Q. -- Mr Bordes, wasn't it?

A. Yes.

Q. But it was acting in relation to this rental on behalf of a company called Sifi?

A. Yes, yes.

Q. And Sifi was a company that you tell us in your statement which was set up originally to purchase the Chateau de la Garoupe?

A. Yes.

Q. And its shares were predominantly owned by OVACO --

A. Yes.

Q. -- another company that you managed?

A. Yes.

Q. And it was in turn owned by Comodo --

A. Yes.

Q. -- a company wholly owned by Mr Berezovsky?

A. He's the beneficial owner, yes.

Q. If you could turn on to page 114T H(C)3/114T. This is a translation of a letter at page 114 in the original French --

A. Mm-hm.

Q. -- again from Mr Bordes to you, this time 20 June 1997,  
and it's "Re: 'Number Ten'". Number Ten was the  
Clocher, wasn't it?

A. I don't know this...

Q. You don't remember --

A. Oh, okay, he speaks here:

"... d'accelerer le principe de l'acquisition du  
'Number Ten'..."

He says here:

"... to speed up the principle of buying 'Number  
Ten'..."

Buying -- if it was buying Number Ten and it is '97,  
so it can't be the Clocher; it must be the -- it can't  
be the chateau; it must be the Clocher.

Q. It must be the Clocher. There was no other property  
being bought in 1997?

A. No, no, no.

Q. You see in the first paragraph:

"The owner, who nevertheless needs to remove  
a certain number of personal effects..."

Having asked you to speed up the purchase, it refers  
to the fact that:

"The owner, who nevertheless needs to remove  
a certain number of personal effects... as well as some

period furniture not included in the sale, wants, for reasons of discretion which concern her and us too, since we want..."

And then in bold:

"... everybody, including the neighbours, to think that this is purely a rental, to have this move carried out by her personal removal man from Paris, who will come on site, stay at 'Number Ten' and leave again with his van."

So again you're being instructed that "everybody, including the neighbours", needs to think that this is a rental?

A. Yes, Mr Bordes send always quite a lot of correspondence, yes.

MRS JUSTICE GLOSTER: Sorry, you're talking rather softly, Mr Jenni. Can you speak up a bit?

A. Yes, okay. Mr Bordes, he was sending a lot of correspondence always, yes, it is true.

MS DAVIES: Would you have read the correspondence you received from Mr Bordes, Mr Jenni?

A. Yes, I looked at it. But you see, even if it was addressed at me, it was Mr Stiefel who was acting in the first place for this. I was not acting in the first place for the Sifi and for the purchase of the Clocher -- of -- yes, of the Clocher.

Q. If you stay on page 114T, or if you're on the original 114, you see in paragraph 2 Mr Bordes is telling you that he has:

"... arranged for Mr RA..."

That must be Mr Abramovich again, mustn't it?

A. Hmm.

Q. Is that a "yes", Mr --

A. Yes.

Q. Yes.

"... to be informed through Mr Eugene Shvidler, that I was in the process of persuading the owner of the neighbouring villa to allow a rental for the months of August and September for the price of USD 200,000 (I had proposed a higher price, but these gentlemen wanted to make an offer at this level, which I am now deemed to have had accepted. This is to keep these gentlemen informed). Shortly afterwards, Mr Shvidler called me back to inform me of his agreement and to thank me, but he told me that in fact, it is very important for him to have the villa sooner, if possible from 21 July..."

Then he says:

"I am therefore initially going to enter into commitments with him for August and September, telling him that I am endeavouring to get the villa for 21 or 22 July in return for USD 25,000 or 30,000 extra, so

that it seems plausible."

So Mr Bordes is clearly telling you, isn't he, that Mr Abramovich has been informed that he's renting the Clocher de la Garoupe although in fact it was Mr Berezovsky who was acquiring the Clocher de la Garoupe before the rental started?

A. It's possible, yes.

Q. It's possible. That's what Mr Bordes was telling you, isn't it?

A. Yes. Yes.

Q. And that's in due course what happened, isn't it?

A. I don't know.

Q. You don't know?

A. Well, he purchased -- Mr Berezovsky purchased the Clocher, yes; but what he was telling or not telling, I don't know.

Q. Are you saying you don't know that Sifi received rental in relation to the Clocher de la Garoupe?

A. No, I don't know this. It was Mr Stiefel who took care of this. I didn't look at these details, no.

Q. But if I were -- we could go through the documents if you want to, but would you accept from me that the documents show that Sifi did receive rental --

A. Yes, okay. I accept it.

Q. You say in your statement that you "recall noticing in

1997 that Mr Abramovich was distancing himself from [Mr Berezovsky]", and that you noticed that he wanted "to make his own separate business and leisure arrangements". That's paragraph 146 D1/10/219.

A. Yes.

Q. Now, we've already established that you did not have any direct professional relationship with Mr Abramovich or his companies?

A. Yes.

Q. So what is that based on, Mr Jenni?

A. It's based on the fact that Mr Bordes -- Mr Abramovich and Mr Bordes were in contact and it looked as though Mr Abramovich wanted also to buy some property in Antibes and Mr Bordes tried to propose to him the services of his company and Mr Abramovich refused and said that he would like to completely independently proceed to buy this property.

Q. In fact Mr Abramovich did use Mr Bordes for the purchase of his property in Cap d'Antibes in 2000; did you know that?

A. No.

Q. And in fact, also, Mr Abramovich stayed at Clocher de la Garoupe throughout the summers of 1997 and 1998.

A. This is correct, yes.

Q. So it's not right, is it, that he was making separate

leisure arrangements in 1997?

A. I was told so that he did but... 1997? Maybe not 1997, maybe 1999 -- 98.

Q. Well, he stayed there in 1998 as well.

A. Okay, I don't -- you see, I don't remember the dates exactly when these things -- it's quite a long time ago. So when I recall that there was a proposition to go through John Heinzen, to use Bordes for the whole arrangement of the things, I was told that he didn't want to and that he wanted to do the separate arrangements for him. This is the information I had and from this information I took to say that, okay, if he doesn't want to go together with Mr Bordes and with the structures and facilities we have, then it is not together but it is separate.

Q. So you put two and two together and made that conclusion?

A. Pardon me?

Q. You put together what you had been told and made that conclusion?

A. Yes.

Q. Now, you explain in paragraphs 147 to 150 D1/10/220 of your statement that the monies that were used to purchase Clocher de la Garoupe on Mr Berezovsky's behalf came from Runicom.

A. Yes.

Q. Did you understand at the time that Runicom was a company ultimately owned by Mr Abramovich?

A. The whole transaction with Runicom was done with Mr Stiefel and I understood from him that the company Runicom was a company that belonged to Sibneft, that it was a trading arm of Sibneft. This is what I understood.

Q. You understood that from Mr Stiefel?

A. Yes.

Q. You didn't investigate that yourself?

A. No.

Q. And did you know anymore about Runicom?

A. No, I don't know anything. Well, I heard -- later on I heard in our proceedings that, first of all, this is in 2008, 2009, I had this information that there was a problem with Runicom, that there is proceedings because it seems that there was a mixture between Runicom SA in Switzerland and Runicom Limited in Gibraltar and all these things, of course, I heard it and knew but not at that time --

Q. I was asking about 1997.

A. No.

Q. Now, if you could turn to paragraph 199 of your statement, you're here addressing certain meetings you

had with Valmet, at page D1/10/230.

A. Wait, wait, 199. Yes.

Q. You say you were first asked by Mr Berezovsky to attend a presentation at Valmet's offices in Geneva in the spring of 2000. You go on to say that you were there as a friend and adviser to Mr Berezovsky and Mr Patarkatsishvili but not in any official legal capacity.

A. Yes.

Q. But you must have been there to represent Mr Berezovsky's and Mr Patarkatsishvili's interests, mustn't you?

A. No. This first meeting was something like a presentation so Mr Samuelson gave a presentation of what he is able to do. I do not know, up to now, who brought Mr Samuelson into the game. As I was in Switzerland at that time and the meeting should take place in Geneva, I was just asked, "Could you drop in, could you sit there and look what is happening and then tell us what you think about it?"

Q. So you were asked to report back to them about it?

A. Yes.

Q. And you subsequently went to a number of other meetings with Valmet?

A. But very much later on, not in the...

Q. So this meeting you're describing in 1999 is a very initial presentation?

A. This was a very initial presentation because we had the problems in 1999, we had the sequestration of funds, blocking of accounts and everything. And then we had the situation that Mr Berezovsky and Mr Patarkatsishvili, they came to the conclusion that they should also, how do you call this, put their relationship into more a formal way and to see what is -- who is who and what is what. And so they were looking for a solution for this and one who could provide such a solution, it seems, was Mr Samuelson. So it was Valmet.

Q. So you obviously gave a positive report back about --

A. Yes, I gave a report that it looks that this company is worth...

Q. And then later in 2000, you attended certain further meetings with Mr Samuelson?

A. I don't remember.

MS DAVIES: My Lady, I wonder if that's a convenient moment.

MRS JUSTICE GLOSTER: Yes, certainly.

Mr Jenni, you're not to talk to anybody about your evidence or about the case over the lunch hour, all right?

THE WITNESS: Yes, okay.

MRS JUSTICE GLOSTER: Very well. 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Ms Davies.

MS DAVIES: Mr Jenni, just before lunch you told us that the background to your first meeting with Valmet was that there had been problems experienced in 1999 involving the sequestration of funds and the blocking of accounts. Could you tell us briefly what that was about?

A. This was the so-called Aeroflot case and it was -- as far as Switzerland is concerned, it was blocking of accounts due to a request for legal assistance by the Russian prosecutors in Switzerland.

Q. So one of the reasons Mr Berezovsky was interested in Samuelson was that they were looking for a solution for having funds that they could have available which wouldn't be frozen?

A. Well, I wouldn't say it was this because in the -- the basic idea was that they wanted to get structured their relationship and they wanted to get structured their holdings in a way that it was clear who was holding what shares in what -- to what extent. This was the objective. So there were put up two structures that were more or less like a mirror, they mirrored the

situation, and in this structure they would put in their shares 50/50, as they decided to do the business together.

And the question of -- well, I would rather say it was a question of confidentiality because before this happened with the sequestration, with blocking of accounts and so on, we had cases where people tried to get into accounts and to get information from accounts that we do not know who they were, what they were. But from banks I received calls telling me, for instance, that somebody was trying to get into the account and to get the information.

Q. Mr Samuelson certainly gave the impression, did he, that he could set up very complex structures that would help prevent funds from being blocked?

A. That is correct -- no, for me it was never a question that it would prevent funds from being blocked because if there is legal insistence somewhere, there is legal insistence somewhere, you have to declare the beneficial owner and so on, so the funds will be blocked if they have to be blocked. But it is also question of confidentiality and you know the Swiss banking secrecy deals with questions of confidentiality. We are used to that not everybody is putting his nose into all the details of other people.

- Q. You told us this morning that after your initial attendance at this presentation in the spring of 2000, you did attend some further meetings with Valmet --
- A. Yes.
- Q. -- later in 2000.
- A. Yes. Later on, yes.
- Q. And presumably at those meetings Valmet were, amongst other things, interested in obtaining details as to the source of the funds that they were going to be managing on Mr Berezovsky's behalf?
- A. The source of the funds? Well, they were -- first of all, they were interested in what businesses were behind it and what businesses should be structured, yes.
- Q. And that was because that was the source of the funds they were obtaining and of course they had --
- A. Yes, of course, it was the businesses that were generating funds, yes.
- Q. And they had their own due diligence requirements they no doubt had to satisfy?
- A. Yes, yes, yes.
- Q. You tell us in your statement at paragraph 200 D1/10/230 that at the meetings that you attended at least, you very much left the explanation of the source of the funds to Mr Fomichev?
- A. Yes, that's correct. Yes.

Q. He, by late 2000, being closely involved in the management of Mr Berezovsky's finances?

A. Yes.

Q. Now, you refer at paragraph 203 D1/10/231 to a meeting that you attended on 5 August 2000 and there's a short note of that meeting at H(A)21/12, if you could be given that.

A. Yes.

Q. And you confirm in paragraph 203 that this is an accurate record of the meeting you attended.

A. Yes.

Q. Now, at page 12 we have the English translation of the meeting note; the original meeting note is actually at page 11. It appears to be in Dutch.

A. Mm-hm.

Q. You can see that that includes a photocopy of your business card and Mr Fomichev's business card.

A. Yes.

Q. Could you just remind yourself -- it's up to you whether you prefer to look at the Dutch or the English but just remind yourself of the -- just read the note. (Pause)

A. Yes.

Q. Just looking at the note, it looks as if this might have been one of the early substantive meetings you attended with Valmet?

A. Yes.

Q. In particular from the fact they're referring at the end to "possibly some... new business". That suggests that the business yet hadn't been placed with them, doesn't it?

A. Yes, yes. The business was not yet placed, no.

Q. Now, if you look at the first paragraph of this note and the last two sentences, would I be right in understanding that at this stage what was being discussed with Valmet was relatively small participations in Russian companies being transferred into the Valmet structure?

A. This is not correct because this was rather the idea that into different vessels should not be put more than these small parts.

Q. The last sentence says:

"The participations shall all be between 5 and 15% of the share capital."

A. Yes, of each -- of each vessel.

Q. The vessel being the underlying --

A. Of the structure, yes.

Q. I see.

A. So that it was not vulnerable, there was not the bulk risk with one vessel.

Q. Now, subsequently to this meeting you provided some

references to Valmet for Mr Berezovsky and Mr Patarkatsishvili; that was on 2 September 2000. If you turn forward in this bundle, we find them at page 137 H(A)21/137.

A. Yes.

Q. This is the reference for Mr Patarkatsishvili --

A. Yes.

Q. -- but did you provide a similar reference for Mr Berezovsky?

A. Yes.

Q. The next meeting the documents record you as attending was a meeting on around 5 September 2000. If you could take up bundle H(A)19 at page 10 H(A)19/10.

A. Yes.

Q. Now, you don't refer to this meeting note in your statement. Have you seen it before?

A. I just have to look at it first.

Q. Of course.

A. No. No.

Q. Just to set the context, although this has a date "9/5/00", that's in fact US dating. You can see that from the bottom of page 11, where the last paragraph refers to "Hans-Peter as a Swiss lawyer", who must be you --

A. Yes.

Q. -- having provided reference letters.

A. Yes.

Q. And we've just looked at one of those reference letters and it's 2 September.

A. Yes.

Q. So this must be produced after that?

A. Probably, yes. I don't know this note but, as it refers to this, it must be after that.

Q. Now, the third paragraph on page 11 of this note --

A. Which, sorry?

Q. The third paragraph on page 11, the paragraph starting, "I have met with BB and AP..."

A. I made a mistake, I put the -- I have to find it first.

Q. Sorry, page 11.

A. Page 11. Yes.

Q. About halfway through that paragraph you see it says:

"Ruslan is assisted by Hans-Peter Jenni, a Swiss lawyer now resident in Cyprus, [Mr] Kay... and [Ms] Nosova... I have had numerous meetings with Ruslan, sometimes attended by Hans-Peter, some by Natalia and one by Joseph... Today, Peter joined me at a meeting held in London with Ruslan and Hans-Peter."

So it looks as if you had been at a meeting in London on around 5 September.

A. That's possible, yes.

Q. And if you go up to the top of page 11, you can --  
sorry, page 10 --

A. Page 10, mm-hm.

Q. -- first of all, you see there's a note in the second  
and third paragraphs of what Valmet had been told about  
what interests Mr Berezovsky and Mr Patarkatsishvili  
held at the time:

"They bought 49% with the Government retaining 51%  
of ORT."

Then:

"They... added Kommersant..."

Then:

"... [they] were able to buy control of Sibneft...  
and subsequently have acquired 70% of Russia's aluminium  
smelters and have created a new holding company called  
Russian Aluminium..."

A. Yes.

Q. Did you know at the time what percentage interest in  
Rusal Mr Berezovsky claimed to own?

A. No.

Q. You weren't responsible for telling Valmet that it was  
70 per cent then?

A. No, not me.

Q. And over the page, at the top of page 11, you see  
a reference to the Hotspur and Octopus Trusts and then

a reference to:

"We will start by moving the Sibneft holdings into the funds in about ten days."

Now, as at September 2000 was your understanding that Mr Berezovsky directly held any Sibneft shares that could be moved into funds in about ten days?

A. I must say I was probably present at the meeting but it was not my suggestion or my -- the information didn't come from me. So whether it was the case or it was not the case, it was up to the people who gave this information to judge it, not me.

Q. And you didn't understand Mr Berezovsky to have shares in Sibneft?

A. I always understood that he has the participation in Sibneft but I didn't know the details: where he had it, how he would transfer it and so on. This I didn't know.

Q. Is this likely to come from Mr Fomichev?

A. Well, probably, yes.

Q. Or Ms Nosova?

A. Or Ms Nosova? I don't -- I cannot answer this question because I don't know.

Q. Was anyone else present at meetings that you held with Valmet?

A. Sometimes it was Boris Berezovsky who was present, Mr Fomichev was present, Mrs Nosova was present,

I remember Mr Curtis was present sometimes.

Q. Do you remember then describing to Valmet the interest --

A. No, no.

Q. None of them?

A. Well, I don't recall it.

Q. You don't recall.

The next paragraph:

"BB and AP also own a large stake in Aeroflot..."

A. Yes.

Q. Was it your understanding as at 2000 that Mr Berezovsky and Mr Patarkatsishvili owned a large stake in Aeroflot?

A. No.

Q. But Mr Berezovsky was receiving funds as a result of Andava's dealings with Aeroflot, wasn't he?

A. There were dividends paid out to the shareholders, yes.

Q. Andava dividends paid out?

A. Yes.

Q. To Mr Berezovsky?

A. I don't remember where they were paid out, but the companies, yes.

Q. Could you be given bundle H(A)18 at page 221.001T H(A)18/221.001T. Now, this is also not a document that you refer to in your statement, no doubt because it only came to light after your statement was signed. Do

you recall seeing this document before?

This is the translation, sorry, I should say, of  
a Russian document --

A. May I see the original?

Q. It starts at page 221.001.

A. Yes. May I see the original?

Q. That is the original, 221.001.

A. This is the original. I don't know, I don't remember  
this document. (Pause)

No, I don't know who produced this document.

Q. Before I ask a question --

A. At least in the French text my name is wrongly spelt --  
in the Russian text my name is wrongly spelt.

Q. Before I ask you a question about it, are you fluent in  
Russian, Mr Jenni?

A. Pardon me?

Q. Are you fluent in Russian?

A. Yes.

Q. And when you communicated with Mr Berezovsky and  
Mr Patarkatsishvili, did you communicate in Russian  
or --

A. Yes.

Q. -- English? Russian?

A. Yes.

Q. Now, if you look at the bottom of the second page of

this document, in the English translation we're told at page 002T that:

"The materials set forth in this list were received by me on 21 April 2000.

"Hans-Peter Jenni."

A. No.

Q. You don't have any recollection of receiving this?

A. No. No, I see this -- I never saw this document.

I don't know these companies. I never heard about these companies.

Q. Could you just be given bundle H(E)1 --

MRS JUSTICE GLOSTER: Is this the original document, the one on the screen?

THE WITNESS: No, this is the translation.

MRS JUSTICE GLOSTER: Is there one in Russian with a signature on it?

MS DAVIES: Not that I've seen, my Lady.

THE WITNESS: There is no signature on it and my name is -- in the Russian original it is spelt wrongly.

MR RABINOWITZ: My Lady, in answer to your question, I don't think we have. This obviously comes from the family defendants' disclosure. But we haven't seen one with a signature on it.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

So you don't have any recollection of seeing this

document before?

A. No, I never...

MS DAVIES: Could you just be given for completeness bundle  
H(E)1/01.

Sorry, it's not in my hard copy, my Lady, as it's  
a new...

A. I don't...

Q. It's on the screen, Mr Jenni.

A. On the screen, yes.

Q. Yes. This is a cover sheet that was found, as we  
understand it, on the front of this file and you see  
that says:

"For Mr Hans-Peter Jenni

"CONFIDENTIALLY

"PERSONALLY IN HANDS"

I just wanted to check you have no recollection of  
seeing that either?

A. No.

Q. Thank you.

Now, you told us a bit this morning about a company  
called Ruco. Do you recall that in 1996 Ruco received  
a loan from a company called Laren Trading --

A. Yes.

Q. -- of US\$5 million?

A. It might -- it's possible, yes.

Q. And is it correct that Ruco then used the funds that it had received to increase the capital of Andava Holding SA?

A. Yes, yes.

Q. And it was Ruco that became the shareholder in Andava Holding SA, not Laren?

A. Yes.

Q. And Ruco subsequently repaid Laren 2.8 million of the loan that it had received?

A. Yes.

Q. In your statement, starting at paragraph 248 on page 240 D1/10/240, you give some evidence about the sale by Mr Abramovich of 25 per cent of Rusal Holding to Mr Deripaska.

A. Yes.

Q. And you say there that Mr Patarkatsishvili -- that's paragraph 251 -- told you that he was unhappy about the sale because he felt that he, Mr Berezovsky and Mr Abramovich should have sold together?

A. This is correct, yes.

Q. Are you suggesting that Mr Patarkatsishvili told you about his happiness in this respect at the time -- that's in late 2004 -- or was it subsequently?

A. No, it was -- rather 2004, I guess.

Q. Presumably you had a number of discussions with both

Mr Berezovsky and Mr Patarkatsishvili --

A. Yes.

Q. -- about the Rusal sale?

A. Yes.

Q. And it must again be possible, mustn't it, Mr Jenni, that you're attributing a conversation that you've had more recently to a conversation you actually --

A. Normally --

Q. -- and suggesting it happened in 2004?

A. This is always possible because time has passed and my memory passes also. But what I can say is normally when things happened I have been informed by them through the communication we had normally, that we're sitting together and discussing all that was happening around, shortly after it happened and not some time later.

Q. But you've discussed it on more than one occasion?

A. Yes.

Q. And it must be very difficult to distinguish one conversation from any one other?

A. Yes.

Q. Do you have any arrangement whereby you stand to benefit financially should Mr Berezovsky succeed in any of his claims?

A. No.

MS DAVIES: Thank you very much, Mr Jenni.

MR MALEK: I have no questions.

MRS JUSTICE GLOSTER: Any questions from anyone else?

MR ADKIN: No.

MR MUMFORD: No.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Just one question, Mr Jenni.

In the course of your answers to Ms Davies today you were asked about the relationship between Mr Abramovich and Mr Berezovsky and you said that you'd seen them together and you'd said that in your view they were friends.

Can I ask you just to describe what it was about their interrelationship which made you form the view that they were friends?

- A. I saw Mr Abramovich the first time, that was in 1995, in a private house outside Moscow with Mr Boris Berezovsky and it was in a familiar surrounding. I saw Mr Abramovich again, and with family, if I remember well, with family in 1997, 1997 at Clocher, at La Garoupe, in Antibes, and that was where the two families were together. So I had the impression that they were quite familiar and quite friends.
- Q. Did they relate to each other in any way which made you form the view about whether they were friends?

MRS JUSTICE GLOSTER: What does that mean, Mr Rabinowitz?

MR RABINOWITZ: Did they interact with each other? Or was it just that you -- the answer that you've given?

A. Well, in fact the feeling was that -- I now also try to recall other meetings where I saw them together and... In the end it was rather formal.

MR RABINOWITZ: Thank you very much.

MRS JUSTICE GLOSTER: When both families were staying at Antibes, did you get the impression they were, as it were, spending some time on their holidays together?

A. Maybe not that they were spending holidays together but they were just near each other.

MRS JUSTICE GLOSTER: Yes, I see.

Thank you. I have no further questions. Thank you very much indeed for coming along, Mr Jenni.

THE WITNESS: Thank you.

(The witness withdrew)

MR RABINOWITZ: My Lady, our next witness is Ms Gorbunova.

Can I just ask: does your Ladyship have -- before she is sworn -- a document identifying a correction to be made to her statement?

MRS JUSTICE GLOSTER: Can you hand me up another one.

(Handed)

Thank you very much.

MS ELENA GORBUNOVA (sworn)

MRS JUSTICE GLOSTER: Do sit down if you would like to.

THE WITNESS: Thank you.

Examination-in-chief by MR RABINOWITZ

Q. Good afternoon, Ms Gorbunova. Can I just check that you don't have with you any mobile phone or any other electronic communication device?

A. No.

Q. Thank you very much.

Can I ask that you please be given bundle D4 open at tab 8 D4/08/56. Ms Gorbunova, at D4, tab 8, you should, I hope, see a document titled "First Witness Statement of Elena Alexandrovna Gorbunova".

A. Yes.

Q. Do you have that? If you can go, please, to page 67 of the bundle, the numbers on the right bottom corner D4/08/67.

A. Yes.

Q. And do you see a signature there?

A. Yes.

Q. And can you confirm that that's your signature?

A. Yes, that's mine.

Q. Thank you.

Now, there is, I know, a correction that you want to make to your witness statement. Can I ask you to go to

page 64 of the bundle D4/08/64. It's paragraph 28.

It really begins at the bottom of the previous page and goes over the page. Do you see that paragraph?

A. Yes.

Q. Right. Then do you have with you there, in front of you, a page headed "Correction to Elena Gorbunova's First Witness Statement"?

A. No, I don't.

Q. You don't. Can I just hand up... (Handed) Thank you very much.

Now, I understand this is a correction you want to make to that paragraph. Is that right?

A. Yes.

Q. Now, subject to that correction, can you confirm that the contents of this, your first witness statement, are true to the best of your knowledge and belief?

A. Yes.

Q. Thank you.

Now, can I ask you next to go to tab 11 of the same bundle D4/11/120. You should see another witness statement: it should be headed "Second Witness Statement of Elena Gorbunova".

A. Yes.

Q. Do you see that?

A. Yes.

Q. Can I ask you to go, please, to page 122 of the bundle D4/11/122. It's the third page of the witness statement. Again, do you see a signature there?

A. Yes.

Q. Can you confirm that it's your signature?

A. Yes, it's mine.

Q. And can you confirm that the contents of this, your second witness statement, are true to the best of your knowledge and belief?

A. Yes.

Q. Ms Gorbunova, as I understand it, the position in terms of the translator is this. You understand English?

A. Yes.

Q. And so the questions will be asked in English.

A. Yes.

Q. But the position is, is it not, that when it comes to answering, for more complex answers you would like to give them to the translator in Russian because you're not comfortable speaking English?

A. Yes, if it's possible.

MRS JUSTICE GLOSTER: Yes. Well, see how you go. It's easier in a way -- well, it's easier for me, put it this way -- if you give your answers in English, but I don't want to inconvenience you in any way. So just how you feel easiest.

THE WITNESS: Thank you, my Lady.

MRS JUSTICE GLOSTER: Can you try and speak up a bit because your voice is quite soft. Can you pull the microphone towards you. Thank you.

MR RABINOWITZ: Can we just have a temporary interruption or commercial so that the translator can go and get her pad and glasses.

Ms Gorbunova, can you wait there, please.

Mr Sumption will have some questions for you.

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Cross-examination by MR SUMPTION

(All answers interpreted unless otherwise indicated)

MR SUMPTION: Ms Gorbunova, when did you last meet

Mr Smolensky?

A. On 5 September 2011.

Q. And what did you discuss with him?

A. We discussed the evidence he gave in favour of Boris for the purposes of the strike-out application and the evidence he was trying to give via Skype to our lawyers.

Q. And what did you say about that?

A. (Not interpreted) Me or him?

(Interpreted) I didn't say anything about that.

I just received information.

Q. Well, you say that you discussed these matters. Tell us what was discussed, what was said?

A. I was asking him how it was happening, how the procedure was actually taking place. I also asked him if he was willing once again to give evidence and to sign it.

Q. And what was his answer?

A. He said that he was willing to meet with our lawyers the following day.

Q. Did you say to Mr Smolensky that you would like him to avoid helping Mr Abramovich in this action?

A. No, that's impossible.

Q. Did you say to Mr Smolensky --

A. I didn't know he was helping him.

Q. No, but you wanted to discourage him from doing so, did you not?

A. No.

Q. And did you say to Mr Smolensky that you would be adversely affected financially if Mr Berezovsky lost, which was why you would prefer him not to assist Mr Abramovich's --

A. I didn't say that.

Q. Because that is what we understand from Mr Smolensky that you said: both of those things.

A. That is not true.

Q. Well, I suggest to you that it is.

A. This is your assumption. I'm telling you what happened.

Q. Do you have a financial interest in the outcome of this

case, Ms Gorbunova?

A. What do you mean?

Q. Well, if Mr Berezovsky wins, do you stand to be better off financially?

A. Naturally.

Q. Explain how that is.

A. Well, because we're a family.

Q. Have you lent your own money to Mr Berezovsky, Ms Gorbunova?

A. No.

Q. You haven't lent any money to Mr Berezovsky; is that your evidence?

A. At some point back in time he put some money on my account and later, when he needed some financial assistance, I just returned this money to him. I didn't consider this money to be my personal funds; I considered it to be the money of our family.

Q. Did you lend him that money when you passed it back to him?

A. No, I didn't. I just gave it back to him.

Q. Was it agreed between you that he would repay it to you if he succeeded in this action? Perhaps the translator could assist.

A. We did not agree that, but I think it's natural to assume so.

Q. You are, I assume, familiar with the main issues in this lawsuit. Is that correct?

A. Yes.

Q. Am I right in thinking that Mr Berezovsky has often spoken to you about them, about the issues?

A. About this as well.

Q. And over the past few years no doubt Mr Berezovsky has often said to you that he believes that Mr Abramovich blackmailed him?

A. I was present myself and therefore I didn't need any confirmation from Mr Berezovsky to know that.

Q. You did not hear, according to your evidence, the detailed exchanges which you claim to have been present at; is that correct?

A. No, I didn't hear the detailed exchanges but the first 15 minutes were sufficient for me to understand that it was blackmail.

Q. Could you look at your first witness statement, please. You tell us in paragraph 39 that the men sat in one corner of the terrace by the dining table and you sat in another one. You then say you went inside after 10 or 15 minutes as it was cold. Do you see that?

A. (Not interpreted) Yes.

Q. The next paragraph:

"From what [you] observed, Roman behaved very

differently at this meeting from how I had seen him behave previously. He used to be respectful towards Boris, almost humble. However, on this visit Roman seemed to be looking down on Boris... My impression was that Roman was trying to demonstrate that he was doing Boris a huge favour. I heard the men talking about Boris and Badri's interests in ORT. I recall Roman saying that the government wanted to pay significantly less for the ORT shares than he was going to pay, and that it was only thanks to Roman that they would pay more. I think Roman also said that he was personally paying some of the sale price as he was fed up with the story with Boris and Badri."

You then say at paragraph 41:

"I remember that after the meeting, Boris was outraged."

Now, what did you hear of the conversation between these three men that led you to think that it was blackmail?

- A. Well, first of all I knew what the conversation would be about and the most important issue that was being discussed was that Nikolai Glushkov was arrested and put in prison. All the rest was a consequence of that situation.
- Q. Reading your witness statement, could you please point

to what it was in this conversation, as you describe it, which suggested that it was blackmail?

- A. I was not actually recording all the words that were being uttered there. I was trying to describe the situation that was at hand, that was there, and the situation was blackmail. This was just a day; the situation was developing over the course of several months.
- Q. What you say in paragraph 41 was that it was Mr Berezovsky who told you that Mr Abramovich had used Mr Glushkov to blackmail him.
- A. Mr Berezovsky simply voiced exactly what I've heard and exactly the conclusions that I have come to.
- Q. You do not say that in your witness statement and it didn't happen, did it?
- A. This is exactly what did happen; it's just that our opinions on the meeting coincided.
- Q. Then why didn't you say that in your witness statement, Ms Gorbunova? You've made two of them.
- A. I was not being asked about the opinion I formed about that meeting.
- Q. If you had heard yourself --
- A. Once again, I was describing a situation, not an opinion.
- Q. If you had actually heard the exchanges between these

three men which amounted in your opinion to blackmail, you would have said that in your witness statement, wouldn't you?

- A. Not necessarily. For me this was a totally natural understanding of the situation but at that time I thought about a different thing altogether: I thought that apart from Nikolai having become a hostage, we were becoming financial hostages to Mr Abramovich.
- Q. Now, you met Mr Abramovich, did you not, many times between 1995 and 2000?
- A. Yes.
- Q. He must have come quite often in that period to your house in southern France?
- A. Yes.
- Q. It cannot be easy to remember even approximately, years after the event, the dates on which you saw him?
- A. The date is indeed difficult to recall but I remember very well the sequence of events.
- Q. Would you look at paragraph 34, please, of your witness statement; paragraphs 34 and 35 D4/08/65.
- A. (Not interpreted) yes.
- Q. You say here that Mr Abramovich was present at Mr Patarkatsishvili's birthday party at the George V Hotel in Paris on 31 October.
- A. No, no, no, I'm saying in fact that we were celebrating

the birthday and Mr Abramovich came along.

Q. Yes. So you say --

A. He did not join in with the celebrations.

Q. You say that he arrived at the hotel around lunchtime and that you spoke to him.

A. Yes.

Q. Now, are you sure about that?

A. Absolutely.

Q. You have a mental picture, do you, of that occasion?

A. (Not interpreted) Yes.

Q. Mr Abramovich had in fact been in Paris ten days earlier but his travel records show that he returned to Russia on 24 October and did not leave Russia again until 6 November. He was not present at the George V Hotel on the 31st.

A. We know everything we need to know about the stamps in Mr Abramovich's passport.

Q. What do you need to know about the stamps in Mr Abramovich's passport, Ms Gorbunova?

THE INTERPRETER: Okay, this must have been my mistranslation.

A. We already know everything about the stamps in Mr Abramovich's passport.

MR SUMPTION: What do you know --

A. Strange metamorphoses are happening to these stamps.

Q. What do you know about the stamps in Mr Abramovich's passport that helps you to give evidence about his presence in Paris on 31 October?

A. Nothing at that time. But if he changed one stamp, nothing can guarantee that he hadn't changed all others as well.

Q. He didn't change any stamps as far as you're aware, did he?

MRS JUSTICE GLOSTER: Well, I'm not sure that's a question she can answer, Mr Sumption.

MR SUMPTION: Well, she claims to have some knowledge of this.

MRS JUSTICE GLOSTER: You think, do you, that he's changed the stamps or he's obtained a change to the stamps in his passport?

A. I saw how they were being changed.

MR SUMPTION: What do you mean, you "saw how they were being changed"?

A. I mean that he sent us one stamp in a copy of a document and it was different from the stamp that he eventually disclosed in the original document. I think this is a question to the experts.

Q. Are you talking, Ms Gorbunova, about an occasion on which a photocopy of a passport stamp at a later date was replaced by a better copy of the same page of the

passport? Is that the occasion you're talking about?

A. I can't say that it was a better copy. I can say that it was different, the stamp.

MRS JUSTICE GLOSTER: Well, Mr Sumption, I don't think you need to go over this.

MR SUMPTION: I'm not going to -- no. I only asked the question because the witness claimed to have some knowledge of it.

Now, Ms Gorbunova, you say that you were at Cap d'Antibes on 6 November 2000; you say that in paragraph 36 of your witness statement.

A. (Not interpreted) Yes.

Q. Would you please tell us what you did on 6 November 2000? Tell us how you occupied your day, who you saw and so on.

A. If I had seen someone, I would have remembered it. Most probably I haven't seen anyone unusual. It was an ordinary, routine day in our house.

Q. Are you saying that you saw nobody on that day or you saw nobody unusual?

A. (Not interpreted) Nobody unusual.

Q. How do you know that, Ms Gorbunova, after 11 years?

A. I just remember that period of time rather well because rather extraordinary events were happening in our lives and I remembered them because they were not very

ordinary.

- Q. Tell us what was the next time after 6 November 2000 when you saw someone unusual and who it was?
- A. By "unusual" I mean all the guests that were coming to visit us.
- Q. Tell us what was the next day after 6 November when you saw someone unusual?
- A. For example, on 7 December.
- Q. On 7 December. You saw nobody unusual between 6 November and 7 December; is that your evidence?
- A. I travelled a lot at that time and very seldom was in the house.
- Q. Ms Gorbunova, you say in paragraph 36 that you are sure that Mr Abramovich did not come to Cap d'Antibes on 6 November. I suggest to you that you cannot possibly remember the specific date on which Mr Abramovich came to Cap d'Antibes.
- A. Everybody's memory works differently. If you assume something, you are basing your assumption on how your memory works. My memory works differently.
- Q. And in particular you cannot possibly remember not seeing somebody on a particular date when you know that he has been on a number of occasions to Cap d'Antibes. What do you say?
- A. If a person hadn't visited us for four months then of

course it's easy to remember.

Q. When you made your first witness statement did you know that Mr Berezovsky was saying that Mr Abramovich's visit to Cap d'Antibes happened a few days before Christmas and a couple of weeks after the arrest of Nikolai Glushkov?

A. No, I didn't know about it.

Q. You didn't know that that's what he was saying?

A. I didn't know which dates he was giving.

Q. You seem to be very familiar with the issues in this action. Are you really saying that you did not know at the time of your first witness statement that your partner was alleging that this meeting occurred a few days before Christmas?

A. Mr Sumption, the important thing is the essence of what is going on and not the time when it was taking place.

Q. Well, the timing is important to some issues on this action and I'm therefore going to ask you about them.

A. Fine, fine. I'll try and remember, if I have time.

Q. At paragraph 38 D4/08/65 you say that:

"Although [you] do not remember the precise date of the meeting... [it] took place before 24 December 2000."

Was that evidence not given in order to corroborate Mr Berezovsky's evidence that it was a few days before Christmas?

- A. No, this evidence was given on the basis of what I was remembering, recollecting -- remembering.
- Q. You said in your first witness statement, paragraph 42, that you went away with Mr Berezovsky after Roman Abramovich's visit and came back after Christmas. Paragraph 42 D4/08/66. Would you just remind yourself of that.
- A. (Not interpreted) Yes.
- Q. Now, in your second witness statement you say that you left with Mr Berezovsky for the United States and came back alone to Cap d'Antibes for Christmas. Do you remember saying that? It's paragraph 6(g) of your second witness statement if you want to have a look at it D4/11/122.
- A. (Not interpreted) Just a second. Which one?
- THE INTERPRETER: Could you give us the tab, please?
- MR SUMPTION: It's in tab 11. I'm just looking at tab 11, paragraph 6, in conjunction with paragraph 42 of your first witness statement.
- A. (Not interpreted) Yes.
- Q. Now, where did you go with Boris after Roman's visit to the chateau? I'm looking at paragraph 42 of your first witness statement.
- A. Most likely to Germany.
- Q. If you look at paragraph 6(c) of your second witness

statement, you say that:

"[You] understand that Boris arrived in the US on 17 December 2000, as is shown by his passport stamps. I was with Boris for some of this trip to the US, and I think that we flew together from the London to the US."

A. (Not interpreted) Yes.

Q. Do you see that?

A. (Not interpreted) Yes.

Q. Now, is it right that the visit that you made after Roman's visit to the chateau, are you saying that that was a visit to the United States?

A. No, I wrote that either we went to Germany or to the US and it is in my witness statement.

Q. Are you referring to your second witness statement when you say that?

A. I don't remember in which.

Q. Well, have a look at paragraph 6 of your second witness statement. Is that the witness statement that you have just referred to?

A. (Not interpreted) Yes. Yes.

Q. Right. You answered "yes", but possibly so faintly that it may not have got on to the transcript.

A. (Not interpreted) I can see it.

Q. It has, fine.

You say in your second witness statement, paragraph 6(c), that you left with Mr Berezovsky for the United States from London --

A. (Not interpreted) Yes.

Q. -- and came back, you say, in time for Christmas.

A. (Not interpreted) Yes.

Q. You describe a number of things that you did in his company in the United States: paragraphs 6(c), (d) and following.

A. (Not interpreted) Yes.

Q. Now, are you aware that your passport stamps show no record of your entering the United States in December?

A. Possibly, but I was there.

Q. Mr Berezovsky's passport stamps do record his entry into the United States, but yours do not.

A. I don't know, but I was there.

Q. You were not there, were you, Ms Gorbunova?

A. I was there.

Q. If you say that you went to the United States with Mr Berezovsky, presumably that is something that you say on the basis of your recollection rather than because you have been assisted by any documents?

A. No, no, I remember I went to Washington and we were at a presentation of a civil liberties society or something, I can't remember exactly what it was called,

but together with Alexander Goldfarb.

- Q. Did you remember going to the United States with Mr Berezovsky before Christmas at the time when you wrote your first witness statement?
- A. I don't know, but I think at that time the question of where we were did not arise.
- Q. If you remembered going with Mr Berezovsky to the United States before Christmas at the time you made your second witness statement, presumably you would have remembered it at the time when you made your first witness statement just a few months earlier?
- A. It's just that when I was giving my second witness statement I had to remember December date by date, very specifically what was happening.
- Q. If you had mentioned the American visit in your first witness statement, that would have undermined Mr Berezovsky's then case that his meeting with Mr Abramovich occurred shortly before Christmas, wouldn't it?
- A. I did not coordinate my statement with Mr Berezovsky.
- Q. And for that reason you didn't mention it, did you?
- A. At that time I was not asked about our movements throughout the month of December.
- Q. If you look at paragraph 38 of your witness statement,
- Ms Gorbunova D4/08/65 --

MRS JUSTICE GLOSTER: The first one?

MR SUMPTION: The first witness statement, yes.

A. What is the tab, please?

Q. Tab 8.

What you say in paragraph 38 is that you are sure that Mr Abramovich's denial that he met Boris in December is wrong. You say:

"The meeting took place before 24 December..."

Then at paragraph 42 you say that after that meeting you and Boris went away for a few days and came back after Christmas.

What you're saying in that witness statement is that after the meeting with Mr Abramovich you went away with Mr Berezovsky for Christmas and didn't come back until afterwards; that's right, isn't it?

A. I'm not saying that we left for Christmas, for actual Christmas.

Q. You are at paragraph 42, aren't you? Because what you say is that you went away with him for a few days and came back after Christmas.

A. (Not interpreted) After a few days.

Q. Look at paragraph 42.

A. I suppose what happened is that the two trips merged in my mind into one. What I remember is the sequence of events and I remember that soon after that, we left.

Q. Soon after the meeting you left, you mean?

A. (Not interpreted) Yes.

Q. The meeting with Mr Abramovich?

A. (Not interpreted) Yes.

Q. And you left for Christmas soon after the meeting?

A. No, I didn't say that we left for Christmas, ie to spend Christmas elsewhere. I was saying that I remember that we came back after Christmas.

Q. Now, you were at Cap d'Antibes on 7 December, when the news arrived of Mr Glushkov's arrest in Moscow, were you not?

A. (Not interpreted) Yes.

Q. Mr Glushkov was a friend, was he not?

A. Yes, he was a friend and he is a godfather to our daughter.

Q. Yes. So the news of his arrest was no doubt distressing for you as well as for Mr Berezovsky?

A. Yes, for me it was also unexpected and traumatic.

Q. If Mr Abramovich had arrived at Cap d'Antibes on 7 December, the very day that the news broke of the arrest of Mr Glushkov, you would have remembered that, wouldn't you?

A. No, not necessarily.

Q. And you would have said it in your first witness statement, wouldn't you?

A. (Not interpreted) What? (Consults interpreter)

(Interpreted) If I remembered it, I would have said it.

Q. You do not remember Mr Abramovich arriving at Cap d'Antibes on 7 December itself, do you?

A. I repeat once again: it's difficult for me to remember all the dates exactly but I remember the sequence of events very clearly.

Q. You do not remember either, do you, Mr Abramovich arriving at Cap d'Antibes in the two or three days after 7 December? Do you agree? You don't remember that either?

A. In two/three days we left for Germany.

Q. This meeting in December never happened, did it?

A. That is not true. It did happen.

Q. You may be confusing Mr Abramovich's arrival on 6 November with his arrival at some stage in December?

A. I cannot be confusing that because on 9 November I went to Moscow; I came back on the 11th and that was my last visit.

Q. Why does that mean that you can't be confusing that, if Mr Abramovich's travel records show that he was in the south of France on 6 November?

A. When I saw Mr Abramovich I already had no possibility to re-enter Russia.

Q. And you are confusing what Mr Berezovsky told you about his exchanges with Mr Abramovich with things that Mr Berezovsky has told you much later many times, are you not?

A. No, I'm not confusing.

MR SUMPTION: Thank you.

MR MALEK: I have no questions.

MR ADKIN: My Lady, no.

MR MUMFORD: No questions.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Ms Gorbunova, you were asked by Mr Sumption about a trip that you made to see Mr Smolensky in September of this year.

A. (Not interpreted) Yes.

Q. Mr Sumption suggested to you that you had had a conversation with Mr Smolensky in which I think it was suggested that you were seeking to persuade Mr Smolensky not to help Mr Abramovich, and you denied that.

Can you just assist us with this: did Mr Abramovich's name come up in the conversation with Mr Smolensky?

A. Yes.

Q. And can you tell us the context in which Mr Abramovich's name came up and what it was that you were told by

Mr Smolensky about Mr Abramovich?

A. Mr Smolensky told me that he got a call from Mr Abramovich, who organised a meeting with Mr Putin to discuss some kind of business interests of Mr Smolensky.

Q. Was there anything else that he said?

A. (Not interpreted) About Abramovich?

(Interpreted) He said that Smolensky was interested in some -- had an interest in a project near Vladivostok and that he was going to build or undertake a large project there and that Putin had promised him help. He also said that Smolensky owned some land there and Putin wanted to confiscate it from him to build his own residence, a villa there for himself, and that Roman was just an intermediary in that.

Q. An intermediary in what? Can you just explain what you mean by "[he] was just an intermediary in that"?

A. As far as I understood, Roman was a person, an intermediary between Putin and Smolensky, somebody who would talk Smolensky into giving up that land.

Q. Are you suggesting that was on behalf of President Putin?

A. (Not interpreted) Yes.

Q. Now, can I just ask you this. You were also asked by Mr Sumption about the circumstances in which it came to be that your second witness statement had more

information about your movements in December than your first witness statement.

A. (Not interpreted) Yes.

Q. Can I ask you to look at paragraph 3, please, of your second witness statement: that's at D4, tab 11, page 120 D4/11/120. You see you say:

"[You] make this statement... following the provision on 4 August 2011 by Global Jet [of information relating to] the private jet [that] Boris [and you] used at that time."

A. (Not interpreted) Yes.

Q. Can you just assist as to whether that was something that you took into account in producing the further details of your movements in December 2000?

A. I didn't take it into account in my first witness statement but I did for my second witness statement.

MR RABINOWITZ: Thank you very much. I've got no further questions.

MRS JUSTICE GLOSTER: Thank you very much indeed.

THE WITNESS: (Not interpreted) Thank you.

MRS JUSTICE GLOSTER: Thank you for coming along and helping the court.

(The witness withdrew)

MRS JUSTICE GLOSTER: I'll take the break now. Have you got another witness for this afternoon?

MR RABINOWITZ: I think we have got another witness here.

MRS JUSTICE GLOSTER: Right. I'll take ten minutes.

Just before I do that, I was promised an agreed chronology, or at least one that is agreed so far as you can get -- obviously you're not going to agree all the dates -- and also an agreed list of issues. I could really do with the agreed chronology.

MR RABINOWITZ: As I understand it, the agreed chronology has been sent to your Ladyship today.

MRS JUSTICE GLOSTER: Excellent. Very well. Thank you very much. Ten minutes.

(3.15 pm)

(A short break)

(3.30 pm)

MR RABINOWITZ: My Lady, our next witness is Mr Dubov.

MRS JUSTICE GLOSTER: Yes.

MR YULI DUBOV (sworn)

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Dubov.

A. Good afternoon.

Q. I wonder if you -- well, can we just start again and can I ask you to confirm that you don't have any mobile phone or electronic device?

A. No, I left everything at my seat back there.

Q. Well done. Can I ask then that you be given bundle D1,

please, open at tab number 12 D1/12/258.

Do you have in front of you, Mr Dubov, a document headed "Witness Statement of Yuli Dubov"?

A. I do indeed.

Q. Thank you very much. And can I ask you to go to page 295 D1/12/295; it's the second last page of the tab in the bundle. You seem to have it there. It's 295, bottom-right corner.

A. Yes.

Q. Thank you. You see a signature there: can you confirm that's your signature?

A. This is my signature.

Q. And can you confirm that this is your first statement in these proceedings?

A. Yes, I believe this is my first statement.

Q. Thank you.

Can you confirm that the contents of this witness statement are true to the best of your knowledge and belief?

A. I do.

Q. Thank you.

Can you then be given bundle D4 opened at tab 2, please D4/02/5. You should see a document, "Second Witness Statement of Yuli Dubov".

A. That's right.

Q. Thank you. If you go to page 11, again you should see a signature D4/02/11.

A. Yes.

Q. Can you confirm that that's your signature?

A. It's my signature.

Q. And this is your second statement?

A. This is my second statement.

Q. And can you confirm that the contents of this, your second statement, are true to the best of your knowledge and belief?

A. I do.

MR RABINOWITZ: Thank you. Can you wait there, please.

Mr Sumption will have some questions for you.

Cross-examination by MR SUMPTION

MR SUMPTION: Mr Dubov, I think you describe yourself as a close personal friend of Boris Berezovsky. Is that right?

A. It's the shortest description of our relations, yes.

Q. Right. Well, it's probably sufficient for present purposes. And of Mr Glushkov also?

A. And of Mr Glushkov also.

Q. You tell us in your witness statement that you work from an office in Mr Berezovsky's building in Down Street. Is that correct?

A. That's correct.

Q. What do you do in that office?

A. Well, most of the time I'm working on my book and in the time that's left I'm also trying to earn some money, more or less successfully.

Q. Now, is it right that since 2004 you have been involved in the preparation of this case?

A. In the beginning, yes.

Q. Only in the beginning?

A. Only the beginning.

Q. During what period were you involved with it?

A. I believe that until February 2008, until Badri died.

Q. Yes, I see. So between 2004 and 2008; would that be fair?

A. Yes.

Q. And have you, during that period, regularly discussed Mr Boris Berezovsky's case with him?

A. No, I don't think that we had any regular discussions about this case.

Q. Well --

A. From time to time Boris came to me with the request to try and find some kind of information that could assist him and his lawyers in preparation to this trial and I was always glad to assist him in this.

Q. And were you present, for example, at interviews with Mr Patarkatsishvili by Mr Berezovsky's solicitors in

2007?

A. Yes, I was indeed. It was two days in July or in June;  
I don't remember when exactly.

Q. Yes.

Now, during the period when you were working on this case, on what basis were you working on it? Was he paying you for it?

A. No.

Q. Do you have any arrangement with anybody under which you stand to benefit financially if he wins this action?

A. No.

Q. Now, I'd like to ask you about the ORT sale, please.

A. All right.

Q. In 2000 you were the deputy general director -- or rather at the end of 2000 you were the deputy director general of Logovaz?

A. That's right.

Q. And that company itself was a shareholder in ORT, with a holding of 11 per cent?

A. Absolutely right.

Q. Was your position as deputy general director a board position, ie were you a director also?

A. I was on board as well.

Q. Yes. And were you, in addition, a director of ORT?

A. I was on board of ORT.

Q. Sorry?

A. I was on board of ORT.

Q. Right. As well as Logovaz?

A. As well as Logovaz.

Q. Now, in early September Mr Berezovsky announced his intention of transferring the 49 per cent stake which he controlled in ORT to what has been called a teletrust of distinguished journalists and cultural figures. Do you know what I'm talking about?

A. Yes, I do know what you are talking about. I never discussed with Boris these arrangements but I knew about this from the press mainly.

Q. Well, were you consulted about these arrangements?

A. No.

Q. You weren't? Were you consulted about the names of the people who would be on this teletrust?

A. No. It was completely Boris's choice and his decision.

Q. Could you please be given bundle H(A)21/178. You should have open in front of you an English translation of a press conference with Mr Berezovsky which was shown on TV6, which I think was another of Mr Berezovsky's television interests --

A. That's right.

Q. -- on 7 September 2000. This is a press conference about the teletrust.

A. Mm-hm.

Q. I'd like you to turn to the third page, page 180 of the bundle H(A)21/180, of this press conference.

Mr Berezovsky is being asked questions, Q, and at the top of the page you will see that he was asked:

"Did you consult with anyone regarding this list or is it your own decision? And could you name people whom you approached and who turned down the offer?"

Mr Berezovsky says:

"I did not make this decision alone. I made it together with other shareholders. And there are two main shareholders. They are the joint commercial bank, I don't know its exact name, where part of the shares are, and the company LogoVAZ. I am not the only shareholder there. There are other shareholders. And I took counsel on this issue with Mr Dubov, with Mr Patarkatsishvili [and] also... the former ORT General Director [Mr] Shabdurasulov."

Now, Mr Berezovsky seems to have said at the time that he took your advice on the subject of the teletrust. Is that wrong?

A. I think that this is wrong.

Q. I see. You don't think that you might have forgotten?

A. Well -- no, I don't think so.

Q. Surely you were being consulted because if the shares

which Mr Berezovsky controlled in ORT were passed to this teletrust, that would include the 11 per cent that was held by Logovaz, wouldn't it?

A. Certainly.

Q. And you at that time were the deputy general director of Logovaz?

A. That's right.

Q. So it would be logical to consult you as a fellow shareholder in ORT, would it not?

A. No. I think that it will be -- this is not the case because I was only the deputy general director. All kind of formal arrangements that had to be done in relation to teletrust had to be done by the general director himself. He was the only person who could act on behalf of Logovaz without any power of attorney.

Q. Well, I understand that. But taking advice about the teletrust wasn't a formal act of Logovaz, was it?

A. Mr Sumption, Boris didn't need any advice in regard of ORT shares from me. I think that the only person from whom he actually needed advice was Badri.

Q. Well, I suggest to you that Mr Berezovsky must have consulted you or he would not, immediately afterwards, have said on TV6 that he did.

A. Mr Sumption, it's already 11 years ago but if he did consult with me, maybe I would remember about this.

I just don't remember. I don't think that it happened this way.

Q. There's no criticism; you might well have forgotten after 11 years.

A. Yes, certainly.

Q. Now, Mr Gorodilov will give evidence that in November 2000 he participated in detailed discussions with Mr Berezovsky's financial manager, Mr Fomichev, about the sale of the 49 per cent share in ORT to Mr Abramovich.

A. Mm-hm.

Q. Now, I'm telling you that just as part of the background to the next document I want to show you.

A. All right.

Q. In the course of those discussions a document called a reference sheet or a summary was prepared by Mr Gorodilov which outlined the way in which the transaction was expected to go through.

A. Okay.

Q. I'd like to ask you to look at that document: it's in H(A)23/71T.

A. I can close this one?

Q. No, you haven't got it. You can put away bundle H(A)21.

A. Right.

Q. Right. Could you please turn to page 71 in this

document, which is the Russian original, but I will be working from 71T, which is the document immediately before it, which is the English translation. Use the English or the Russian version according to your preference.

A. Okay.

Q. Now, Mr Gorodilov says that this document was drawn up on 13 November 2000 and that date is confirmed by the metadata on the word processing file which shows that the file was created on that date and last modified on that date with an editing time of 31 minutes.

Now, I want you to look at this document, which appears fairly clearly to have been created on 13 November. It was prepared at a stage when it was understood that the price would be 100 million, before it was increased by agreement to 150 million.

What I want to draw your attention to is "Stage III" as described in the document. I'm looking at the English version but you can look at the Russian. "Stage III":

"LogoVAZ... sells its 11% of shares in ORT... at the nominal value (10,000 roubles per share) to a legal entity resident of the Republic of Russian Federation... which is established by one legal entity and is not an affiliate of Sibneft... The total amount of transaction

is [1.1 million] roubles."

Okay? This suggests, does it not, that a price of 1.1 million rubles for the 11 per cent shareholding had been agreed by 13 November 2000?

A. Between whom, Mr Sumption?

Q. It had been agreed in the course of discussions about how the transaction was going to go through between Mr Gorodilov and Mr Fomichev.

A. Mr Sumption, I can't say that I haven't seen this summary before; I've seen it in the disclosure. But I have never seen it in the year 2000. I was never party to any discussions which Mr Gorodilov had with Mr Fomichev.

Q. I understand that you were not party to those discussions and that you would not have seen this document at the time. My reason for putting it to you is that you say something about the price of 1.1 million rubles at paragraph 115 of your witness statement D1/12/285.

A. The first one?

Q. Yes. Paragraph 115 of your witness statement: would you like just to remind yourself what you wrote.

A. Yes.

Q. Now, what you say is that there was a discussion between you and Mr Frolov -- who was the director general of

Logovaz; is that right?

A. That's right.

Q. -- about what should be charged for the Logovaz  
11 per cent shareholding.

A. That's right.

Q. There was a discussion about the tax implications and to  
overcome that, the legal department recommended that you  
should sell the shares for a nominal consideration of  
1.1 million rubles and that was the price duly inserted  
in the contract.

A. That's right.

Q. Now, what I am suggesting to you is that in fact the  
price of 1.1 million rubles had been fixed at least six  
weeks before this, in mid-November.

A. Mr Sumption, as I already said before, I was not party  
to any discussions that Mr Fomichev could or couldn't  
have with Mr Gorodilov. As far as I understand,  
Mr Abramovich was -- also was not a party to these  
discussions.

Q. That is correct.

A. What prompted my exchange with Mr Frolov on  
24 December 2000 was that I got a phone call from  
Mr Abramovich saying that he wants me to sell ORT shares  
to Sibneft and when I asked how much he is prepared to  
pay for it, he said, "I'm paying nothing". This is why

I had to discuss it with Mr Frolov, who was absolutely outraged at this, and then we had to call the head of our legal department to ask what could happen if the deal will go on as Mr Abramovich suggested.

Q. The point is that it had always been agreed between the respective financial managers of Mr Abramovich and Mr Berezovsky that a nominal price of 1.1 million rubles would be paid for the Logovaz 11 per cent.

A. Mr Sumption, let's agree on something: I don't know what was discussed or agreed between financial managers. I know that Mr Fomichev was -- had no authority to decide anything on behalf of Logovaz. At that time we have been very friendly with Mr Fomichev and actually I loved him at that time very much, I considered him as being my friend, but he had no authority for Logovaz at all. Logovaz had its own general director and even myself, being his deputy, never interfered with his responsibilities.

What actually happened, if what you are suggesting is right and if these discussions have been under way for some time, is that neither Roman nor myself have been informed that there is some agreed price on these shares. What I know is that Roman called me on 24 December and said that he is buying ORT shares from Logovaz and he's paying nothing, and that was it.

Q. Mr Dubov, Mr Fomichev clearly did not have authority but Mr Berezovsky had a decisive voice in the affairs of Logovaz, did he not?

A. Up to a certain degree, yes.

Q. And Mr Berezovsky was Mr Fomichev's boss, wasn't he?

A. Mr Sumption, Mr Berezovsky was also my friend, and still is. It was very easy for Boris just to take a phone, to call me and say, "This is what we agreed on, this is what we disagreed and this is what I want you to do". It was absolutely unnecessary to introduce an intermediary, however respected Mr Fomichev is, between Boris and me; no reason at all. The only person who could act as intermediary between Boris and me was Badri.

Q. I'm not suggesting that Mr Fomichev acted as an intermediary between Mr Berezovsky and you; what I am suggesting is that Mr Berezovsky, once the agreement had been made between his subordinates and those of Mr Abramovich, then took the step of giving you instructions to act accordingly.

A. Excuse me? Maybe I missed something. I have to answer this?

Q. I am not suggesting to you that Mr Fomichev acted as an intermediary between Mr Berezovsky and you; I am simply suggesting that Mr Berezovsky contacted you directly

when Mr Fomichev had agreed on his behalf something with Mr Abramovich's staff.

A. Well, Mr Berezovsky didn't contact me directly.

Q. What I suggest, Mr Dubov, is that the 1.1 million rubles price did not originate with the legal department of Logovaz and was not devised at the end of December, as you suggest.

A. Well, Mr Sumption, this is my story. I have great respect for you, you can suggest whatever you like, but this is my story: this is what happened on 24 December 2000.

And may I add something? Because I've been looking through the disclosure provided by your client. As far as I recall, on 27 December there was a letter from Mr Gorenichy to Mr Frolov.

Q. I'm going to come to that.

A. Okay. Right.

Q. Now, was it the practice at Logovaz, as in many other companies, that sometimes board decisions were reached by telephone, without of an actual face-to-face meeting, and then minuted? Did that happen sometimes?

A. I know that -- it's a long time ago, Mr Sumption. I'm afraid that I cannot remember the exact articles of Logovaz charter. I think that we have some provision that shareholders' meeting could be done just by

telephone.

Q. And what about directors' meetings?

A. I think that the directors' meetings should be done in person.

Q. Could you please --

A. I could be mistaken about this, but this is my recollection.

Q. Could you please be given bundle H(A)23/193. Just give me a moment. (Pause)

On that last point, was there a face-to-face meeting of the directors at the end of December, immediately before the agreement to sell the 11 per cent was actually signed?

A. No, there was not.

Q. Was it a board matter whether those things should be sold?

A. Well, maybe I have to explain something about the way in which the decisions have been made in Logovaz. It was agreed, and I think it was before my time, that all important decisions made by the management of Logovaz have to be approved by the shareholders, just because if you look, for example, at the list of the directors here, you will see that out of seven board members, five obviously represent Boris's and Badri's interests.

So it was decided, before my time, as I said, that

the most -- that the important decisions of the management have to be approved by the shareholders. And usually when we had in mind some kind of a business deal in which we were going to enter, it all started with at first myself and then with Mr Frolov calling the shareholders and asking their opinion on this point.

If it was necessary according to the -- to Logovaz charter to have the formal approval of the board, then there was a board meeting which made the -- which approved or disapproved the deal. Well, actually, if the deal was to be disapproved, there was no need to collect the directors together.

Q. Could you please look at page 193R, which is the Russian version of the document that you probably have open in the English translation H(A)23/193R.

A. Mm-hm.

Q. Now, this is a document disclosed by Mr Berezovsky and it's a board minute of Logovaz dated November 2000 and it records a board decision to sell, on your proposal, the company's holding in ORT at 1.1 million rubles. Do you see that?

A. Yes, I do.

Q. Now, what you say about this document in your second witness statement, paragraph 20, is that, as I understand it, it does record the decision of the

board but has been backdated.

A. That's right.

Q. Now, when do you say that this document was actually prepared?

A. I think it was prepared in late December or maybe the first days of January, but I think it was late December.

Q. Why do you say that it was backdated?

A. Because it couldn't happen in November.

Q. So it's because you don't remember it happening in November that you think it must have been backdated?

A. No, Mr Sumption, this is not what I'm saying.

Q. No?

A. I'm saying that it couldn't have happened in November.

Q. What reason could there have been to backdate a Logovaz board minute recording this sale to the previous month?

A. Well, it's rather difficult for me to answer this question --

Q. Yes.

A. -- just because I think that the negotiations about the paper trail to -- the paper trail to the deal had been discussed with Mr Frolov, not with me. After the first and the second phone discussions with Mr Abramovich, I distanced myself from this deal. But I think that this is what was requested from Mr Frolov and we've been trying to understand at what time in November Badri was

still in Moscow. This could explain the reason why no date is put in here.

Q. What is the stamp that we see on the Russian text of this document at page 193R?

A. There are two stamps.

Q. Right.

A. One is Logovaz --

Q. The one on the right side of the page.

A. It's the General Prosecutor Office.

Q. Right. And what is the other stamp?

A. And the first stamp, to the left, is stamp of Logovaz; and stamp to the right is the stamp from the General Prosecutor Office.

Q. Right.

Well now, the stamp from Logovaz, does that indicate that this document came from the records of Logovaz?

A. Yes, certainly.

Q. Now, I ask the question again: why should a board minute prepared at the end of December, recording a decision made at the end of December, have been backdated to November?

A. Well, I have, unfortunately, two answers to one question. The first answer is that there was no board meeting either in November or in December at all.

Why it was backdated? I think that I already

explained. We've been trying -- Badri was not in Russia in December at all. We've been trying to establish some date in which Badri was in Russia in November but obviously we were not successful with this.

Mr Sumption, try and understand: all this is completely against the rules which are given in Logovaz charter. I don't mean to say that Logovaz has been backdating its documents on every occasion but this was not an ordinary business transaction; in fact it was not an business transaction at all. By selling ORT shares we've been paying a ransom for Nikolai, and there are no rules about paying ransom in anyone's charter.

- Q. That doesn't explain why it's necessary to say that the transaction has been approved in November if it's actually been approved in December, does it?
- A. Mr Sumption, I have a very simple answer to this question: Badri was not in Russia in December. There was no opportunity for Badri to sign this document in December at all.
- Q. And that may be one of the reasons why it was actually signed in November.
- A. It was not signed in November. It couldn't happen before Roman called me.
- Q. Do you have any reason for saying that this document was backdated other than that otherwise it would be

inconsistent with your evidence?

A. It's inconsistent -- it's absolutely inconsistent not just with my evidence but with what I remember about the events of December 2000.

Q. In other words, it's inconsistent with your evidence.

MRS JUSTICE GLOSTER: Well, that's comment.

A. Okay, then we put it this way.

MR SUMPTION: And you have no other reason, do you -- do you have any other reason apart from that for saying it must have been backdated?

A. No, I have only one reason.

Q. Now, at paragraph 113 of your first witness statement D1/12/285 you give evidence -- and you've referred to this already -- about telephone conversations that you say occurred on 24 December.

A. That's right.

Q. Do you claim to remember that date or are you relying on some document to tell you that these conversations occurred on 24 December?

A. No. I remember this date.

Q. How do you remember the date all these years later?

A. It's very simple: because on 24 December it was Nikolai's birthday. And call from Roman and subsequent discussion with Boris, who said me -- who told me that this is payment for Nikolai's freedom, coming on

Nikolai's birthday, couldn't be unnoticed.

Q. Where did you understand Mr Berezovsky to be ringing you from when he had the telephone conversation that you describe at paragraph 114?

A. This is not a simple question, Mr Sumption, because I was trying to remember how actually this telephone exchange happened. I know that Boris called me but I also have recollection of trying to get him on phone. Obviously I wasn't successful because I remember that Boris called me. I don't know where he was.

Q. Well, he was actually in the United States.

A. Quite possible.

Q. And Mr Abramovich was in Chukotka on 24 December.

A. Yes.

Q. Now, in fact Mr Abramovich did ring you, but it was on 27 December and not on the 24th, wasn't it?

A. Mr Sumption, Mr Abramovich called me on 24 December shortly after 9 o'clock Moscow time, because I was in my office at 9 o'clock.

Q. Mr Abramovich rang you on the 27th and asked you to arrange the transfer of the Logovaz shares in ORT and he told you, did he not, that Mr Gorodilov would be contacting you with the details and with documents for signature? That is what happened, isn't it?

A. No, this is not what happened because if you have a look

at the sale agreement, it is dated on 25 December.

Q. But it wasn't executed until several days after that, was it?

A. "Executed", what do you mean?

Q. Signed.

A. It was signed by Mr Frolov on 25 December -- no, Mr Sumption, I'm sorry, you are quite right about this. It was signed several days later.

Q. Indeed.

A. But on 25 December this sale agreement was already with Mr Frolov and he was already studying it.

Q. Mr Dubov, the reason why you put 24 December as the date of these telephone conversations is that when you wrote your first witness statement you thought that the sale agreement for the 11 per cent had been signed on 25 December, which is the date that is on it; that's why you appointed 24 December as the date --

A. Mr Sumption, you are suggesting an alternative version to the events that happened. You have your version; I have my own.

I am explaining why I put 24 December: because it was Nikolai's birthday. Of course, I can tell you quite a story of what I thought at that time, why it happened on exactly the same day when it was Nikolai's birthday, why it couldn't happen before, but I don't think that

it's of much interest for this court. But I remember this day because it was Nikolai's birthday.

Q. Now, in fact -- and I think you mentioned this a moment ago -- it was Mr Gorenichy, was it not, who contacted Mr Frolov directly with the details and documents relating to the sale of the 11 per cent? Do you agree?

A. Mr Sumption, I have great respect for Mr Frolov: he is my very good friend and he is my comrade of old standing. But when we actually changed our positions in Logovaz in autumn 1999, nobody knew about it. For a very long time, even in the year 2000 and 2001, people still kept thinking that I was the general director of Logovaz. I don't know why. But anyway, that was the kind of wrong common knowledge.

Mr Gorenichy could call Mr Frolov only after I told Roman that I'm not the general director anymore. Even Roman didn't know that at that time, on 24 December. He thought that I was in charge.

Q. Now, Mr Gorenichy, was he the head of the Sibneft legal department? You don't know?

A. Possibly. I never met him.

Q. Okay. Would you please have a look at H(A)26/118T, which somebody will bring to you.

A. And 23 can be taken back?

Q. Yes, it can.

You will find the Russian version of this on page 118 and the English translation is on the coloured sheet immediately before it.

A. Mm-hm.

Q. This is a letter from Mr Gorenichy and it's addressed, isn't it, to Mr Frolov?

A. That's right.

Q. He is "Yevgeny Patrikeyevich" at the top?

A. Absolutely.

Q. What he says is that:

"On the instructions of [Mr] Gorodilov and with the approval of [Mr] Fomichev I ask that you sign the share sales and purchase agreements and the transfer orders.

"Since the execution of the transaction is scheduled for 28 [December], please sign the power of attorney...

"Please send one copy of the sales and purchase agreement, the transfer order and the power of attorney for A Tuzhilin immediately to... Sibneft..."

And the address is then given and he gives Mr Frolov a telephone number in case there's any difficulty.

Now, did you see this letter when it reached Mr Frolov?

A. No.

Q. You did not.

Now, what I suggest is that you were telephoned by

Mr Abramovich on the 27th; he told you to expect Mr Gorodilov to be in contact with the details; Mr Gorodilov then arranged for Mr Gorenichy to do it, and he contacted Mr Frolov directly because you had said he was the man to contact.

Do you agree or not?

A. Well, I agree with most of what you have said, but let's start with the 24 December. The call from Roman came on 24 December.

Q. Have you finished?

A. Yes.

Q. Now, on paragraph 117 of your witness statement D1/12/286 you say that on 28 December you took the documents to Sibneft and presented them to Mr Abramovich in person.

A. That's right.

Q. Now, what were you, the deputy general director of Logovaz, doing performing in person the menial function of acting as a delivery boy of these documents to Sibneft?

A. Mr Sumption, you can't be serious about this. It was not a menial of function of delivery boy. I wanted to see Roman and I wanted to ask him when Nikolai is going to be released. Do you recall it the menial function of a delivery boy? I was the only one who could put these

questions to Mr Abramovich.

Q. You never saw Abramovich on 28 December, nor did he say to you, as you allege, that Mr Glushkov would be released as soon as the transfers were delivered.

A. Mr Sumption, are you suggesting that I'm lying in my witness statement?

Q. I'm telling you that you are mistaken.

A. No, I am not mistaken. I called Roman on the morning, 28th maybe -- I don't remember was it 28th or 29th -- I called Roman and I told him that I want to see him and he asked me to take with me a copy of my book to sign it for Mr Shvidler. And I came to Sibneft, I gave the signed copy to Mr Shvidler and then I saw Roman. I showed him -- I gave him the share transfer instruction and I asked him when Nikolai is going to be released.

Q. Now, were you aware when you made your witness statement that Mr Berezovsky was alleging that he had had a meeting at Cap d'Antibes shortly before Christmas with Mr Abramovich?

A. No.

Q. You were not aware of that?

A. Absolutely.

Q. Because I've given you one reason why I suggest that the date appointed was the 24th in your witness statement:

namely you thought that was the date of the agreement. The other reason was that this particular date had to fit in with Mr Berezovsky's evidence about the date of the meeting at Cap d'Antibes, didn't it?

A. Mr Sumption, believe it or not, but the first time I heard about the meeting at Cap d'Antibes was maybe -- was not earlier than 2004; maybe even later.

Q. And you have also, have you not, sought to fit in your evidence with that of Mr -- sorry, you say you learnt about it in 2004?

A. Yes.

Q. So you did know about it at the time you prepared your witness statement?

A. Of course I did.

Q. I see. I'm sorry, I misunderstood your earlier answer.

At the time you prepared your witness statement you realised that Mr Berezovsky was saying that he'd had a meeting with Mr Abramovich shortly before Christmas?

A. I knew that they met at Cap d'Antibes at that time, certainly I did, but I didn't tie up my witness statement with what Mr Berezovsky was going to say in his witness statements or in his pleadings or wherever.

Q. I see.

A. Are you suggesting that I was just fitting in my evidence with what Mr Berezovsky was going to say?

Q. Indeed I am.

A. That's -- I'm afraid that this is not completely correct, Mr Sumption.

Q. You had been working on this case for a period of four years after your arrival in England and there was no way that you were going to say in your witness statement something that was inconsistent with what Mr Berezovsky was saying in his, was there?

A. I don't know; I never went into any comparison of what I am saying in my witness statement and what Boris is saying in his witness statement. I think that we just put these witness statements together and try to analyse it. There may be some inconsistencies. Where we are saying about the same events, I think that on most occasions we coincide.

Q. And the same applies, does it not, to the evidence that you give at paragraph 129 of your witness statement D1/12/189, when you say that Mr Berezovsky told you in 2004 that it was necessary to wait until Mr Glushkov was out of Russia before suing?

A. Yes.

Q. That's another statement that you have made in order to corroborate what you know to be Mr Berezovsky's case, isn't it?

A. This is what Mr Berezovsky told me. I am not

corroborating anything; I am just repeating his words.  
This what I was told by Boris.

Mr Sumption, I'm not lying here. I'm giving this evidence to the best of my recollection. It's not my task to whitewash Boris or whoever else.

Q. I understand that, Mr Dubov.

A. That's right. Thank you very much.

Q. But when you drew your own witness statement up, you allowed yourself to be guided by what other people recalled about the chronology, in particular by what Mr Berezovsky recalled about the chronology. When remembering, in other words, what the dates were, you were influenced by what other people had said about the timing. That's right, isn't it?

A. Mr --

Q. It's perfectly natural.

A. Mr Sumption, first of all it's completely wrong. And the second point that I would like to make: this is the first time we met. I am not the person who is easily guided by anyone.

Q. Mr Dubov, are you trying to suggest that you drew up your witness statement and Mr Berezovsky drew up his in completely independent compartments, each of you ignorant of what the other had said about the timing of events?

A. Well, I know that Boris drew his witness statement without even reading mine. I'm not sure that he read my witness statement before. I certainly have seen drafts of his witness statement.

Q. When you drew up your own?

A. Before I drew my own.

Q. Yes.

A. That's true. I also seen drafts of Badri's witness statement.

MR SUMPTION: My Lady, I have, I suspect, about 10 or 15 minutes more. Would your Ladyship prefer me to deal with that now or tomorrow?

MRS JUSTICE GLOSTER: I think tomorrow. Only I've got a telephone meeting at 4.30.

THE WITNESS: My Lady, may I just take 30 seconds?

Mr Sumption, just about this correspondence with Mr Gorenichy, just to be sure that we're not cherry-picking here, there was another letter from Mr Gorenichy to Mr Frolov. Do you have it? I think it came around this date.

MR SUMPTION: Are you pointing to a document in the bundle or are you remembering another?

A. I'm remembering.

Q. Right.

A. Because I've seen it in disclosure. It's dated around

27th or maybe 26th, in which Mr Gorenichy is saying, "I'm sorry, Mr Frolov, we're sending you the sale agreement with the right amount of money we are going to pay for ORT shares". If everything was agreed in November and if there were a board meeting of Logovaz, and on both occasions the sum of 1,100,000 rubles have been approved, what kind of wrong amount for Logovaz shares -- for ORT shares could be in the first draft of the sale agreement?

MR SUMPTION: We will look and see if we can find such a letter overnight.

THE WITNESS: Yes, please. I've seen it.

MRS JUSTICE GLOSTER: Right.

Now, Mr Dubov, you mustn't talk about your evidence or the case with anybody overnight. You understand?

THE WITNESS: Absolutely.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: My Lady, can I just mention that we have not yet received the agreements relating to the 1 per cent in relation to either Ms Nosova or Mr Lindley, and Ms Nosova is due to give evidence tomorrow. Can I assume that we will receive it promptly?

MRS JUSTICE GLOSTER: Mr Rabinowitz, what's the position on that?

MR RABINOWITZ: I'm told that we have just got them and we

will send them as soon as possible.

MRS JUSTICE GLOSTER: Well, that better be before close of business this evening.

MR RABINOWITZ: I can tell your Ladyship that we're moving as fast as we can on this. It's not entirely within our control. But as soon as we are able, we will send them to Mr Sumption, and I hope that is very soon. I'm not sure I can take it any further.

MRS JUSTICE GLOSTER: Right. Otherwise there may have to be a delay in the cross-examination.

I've got a point to raise and it's this:

Mr Rabinowitz, the application that you made -- or Mr Gillis actually made -- in relation to cross-examining the border control officers, where have we got to on that?

MR RABINOWITZ: Can I leave that to Mr Gillis, please?

MRS JUSTICE GLOSTER: Yes, certainly. Mr Gillis.

MR GILLIS: My Lady, we've received a reply from the border control officials indicating that they're not in a position to provide us information as to the mechanism for gathering information or providing information in relation to the stamps. There are one or two enquiries which we're still in the process of making which we hope we'll be able to resolve in the next day or so and then be able to report back on whether we are continuing with

our application.

MRS JUSTICE GLOSTER: Pursuing your application. Well, I've read the House of Lords case: it puts a slightly different perspective on it, I think.

MR GILLIS: Well, if we need to address that, we can. We think that in actual fact the House of Lords didn't disagree with what Lord Justice Thomas was saying, but we can debate that if necessary.

MRS JUSTICE GLOSTER: Well, I'll need to have submissions on that because what will obviously affect my discretion is what are the consequences if I were to make such an order. That's what I'm interested in.

MR GILLIS: Indeed so.

MRS JUSTICE GLOSTER: If it's a question of weight, it's a question of weight; but if it has some impact on the consequences then I need to know precisely what the position is before I exercise my discretion. Right.

MR SUMPTION: My Lady, we're not entirely happy with that summary of the letter. The position is that the letter that has been received --

MRS JUSTICE GLOSTER: Sorry, the summary of the --

MR SUMPTION: The letter in response to the enquiries made of the Border Guard Service.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: The position appears to be that the records of

the Border Guard Service about entry and departure from Russia are automatically generated by the process of swiping the passport through an automatic reader. So it's not an exercise that involves a human agency. The passport is stamped and on the occasion when it is stamped it is put through a reader which automatically records the entry and departure, as the case may be, and that is the record which the border guard uses to answer questions like the ones which my learned friends are concerned with.

MRS JUSTICE GLOSTER: Well, maybe I'll have to look at what information you have been provided with.

Very well. Is everybody happy with a 10.15 start?

MR SUMPTION: My Lady, yes.

MRS JUSTICE GLOSTER: I assume that if anybody wants an earlier or a later start, they will let me know.

Who, apart from this witness, do we have tomorrow then?

MR RABINOWITZ: We have Dr Nosova, my Lady.

MRS JUSTICE GLOSTER: Yes. And she'll be all day?

MR RABINOWITZ: I understand she'll be all day.

MR SUMPTION: Just Dr Nosova? What about Mr Voronoff and Mr Goldfarb?

MR RABINOWITZ: I thought that my learned friend was going to be most of the day with Dr Nosova. If he wants

another witness --

MR SUMPTION: No, I'm not. I shall be relatively brief with

Dr Nosova: I think I shall probably be about an hour to  
an hour and a half.

MR RABINOWITZ: We have Mr Voronoff who will be here  
tomorrow.

MRS JUSTICE GLOSTER: Can you just, Mr Rabinowitz --

MR SUMPTION: We can sort this out between ourselves.

MRS JUSTICE GLOSTER: Well, I think I'd like to know so  
I can refresh my memory of the witness statements.

MR RABINOWITZ: If my learned friend can take them, we have  
Dr Nosova, then we will have Mr Voronoff and then we  
will have Mr Goldfarb.

MRS JUSTICE GLOSTER: Mr...?

MR RABINOWITZ: Goldfarb.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: I understand that if we go short, after those  
three there are no other witnesses that are currently  
available to give evidence tomorrow. Is that correct?

MR RABINOWITZ: That's my understanding.

MRS JUSTICE GLOSTER: Right, very well. 10.15 then.

(4.24 pm)

(The hearing adjourned until

Wednesday, 19 October 2011 at 10.15 am)

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Wednesday, 19 October 2011

(10.15 am)

(Proceedings delayed)

(10.21 am)

MR YULI DUBOV

MRS JUSTICE GLOSTER: I'm sorry I kept you waiting, I had another matter to attend to.

Yes, you're still on your oath.

THE WITNESS: Yes, I am.

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Mr Dubov, towards the end of your evidence yesterday you referred to another letter from Mr Gorenichy about which you had a point to make and I think you were referring, if somebody could give you bundle H(A)26, to page 149 H(A)26/149.

Have you got that?

A. Yes.

Q. Is this the letter you were referring to?

A. This exactly the letter that I was referring to.

Q. And what was the point you wanted to make about it?

A. Well, this letter is dated 28 December --

Q. Yes.

A. -- year 2000.

Q. Yes.

A. And here Mr Gorenichy obviously saying that he is:

"... sending... the share sales and purchase agreement, in which the amount of the transaction has been corrected..."

Q. Yes.

A. If the amount of the transaction has been agreed between all parties in November, as obviously is alleged in the evidence produced by your client, what this correction to the amount actually means?

Q. Are you suggesting that the decision within Logovaz to make it 1.1 million rubles was taken between the arrival of the original documents and the 28th, the following day?

A. Yes. The agreement in Logovaz that the price for the shares will be 1,100,000 rubles was made on 24 December, not before.

Q. Right. So since the first version, the uncorrected version of these documents arrived on the 27th, there's no reason to suppose that this correction was in fact attributable to a decision within Logovaz about the price, is there?

A. Mr Sumption, after so many years, nobody knows exactly what happened. But my belief is that there have been some drafts of the agreements -- of the agreement which have been travelling between Sibneft offices and Logovaz, starting from 24 December at the earliest, and

28 December when everything was signed by Mr Frolov. Unfortunately I don't have the earlier drafts of the agreement.

Q. You don't even know whether there were any before the 27th, do you?

A. What I actually do know is that on 24 December I was told that the shares will be given to Mr Abramovich for free.

Q. Well, I'm asking you about earlier drafts. You don't know whether there were any earlier drafts before the one received on the 27th, do you?

A. I don't. This is my conclusion from what I see in this letter.

Q. The correction referred to in that letter was simply a correction of a typographical error. What had happened was that in the original version on the 27th, the figure of 1.1 million rubles, the third digit, which should have been a zero, had been erroneously expressed as a 1, which I understand represented a difference of about \$450 at the then exchange rate. That's all that there was to it.

A. I don't know anything about this.

Q. No, you don't.

My Lady, that document is not in the bundle yet but we will be adding it to the bundle and giving your

Ladyship a reference as soon as we can.

Now, I'd like to turn to another aspect of your evidence, please, Mr Dubov. You say at paragraph 94 of your witness statement D1/12/281 that --

MRS JUSTICE GLOSTER: Is that the first one?

MR SUMPTION: I think at paragraph 94 you're talking about --

MRS JUSTICE GLOSTER: Is that the first witness statement?

MR SUMPTION: Yes, it is. In your first witness statement I think you need to start at 93.

Am I right in assuming that 93 and 94 are both concerned with a conversation that you had with Mr Patarkatsishvili in September 1999? Is that correct?

A. Could be, but I don't have my witness statement before me unfortunately.

Q. I'm sorry. Can you please be given your witness statement.

A. Can I take this away?

Q. Yes, you can. Bundle D1.

A. Yes.

Q. In paragraph 94 are you talking about a conversation that you had with Mr Patarkatsishvili in September 1999, see the beginning of the previous paragraph?

A. I do.

Q. So, as I understand it, you say that Mr Patarkatsishvili

told you in September 1999 that he and Mr Berezovsky already had investments in the aluminium industry.

A. Or the words to this effect.

Q. Yes, I see. Mr Berezovsky's own evidence is that he and Mr Patarkatsishvili had never considered investing in the aluminium industry until Mr Bosov approached them in late 1999 with a proposal to buy the Bratsk and Krasnoyarsk plants. Are you aware of that?

A. Yes, I heard Boris's evidence.

Q. Well, he didn't actually say that in his oral evidence; he said it in his witness statement. The reference for the transcript is fourth witness statement, paragraph 254 D2/17/249.

A. Could be.

Q. Well now, if Mr Berezovsky and Mr Patarkatsishvili had never considered investing in the aluminium industry until Mr Bosov approached them at the end of 1994, Mr Patarkatsishvili cannot have said this to you in September 1999, can he, unless he was for some reason trying to mislead you?

A. I know nothing about this. This is what I was told by Badri.

Q. Yes. What I would suggest to you is that this is one of a number of occasions in your witness statement when you say that you learnt something at a particular date and

you can't actually remember when it was.

A. Yes. This is true. Sometimes I remember the date, sometimes I don't.

Q. And you don't remember the date on this occasion, I would suggest.

A. There is nothing to tie me to a specific date.

Q. Now, you give evidence at a number of points in the latter part of your witness statement about Mr Abramovich's political influence.

A. Mm-hm.

Q. Between paragraphs 87 and 90 D1/12/279 you say that Mr Abramovich asked you in February 1999 -- he telephoned you, you say, and asked you to come to his office in Sibneft and then he took you to the Kremlin so that you could be shown a search warrant to search the offices of Logovaz.

That's in summary what you're saying, isn't it?

A. No, it is not.

Q. Right. What do you --

A. I was never shown a search warrant. What Mr Sechin actually showed me was a handwritten note, I --

Q. Saying that there would be a search warrant?

A. -- I think that it was pencilled, not pen, to read and then he took it away.

Q. Right. What you say he showed you was a piece of paper

which said that the Prosecutor General's Office had issued a warrant to search the office of Logovaz?

A. That's right.

Q. Now, that would have been, would it not, during the presidency of President Yeltsin?

A. That's right.

Q. Now, can you think of any reason why if Mr Abramovich had advance notice of this raid, which seems to be the suggestion, he should have taken you to the Kremlin to learn about it instead of telling you directly?

A. I never had any direct knowledge of what Mr Abramovich knew at that time.

Q. Are you aware that you cannot just turn up at the Kremlin and speak to senior members of the presidential administration; you need passes which have to be arranged some time in advance?

A. Mr Sumption, when you are saying "some time in advance", what actually do you mean? Is 15 minutes enough?

Q. Enough for what?

A. For issuing a pass.

Q. No.

A. Ah. You're sure about this?

Q. Mr Abramovich would have no way of knowing whether you were available on this day or not, would he, if he just rang you up before the journey?

- A. Well, first of all, it was common knowledge that most of my time I spent in Moscow. And he didn't call me on the landline; he called me on my mobile.
- Q. His evidence is that this incident never happened.
- A. Mr Sumption, I am very much adverse to saying that Mr Abramovich is not telling truth, but since you actually are making me to do it: yes, he is not telling the truth here.
- Q. What did you understand to be the purpose of this visit to the Kremlin?
- A. The purpose, as I understood at that time, is that the purpose of this visit to the Kremlin was that this information should go to me directly from Mr Putin, through Mr Sechin.
- Q. Now, you say at a later point in your witness statement that Mr Aminov had told you in around 2001 that Mr Abramovich had assisted in the selection of members of Mr Putin's government, including the public prosecutor, Mr Ustinov, the minister of nuclear energy, Mr Adamov, and the minister of transport, Mr Aksonyenko. That's, I think, a fair summary of your evidence.
- A. Could you please refer me to the paragraph?
- Q. 131 to 133 D1/12/289.
- A. 131?
- Q. Yes. The names that I've just referred you to are in

paragraph 133.

A. Mm-hm.

Q. Can you not remember it without reminding yourself from your witness statement, Mr Dubov?

A. I'm just checking whether Mr Aminov told me anything about Mr Adamov and Mr Aksonyenko.

Q. Right.

A. And I hear from the paragraph 133 that Mr Aminov never told me anything like this.

Q. I see. This is simply your belief; is that right?

A. No, it's not my belief; it was common knowledge in Russia at that time.

Q. So --

A. Most of this information I received from mass media and also from people who were well informed about what was going on in and around Kremlin.

Q. I see.

A. Mr Sumption, let me say something. I would like just to explain the situation here, maybe it will help.

I understand, if we are to be objective, that all my evidence on this point is hearsay because I couldn't have any direct knowledge of this.

Q. No.

A. I got this information mainly from the mass media, from my sources in the governmental structures and from

Mr Aminov.

Q. I see.

A. But all this is hearsay because --

Q. But --

A. Just one second, if I may.

Q. Yes.

A. It's very difficult to obtain any direct proof of Mr Abramovich's influence during the time of President Putin and before. There are no signed papers saying, "I, Roman I, hereby appoint the below-mentioned to be my faithful and loyal general prosecutor". There are no such documents and they cannot exist. But I think that certain implications and certain conclusions about Roman's role in the Putin's government could be obtained from your client's evidence and it's much more convincing than what I am saying here.

Q. Well, let's wait until he gives that evidence. What I'm concerned with, Mr Dubov, is exactly which part of these paragraphs you attribute to Mr Aminov and which parts are due to gossip. I'm not going to question you on what you may have deduced from newspaper reports and chats around Moscow.

Am I right in thinking, from your last answers, that what you understood from Mr Aminov was simply what we see in the first sentence of paragraph 133; the rest of

it is your inference from press reports and the like?

A. No, I think that it starts with the second sentence in the paragraph 132:

"I heard about Mr Aminov's and Roman's roles in the appointment of governmental officials from Mr Aminov himself. I recall him telling me about it in around 2001."

Q. But what appears after the first sentence in paragraph 133 is not something that you heard from Mr Aminov; is that right?

A. If you mean Mr Ustinov, Mr Adamov and Mr Aksonyenko, then you are right, Mr Sumption.

Q. Yes.

A. It's not something that I heard from Mr Aminov. To be precise, I heard from Mr Aminov another names, but I wouldn't like to put him -- to put these names into my witness statement.

Q. The two ministers whom you refer to, Mr Adamov and Mr Aksonyenko, had in fact already been appointed by Boris Yeltsin before that, hadn't they?

A. That's right.

Q. And they were simply left in place?

A. They had been simply left in place. This is the point, Mr Sumption.

Q. Now, one last question, Mr Dubov.

We understand that you have declined to produce a copy of the statement which you served in support of Mr Glushkov's asylum application. Is that correct?

A. Well, I don't have it.

Q. You don't have it?

A. I don't have it.

Q. Right. Well, I will check that. I'm told that what we have been told by Addleshaws is that you were not willing to provide it. But you say that you couldn't provide it anyway?

A. Just one second. First of all, I don't have it; I cannot provide it even if I wanted to.

Q. Right.

A. And, yes, I'm very reluctant to provide this witness statement.

Q. Why is that?

A. Just because it contains -- first of all, when I was giving this witness statement I was told that the hearings on Mr Glushkov's asylum case will be held in camera and that whatever is said will never be made public. This is why I put into my witness statement a number of my personal details which I would be very, very reluctant to made public -- to be made public. I don't remember what these details were or where they were in my witness statement, but I thought and I still

think that it's important for my personal security.

Q. The solicitors, Ghersons, who acted in Mr Glushkov's asylum application, they would have a copy of your statement?

A. I don't know.

Q. Are you willing to allow them to disclose your statement on a basis which redacted personal details relating to you?

A. If this redaction will not -- first of all I would like to have a look at this. If -- I think that if the redaction is satisfactory for me, then why not?

MR SUMPTION: Right. Well, we will pursue that with Addleshaws and Gherson.

Thank you very much, Mr Dubov.

MR MALEK: No questions.

MRS JUSTICE GLOSTER: Anyone else?

MR ADKIN: My Lady, I just have one.

MRS JUSTICE GLOSTER: Right.

MR ADKIN: Other than formally adopting the lines of cross-examination taken by my learned friend.

Cross-examination by MR ADKIN

MR ADKIN: Mr Dubov, could you take up, please, your witness statement and turn to paragraph 160 of it D1/12/295.

Do you have that?

A. 160?

Q. 160 on page 295.

A. Yes.

Q. Here you're talking about a car journey that you say you took in January 2008. You say that:

"... Nikolay..."

That's Mr Glushkov, isn't it?

A. Yes.

Q. "... explained to Michelle..."

That's Michelle Duncan, isn't it?

"... that Badri had decided that he wanted to sue [Mr] Deripaska in relation to Rusal [and] also said that Badri was thinking about joining Boris in his claim against Roman."

Yes?

A. That's right.

Q. Can you take up bundle D2 and turn to tab 13, please. If you would turn, please, to page 52 of that document, you'll see that this is Mr Glushkov's own statement in these proceedings D2/13/52.

A. 52?

Q. Page 52, please, at paragraph 252, and I wonder if you would read, please, that paragraph.

A. I've read it.

MR ADKIN: Just hold on for a moment.

MRS JUSTICE GLOSTER: Your microphone is not connected so

it's difficult to hear.

MR ADKIN: Right. I will finish this if I may, my Lady, and speak as loudly as I can manage.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: I only have one further thing to say, which is:

in light of that paragraph, Mr Dubov, I suggest that the evidence that I've referred you to in your own witness statement is mistaken.

A. Mr Adkin, I don't see why. Could you please explain?

Q. Well, because Mr Glushkov, you see, in his statement says that as far as he was concerned, "Badri continued to attempt to negotiate the position"; and indeed, on the day before Badri died, he said that he was arranging a meeting with Mr Abramovich to discuss the issues.

That's not consistent, is it, with Badri having decided to sue Mr Abramovich?

A. I think that is absolutely consistent. What Badri decided three weeks before is absolutely consistent with what he was thinking in February. I was not party to this lunch at a Spanish restaurant. But if he decided in January to sue Mr Deripaska and to join Boris in his claim against Roman Abramovich, I don't think that it could seriously influence his decision to have one last meeting with Roman.

MR ADKIN: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much. Yes?

MR RABINOWITZ: I have no questions for Mr Dubov.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming along.

THE WITNESS: Thank you.

(The witness withdrew)

MR RABINOWITZ: Up next we have Dr Nosova, my Lady.

DR NATALIA NOSOVA (sworn)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

THE WITNESS: Thank you.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good morning, Dr Nosova.

Dr Nosova, before we begin, can I ask you to confirm that you don't have any mobile phone or any other electronic means of communication?

A. I don't have it.

Q. You don't have to stand.

Dr Nosova, your statements, as I understand it, have been reprinted in large A3 type in order to assist you to read them. Is that right?

A. Yes.

Q. My Lady, I've mentioned this to my learned friends.

They have just been printed; they are unmarked.

Can Dr Nosova be shown her statements.

The position is, is it, that in relation to any

other documents that you're asked to look at, you will look at them on the screen enlarged --

A. Yes.

Q. -- so that you can see them.

Now, Dr Nosova, can I ask that you first take up the document entitled "Witness Statement of Natalia Nosova". My Lady, for the transcript, the trial bundle reference to that is bundle D1, tab 9 D1/09/112.

A. This one (indicates)?

Q. That's the one, thank you.

A. Mm-hm.

Q. Dr Nosova, can you go to page 72, please, of that statement? It's bundle reference page 184 D1/09/184.

A. Mm-hm.

Q. Can you confirm that that is your signature?

A. Yes, it is.

Q. Can I now ask you to go to page 1 of that statement.

You see in the right-hand corner it's marked your first witness statement, top right-hand corner? Right at the top.

A. First, yes.

Q. Now, in fact it's your second witness statement in these proceedings, isn't it --

A. Yes, it is.

Q. -- because you made one in the context of the strike-out

application?

A. Mm-hm.

Q. So can you please confirm that this is your second witness statement in these proceedings?

A. Yes, it is. It is my second witness statement.

Q. Thank you.

I understand there are two corrections that you want to make to this statement. You may not have this: it's an enlarged copy of the note. (Handed)

Does your Ladyship have a copy of the corrections Dr Nosova wishes to make?

MRS JUSTICE GLOSTER: No, I don't.

MR RABINOWITZ: Can I just hand this up. (Handed)

THE WITNESS: If we need to look at some document, can we find it here? (Consults interpreter)

MR RABINOWITZ: Dr Nosova, can I ask you to go to paragraph 228; it's page 43 of this statement D1/09/155.

A. Yes.

Q. And do have a look at paragraph 228 but is it right that the correction you want to make to paragraph 228 is shown at point 1 of the document showing the corrections?

A. Yes.

Q. The replacement of the word "happened" with "what was

happening" in the first sentence?

A. Yes, I am correcting the grammar here.

Q. Thank you very much for that.

Can I ask you now to turn to paragraph 308, which is at page 56 of the statement D1/09/168.

A. Mm-hm.

Q. And again looking at the list of corrections to your witness statement, is it right that the correction you want to make to paragraph 308 is shown at point 2 on this document?

A. Yes.

Q. Thank you. The insertion of the words "through Badri" in the second sentence?

A. Yes, I just wanted to clarify.

Q. Subject to the two corrections we have just identified, can you confirm that the contents of this, your second witness statement, are true to the best of your knowledge and belief?

A. Yes, they are.

Q. Now, can I ask you next to go to the document entitled "Third Witness Statement of Natalie Nosova". My Lady, this witness statement for Ms Nosova was served last night. It's on Magnum, as I understand it, at D4, tab 12 D4/12/124. I do have a hard copy here --

MRS JUSTICE GLOSTER: Well, I would like to have a hard copy

because I have the statements in hard copy.

MR RABINOWITZ: -- and it has even been hole-punched.

(Handed)

Dr Nosova, can you turn to page 2 of that statement, please, and can you confirm that that is your signature?

A. Yes, it is.

Q. Can you confirm that this is your third witness statement in these proceedings?

A. This is correct.

Q. And can you confirm that the contents of this, your third witness statement, are true to the best of your knowledge and belief?

A. Yes, they are.

MR RABINOWITZ: Thank you very much. Can you wait there, please.

Cross-examination by MR SUMPTION

MR SUMPTION: Dr Nosova, have you worked for Mr Berezovsky since 1991?

A. Yes, that's correct. In 1991, in the end of 1991 I joined him at Logovaz becoming his deputy for finance. He was general manager at the time and I was invited to Logovaz to become deputy general manager.

Q. And have you worked for him continuously since then?

A. That's correct.

Q. Does that mean that when he left Russia in 2000 you

followed him to France and then to England?

A. I was not continuously at his side at the time because he was in France, then he moved to England, but I was able to come to England only in -- actually I came in July but then I went for a holiday --

Q. Which year?

A. In July 2002. Then I went for a family holiday and actually I joined Mr Berezovsky again in September 2002.

Q. And when you came to England, did Mr Berezovsky buy a house, Heath Lodge in Iver, for you to live in?

A. That's correct.

Q. And do you still live in it?

A. Yes.

Q. What is the work that you have done for Mr Berezovsky since he left Russia?

A. I have been advising him on financial aspects of his new investments and on his business in general.

Q. What functions have you performed in relation to this litigation?

A. I'm assisting Mr Berezovsky in this litigation because I know the background and I actually really want the truth to come out in these proceedings.

Q. You say you are assisting him in this litigation: can you tell us what form that assistance takes?

A. As I have just mentioned, I know the background and

there are not very many people around now who know the background. And I also know -- I was -- don't forget I was also close to Badri, so -- and Badri is not with us anymore and I also know quite a big part of that story. So -- and that's my all.

- Q. Well, Dr Nosova, that explains why you have been assisting Mr Berezovsky with this litigation perhaps; what I am actually asking you is what sort of assistance -- what do you do in relation to the litigation?
- A. It's managerial role in a way. It's explaining information that becomes available to Mr Berezovsky, (inaudible), things like that.
- Q. So have you participated in the collection of evidence?
- A. Yes, of course, because we -- you know the problem that Mr Berezovsky has that a lot of documents were lost during different raids and during movements from Russia to France to England. There were numerous seizures and searches, seizures of documents. So many documents were taken from him in this way, but still documents remain.
- Q. So you have been concerned, have you, with finding relevant documents concerned with this dispute? Is that correct?
- A. It was not me who was going around searching for documents. There were big legal teams working on this,

right? And when a document, an old document is found, sometimes it's, for people who are just involved, difficult to understand the significance of this document.

Q. So do I understand from that answer and another that you gave just a minute or two ago that when new documents appear, you will discuss and explain those to Mr Berezovsky? Is that right?

A. No, not exactly.

Q. What do you do by way of explanation to Mr Berezovsky?

A. You kind of little bit exaggerate that it goes immediately to Mr Berezovsky, right?

Q. I haven't said "immediately".

A. Because if there is some documents then is found, then sometimes people read it, they don't even understand what it is, you know, or what it refers to. It needs some recollection and reconstruction also to understand what it is: who were the people who were involved at that time in this particular project and so on.

Q. In your answer a few moments ago, [draft] page 21, lines 17 to 19, you say that you "explain information that becomes available to Mr Berezovsky [and] things like that". What sort of information that becomes available do you explain to Mr Berezovsky?

A. This is a very general question, Mr Sumption. And also

not only to Mr Berezovsky but sometimes his lawyers were asking me, right? Sometimes we discussed in our inner circle what it is all about because it was necessary to reconstruct at least to what project it referred from in that whole time, who were the people who were involved on this project who could give further clarification and so on.

Besides, there is also some financial things involved, you know, what -- because sometimes payments were made, for what payments they're made. That was also important to reconstruct.

Q. Now, by way of example, when a large number of documents became available to show the movements and whereabouts of different people, including Mr Berezovsky, in December 2000, were you involved in explaining those to Mr Berezovsky?

A. No, I was not. It was not my role.

Q. I see.

Now, you attended a number of interviews with Mr Patarkatsishvili, didn't you --

A. Yes.

Q. -- both in 2005 and 2007?

A. Yes, exactly.

Q. Why were you at those interviews?

A. Because Mr Berezovsky asked me to go with the lawyers.

- Q. Was that because your familiarity with the background made you a good person to obtain Mr Patarkatsishvili's evidence about these matters?
- A. I don't really think so. I think first of all it was because of my close connection to Mr Patarkatsishvili and when the lawyers, Andrew Stephenson and Jim Lankshear, went to Georgia, it was a little bit unfair to send them without anyone who has close relationship with Badri. And I think that's the reason why Mr Berezovsky asked me to go.
- Q. Yes. It wasn't just the meetings in Georgia, was it; it was also the ones at Downside Manor, for instance?
- A. Downside Manor is different. Let's then separate, please.
- Q. Now, did you review draft witness statements that were served in this action, not just your own but other people's?
- A. Some of them were shown to me.
- Q. And did they include Mr Berezovsky's draft witness statements?
- A. I think some passages from this were also shown to me.
- Q. Now, when Mr Abramovich applied for summary judgment, the main witness statement put in on behalf of Mr Berezovsky was that of his solicitor, Mr Marino. Do you remember that?

- A. Yes, I do.
- Q. And did you give Mr Marino the benefit of your recollection of the matters that were relevant to Mr Berezovsky's claim?
- A. To the extent that Mr Marino was asking me.
- Q. Well, you had what you described as a "managerial role" in this litigation. If you thought that there was something that it was important for Mr Marino to know, you would have told him, wouldn't you, rather than just wait for him to ask you?
- A. Mr Sumption, I am not a lawyer. I am not in a very good position to advise such a distinguished solicitor as Mr Marino what to do.
- Q. But you say that you do know the facts and that's why you were involved?
- A. The factual -- the factual -- the facts that they were verifying with me, I confirm to them if they were within my knowledge.
- Q. If there was a fact within your knowledge which you thought it was important for Mr Marino to know, however distinguished he was, you would have told him, wouldn't you?
- A. Not necessarily, because it was dependent also on the questions that Mr Marino and his team from Addleshaw Goddard were asking me --

- Q. Well, we know from Mr --
- A. -- by way of interview.
- Q. We know from Mr Marino's statement in the striking-out proceedings that you told him about your recollections of your period as a deputy director of Logovaz in the mid-1990s. You told him about that, didn't you?
- A. He was asking about that, yes.
- Q. You told him about the interests that Mr Berezovsky had taken in the oil sector in 1993 and 1994, didn't you?
- A. Yes, I presume so. I should have told him, yes.
- Q. You gave him an account of meetings at the Logovaz Club in 1995 which were attended by Mr Abramovich, didn't you?
- A. That's correct.
- Q. You told him about the control which Mr Berezovsky was able to exercise over Consolidated Bank, didn't you?
- A. Yes.
- Q. And about the role of Consolidated Bank in the loans for shares auction?
- A. Yes, I did.
- Q. You told him, did you not, about what you knew at the time about Mr Berezovsky's arrangements with Mr Abramovich in 1995?
- A. Well, to the extent that he was asking about it. The questions he was asking about it, I was giving him the

answers.

Q. Now --

A. Whether he asked complete questions, I don't know. And I couldn't judge that, what they need for the case.

Q. You told him, didn't you, about the role of Mr Berezovsky in the preparations of that were made for NFK to participate in the loans for shares auction?

That's right, isn't it?

A. Yes.

Q. And you told him, did you not, about the creation of the offshore holding structure for assets that was being developed in 2000, did you not?

A. Pardon?

Q. In 2000, plans were made to transfer assets of Mr Berezovsky and Mr Patarkatsishvili to an offshore holding structure?

A. Do you mean "H" and "O" structures?

Q. That among other things. There was also Pennand and Tiberius and other structures?

A. Pennand and Tiberius were dealt with by Ruslan Fomichev.

Q. Yes, but you gave Mr Marino information about Pennand and Tiberius, didn't you?

A. The only thing I could tell him about it, I think, was I noticed some inconsistency that Pennand was said to be set up for I think Boris or maybe Badri, maybe for

Boris, which is not correct, because I know that MTM were actually using Pennand for their other clients before they started to use it for this transaction.

- Q. You told him, didn't you, about the involvement of Valmet and Mr Samuelson in the creation of offshore structures?
- A. I told him about our work with Mr Samuelson and Valmet, which later became MTM, to establish big offshore structures: one of them was called Hotspur and we were abbreviating it, call it "H", for simplicity, and the other Octopus, which we call "O". These two offshore structures -- they were quite big, complex -- they were set up by Samuelson and his different offices, because Samuelson had many offices.
- Q. Dr Nosova, Mr Marino's statement is dated April 2009.
- A. Mm-hm.
- Q. In July 2009 you put in a witness statement of your own in the summary judgment proceedings, didn't you?
- A. Yes.
- Q. And that deals mainly with the status and role of Consolidated Bank?
- A. I thought I made it very clear, my Lady, in this witness statement that I put in in July, the purpose of this witness statement is to set out my firsthand knowledge of Mr Berezovsky and Mr Patarkatsishvili's joint control

of Logovaz and Consolidated Bank from 1995 onwards and Mr Abramovich's knowledge of Mr Berezovsky control of Obedinyonniy Bank, which is Consolidated Bank.

So my witness statement for the strike-out application, it was actually dedicated to these two points, and I outlined it in the beginning of my witness statement.

Q. Now, you told us a few minutes ago that there were many aspects of the background and the facts which you were the only person still around who could speak to them. Do you remember saying that?

A. I'm not -- I didn't say that I was the only person. I said there were not many persons -- many people left around. Can we look at the transcript?

Q. Well, we're just scrolling back to that. I don't think the exact words matter but we'll just have a look.

Yes, you're quite right. What you said is:

"... there are not... many people around now who know the background."

A. Not many people around. It's not what you say now: that I was the only person. I never said that I was the only person.

Q. You're quite right. What other people are around who know the background?

A. The background of what exactly?

- Q. Well, the background to the facts which are in dispute in this case. You say that there were not many people who knew the background that was relevant to this case and you were one of them; I'm just asking you who the others were.
- A. As far as I understand, the other people are mainly witnesses in this case from both sides. But some people didn't come as a witness, especially -- maybe having their reasons.
- Q. Now, if you were one of the people -- one of the few people -- who knew the background facts, it must have been obvious to you when you were discussing these matters with Mr Marino that you were likely to be a witness at the trial of the action. Do you agree?
- A. Yes, I agree.
- Q. Now, is your husband Michael Lindley, the head of the private client department at Streathers?
- A. That's correct.
- Q. And what has his role been in the preparation of this action?
- A. I think he'll better describe himself, but he was also involved in what you described as managerial role of this litigation.
- Q. Right. And he also attended, didn't he, the meetings with Mr Patarkatsishvili and Mr Berezovsky at

Downside Manor in June 2007, along with yourself?

A. He was there, but I'm not -- I don't know in what capacity.

Q. You don't know in what capacity?

A. I don't know.

Q. So you bumped into him there and said, "What a surprise to see you"?

A. No, I didn't bump into him there. I knew that he will also be there.

Q. Yes. You must have had some knowledge of why he was there, Dr Nosova?

A. I think you'd better ask him why he was there. But as far as I remember, Boris actually quite valued his opinion on many things.

Q. Do you know whether he has been acting in this managerial role in the litigation in his capacity as a partner of Streathers?

A. I don't know.

Q. Now, you and Mr Lindley each entered into agreements under which you stand to receive 1 per cent of the recoveries in this and other litigation; that's correct?

A. That's correct.

Q. And we've been given copies recently of those agreements. Were both of those agreements made in October 2009? Can you confirm that?

A. Yes.

Q. At a time when you knew you were likely to be a witness?

A. Nobody thought a link to these two things because the agreements are about not giving evidence and being paid for evidence, as Mr Sumption is trying to present now. My Lady, the agreements were for -- to my agreement, for me to provide Mr Berezovsky and, in case he dies, what is very important, to his family assistance to recover his assets. That's the main point. And Mr Berezovsky volunteered this agreement, not only to me but these agreements also, because he was concerned -- he was very much concerned that the litigation should continue in case he dies.

Q. Dr Nosova, the agreement in fact says -- the reference is H(A)98/43.007; perhaps we could get it up.

A. Where is it?

Q. You, I think, prefer to look at this on screen, so it will, I think, appear on your screen shortly.

A. But I need large.

Q. Do you want a hard copy as well?

A. I need to enlarge it.

Q. Sorry?

A. I need to enlarge it --

Q. Well, I'm sure you will be assisted in that.

A. -- because my eyesight is dead. Yes, that's it, okay.

MR RABINOWITZ: Can I generally try to be helpful and suggest that a paralegal sits up with Dr Nosova if you're going to be mentioning documents so she can expand it on the screen. It doesn't sound as if she's going to need a translator, so perhaps the paralegal can sit up and do the expanding.

MRS JUSTICE GLOSTER: Yes, very well. Madam Translator, if you'd like to sit at the back just in case you are needed. Thank you. Just perhaps in the row behind and have the paralegal go where you were. That might be easier.

MR SUMPTION: Have you got that agreement up on your screen, Dr Nosova?

A. Yes. How can I move it if I need it?

Q. Can you see it?

A. How can I move it if I need it? I have half of the first page on the screen.

Q. Right. Well, if you've got that, you will see that recital D says that you have agreed to assist Mr Berezovsky -- this is his alias, Platon Elenin -- and agreed with him that you will assist his estate in the event of his death.

A. Yes.

Q. So it's both, isn't it?

A. Yes, but that's what I'm explaining. That's actually

the key word. Because Boris was very much concerned at the time that the litigation should continue in case something happens to him.

- Q. Now, the agreement and the 1 per cent covers not only this litigation but a large number of other actions which are listed on the second page together with various assets which Mr Berezovsky is claiming?
- A. Of course, because a huge part of his assets is blocked now with all the litigations and it's impossible to recover them without the litigations being solved, being considered by the English courts.
- Q. Now, one of the actions in respect of which you are getting 1 per cent of the proceeds was the North Shore action, wasn't it?
- A. Yes.
- Q. The North Shore action, was that an action in which Mr Berezovsky was claiming \$50 million from Mr Fomichev?
- A. Yes.
- Q. And did you give evidence in the North Shore action?
- A. Yes, I did.
- Q. Now, did you disclose before giving that evidence in the North Shore action that you and your husband stood to gain between you \$1 million if Mr Berezovsky won in full?
- A. Nobody asked me, neither Mr Fomichev's barrister nor the

judge. Apparently it was not an issue for them.

Q. Well, how could it be an issue if they didn't know about it because you hadn't told them?

A. But they didn't ask me.

Q. You're saying that you would have expected them to say, "Oh, Dr Nosova, have you by any chance got a percentage agreement with Mr Berezovsky?" You thought that it was up to them to ask you that, did you?

A. Mr Sumption, I was giving evidence in North Shore action for the first time in my life. I was explained that I have to give truthful, sincere answers to all the questions that will be put to me. That's exactly what I was doing.

Q. You and your husband stand to gain up to \$140 million between you if Mr Berezovsky wins this action; is that correct?

A. That's correct. That's exactly like this and I very much hope he win.

Q. I'm sure, Dr Nosova, that that consideration will enormously improve the quality of your memory.

You were involved in some of the preparations, I think, for the loans for shares auction of 28 December 1995.

MRS JUSTICE GLOSTER: Are you moving on from this agreement?

MR SUMPTION: Yes, I am.

MRS JUSTICE GLOSTER: Is it on Magnum yet? Because

I haven't -- I know it has a reference number.

MR SUMPTION: I thought it was. We have it on our screens.

MRS JUSTICE GLOSTER: Right. I don't have it on mine.

I don't know why that is, but I don't.

Second question: are you getting paid anything as you go along -- I'm not able to scroll down the rest of the agreement. Are you being paid, as it were, time fees or anything of that sort? Your only remuneration is the percentage of any recoveries?

A. Yes.

MR SUMPTION: My Lady, I've just noticed the time. Since I am moving to another subject, would your Ladyship like to take the break?

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: That would enable us to see whether we can do something about your Ladyship's screen.

MRS JUSTICE GLOSTER: Perhaps Mr Fleming can do something about it. It may be that I'm not operating on the web server, I'm just on the local server; I'm not sure what the position is. But if he can do it for me, I'd be grateful.

Very well, ten minutes.

(11.16 am)

(A short break)

(11.30 am)

MR SUMPTION: Dr Nosova, one other question about the agreement that I was asking you about before the break.

You say that in the North Shore litigation no one asked you about the agreement. In this litigation my client's solicitors did ask Addleshaws whether there were any witnesses who were being paid a contingency fee. Did anyone from Addleshaws approach you or your husband and ask them what the answer to that question was after they'd been asked it?

A. As to myself, I say that nobody from Addleshaws approached me about it. And whether they approached or not my husband, I think you have to ask my husband.

Q. Now, you were involved in some of the preparations for the loans for shares auction of 28 December 1995, weren't you?

A. Yes.

Q. And you were also involved -- is this right -- in the early stages of the plan in 2000 to move the assets of Mr Berezovsky and Mr Patarkatsishvili into offshore trusts?

A. Yes, which became known as "H" and "O" trusts. We are talking about this, right?

Q. Right.

Now, you were not personally involved, were you, in

the discussions between Mr Berezovsky and Mr Abramovich about the terms of their cooperation on Sibneft? You only heard about that, you say, afterwards from one of Mr Patarkatsishvili or Mr Berezovsky. Is that right?

A. Not -- not exactly. I was not involved in the discussions that they had between the three of them --

Q. That's all I'm asking.

A. -- on this. No, no, your question -- can I -- it was wider. That's why I --

Q. Let me narrow it then.

A. Please.

Q. Were you personally involved in those discussions?

I understand the answer is "no".

A. The answer is "no".

Q. Right. And is it right that you were not personally involved in the three cash auctions in 1996 at which 49 per cent of Sibneft was sold off by the State?

A. In the privatisation, 49?

Q. Yes.

A. No.

Q. So you were not involved?

A. I was not involved.

Q. And you were not involved, were you, in the auction of the State's 51 per cent holding which was sold in May 1997, after the default?

A. I was not.

Q. Or in the negotiations for the acquisition of the aluminium assets in early 2000: not personally involved in that?

A. Not personally involved.

Q. And not personally involved in the negotiations for the merger of the aluminium assets with those of Mr Deripaska, were you?

A. Personally, no.

Q. No. Or in the establishment of Rusal?

A. Personally, no.

Q. And, as I understand it, you weren't personally involved with the sale of Mr Berezovsky's stake in ORT. You weren't personally involved in that?

A. Personally -- you mean creation of documents? No.

Q. Well, did you yourself have any involvement in it, as opposed to hearing about it from other people?

A. Look, Mr Sumption, first of all, I was with Boris and Badri all the time at that time, right? All the time.

Q. At which time?

A. 1995/1996.

Q. I'm talking about --

A. No, no --

Q. -- the sale of ORT in 2000.

A. In 2000 I was talking to Badri all the time about it,

especially when Nikolai was arrested, because after Nikolai was arrested I communicated to Badri every day. Every day he was calling me because we very much concerned about Nikolai. We wanted to pass clothes to him, food, medicine, because when he was arrested he had nothing: he was dressed very lightly, he didn't have any hygienic items, he didn't have any medicine, and this was a very ill man. And I was crying all the time and I was talking to Badri all the time.

And Badri assured me that Nikolai would soon be released and when Badri was assuring me that Nikolai would be released soon, he was always referring to Roman. He was always referring to Roman Abramovich because he was saying that Roman Abramovich assured him that Nikolai would be set free.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

A. And moreover --

MR SUMPTION: Dr Nosova, I will ask you about this in due course.

A. And moreover -- sorry, there is -- could I say something?

MRS JUSTICE GLOSTER: No, no, just answer the questions, please.

THE WITNESS: Okay.

MRS JUSTICE GLOSTER: We'll get on much more quickly. And

anything Mr Sumption doesn't ask you about and Mr Rabinowitz thinks is important, he will elicit from you in re-examination.

THE WITNESS: Yes, okay.

MRS JUSTICE GLOSTER: Thank you.

THE WITNESS: And then he also asked --

MRS JUSTICE GLOSTER: No, no, just a second. Let Mr Sumption ask the next question, please.

MR SUMPTION: You were not personally involved in the Devonia transaction, were you?

A. I was not.

Q. And you were not personally involved in the sale of the second tranche of Rusal shares in 2004?

A. I was not involved in the contractual documentation negotiations that led to the sale of this tranche but I was involved with Boris and John Deuss and Badri discussing alternative ways how to sell this 25 per cent and I am dealing with it in my witness statement.

Q. The evidence of these matters that you give in your written statement is entirely based on what you say Mr Berezovsky or sometimes Mr Patarkatsishvili told you from time to time; that's true, isn't it?

A. Mr Sumption, I'll not only -- you see, you are creating a picture as if it was existed -- everything existed in vacuum. There was no vacuum because we are all

together, Boris was always very open about his discussions with Abramovich. He'll talk to Abramovich; he'll come to the next room, where I will be maybe with other people, he'll tell us what they were discussing.

Then I was watching dealings with them, I was watching the people's behaviour after that. Badri told me a lot. I was very close to Badri also. I heard -- then there were things happening: money were coming in, dividends, for example, from Rusal, dividends from Sibneft.

You can't say that if you were not present in Dorchester Hotel or in some meetings, that you don't know anything about it. My position is I know quite a lot about it, so you can ask me.

For example --

MRS JUSTICE GLOSTER: Okay, that's enough.

MR SUMPTION: Dr Nosova, I haven't yet suggested anything.

I'm simply trying to distinguish between what you know from your own knowledge and what you have been told by Mr Berezovsky or Mr Patarkatsishvili. I understand that the effect of that last answer was that what you know, you have learnt because Mr Berezovsky or Mr Patarkatsishvili has told you at some stage.

A. I disagree with what you are saying. I have just tried to explain to my Lady. Let's take an example, 1995,

because you mentioned it. You kind of put it all together; let's separate.

1995, this first auction, December 1995, for the right to manage 51 per cent of Sibneft, it was the most important auction. It was much more important than all the other auctions, 49 per cent, and even the auction of '97 when this 50 per cent was auctioned to be owned. I'll explain why: because first of all, according to the agreement between Boris, Badri and Abramovich, Abramovich and his team got access to the management and they got access to assets and cashflows of Sibneft.

So all the other auctions, acquiring of the shares 49 per cent through auction, as my Lady already knows, and the 51 per cent auction that took place in 1997, they were not bought by Mr Abramovich with his own monies or with the own funds of his companies.

MRS JUSTICE GLOSTER: Right, just a second.

A. This is very important.

MRS JUSTICE GLOSTER: No, no, please be quiet. I control this court.

THE WITNESS: Okay, sorry.

MRS JUSTICE GLOSTER: No one else does, I do. That must be absolutely clear.

You've had an opportunity to answer the question. As I've said, if Mr Rabinowitz thinks there's anything

you need to ask add to this answer, he will elicit it from you in re-examination.

THE WITNESS: Okay.

MR SUMPTION: Now, we had served on us last night very late your third witness statement in which you say that Mr Patarkatsishvili told you over breakfast at the George V Hotel in Paris, seven to ten days after Mr Glushkov's arrest, that there had been a meeting at Cap d'Antibes between him, Mr Berezovsky and Mr Abramovich. I haven't asked a question yet.

Now, you are aware, are you not, that the George V Hotel in Paris records show that Mr Patarkatsishvili was staying there between 13 and 16 December? You know that, don't you?

A. I am not aware.

Q. Are you suggesting that you made your sixth witness statement, Dr Nosova, without being aware of what the travel records in the bundles showed about the whereabouts of Mr Patarkatsishvili?

A. Travel records is not my thing.

Q. You must have been aware, Dr Nosova, that the travel records showed that Mr Patarkatsishvili was in Paris at that time?

A. I was not aware. But I was aware that he was because I met him there.

- Q. You were aware that he was because his movements in December have been traced from day to day in the documents in this case: that's why you were aware.
- A. I disagree with you.
- Q. As the manager of this litigation did you read the openings, the written openings?
- A. Don't please call me "manager" in singular.
- Q. All right. As one of the managers did you read the written openings?
- A. The written submissions?
- Q. Yes.
- A. Yes.
- Q. Right. Those submissions made it perfectly clear, didn't they, that there was a major issue about the whereabouts of Mr Patarkatsishvili, Mr Berezovsky and Mr Abramovich in December 2000?
- A. That's exactly the reason, my Lady, when I started to prepare for today I revisited, of course, my witness statements and I realised that the meetings I refer to in my old witness statement for asylum application for Glushkov and also I refer to a meeting in my main witness statement for this trial, they're actually the same meeting. And I realised that's the meeting that Badri told me about when I met him, when I met him in France, and I remembered it was George V Hotel and the

meeting was over breakfast. And I started to --

Q. Dr Nosova, I'm going to ask you about this.

A. No, I am explaining why this was served last night. It was served last night because when I was getting ready for today and I revisited my witness statement, I put these two things together and I realised that's exactly the meeting which is very much in dispute.

MRS JUSTICE GLOSTER: Yes, I see. So it was only when you were preparing for giving evidence today --

A. Yes.

MRS JUSTICE GLOSTER: -- that you realised that you hadn't mentioned your bit of evidence about this?

A. Yes.

MRS JUSTICE GLOSTER: I see. Thank you.

MR SUMPTION: Dr Nosova, you say that you read the written submissions. It must have been obvious to you from those written submissions that there was a big issue about the whereabouts of Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili in December 2000. You realised that, didn't you?

A. I realised, but I am not very good for organisational things: who goes where, plane flies where. I just am not interested in this. My speciality is different: I am a finance manager. I'm not interested in politics, I am not interested in forensics. That's it.

- Q. And you realised, didn't you, that in those written submissions there was a good deal of information about where Mr Patarkatsishvili was in December?
- A. No. I didn't concentrate on that.
- Q. Are you trying to tell the court that you decided what the date of your discussion with Mr Patarkatsishvili was without even checking whether he was in Paris at the time?
- A. Yes.
- Q. That is untrue, isn't it, Dr Nosova?
- A. No, it's true. I didn't check when Mr Patarkatsishvili was in Paris at the time.
- Q. Did you get someone else to check?
- A. No.
- Q. Now, you met Mr Patarkatsishvili on many occasions, didn't you, after the arrest of Mr Glushkov?
- A. I met him.
- Q. On many occasions?
- A. I can't say "many occasions" because the first days when he was arrested, Badri and me, we communicated on the phone.
- Q. I'm not talking about --
- A. But then I also went to France, and I went to France and we met there, in France.
- Q. Dr Nosova, in the years that have passed since

December 2000 you have had many exchanges with Mr Patarkatsishvili, have you not?

A. Yes.

Q. Now, no doubt you have often discussed with him the circumstances in which ORT was sold; is that right?

A. Yes.

Q. Now, when you say that it was on this occasion in mid-December 2000, rather than on some other occasion, that Mr Patarkatsishvili told you this, you are relying, are you, on your memory, your recollection?

A. That it was on this occasion that he told me?

Q. Rather than another occasion. You're relying on your memory rather than a document?

A. But -- but it was after Nikolai's arrest and it was related to Nikolai's release. So if I met Badri and discussed with him in previous months of 2000, Nikolai wasn't in jail yet. I don't understand the question.

Q. No, Dr Nosova, I'm talking about the period after Mr Glushkov's arrest.

Now, when you say in your third witness statement that it was on this occasion in December 2000, rather than on some later occasion, that Mr Patarkatsishvili told you about this meeting, you are relying purely, as I understand it, on your memory rather than on a document. Is that correct?

- A. I was relying on my --
- Q. Memory?
- A. -- memory because it was the first time I met him abroad after Nikolai's arrest. And I wanted to check my memory so I checked my passport and indeed it confirmed to me that I was in Paris at the time.
- Q. You were in Paris between 12 and 20 December, I think your evidence is. Is that right?
- A. No. My evidence is different. My evidence is --
- Q. The 12th and the 22nd?
- A. -- that I arrived in Paris on the 12th and I came back to Moscow on the 22nd.
- Q. Yes. So you were in Paris for ten days --
- A. I was not in Paris for ten days. I am not saying that.
- Q. I see. You were not in Paris for all of that time; is that right?
- A. My recollection is that in the end of this period I think I went to London for several days.
- Q. Now, you have worked, Dr Nosova, for years on this litigation in a capacity as a manager.
- A. First of all, again you are using the singular "manager" and it creates impression --
- Q. I said "a manager".
- A. -- I am the main person over this litigation, which is not.

- Q. Dr Nosova, there's no point in trying to think of what you think the implications behind my questions are.
- A. No, I'm just trying to be precise.
- Q. You have worked for years on this litigation, have you not?
- A. In a different way, yes.
- Q. You have been sitting in court for much of this hearing, haven't you?
- A. I was sitting in court for much of this hearing, yes; not for all of it, but for much of it.
- Q. Including almost all of Mr Berezovsky's evidence?
- A. Yes.
- Q. You have never previously suggested, have you, that Mr Patarkatsishvili told you, between the 14th -- seven to ten days after Mr Glushkov's arrest, about a meeting at Cap d'Antibes with Mr Abramovich? You've never previously suggested that, have you?
- A. My Lady, I just explained why I put in my statement only yesterday. I can repeat again because it will be the answer to the question that I am getting.

I never previously suggested because only yesterday, when I was getting ready for today, I revisited my witness statements -- and I draw your attention: one of them is August 2008, for Glushkov asylum application, and the other is the main witness statement for this

trial -- and realised that the meeting that Badri was talking about when I met him in Paris, between him, Boris, Abramovich, when he said this, that they have to give up or (inaudible) for exchange of release of Glushkov, that it's actually the same meeting everybody are disputing about now.

MRS JUSTICE GLOSTER: Right. Well, I've got your evidence on that.

A. That's it. So I can't add anything to it.

MR SUMPTION: Dr Nosova, would you please look at your witness statement at paragraph 289 and 290 D1/09/165. This is your second witness statement, the big one. Have you got that?

A. Yes.

Q. In paragraph 289 you say:

"At this time, that is following Nikolai's arrest, Badri told me whenever we spoke that he and Boris were doing everything they possibly could to help Nikolai, and he assured me that they would obtain his release. When we had these conversations, he several times referred to Mr Abramovich -- he said that Mr Abramovich had promised that Nikolai would be released."

Now, that's a reference, isn't it, to discussions with Mr Patarkatsishvili during December and possibly after December as well?

A. No. This is -- the reference to discussions that I had with Mr Patarkatsishvili the very first days after Nikolai was arrested, when we were just trying -- it was not only about his release; we were trying to get warm clothes to him because when he was arrested, as I said, he was dressed very lightly, and we found out that the temperature in his cell was 12 and it was December, and it was -- we wanted to get at least a jumper to him, a warm jumper.

And Badri held negotiations with the offices in Lefortovo to get him this jumper: also, by the way, what triggered my recollection, because he explained me on the phone that they refuse because they were told that Nikolai should be kept in harsh conditions. But when I met him in Paris -- now I remembered, after already memory: when you remember, you remember more -- that he mentioned me it was \$50,000 that he offered for -- to give this -- to pass on this jumper to Nikolai and it was refused. I think I mentioned that somewhere.

And also I said he called me and told me and I started to think he couldn't tell me on the phone, and now I remember he told me also at this meeting in Paris. And he was always referring to Mr Abramovich, on whom this release depends.

And moreover --

MRS JUSTICE GLOSTER: No, no, that's fine.

THE WITNESS: Okay, sorry, because I get...

MR SUMPTION: Dr Nosova, now would you look at paragraph 290 of your witness statement D1/09/165. After describing the discussions which you had with Mr Patarkatsishvili at paragraph 289, you say:

"I subsequently found out from [Mr Patarkatsishvili] that there had been a meeting between Mr Abramovich, [Mr Berezovsky] and [Mr Patarkatsishvili]."

In your main witness statement you are saying that you found that out after the various exchanges described in paragraph 289, are you not?

A. I have just explained that the first days we were all talking on the phone and then I went to Paris. So going to Paris, and it was maybe this meeting with Badri happened approximately one week, ten days after Nikolai's arrest, it's already in my mind subsequently because it was not in the same phone conversations that I had with Badri.

Q. The discussions that you had with Mr Patarkatsishvili about getting warm clothes and better conditions organised for Mr Glushkov in fact occurred in January 2001, did they not, after Mr Patarkatsishvili had returned to Moscow and so had you?

A. No.

- Q. Now, until Mr Berezovsky made his sixth witness statement on 14 September 2011, his case was that the meeting at Cap d'Antibes happened shortly before Christmas. You're aware of that, aren't you?
- A. I heard that, yes.
- Q. Now, the evidence that you have just given in your third witness statement would not have been consistent, would it, with Mr Berezovsky's original story that this happened shortly before Christmas?
- A. I didn't have any purpose to make anything consistent; I'm just telling what I remember and what I was able also to recollect.
- Q. Have you read his sixth witness statement?
- A. I don't remember, maybe I did. But again, it's about things that I am not really involved. It's not my thing. It's kind of forensic thing: who flies everywhere and so on, dates. I get dizzy with dates.
- Q. Would you take Mr Berezovsky's sixth witness statement, which is in bundle D4. Somebody will give it to you.
- A. Okay, that's fine.
- Q. It's behind flag 9 of bundle D4 D4/09/75. Have you got that? Now, in this witness statement Mr Berezovsky, having previously said that the meeting occurred shortly before Christmas, says -- and it's paragraph 33 -- that, "In [the] light of the above", and he's referring to the

travel records, he thinks that the meeting with Mr Abramovich occurred on or shortly after 7 December but he could not exclude the possibility that he made two separate visits to the United States between 16 and 26 December and that the meeting happened sometime between the two.

Do you see what he says? Paragraph 33.

A. Yes.

Q. Now, you were aware that that was the way that Mr Berezovsky had expressed his evidence at the time of his sixth witness statement, weren't you?

A. I was aware that there is a dispute whether this meeting took place at all or not and whether it took place end of December or after Nikolai's arrest. I was aware about it, yes.

Q. This witness statement, the sixth witness statement of Mr Berezovsky, was served in the middle of September and you read it, did you not?

A. To tell the truth --

Q. Yes?

A. -- I didn't because I explain: I am not interested in these parts.

Q. You never said at any time that the meeting could not have occurred shortly before Christmas or in the interval between two visits to the United States because

you had been told about it by Mr Patarkatsishvili seven to ten days after Mr Glushkov's arrest?

A. No, but it only shows that we didn't discuss it in this way as you are trying to present now.

Q. The reason why you never mentioned it was that you had no recollection even as recently as the middle of September of this year that it was in mid-December that Mr Patarkatsishvili had told you that; that's right, isn't it?

A. Till -- could I see the question?

Q. I'll repeat my question.

You had no recollection, even as recently as September of this year, that it was in mid-December 2000 that Mr Patarkatsishvili had first told you about the Cap d'Antibes meeting?

A. You are completely wrong. I gave a witness statement in Nikolai's asylum application in August 2008 and if you want, we can cite from there about this meeting. Just a moment.

Where is asylum application? It's not here. My witness statement in Glushkov's asylum application, it's not here.

Q. If you want to look at your asylum statement, Dr Nosova, you'll find it in R(E)7/130/98.

A. Thank you.

Q. Now, what are you referring to here?

A. Okay:

"In December 2000, following Nikolay's detention, I was very worried about him, and Badri kept telling me that they were doing everything they possibly could to help Nikolay's and he assured me that they would soon obtain his release. I was aware from Badri at the time that there was a meeting between Abramovich, Boris and Badri. I wasn't at the meeting but Badri reported it back to me that Abramovich stated that they had to give up their stake in ORT as a condition of Nikolay's release. Badri also told me that Abramovich was acting on instructions from Voloshin and I knew generally from other conversations with Badri that the president wanted the shares in ORT to be returned to the control of the state."

So in my witness statement in Nikolai Glushkov asylum application already in August 2008, I am mentioning this meeting. So you are not right, you are not correct.

Q. Dr Nosova, I am well aware that you understand there to have been a meeting; the question is whether you were first told about that meeting by Mr Patarkatsishvili in the middle of December 2000, seven to ten days after the arrest of Mr Glushkov. That was something that you had

never remembered before serving your third witness statement; isn't that right?

- A. I explained already several times here that when I started to get ready for today I revisited all my witness statements, I paid attention that I mentioning this meeting, that meeting, and then I was also thinking about this sweater, this \$50,000, because he told me about the sweater and that they refused to take it because Nikolai was supposed to be kept in harsh conditions. But I started to remind he would tell me on the phone the amount and then I remembered, and then I remembered that I met him in Paris after Nikolai was arrested.
- Q. Dr Nosova, as a result of sitting through most of this trial you are well aware that there is a serious difficulty about Mr Berezovsky's case on this meeting because it does not appear that any of the three participants were in the same place at any stage. You are well aware of that from having sat through the hearings, are you not?
- A. I'm aware that there is an issue but I'm not -- I don't know whose case -- you said Berezovsky case; I think it's Abramovich case also. The reason I decided to put in this statement because I understood that it's an issue in dispute and I thought it would be helpful to

court if I can explain something which is relevant to the issue in dispute. That's it.

Q. What you did in response to that difficulty was to go through your travel records and the information in the submissions about your movements and Mr Patarkatsishvili's movements and to find out the earliest date on which you could say that Mr Patarkatsishvili had told you about this; that's what you did, isn't it?

A. Mr Sumption, I can assure you I didn't go through these movements in submissions because this I never do. These things that are boring for me and I prefer not to do things that are boring for me. That's it.

Q. Your claim to have suddenly remembered the precise date on which he told you, and that it was on that occasion rather than on some later occasion, is, I suggest to you, a deliberate untruth which you are telling in the hope of bolstering up this part of Mr Berezovsky's case.

A. It's not so. I completely disagree with what you are saying.

Q. Now, you attended interviews with Mr Patarkatsishvili in June 2005, did you not?

A. Yes.

Q. In your witness statement, your main witness statement, at paragraph 377 D1/09/180, you say that you have

looked at the notes of those meetings at which you were present. You say that:

"... [you] cannot now recall the exact words used... [but you] have no reason to believe that the notes and the proof of evidence do not broadly reflect what was discussed during the meeting."

Do you remember giving that evidence in your witness statement?

A. Yes.

Q. Now, the document that you refer to as "the proof of evidence" in the second line of that paragraph is a draft proof prepared by Mr Lankshear which is at bundle R(D)1/06/68. Could that please be brought up on screen.

Now, have you got that document open on screen or in hard copy?

A. At 377? I have hard copy.

Q. No, it's not 377. I'm referring you to a document which is at R(D)1/06/68. Do you have that document open?

A. Mm-hm.

Q. Right. Now, is it true that you acted as translator at this meeting when Mr Patarkatsishvili needed assistance with the language?

A. This is not correct because Mr Patarkatsishvili, he spoke English. It would be incorrect to say that he

didn't speak English at all. But at that stage in time his English, of course, was not perfect and it was necessary sometimes, even maybe quite often, to translate the questions. He then would sometimes try to word his answer in English. If we felt -- because Ina was also translating, right? But when -- if we felt that he had difficulty in expressing himself, then we would translate his answer.

- Q. Now, would you please turn to page 77 of the bundle numbering. It will be brought up on screen. I would like you to look at R(D)1/06/77 and in a few moments 78 I will turn to, but let's start at 77. Have you got that?
- A. Which one? This? Mm-hm.
- Q. Now, this is Mr Lankshear's draft proof, which you say you have no reason to regard as incorrect. I would like you to read to yourself, please, from line 320 on page 77 to line 357 on page 78.
- A. Mm-hm. (Pause) Yes.
- Q. Now, I can show you the actual notes on which this is based if you like, but this is an easier version to read because it's not in note form.
- A. It's here also.
- Q. Now, Mr Patarkatsishvili did not say at this meeting, did he, that Mr Abramovich had promised that Mr Glushkov

would be released?

- A. You know, you should look at my witness statement also because I'm explaining why he didn't say that and -- because Mr Patarkatsishvili explained to me in Russian, informally, that he was very, very careful, very, very cautious when he was giving his answers because he was worried that what he will say will leak out to Mr Abramovich. And that would have been a disaster for him because for the time being he was negotiating with Mr Abramovich and he didn't want his negotiating position to be destroyed.

He was pretending that he believed Roman's explanations about ORT, about everything, Sibneft, because he had to -- he wanted to keep this channel of communication open to negotiate. That's why he was giving a very guarded account and that's why he didn't say many things.

And besides, the lawyers were not asking much and also Patarkatsishvili expressed to me his surprise that lawyers were not asking more probing questions. But for the lawyers, it was initial stage: it was just finding -- fact-finding exercise. They ask him to tell the story and he told them that part of the story that he thought was safe to tell, keeping into account that he was negotiating with Abramovich and he didn't want

his negotiating position to be damaged.

MRS JUSTICE GLOSTER: Right, thank you.

MR SUMPTION: Dr Nosova, this was a meeting between Mr Patarkatsishvili and Mr Berezovsky's own closest assistants and lawyers, wasn't it?

A. Yes.

Q. He had absolutely no reason, did he, to believe that the material was going to be handed over to Mr Abramovich?

A. Did Mr Abramovich have reason to believe that Patarkatsishvili would be recording their conversation in Le Bourget?

Q. Kindly answer my question.

A. No, I'm just giving you an example. There is always a risk.

Q. I would like you to answer my question, please, Dr Nosova.

A. I think he had reason to believe that there was a risk that information could leak out. It's a big house with big staff. Who knows? Nobody knows. It could be bugged, telephones could be bugged. That's the reality.

Q. Now, if you look at the draft proof again, it wasn't simply that he didn't mention Mr Abramovich --

MRS JUSTICE GLOSTER: Which line are you looking at please, Mr Sumption?

MR SUMPTION: Line 343 on page 78 R(D)1/06/78.

It wasn't just that he didn't mention Mr Abramovich had promised the release of Mr Glushkov. What he says at line 344 is:

"Evidently it was not within [Mr Abramovich's] power to release [Mr Glushkov]. [Mr] Voloshin himself had promised this to me in a personal conversation I had with him later."

Now, Mr Patarkatsishvili was saying: it wasn't in Mr Abramovich's power, it was in Mr Voloshin's, and it was Mr Voloshin who made me that promise. That's what he was saying, wasn't it?

- A. Okay, as to ORT, of course the main people who wanted ORT, it was Putin and Voloshin; but Abramovich was helping them, he was helping them to do it. And he was not an intermediary because he was trying to help Boris or Badri to get the shares sold. Boris didn't want to sell; he wouldn't want to sell. If not -- if Nikolai wasn't put in jail, he would never sell ORT. It was one of his babies, you know, and he understood the real value of ORT.

So Voloshin -- and that's why, by the way, when I referred to this meeting that Badri, Abramovich and Boris had in France, about which we've had a dispute now, I added there my recollection that Badri said that Abramovich was acting on instructions from Voloshin. So

they were all acting together.

Q. Dr Nosova, just have a look, would you, at the draft proof. What I asked you was this.

You've accepted, although you give an explanation, that Mr Patarkatsishvili did not say that Mr Abramovich had promised to have Mr Glushkov released. What I'm suggesting to you is this: Mr Patarkatsishvili actually positively said that there was nothing that Mr Abramovich could do about it and it was Mr Voloshin who had promised that Mr Glushkov would be released. That's what he said, isn't it?

A. Mr Sumption, Mr Patarkatsishvili had to play a game with Abramovich pretending that he believed his explanations. That's one of the rules when you are negotiating, and especially --

MRS JUSTICE GLOSTER: Sorry, can I just interrupt you again.

What I'm not understanding at the moment is that this is a meeting between Mr Patarkatsishvili and Mr Berezovsky's lawyers and associates, friends, at which a proof is being taken or notes are being taken for the purposes of a proof to assist Mr Berezovsky and perhaps also Mr Patarkatsishvili in litigation that's being brought against Mr Abramovich.

So what I want to understand from you is why you say Mr Patarkatsishvili would be being guarded during the

course of these conversations when he should be, one would have thought, trying to help Mr Berezovsky?

- A. Okay, I explain to my Lady. The position was Mr Berezovsky wanted to bring a claim and Mr Patarkatsishvili didn't want to bring a claim, not because he thought that what Abramovich did to them was right, he knew that he was wronged by Mr Abramovich, but he hoped to negotiate with Mr Abramovich and he hoped that by way of negotiation he would deal with Mr --

MRS JUSTICE GLOSTER: Yes, I've got that.

- A. Yes.

MRS JUSTICE GLOSTER: What I don't quite understand is the basis of Mr Patarkatsishvili's fear that what he's saying to Mr Berezovsky's lawyers and associates will leak out to Mr Abramovich. That's what I don't quite understand.

- A. He was worried about security all the time and he didn't want to have a slightest chance that what he says never to hear about Abramovich could leak out to Mr Abramovich. So -- and he explained it to me informally, to myself at the time.

MR SUMPTION: Dr Nosova, are you also suggesting that in addition to being guarded, Mr Patarkatsishvili actually told lies to Mr Berezovsky's solicitor when he said it was evidently not within Mr Abramovich's power to

release NG and it was Voloshin who had promised him that in a personal conversation which occurred later? Are you saying that was actually untrue?

A. I am saying that Mr Patarkatsishvili was playing a game. I am saying that Mr Patarkatsishvili pretended that the explanations that Roman gave, "Oh, it's not in my power", that he believed these explanations when in reality he did not.

Q. You see, Dr Nosova, a great troupe of witnesses, including yourself, is coming along to this court to say, "Mr Patarkatsishvili told me at the outset that he had been bullied by Mr Abramovich into selling his stake in ORT", and yet you say that Mr Patarkatsishvili was so guarded about that that he wouldn't even admit it to Mr Berezovsky's own solicitors. That's what you're saying, isn't it?

A. Because he was worried this information could leak because the house could be bugged -- we had so many examples of this -- the house could be bugged, there's staff around, somebody brought the coffee and heard something, something put on some recording device. Who knows?

Q. And yet you say he told you this in the breakfast room of the George V in Paris?

A. This?

- Q. About this meeting.
- A. About what meeting?
- Q. About the Cap d'Antibes meeting?
- A. About Cap d'Antibes meeting, yes.
- Q. Yes.
- A. But this -- so we're finished with this part?
- Q. No.
- A. No?
- Q. We're talking about the circumstances in which the ORT shares were sold.
- A. Mm-hm.
- Q. Now, you say that Mr Patarkatsishvili was so frightened of a leak happening that he wouldn't even say that Mr Abramovich had made threats or promises about Mr Glushkov to Mr Berezovsky's solicitors; yet on your evidence he was perfectly happy to tell you that in the breakfast room of the George V Hotel in Paris. Is that right?
- A. You forget one more thing. You forget that the notes that the lawyers -- my Lady, I want to also stress this point. Badri knew that the lawyers are taking notes. He understood that the notes would be typed in London, be in the computer. There is always a risk with the computers that the computers also can be hacked and so on. So when information was put on papers, a document,

the risk is even more.

In George V Hotel there was no risk that it would be put on paper, right? We didn't know that it will be here right now, right? So that may be the difference. And there is maybe less probability that the table in George V Hotel breakfast table -- you don't know at which table you will sit -- will be bugged.

Q. Now --

A. Big difference.

Q. Can we look back at what Mr Patarkatsishvili said at this meeting which you attended:

"Evidently it was not within RA's power to release NG. Voloshin himself had promised this to me in a personal conversation I had with him later."

Now, are you suggesting that Mr Patarkatsishvili was not only guarded about information he disclosed but actually told untruths to Mr Berezovsky's solicitors? Is that what you're suggesting?

A. It's not true or untrue about the fact. It's a guess.

Can I tell you something about Roman's --

MRS JUSTICE GLOSTER: No, just answer the question, please.

A. Yes. It's a guess. And it all changed because after Roman Abramovich bought the ORT shares and held them, he kept them. It meant that Putin trusted him and considered him to be one of his own camp because he

allowed Abramovich to keep the ORT shares. You know that Putin was very concerned that the ORT shares finish in very safe hands. So for --

MRS JUSTICE GLOSTER: I'm going to interrupt you because I would like you to answer the question please. I think you've answered the question "yes". The question was: are you suggesting that Mr Patarkatsishvili actually told untruths to Mr Berezovsky's solicitors?

A. On this point I think he was not sincere.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: And is that what you describe as "a guess"?

A. Can I continue then? My Lady, can I continue? Because you wanted me to answer this question. Now Mr Sumption wants me not to guess --

MRS JUSTICE GLOSTER: No, I think you've answered the question I wished you to answer --

A. Okay.

MRS JUSTICE GLOSTER: -- and you've said that you thought that Mr Patarkatsishvili was not sincere when he answered in this way.

A. In this very question, on this very point.

MRS JUSTICE GLOSTER: Yes, thank you.

A. It doesn't mean that everything that he was saying was not --

MRS JUSTICE GLOSTER: No, of course not.

Mr Sumption, ask the next question, please.

MR SUMPTION: Dr Nosova, I suggest that your evidence that Mr Patarkatsishvili told you privately that he was just playing a game or anything of that kind is not in fact true. He never said that to you, did he?

A. He said it to me and what you are saying now, it's not correct.

Q. At paragraph 294 of your witness statement D1/09/166 you say -- and you are talking now about the very end of December, when I think both you and Mr Patarkatsishvili were in Moscow; is that right?

A. The very end of December.

Q. Yes, New Year's Eve.

A. Where is it?

Q. Paragraph 294.

A. 294?

Q. Yes. You say that:

"... Badri kept repeating that Nikolai would be released because Mr Abramovich promised that he would be released before the New Year."

Now, in fact Mr Patarkatsishvili did not say that, did he? What he said was that he was confident that Mr Glushkov would be released because he had been given a personal assurance to that effect by Mr Voloshin. That's what he said, isn't it?

A. Badri called me at 11 o'clock in the evening on 31 December 2000 and asked me if someone could go to Lefortovo prison in case Nikolai was released and, if it happens, to meet him and pick him up. And he kept repeating to me, my Lady, that Nikolai would be released because Roman Abramovich promised that Nikolai would be released till the 31st -- till the New Year, and it was actually one hour left till the New Year. So he was actually waiting for Roman Abramovich to deliver on his promise. That's what it is.

MRS JUSTICE GLOSTER: Right. You said that in paragraph 294 of your witness statement.

A. Yes. Mr Voloshin was not mentioned here. Here he was not mentioned. Here only Roman Abramovich was mentioned.

MRS JUSTICE GLOSTER: Okay, you've given the answer. Thank you.

MR SUMPTION: Now, after the ORT sale had gone through at the end -- the ORT sale went through at the end of December, didn't it?

A. It was completed in January I think, but this -- if you're referring to Akmos Trade contracts and the transfer of shares of Logovaz to Betas.

Q. That all happened at the end of December?

A. It was all signed end of December. That's why, by the

way -- Badri told me we did everything that they wanted us to do, so that's why Nikolai should also be released.

Q. After the ORT sale had gone through there were negotiations, were there not, in the first three months of 2001 between Mr Patarkatsishvili and various emissaries of the presidential administration? That's correct, isn't it?

A. Continue -- you mean continuing attempts of Badri to release Nikolai?

Q. Yes, that was one of the matters discussed; another was the future of the TV6 television station.

A. Mm-hm.

Q. You agree that there were negotiations directly between Mr Patarkatsishvili and various emissaries of the presidential administration in the first three months of 2001; is that right?

A. Patarkatsishvili was also negotiating with the Kremlin and the officials.

Q. Yes. Now, could you please take -- you've probably still got -- hang on, you're not using bundles. Can we have up R(D)2/22/8. For those using hard copies, it's behind flag 22 of the bundle.

Now, have you got this, Dr Nosova?

A. Mm-hm.

Q. If you look halfway down --

MRS JUSTICE GLOSTER: Just a second. Have you got it blown up all right?

A. Yes, thank you.

MR SUMPTION: If you look halfway down page 8 in the bundle numbering, you will see a heading between two horizontal lines which says "TV6 -- RA + N Glushkov???" . Do you see that?

A. Can you remind me what it is?

Q. Well, do you see the heading first?

A. No.

Q. I just want to make sure you're in the right part of the document.

A. I don't see the heading. Can I see the heading?

MR SUMPTION: Can the witness have pointed out to her --

A. No, but what kind of document it is?

MRS JUSTICE GLOSTER: No, just a second. The question is, Dr Nosova: can you see on the screen "TV6 -- RA + N Glushkov???"?

A. Yes, I see.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: I am interested in the text that follows that heading. You will see that your name then appears, "Natalia -- Nosova", okay?

A. Mm-hm.

Q. This, as I understand it, is information which in the

course of this meeting in June 2007 you were giving to Mr Berezovsky's solicitors. Is that right?

A. Is it some -- is it some note of some meeting?

Q. Yes. This is Mr Stephenson's note of a meeting with Mr Patarkatsishvili on 13 June 2007 --

A. Mm-hm.

Q. -- at which you were present.

A. Yes, I was present.

Q. You agree you were present?

A. Yes, I was, yes.

Q. And as I understand it, the bit that appears underneath your name is information which is being supplied by you.

A. No.

Q. Who is it being supplied by then?

A. Don't know.

Q. What?

A. I don't know.

Q. Well, why is your name there?

A. Because maybe I said something about TV6, maybe I said something about RA and Nikolai Glushkov. I doubt that it was I who said something about Pugachev. Because you see here it is written "Pugachev -- in presence of Ruslan": it means the source of information was maybe Ruslan, if it was in his presence, and Ruslan told somebody about it, apparently. That's how I can guess

it.

Q. Mr Fomichev was not at this meeting.

A. Huh?

Q. Mr Fomichev wasn't at this meeting.

A. No, but he told somebody maybe who was at this meeting about it because there is a reference that Pugachev said it in the presence of Ruslan. That's how I can understand it. You're asking me to guess: I'm guessing.

Q. Who is Mr Pugachev?

A. Pugachev was not only senator; he had business interests, he had Bank Mejprom.

MRS JUSTICE GLOSTER: He was a senator, was he?

A. He was a senator but I don't remember whether he was a senator at this time or not. I am not very much interested in politics. But I remember he had a bank and then I think the bank lost the licence, but before it lost licence it was quite a big bank.

MR SUMPTION: Mr Pugachev was a close friend and emissary of President Putin, wasn't he, or Acting President Putin at this stage?

A. He was quite close to the authorities.

Q. Yes. And he opened negotiations, didn't he, at the beginning of January with Mr Patarkatsishvili about the future of Mr Berezovsky's other television station, TV6?

A. You see, it only shows that --

Q. First of all, is that true or not?

A. I don't know. I can tell you what I know about TV6.

I can't tell you what other people were discussing when I was not present and when I wasn't actually briefed on it, on the...

This was said at this meeting but for me it was not the information that I knew before, before it was said in this meeting. But I know about TV6 that we were being pressed also about TV6 because we had another TV channel, less important than ORT but still, and of course the authorities wanted us out of this TV channel.

But in the end, Roman Abramovich by the end also helped the authorities out: he approached Badri and said, "Badri, I can pay you \$20 million for TV6". And Badri said -- he came and said, "Why taking \$20 million from him?" Because it's such huge undervalue, it's ridiculous. "If we take money from him, he will think that he has got a fair deal, a deal, and it's not a deal, it's robbery, so let's just give it to him". And he said, "Roman, we'll just give it to him".

That's --

Q. Were you present on that occasion?

A. Badri told me about that.

Q. Right. Just have a look at the next line --

A. And about TV6 I know a little bit because I was a member

of the board of TV6.

Q. Dr Nosova, have a look at the next line. Under the line it says:

"31 Dec[ember] Badri rang to say promised he would be released -- N Nosova."

A. Yes.

Q. Now, that's you, isn't it, giving this information?

A. Yes.

Q. Right. Just as the previous text is you giving information?

A. No. I disagree about Pugachev, I don't think it was me.

Q. Now, further down the page you will see:

"TV6 -- Second asset -- talks with RA, Voloshin, Sergei Ivanov... talked about TV6 & NG."

Mr Ivanov was the secretary of the Russian Federation Security Council, wasn't he?

A. Yes, maybe. Yes, I remember something like this. He had big position, yes.

Q. Yes. After Mr Pugachev's approach, there were direct negotiations between him and Mr Patarkatsishvili also, weren't there?

A. Yes.

Q. And over the page, if the screen could move to the next page, you are describing visits --

A. Where? I don't see it? Where I am describing? I think

you went too far, no?

MRS JUSTICE GLOSTER: Which line are you referring to? Can it be highlighted on the screen, please?

MR SUMPTION: If you look at the very top of page 9:

"34 Kosygin Street -- official gov[ernment] building -- Sergei Ivanov -- Sec[retary] of Sec[urity] Council of Russia. Part of the group -- he says if we do everything correctly about TV6 -- NG will be freed."

A. Mm-hm.

Q. Now, the promises for Mr Glushkov's release which had originally come from Mr Voloshin were now being made, were they not, by Mr Pugachev and by Mr Ivanov?

A. Just a small correction, I didn't understand: you said that I was describing?

Q. Yes, because the --

A. It was not me who was describing.

Q. The whole --

A. It was Badri, I think.

Q. The whole of the section at the bottom of page 8 and above the line on page 9 is information supplied by you, is it not?

A. No. No. This information I am sure was supplied by Badri. And the previous -- can you go back?

Q. If you look at the bottom of the previous page, page 8 --

- A. "... talks with RA, Voloshin, Sergei Ivanov", I think it was also supplied by Badri.

So your assumption that everything which is under this section is what I said is completely incorrect.

- Q. Do you see at the bottom of the previous page, the last block of text on page 8:

"Natalia Nosova -- Steve Curtis -- doc[ument] escrow -- absolutely sure will be released -- TV6 Badri exchange of all negotiations -- Sergei Ivanov -- Putin asked him to be in [the] middle of [the] deal..."

Now, what I suggest is being said here -- and I suggest it's being said by you -- is that in early 2001 Mr Ivanov had been asked to act as an intermediary by Putin and had offered Mr Glushkov's freedom in return for TV6.

- A. It was not said by me. I can -- actually you need to separate. I can explain you where what I said ends. "Natalie Nosova -- Steve Curtis -- doc[ument] escrow -- absolutely sure will be released", tochka, dot. Everything else is not me.

And I'll explain why I said it. I remembered that at some point in Down Street I met Stephen Curtis, and who was -- who told me, and I also knew it from some other people, that we were considering to sell Kommersant. This is what was going to call the, I don't

know, aborted sale of Kommersant.

And the concern was that if we sell -- that we maybe will sell Kommersant, you know, it's also very important, my Lady. Kommersant was very important independent newspaper in Russia. Everybody read it, all the -- not only all the business people; everybody read it. It was our newspaper and it also had magazines and so on.

In 2003 at some point we were starting to experience pressure to sell Kommersant and then Stephen Curtis was working on creating some kind of escrow arrangement, that was the idea: that if we sell Kommersant then Nikolai Glushkov will certainly be released. And this didn't materialise, I don't know the reasons; maybe because it was very difficult to put on paper. It's -- if you sell them this, then Nikolai Glushkov can walk out of jail, maybe people from the other side were not prepared after what happened with Lesin, protocol 6, to take such a risk.

And that's what it refers to. And the big -- "TV6 Badri", I am sure it's all Badri after that.

- Q. Your name appears seven times in this section and I suggest all of that information came from you.
- A. You're absolutely wrong. I already explained what information could be attributed to me, which could come

for me and came from me, and what information didn't come from me and even couldn't come from me.

Q. Now, the negotiations with the presidential administration, through various intermediaries, came to an end, didn't they, on 11 April 2001, when the incident occurred which it was later alleged showed that Mr Glushkov was trying to escape? That's when they came to an end, isn't it?

A. The pressure -- to increase the pressure on us this so-called escape attempt was orchestrated.

Q. I'm not asking you about the escape; I'm just trying to establish the date.

A. Yes. What, 11 April, so-called escape attempt? Yes.

Q. All right, let's call it a so-called escape attempt. That was when these negotiations came to an end, right?

A. About Nikolai?

Q. Yes.

A. About Nikolai?

Q. The negotiations with the government.

A. Then, okay, Abramovich stepped into the shoes of the government and now -- and after that, after this alleged escape attempt, we had another situation from Abramovich: "If you don't sell Sibneft to me at the price that I want, Nikolai will stay in jail forever". That's it.

Q. Well now, you refer to that, I believe, in paragraph 308 and following of your witness statement D1/09/168.

Would you like to turn to that? It starts at 306.

Could you open your witness statement on the screen at page 168. At the top of the page is paragraph 306.

A. Yes.

Q. Right. Now, what you say here is that:

"In April 2001, [you] went to see [Mr Berezovsky] in Cap d'Antibes."

A. Yes.

Q. And:

"The purpose of this [meeting] was to discuss the positions of Nikolai and [two of] his associates... who [had been] arrested on 11 April in connection with the alleged escape attempt. When I went there and met Boris, he asked me to estimate how much... Sibneft was worth."

And you discussed that.

A. Mm-hm.

Q. You then say you were not able to give him an exact estimate. And then in paragraph 308:

"At that meeting..."

And I think that must be the April meeting; yes?

A. Yes.

Q. "... we also talked about Nikolai, Vladimir and Igor;

about the chances for their release, and the costs of the lawyers and supporting their families while they were in prison, and how they were to be provided for. It was in this context that Boris said to me that Mr Abramovich had told Badri and him that Nikolai would only be released if they sold him their interest in Sibneft, and that otherwise he would stay in prison for a very long time."

Do you see that?

A. Yes.

Q. Now, one point on which Mr Berezovsky's case has been consistent ever since the letter before action of 2007 is that the only occasion on which Mr Abramovich uttered a threat relating to Mr Glushkov in connection with the sale of Sibneft was at a meeting with Mr Patarkatsishvili in Munich in May 2001. That's his evidence.

Now, you can't, I suggest, have been told by Mr Berezovsky in April that that was what Mr Abramovich was doing.

A. That's my recollection, that I was told about it in April.

Q. Yes. Your recollection cannot be correct if that was a threat that was only made in Munich, a month later?

A. I'm not sure that it wasn't actually formulated by Roman

to Badri before that because they were talking and because Abramovich was putting pressure all the time and he was using the position of Nikolai.

Q. Now, this meeting that you had with Mr Berezovsky must have been just after the breakdown of negotiations with the various Russian government representatives, Mr Ivanov and so on, about TV6?

A. I don't think Mr Berezovsky would mix the government negotiations with Abramovich. I would very be much surprised because if I'm not interested in politics, he is.

Q. Well, what I suggest to you is that you are mixing them up.

A. My recollection is that it was like this because Badri was talking to Abramovich, Abramovich now had much more power, and we understood now that he had much more power because -- sorry, my Lady, but this is very important -- when he bought ORT shares from us, he didn't pass them on to the government; he kept them, and it means that Mr Putin allowed him to keep them. It means Mr Putin considered him to be his own man.

And for us it was very significant because we understood how powerful -- it gave us exactly the understanding of his relationship with Mr Putin.

Q. Dr Nosova, you were a director of TV6; you confirmed

that a few minutes ago.

A. I was on the board of TV6.

Q. Exactly.

A. Yes.

Q. And you were therefore critically involved with the suggestion that TV6 should be sold in return for Mr Glushkov's release, weren't you?

A. You know, TV -- it was -- TV6 is a more complicated situation because first of all --

MRS JUSTICE GLOSTER: Just a second.

A. Yes.

MRS JUSTICE GLOSTER: Could you answer the question which is: were you critically involved with the suggestion that TV6 should be sold in return for Mr Glushkov's release? Were you involved in the decision?

A. I was not involved and I'll explain to my Lady why: because it's not a question that we put on the agenda of the board of directors. Can you --

MRS JUSTICE GLOSTER: It's for shareholders, is it?

A. Yes. Can you imagine on the agenda of the meeting of the board of directors a point, "TV6 to exchange for freedom of Glushkov"? Even in Russia at that time it wasn't possible.

MR SUMPTION: Dr Nosova, I am not suggesting that this was ever formally put to any meeting of TV6. What I'm

suggesting is that you were involved with considering this proposal because you were a director. I'm not suggesting it was discussed at board level. That explains why you were involved in these discussions with Mr Ivanov.

- A. Directors -- I don't know directors being involved in such discussions. The owners were involved in such discussions, and the owners were Mr Berezovsky and Mr Patarkatsishvili.
- Q. Now, it is not possible that Mr Abramovich made statements in relation to the proposed sale of Sibneft about Mr Glushkov's position because that is said to have happened in Munich. What Mr Berezovsky might have been talking to you about in April was the breakdown of negotiations with Mr Ivanov on TV6. Do you follow me?
- A. Mr Sumption, even I couldn't mix up Abramovich with Mr Ivanov, sorry to say that, no matter how uninterested in politics I was. That's my recollection. If the recollection of Mr Berezovsky is different, okay, it's different.
- Q. Now, you say at paragraph 321 of your witness statement --
- A. Which one?
- Q. Paragraph 321. It's on page 170, right at the bottom of the page D1/09/170.

A. Just a moment, I need to find it. 321?

MRS JUSTICE GLOSTER: Paragraph 321.

A. And which one? Re Munich, ah, okay.

MR SUMPTION: You say at paragraph 321 that:

"[You] heard from both Boris and Badri about a meeting between Badri and Mr Abramovich at Munich Airport at the beginning of May 2001..."

A. Mm-hm.

Q. "... although neither told me at the time exactly what had been said there. After the meeting, however, it was clear that Boris and Badri were still of the view that they had to sell Sibneft to Mr Abramovich because if they did not he could and would encourage raids which would make their position untenable or the confiscation of their interests."

Now, when you say that there was a concern that Mr Abramovich would encourage raids, what sort of raids and on whom?

A. This concern actually appeared much, much earlier. It started, I think, somewhere autumn 2000, when Abramovich started to say that Boris has still association with the company, his conflict with Putin, it could lead to either confiscation, it could destroy the company, he was saying, it could lead to confiscation of assets and -- no, with Nikolai I think we covered already.

- Q. Which company are you talking about: Sibneft?
- A. Sibneft.
- Q. Are you seriously suggesting that Mr Abramovich was threatening to have his own company raided in order to put pressure on Mr Berezovsky? Is that what you're suggesting?
- A. Mr Sumption, I think you missed a very important point, I'm sorry to say. I several times stressed that when we sold ORT shares to Mr Abramovich, he was allowed by Putin to keep him as his most trusted man. So it shows the relationship between Putin and Abramovich.
- Q. You're not focusing on my question, Dr Nosova.
- A. So -- no, I am focusing on your question. So when you are saying Munich -- it was May, right? May 2001 -- it already happened.
- So Abramovich was quite capable of orchestrating something and then stopping it at an appropriate moment, which could be tax investigations, it could be a threat to the shares, it could be anything. But I am certainly convinced that he wouldn't have left it to go too far and he would have stopped it when it started damaging his own interests. That's the reality that we had at the time.
- Q. I would suggest to you, Dr Nosova, that the idea that Mr Abramovich would encourage raids on his own company

in order to bring pressure to bear on Mr Berezovsky in France is absurd and you know that.

- A. It is not absurd. For anyone who knows Russia at the time, it is not absurd at all.
- Q. Would you please look again at bundle R(D)1/06/79.
- A. Which one?
- Q. This is a later point in the draft proof which I was asking you about earlier.
- A. Badri? Is it Badri's proof?
- Q. Yes.
- A. Mm-hm. What the date?
- Q. This is Mr Stephenson's note and the date is June 2007.
- A. Thank you.
- Q. 5, sorry. 2005.
- A. So is it June 2005 or is it December?
- Q. Yes, it's in fact the combined proof based on both notes, so it's June 2005.
- A. Okay.
- Q. Now, do you see what is said about the Munich meeting here?
- A. Can I --
- Q. The section on the Munich meeting actually starts -- I'm trying to help you, Dr Nosova, to find it. If you start at the bottom of the previous page, page 78, there's a heading, "Sale of Sibneft", and I'd like you to read

from line 361 on page 78 to line 379 on page 79.

A. Mm-hm. (Pause)

Q. Have you done that?

A. Yes.

Q. If you look between 377 and 379, Mr Patarkatsishvili says that:

"When negotiating this deal there was no specific mention made of [Mr Glushkov] but this was not necessary as it was clear that his release was one of the reasons we were prepared to sell."

A. Mm-hm.

Q. Now, that is what Mr Patarkatsishvili said at this meeting: that there was no specific mention of Mr Glushkov. That's right, isn't it?

A. That's what it says.

Q. And you have no reason, as you say in your witness statement, to believe that that is wrong?

A. Well, I have no reason to believe that what he said was put in wrong way but I have to tell you that there was -- it was not necessary to discuss it because it was discussed before on many, many occasions. So people knew what they were talking about. They discussed it before on many, many occasions.

Q. Though, according to Mr Berezovsky's case, it was only in Munich that there was a threat to Mr Glushkov's

position designed to produce a sale of Sibneft.

A. The release of Nikolai was discussed as a condition, was discussed between Badri and Roman many, many, many times before that. That was -- it was not necessary to discuss. And that's why Badri said, "But you know, remember our main condition", and Roman confirms: yes, he remembers, because the main condition that Nikolai shouldn't be kept in jail discussed many, many times before that.

Q. Could you please turn to paragraph 196 of your witness statement D1/09/149. I want to ask you about a completely different topic.

A. 100...?

Q. Yes, would you remind yourself of what you wrote at paragraphs 196 and 197 of your main witness statement about the Eurobond offering circular of 1997. (Pause)

Have you read that, Dr Nosova?

A. 196?

Q. 196 and 197.

A. Oh, okay, sorry. I didn't realise I have to read it. (Pause) Yes.

Q. Leave that open, would you, and could we have up on screen H(A)07/34, which is the relevant part of that circular. What I would like you to read is the paragraph underneath the table of shareholders which

begins --

A. I don't see anything.

Q. Do you see a table of shareholders?

A. Here, uh-huh.

Q. Underneath it there's a paragraph that begins:

"FNK, SINS, Refine Oil and Runicom..."

I would like you to read to yourself the whole of that paragraph, please. (Pause)

A. Mm-hm. I've read it.

Q. Now, what that paragraph says, among other things, is that:

"Mr Berezovsky..."

I'm reading from three lines up from the end of the paragraph:

"... does not own or control, or have any other interest in, any shares in Sibneft, directly or indirectly."

A. Mm-hm.

Q. Was that statement true?

A. No.

Q. Now, in your witness statement you say it was technically correct. Why was it technically correct in your view?

A. "Technically correct" referred not to this statement.

"Technically correct" referred to the statement that was

supposed to be here, that was agreed could be here, and not to this one. This one, nobody showed this to us. As far as I know, Mr Berezovsky haven't seen it, I haven't seen it. It's some other statement.

- Q. The only statement that was ever shown to you or Mr Berezovsky was the one that we have just read here, wasn't it?
- A. It wasn't shown to us before the circular was published.
- Q. You say at paragraph 195 of your witness statement D1/09/149 that you weren't involved in the preparation of the offering circular.
- A. I wasn't.
- Q. "... but Boris told me that Mr Abramovich had consulted [him] and [Mr Patarkatsishvili] about it before it was published."
- A. He told them about this attempt to raise finance on the international capital markets and he said that again they will distance Boris from it as the public position. That's what he said, as far as I know. Nobody showed Boris what they managed to stick into this circular.
- Q. Well, let's just look at how you describe the document in paragraph 196.
- A. Okay.
- Q. "In the preparation of this Offering Circular, I was aware of the fact that Mr Abramovich had agreed with

Boris that there should be a statement in the document confirming the agreed public position which they were adopting: ie that Boris did not have an interest in the company."

A. Mm-hm.

Q. Now, that is precisely the statement that the circular makes, is it not?

A. Not at all. Could I read it myself?

"... I was aware of the fact that Mr Abramovich had agreed" --

MRS JUSTICE GLOSTER: No, you don't need to read it out aloud. We've all got it on the screen.

A. Okay. My Lady, I need to explain. It's not the statement that is in the circular; it is statement that was supposed to be in the circular and that was supposed to cover only legal interest. That's why I am saying that technically correct, because Sibneft was held by Mr Abramovich, and that's because I refer everywhere in these paragraphs to 1996 agreement.

And then I say that it was Mr Abramovich and Mr Shvidler who were instructing the lawyers and the investment advisers on this circular and they were supposed to explain the real position to them and get their advice whether or not it's possible to include a statement that they agreed to the fact that it would

cover only legal interest.

They didn't do that, obviously; they put in something else, something completely different. It was never approved by Mr Berezovsky, it was never approved by myself. We haven't even seen it.

Q. Dr Nosova, you weren't even involved in the preparation of this circular and you have no knowledge --

A. I was not --

Q. Let me finish -- you have no knowledge of the matters which you have covered in your last answer.

A. Why?

Q. There was no other statement, was there?

A. No, no, I have knowledge. Because who is instructing lawyers and investment advisers? The chief financial officer of the company, who was Mr Shvidler.

Q. Then why do you say that you weren't involved in the preparation of the offering circular?

A. I was not involved, but it's common knowledge. You asked whether I am familiar to such documents. Who instructs the lawyers and investment advisers? The chief financial officer of the company. At that time it was Mr Shvidler.

Q. You yourself, in paragraph 196, do not refer to a legal interest; you refer to just "an interest". Your gloss that you were told that it would refer to a legal

interest is simply something that you have invented in the course of your oral evidence?

A. You are absolutely wrong. I'm saying "interest" in the 1997 -- in 197. I explain: technically correct, since Sibneft was held by Mr Abramovich. It's obvious it covers only legal interest. It also refers several times to 1996 agreement and the public position which they were adopting.

And by the way, I was shown Mr Abramovich's fourth witness statement and Mr Abramovich himself says that he never showed this circular --

MR SUMPTION: Well, I'm not asking you to comment on other people's evidence.

MRS JUSTICE GLOSTER: Just a second. Can I just interrupt you. It's not appropriate --

THE WITNESS: Ah, okay, sorry.

MRS JUSTICE GLOSTER: -- for you to comment upon other people's witness statements --

THE WITNESS: Ah, okay, sorry.

MRS JUSTICE GLOSTER: -- unless, again, in re-examination Mr Rabinowitz wishes you, in connection with an answer you've given to Mr Sumption --

THE WITNESS: I'm sorry, my Lady.

MRS JUSTICE GLOSTER: It's all right, don't worry. It's difficult to know the rules of the game sometimes.

THE WITNESS: Yes, we are learning.

MR SUMPTION: Dr Nosova -- just one more question if I may,  
my Lady.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: Could you look back at paragraph 195  
D1/09/149.

These paragraphs which I've been asking you questions about, the evidence that you give in your witness statement at 195 to 197 is not about some earlier or different version of this statement because you start out by referring to the very document that you've got open on your screen. H(A)08/90 is the same document -- that is the circular and participation certificates; that's simply another reference to it.

A. Mr Sumption, it is not about any versions of this circular because we have never seen any versions. We have never seen a single version. The only thing that was discussed, that Roman asked Boris that they will again distance him from the company as usual, meaning legal interest, that's it. And they were supposed to take advice from people who were advising them whether it's possible in such a document to cover only legal interest. Apparently they couldn't do that. And instead of just dropping it, they went all the way, made this blatant denial, which is completely wrong.

- Q. This document was disclosed by Mr Berezovsky, wasn't it?  
Look at the bottom of the page on the left.
- A. Maybe, but it doesn't mean that Mr Berezovsky saw it  
before it was published.

MR SUMPTION: My Lady, I think we --

MRS JUSTICE GLOSTER: Very well. 2.05, please, we'll resume  
for your cross-examination. Can you make sure that  
during the lunch hour you don't discuss your evidence or  
the case with anybody.

THE WITNESS: Mm-hm. Thank you.

MRS JUSTICE GLOSTER: Very well. 2.05.

(1.05 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Dr Nosova, there are a large number of points  
in your witness statement when you say that this or that  
statement was made to you at particular times by either  
Mr Patarkatsishvili or Mr Berezovsky. What I am going  
to put to you generally is that what you did when  
preparing your witness statement was to go through all  
the points in Mr Berezovsky's evidence which you thought  
were likely to be challenged and simply to stick into  
your witness statement that he had told you those things  
at the time, regardless of whether he had or not.

A. Is this a question?

Q. I'm giving you an opportunity to comment on that.

A. This is completely wrong. Absolutely wrong.

Q. Now, one different aspect if I may. Could I ask you to look at bundle H(A)19/10, which is a note of a meeting with Mr Berezovsky and Mr Patarkatsishvili prepared in September 2000 by Mr Samuelson of Valmet.

Have you seen this document before?

A. It was shown to me.

Q. Were you present at this meeting?

A. No, I was not.

Q. You did, however, have other meetings with Mr Samuelson of Valmet, did you not?

A. I did; not only with him but also with people who were working in different Valmet offices.

Q. Yes.

A. MTM.

Q. Now, do you see on the second page, page 11 of the bundle H(A)19/11, a statement saying -- this is about five/six lines from the top of the page:

"We will start by moving the Sibneft holdings into the funds in about ten days. These holdings are owned through Cypriot companies mainly today."

Did you at any stage tell Valmet that?

A. About ten days?

- Q. No. Did you at any stage tell Valmet that Sibneft was held through Cypriot companies?
- A. It could be, yes.
- Q. Are they?
- A. Were they at the time?
- Q. Yes.
- A. My recollection, yes, they were.
- Q. You're talking therefore, are you, about Cypriot companies of Mr Abramovich?
- A. Yes.
- Q. Which companies are they?
- A. Now I don't remember their names. But they were -- it was not Cypriot companies of Mr Berezovsky or Mr Patarkatsishvili; they were Cypriot companies of Mr Abramovich.
- Q. Right, I see. So you think you may have been the source of that information?
- A. As well Ruslan could be the source of this information.
- Q. What about the statement that appears in the next paragraph, which consists of just one line:
- "BB and AP also own a large stake in Aeroflot..."
- Did you tell Valmet at any stage that?
- A. No, I didn't, because we didn't own shares in Aeroflot. Maybe we had a very small stake which was just bought on the market, but it was not -- obviously it's not the

stake that Samuelson is describing here.

Q. So do you have any knowledge of how Mr Samuelson could have obtained that information?

A. It could -- maybe he just misunderstood what Boris was telling him because Boris obviously was telling him about future project because for some time it was considered to -- there was some synergy in combining Aeroflot and Transaero activities.

We already owned Transaero, we owned a big stake in Transaero, which was actually controlling stake, but we didn't have the same in Aeroflot. So I can only presume he was maybe talking a future project to get a stake, a big stake, in Aeroflot and then do -- maybe a merger, maybe not a merger -- cooperation between two airlines. And I think that Samuelson just didn't understand him.

Q. Dr Nosova --

A. But it's my guess. Sorry, I need to say.

Q. There's just one other thing I want to ask you. It's about a document which has just been brought to my attention, although it involves dealing with a matter that I asked you about at the outset of your cross-examination.

Could we please have onscreen L(2001)1/207.

MR MALEK: 2011?

MR SUMPTION: Yes, L(2011)1/207. Have you got that? You

should have in front of you a letter of 18 February from Addleshaws to Skadden Arps.

A. Mm-hm.

Q. Right. Now, this letter is about documents in your possession of which disclosure was sought.

A. Mm-hm.

Q. And if you look on the second page of the letter, you will see that it was copied to Charles Fussell & Co.

A. Mm-hm.

Q. Now, Charles Fussell & Co, were they your personal solicitors?

A. Yes.

Q. And did they draw up the disclosure statement which was made on your behalf about documents in your possession?

A. Yes --

Q. Now --

A. -- and I of course approved it.

Q. Sorry?

A. Yes, yes.

Q. Who approved what?

A. I approved the statement.

Q. You approved it, yes.

Well now, in the last paragraph on the first page of this letter reasons are given why your documents are not at the disposal of Mr Berezovsky.

A. Mm-hm.

Q. What this says is:

"... we understand that any attempt to determine which documents held by Dr Nosova are BB Documents and which are not BB Documents... would be highly complex. Mr Berezovsky does not have, has no right to, and has no proper basis for requesting, a complete list of Dr Nosova's documents. Dr Nosova has never been Mr Berezovsky's employee, and we are informed that there is not (and never has been) any formal contractual arrangements between our client and Dr Nosova."

Now, I think you acknowledge that that statement is not correct?

A. In what respect?

Q. There was a formal contractual arrangement between you --

A. In what respect?

Q. Sorry?

A. In what respect?

Q. There was a formal contractual arrangement between Mr Berezovsky and you, wasn't there?

A. Which one?

Q. The contract under which you receive 1 per cent.

A. Something different completely. Because what is being said here that I wasn't his employee, which is correct,

and there is a reference to Logovaz times. At Logovaz I was not employee of Mr Berezovsky; I was his deputy.

Q. Did you see this document? Were you consulted about this document, Dr Nosova, and your position?

A. The dis -- this document prepared by Charles Fussell?

Q. No. This letter was copied to Charles Fussell --

A. I need to look at it again.

Q. Okay. Copied to your solicitors.

A. From Addleshaw Goddard. I don't -- to Skadden Arps, okay. (Pause)

As far as I remember, Addleshaw Goddard were dealing with my lawyer, Charles Fussell, about this letter.

Q. Yes. Now, this letter, as you can see after the signature of Addleshaw Goddard, was copied to your lawyers, Charles Fussell.

A. Yes.

Q. And what I want you to tell us is: did you see it?

A. I think I saw it when Charles Fussell received it.

Q. Yes, and you must have noticed that Addleshaw Goddard were saying that there was no formal contractual arrangement between Mr Berezovsky and yourself?

A. Yes.

Q. And you must have realised that there was a formal contractual arrangement between Mr Berezovsky and yourself: the contract that we were talking about this

morning?

A. No, because what is meant here, it's other contractual arrangements.

Q. What contractual arrangements?

A. Here the point is I was equally close to Boris and Badri, I was advising them on the affairs of the joint venture and I held documents for both of them. I had documents for Badri, I had documents for Boris, I had documents for their joint venture, and it was sometimes very difficult to identify for whom I have these documents.

So I'm not a lawyer myself but, as I was explained, it was very difficult to distinguish which documents I hold for the joint venture which is disputed, which documents I hold in some other capacity. So to avoid these disputes on whose behalf I am holding a certain document -- there were many, right? -- so the parties came to an agreement that I will be doing a disclosure as a third party. That's what it's all about.

Q. Yes, I understand what it's all about, Dr Nosova, but it's not the aspect of this letter which I wish to draw your attention to.

This letter says that there is no formal contractual arrangement between Mr Berezovsky and you, and that statement was untrue, wasn't it?

- A. It was true because I didn't work for Boris Berezovsky on a contract basis.
- Q. But you had a formal contract with him, didn't you?
- A. But it doesn't mean that I worked for him under a contract.
- Q. No. I'm not suggesting that you worked for him in the sense of being an employee. You had a formal contract with him, didn't you?
- A. Mr Sumption, I am not a lawyer and especially I am not a labour lawyer. So I still disagree with you. My opinion is different.
- Q. Is the 1 per cent agreement a contract or is it not?
- A. Many things are contracts, agreements; it doesn't mean that they cover the contractual relationship which is meant here. Here it's obvious that this is not meant here, this kind of contractual arrangement. What is meant here was: was I under control of Mr Berezovsky as, for example, somebody who was working in his office for salary or under contract? I was not; that's true.
- Q. The recital of the 1 per cent agreement records that you had agreed to assist Mr Berezovsky with his litigation, and you had, hadn't you?
- A. Yes.
- Q. You were perfectly content that this kind of statement should be made in a letter by Addleshaw Goddard to

Skadden Arps because you never wanted the 1 per cent arrangement to see the light of day, did you?

A. This is completely untrue. Completely untrue. When I was looking at it, I never linked it with that because in my opinion what is meant here completely different.

Q. And when your disclosure statement was prepared by Charles Fussell, it did not include any reference to the 1 per cent contract, did it?

A. No.

MR SUMPTION: Thank you.

MRS JUSTICE GLOSTER: Mr Sumption, could you give me, please, for the record, the page reference to the agreement that you took Dr Nosova to earlier this morning?

MR SUMPTION: Yes: it is H(A)98/43.007.

MRS JUSTICE GLOSTER: Thank you.

Yes, Mr Malek.

Cross-examination by MR MALEK

MR MALEK: Dr Nosova, can you please turn to your statement, which is at D1/09/155. Do you have that in front of you? This is a section of your statement under the heading "The Aluminium Assets" which starts at the previous page, at 225. What I would like to do is look at paragraph 231.

A. Could I ask you to refer to paragraphs because my pages

are different because it's blown in another format.

Q. Yes, paragraph 231. What you tell us is that:

"By early 2000, Boris in particular had developed a close affinity with England. He was particularly impressed with its democratic society and its fair system of law, and he respected the English judicial system, which he very often referred to as the 'British system'."

At paragraph 232 you say this:

"It was standard practice by this time for Boris and Badri to hold their assets through overseas, including offshore, vehicles and to use a western system of law as the governing law of acquisition agreements and other contracts. In the early and mid-1990s, Swiss structures and Swiss law as the governing law were widely used by them. However, by the end of 1999/early 2000, an obvious shift had already occurred to use common law offshore structures and English law as the governing law."

What is the basis of your knowledge? Were you involved in these structures that you're referring here as the financial adviser for Mr Berezovsky?

A. First of all, early and mid-'90s, it's still Logovaz.

I was deputy general manager of Logovaz and some time later first deputy general manager of Logovaz: my

responsibility was finance. I was involved in it.

I knew which structures were created and I knew we had a number of contracts, agreements, and we often used Swiss law.

Q. Is this a reference to Logovaz or is this a reference to Badri and Mr Berezovsky personally?

A. It is early and mid-'90s, Badri and Boris were at the time at Logovaz, so it's very difficult to distinguish. They owned Logovaz, Logovaz was a separate entity. So it was used by Logovaz and they know their affairs. But with -- it wasn't only Swiss; we were using other offshore structures also.

Q. So how should paragraph 232 read? Where it says, "In the early and mid-1990s Swiss structures and Swiss law as the governing law were widely used by them", should that read "widely used by Logovaz"? Or can you help us --

A. Not only Logovaz, by Boris and Badri also, because it was used by companies, offshore companies, not Russian companies but other companies: companies that we had abroad and we used for our business.

Q. You refer at paragraph --

A. And they were owners of these companies.

Q. In paragraph 232, you say:

"It was standard practice by this time..."

Do we take "by this time" to mean early 2000? Is that the period of time that you're referring to by the use of the phrase "by this time"?

A. In this paragraph I made a distinction because I was talking "By early 2000" in the previous paragraph and then I explain that it was not always like this, it changed over the time, because in the early period we were more inclined to use Swiss structures and Swiss law but with the passage of time we more and more started to use common law offshore structures and English law.

Q. If we look at the last sentence of paragraph 232:

"By the end of 1999/early 2000, an obvious shift had already occurred to use common law offshore structures..."

Can we look at the position at the end of 1999: what common law structures are you referring to there?

A. We were using, for example, British Virgin Islands.

Q. For what purpose?

A. For our offshore companies.

Q. And what were those offshore companies doing?

A. The offshore companies we had, we used them for different business: we used them for cars business that we still had, we used them for subsidiaries of our Swiss companies, for many purposes.

Q. If we look at paragraph 232, the first sentence:

"It was standard practice by this time for Boris and Badri to hold their assets through overseas, including offshore, vehicles..."

Can you explain to us why Mr Berezovsky was holding assets in offshore vehicles? What was the reason for that, according to your understanding?

- A. It started very early in the day. I explained in my witness statement: when I was invited to work at Logovaz, the initial meeting I had, it was with Boris and Badri -- with Boris and Nikolai Glushkov, and Nikolai Glushkov specifically, he explained the strategy to develop the business and a very important element of this strategy was creating offshore companies. And it was 1991/1992: not many people in Russia at that time used offshore companies and at least not efficiently. It all happened later.

MRS JUSTICE GLOSTER: Sorry, not efficiently or not officiously?

- A. Not efficiently.

So Logovaz was one of the first big companies that started to use not just shell offshore companies but offshore companies that were doing real business. You know the history, it was described how Forus was created, Anros, Forus, Andava, but there were also other offshore companies and they were satellite companies

around the subsidiaries.

MR MALEK: Would it be right to say that Mr Berezovsky's assets were invariably held through offshore companies, for example like properties, his property in England and in the south of France?

A. In the time he didn't have these properties in England or south of France so...

Q. But in the end of 1999?

A. In the end of 1999, not necessarily, because both offshore structures were used and sometimes assets were owned in the name of Mr Berezovsky or members of his family. I can't say that invariably all the interests were held through offshore companies.

Besides, we know that, for example, Sibneft was held by Mr Abramovich on oral agreement. So it was not held through offshore companies belonging to Mr Berezovsky and Mr Patarkatsishvili.

Q. At the end of 1999 what assets did Mr Berezovsky hold in his own name of a substantial nature?

A. There were some shares in his own name, both in Russia and abroad.

Q. Yes.

A. But he actually -- the shares he -- in 1996, almost everything he transferred to Badri because with Badri he also had an agreement for his protection.

- Q. That's not my question. My question is: in 1999 can you give us an example of substantial assets held in Mr Berezovsky's personal name, rather than in a trust or offshore company? Can you think of anything?
- A. He had just a shareholding in Logovaz, part of it, in his personal name because it was frozen by the Russian authorities; it could not be transferred to Badri.
- Q. And any other asset that you are aware of?
- A. There was some real estate. There was some real estate.
- Q. Where?
- A. Real estate in England. But it was not in his name, maybe it was in the name of his wife.
- Q. No, I'm asking about assets in his own name.
- A. I think TV6, while we still had that, part of it was in his own name.
- Q. And how much?
- A. This is difficult for me to remember now. But part of this stake in TV6, I think it was a significant part, it was in his own name.
- Q. Can you turn to paragraph 228 D1/09/155, where there's a section dealing with the acquisition of the aluminium assets.
- A. Mm-hm.
- Q. You've been listening to the evidence and have heard about the KrAZ assets which were acquired in early 2000.

Do you recall the press statement where Mr Berezovsky told the media that Logovaz had acquired the aluminium interest? Was that something that you were in court to listen or would you like to see the document referring to that?

A. No, I don't need to see the document because for Logo -- you know, don't forget that in Russia Yukos was very often called Menatep Group, though Yukos is Yukos. Same, assets of Logovaz, they can -- people could refer to them as Logovaz. The assets via Logovaz or shareholders of Logovaz, owners of Logovaz held interest. So till today we consider ourselves to be Logovaz Group; this is true.

Q. So the statement to the media that Logovaz had acquired the aluminium assets, do you think that was a correct statement?

A. Shareholders of Logovaz, owners of Logovaz acquired aluminium assets.

Q. Now, at 230 you explain that:

"The ['H' and 'O'] structure was put in place to offer asset protection for Boris's and Badri's oil and aluminium assets."

Do you see that in front of you?

A. Which?

Q. Paragraph 230 of your statement.

A. 230, yes. (Pause)

Yes.

Q. I'm not going to ask you questions about Mr Berezovsky's case as to whether or not he acquired the KrAZ assets in early 2000, but can you confirm this: that, as far as you are aware, no offshore vehicle of Mr Berezovsky ever held those assets?

A. Assets that were put in "H" and "O" structure?

Q. No, the assets that -- you refer at paragraph 230 about the "asset protection for Boris's and Badri's oil and aluminium assets".

A. No, I need to explain here to my Lady that the main purpose for creating "H" and "O" structure was to put there their oil and aluminium interests, but it was not the only purpose because we also put there TV6, Kommersant, some other -- and then newly acquired assets also, but it happened later, because it was not used for its primary purpose. The main purpose was to put assets which were oil and aluminium interests.

Q. Let me try and ask the question once again. As far as you're aware, no offshore vehicle of Mr Berezovsky ever acquired those oil and aluminium assets; that's correct, isn't it?

A. Before putting oil and aluminium assets into these structures, Mr Berezovsky and Mr Patarkatsishvili had to

use the right that they had according to agreements with Mr Abramovich, so that when they call for their shares, Mr Abramovich was obliged to transfer them to them.

So the structures needed to be created. It took time to create these structures because they're very complicated, very, very complex, because they were supposed to be very well protected.

MRS JUSTICE GLOSTER: Protected from what?

A. From Russian authorities. So... but after the structures had been created, the idea was to transfer -- to call for the shares of Sibneft and Rusal that were held by Mr Abramovich and transfer them into the structure. That was the idea.

MR MALEK: Let me try and make it even more simple.

Think about the KrAZ assets that were acquired in 2000. You know what I'm talking about?

A. Mm-hm.

Q. It's right to say that those KrAZ assets never found their way into an offshore company belonging to Mr Berezovsky, did they?

A. Because apparently Mr Abramovich didn't keep his obligation, didn't transfer them.

MR MALEK: I've no further questions.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, I do have some questions.

## Cross-examination by MR ADKIN

MR ADKIN: Dr Nosova, my first question is: can you hear me properly from here?

A. Not as well as the others, but I still can hear something.

MRS JUSTICE GLOSTER: Well, speak up, Mr Adkin, that's all.

MR ADKIN: Did your husband draft the 1 per cent agreement that we've been talking about this morning?

A. Yes, he did.

Q. You said that you worked for Mr Patarkatsishvili and Mr Berezovsky --

A. Yes.

Q. -- and you looked after financial matters for them?

A. Yes, exactly.

Q. And presumably you had a reasonably good awareness of their investments?

A. Yes.

Q. And that remained the position, did it, when Mr Patarkatsishvili died?

A. Yes.

Q. Was your husband also aware of their investments?

A. Not of all of them; of part of them. Here I need to explain to my Lady, if I may, that the investments were managed actually by four groups of people and entities: it was MTM and which -- and later LMC corporate service

providers, who were managing part of the assets; it was Salford investment management who were managing Rainbow Fund --

Q. Dr Nosova, I hesitate to interrupt but this isn't the question that I asked.

A. No, no, it's very relevant to your question.

Q. Well --

MRS JUSTICE GLOSTER: Let her finish, please, the explanation. But keep it short, please, Dr Nosova.

A. Yes. They were managing Rainbow Fund and some other assets. There was Mr Anisimov, Mr Anisimov who also managed a very, very big group of assets. And there was also Joseph Kay, who managed a group of assets.

So that's the question -- the answer to your question, Mr Adkin.

MR ADKIN: And one of the assets that Mr Anisimov, you say, managed on behalf of Mr Berezovsky was Metalloinvest, wasn't it?

A. Yes, it was.

Q. Yes. Could you please take up bundle H(A)95, and turn to page 56 H(A)95/56. Do you have that?

A. Yes.

Q. This is the last in a number of draft deeds between Mr Patarkatsishvili and Mr Berezovsky.

A. Mm-hm.

- Q. And it was disclosed, along with five others, by Streathers, which is your husband's firm.
- A. Mm-hm.
- Q. We are told that the date upon which the deeds were produced -- and this one, one can see from page 56 -- is the handwritten date at the top. Do you see that? "4.9.2007".
- A. Is it one of the versions?
- Q. This is the last version in time.
- A. The last version?
- Q. This is the last version.
- A. Because there were several versions.
- Q. There were indeed several versions. Do you remember these documents?
- A. Yes, I do.
- Q. And do you remember being involved in having produced these documents?
- A. Yes, I remember. Yes.
- Q. Now, these deeds purport to record an agreement between Mr Berezovsky and Mr Patarkatsishvili to separate their various business affairs. Do you recall that? Do you recall what they purport to say?
- A. Not exactly.
- Q. Well, you can take it from me that that is what they purport to say but, as we understand it, Mr Berezovsky

says that these deeds are in fact false and that they purport to record an agreement which was never in fact made between him and Mr Patarkatsishvili.

Do you agree with that analysis?

A. I think the most important thing to say here is these deeds were never signed. Moreover, Mr Berezovsky never seen these deeds. It never come to that, right? It was idea of Badri and he was thinking of whether it is possible for asset protection to create some document, without distorting reality, legal document that could distance Boris again from the assets.

Q. Can I go back to my question, please, Dr Nosova.

Do you agree that these deeds purport to record something that did not actually happen?

A. When these deeds were being created, it wasn't clear whether something will happen or not because it would depend on the principals because these, when -- if they were progressed to the point when they became more or less complete documents, would have been given for consideration to the principals. It was never given to Badri -- to Boris. Badri was looking at them several times.

And with this very last deed, on 4 September -- if it is the last deed; I just take your word for it -- Badri came up with something that was impossible to do.

Can I tell my Lady what it was?

MR ADKIN: Dr Nosova, I don't want to --

MR RABINOWITZ: My Lady, before this conversation carries on much further, Mr Adkin of course is here just to deal with the overlap issues. I don't know where he's going with these questions. This is an issue, the effect and status of this document -- your Ladyship will have heard it referred to, I think, as the economic divorce -- which is one for the Chancery trial, not for this trial.

Now, again, I don't know where my learned friend is going with these questions but I do need to put down that marker because I think he has been, or at least on the verge, going over a line and I just want to make that clear both to your Ladyship and to my learned friend.

MRS JUSTICE GLOSTER: Yes. Mr Adkin, I am very conscious that I am not going to be deciding Chancery issues that are not overlap issues.

MR ADKIN: My Lady, I am very conscious of that too and I want to say to your Ladyship and to the witness that for the purposes of this cross-examination I'm perfectly happy to accept, for these purposes only, Mr Berezovsky's case that these are false documents and that they do not record something that actually happened. That doesn't matter for my --

MR RABINOWITZ: With respect to my learned friend, that sort of pejorative way of putting it I think really doesn't help anyone. If he wants to say these documents were never agreed and never signed, that's fine. If he wants to say that Mr Berezovsky says that he didn't actually finally agree to what's here, that's fine. It was never put to Mr Berezovsky. But if he's going to go further and put it in a pejorative way, in my respectful submission --

MRS JUSTICE GLOSTER: I don't know that he was putting it in a pejorative way.

MR RABINOWITZ: I think he was suggesting they were false documents.

MRS JUSTICE GLOSTER: That's Mr Berezovsky's case.

MR RABINOWITZ: No, that's the way my learned friend is characterising Mr Berezovsky and it's that that I object to.

MRS JUSTICE GLOSTER: Okay. Well, what is clear is that they're draft documents and the witness has told us that they were never signed up and that is common ground.

MR RABINOWITZ: Indeed.

MR ADKIN: Indeed.

MRS JUSTICE GLOSTER: And we don't need, I think, to go into whether there was or was not any sort of agreement between the parties which these documents, if signed,

might have reflected.

MR ADKIN: My Lady, absolutely, and I don't intend to do that in any way because I'm very conscious that there is a line over which I must not tread.

What I want to ask is this: presumably, Dr Nosova, whatever status these documents have, the purpose of your input into these documents was to make them look as genuine as they could do by accurately recording the status of the investments between Mr Berezovsky and Mr Patarkatsishvili?

- A. That was not the purpose and that was not my role, to make something good -- look good or real when it was not. My role was always different. And when I told Badri that it's impossible to write in these documents what he thought was possible, the whole project was abandoned.
- Q. Can I ask you, please, to take up page 59 of the bundle that you're in H(A)95/59. Now, as we understand the documents, you will see on page 59 and page 60 two schedules and they set out various investments. As we understand the documents, these schedules purport to set out the investments which were made between Mr Patarkatsishvili and Mr Berezovsky.
- A. These schedules do not purport to set out anything because it's only part of the investments and it is only

a small part of the investments. The schedules were never complete.

MRS JUSTICE GLOSTER: What, Mr Adkin, I need to know before I let this cross-examination go further is why these draft documents are of relevance to the overlap issues.

MR ADKIN: My Lady, they are of relevance because I am going to put to the witness what is in these schedules and what is not in these schedules. I'm going to suggest to the witness that there are certain significant investments missing from these schedules which would otherwise be in them if Mr Berezovsky had an interest in Rusal or the proceeds of sale of Rusal or the investments purchased with those proceeds of sale.

MRS JUSTICE GLOSTER: Well, the value of a draft document is questionable, isn't it?

MR ADKIN: Well, my Lady, there are three documents which have schedules, all of them are the same --

MRS JUSTICE GLOSTER: Right. Well, I'm going to let you put the question.

MR ADKIN: Dr Nosova, you can take it from me that in three of the six draft deeds that have been produced the schedules are exactly the same, save that one investment has moved from the second schedule to the first schedule.

A. Okay.

Q. What I want to ask you is this: nowhere, I suggest to you, in either the first schedule or the second schedule is Metalloinvest mentioned as an asset that was held as part of the joint venture between Mr Berezovsky and Mr Patarkatsishvili, is it?

A. My Lady, could --

Q. Do you agree with that?

A. I agree that it's not mentioned. There is a reason.

Q. Well, we'll come on to the reason.

A. I need to tell --

Q. Nowhere in either of the schedules --

MR RABINOWITZ: With respect to my learned friend, he asks a question: the witness is trying to answer it and explain the position and he won't let her do it.

MRS JUSTICE GLOSTER: No, well, I'm going to allow the witness, once the alleged admitted assets have been identified, to give her reasons why she says those assets were omitted from this draft document.

THE WITNESS: Okay, thank you.

MR ADKIN: My Lady, absolutely.

MRS JUSTICE GLOSTER: So just identify which assets you say were missed from these schedules, Mr Adkin, please.

MR ADKIN: Nowhere in either of these schedules is any other asset which was acquired with the \$585 million paid out from the second Rusal sale in July 2004 identified, is

it?

A. No, this is not true because here is identified Rainbow Fund and part of the investments in Rainbow Fund were made with the Rusal monies.

But it's not the main answer to your question. I'll answer you when your Lady allow me.

MRS JUSTICE GLOSTER: Well, just identify the assets you say were not in these schedules.

MR ADKIN: Well, the assets that Mr Berezovsky says in his main Chancery action were acquired with the proceeds of that \$585 million include Metalloinvest, Kulevi Port, a Mosselprom poultry factory; none of those is mentioned in any of these schedules, is it, Dr Nosova?

A. Is it time to give full answer or should I --

Q. Do you agree with that?

MRS JUSTICE GLOSTER: Just agree whether they're mentioned or not, will you?

A. They're not mentioned.

MR ADKIN: Now, you've been wanting to give your explanation as to why; would you do so, please.

A. Yes. In the very beginning, my Lady, do you remember I insisted to explain that there were four groups of people and entities who were managing assets: Valmet, which became MTM and then LMC took over; Mr Anisimov with his people; Mr Joseph Kay; and Salford.

So this, as I mentioned here, it was the knowledge of LMC. Had these drafts ever come to completion, then Mr Anisimov, Mr Joseph Kay and Mr Salford would have been requested to complete the schedules and then there will be Metalloinvest, Kulevi Port, this poultry factory, all the assets managed by Salford, Fisher Island and the other assets managed by Joseph Kay; everything.

That's the answer.

- Q. Well, none of the assets in the first schedule was managed by LMC at all, was it?
- A. What?
- Q. None of the assets in the first schedule was managed by LMC at all, was it?
- A. These are the assets that we had in Russia and that we have sold. Transaero, the companies that received the proceeds of transfer were managed by LMC. KPH was all managed by LMC. Spartak Moscow, there was a kind of promissory -- it was commercial paper, it was also received by a company managed by LMC. Forus, there was a role of LMC in this transaction. Latvia TV too. Avtoconsortium also. So all these were within the knowledge of LMC.

And the same assets -- where is this other schedule? Could I have a look at that?

MRS JUSTICE GLOSTER: The second schedule, you mean, in this document?

MR ADKIN: Page 60 H(A)95/60.

A. These were projects either managed by LMC or projects into which LMC made payments, they were on records, they knew about this project. For example, TG Project, B Media, these were projects managed by Salford, but LMC, formerly MTM, before them. They have made so many payments into these projects that they knew about it.

Q. Well, Project Embassy, that was a Salford project, was it not?

A. It was Salford, that's what I'm saying, but LMC --

Q. And B Media was also a Salford project, wasn't it?

A. Yes.

Q. So when you said a few moments ago that these were all LMC projects and that the reason why the Metalloinvest and Kulevi weren't mentioned is because this was just limited to LMC, that was not correct, was it, Dr Nosova?

A. No, you are distorting my words or maybe you just, sorry, didn't hear what I said, because I have the problem with the sound.

I said that LMC were aware of some of these projects that were actually managed by Salford because LMC were either paying money or their predecessors paid money to this project, quite big amounts, and it was in LMC's

databases; that's why LMC knew about it. But there were other projects managed by Salford where cashflow didn't go through LMC. They're not here. Kulevi Port, Metalloinvest, the cashflow never went through LMC. They're not here.

So the idea was if this document ever came to completion then all these four groups of people who were managing investments, including Mr Anisimov, Joseph Kay, Salford and LMC, just to check whether they didn't miss anything, it would have been completed. This is not full schedules at all; it's just a hint.

Q. I suggest, Dr Nosova, that the reason why the assets -- Metalloinvest, Kulevi, Mosselprom -- that were derived from the second Rusal sale are not in this document is because those were not assets that Mr Berezovsky or Mr Patarkatsishvili ever regarded as being Mr Berezovsky's or that Mr Berezovsky had an interest in.

A. Completely wrong.

MR ADKIN: My Lady, I have no further questions, other than formally to adopt the lines of cross-examination.

MRS JUSTICE GLOSTER: Right, thank you. Mr Mumford?

MR MUMFORD: My Lady, I have no questions.

MRS JUSTICE GLOSTER: Thank you. Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Just one question, Dr Nosova.

You were asked earlier today whether you were personally involved in making the agreements of 1995 and 1996, whether you were involved personally in the auctions in 1997 or indeed personally involved in the acquisition of the aluminium assets, February 2000, or indeed in Rusal, and you explained that you were not personally involved in this.

It was then suggested to you that the information in your witness statement that you give about these transactions is all knowledge that would have come to you simply by being told about these things by Mr Berezovsky and Mr Patarkatsishvili, and you made clear that that was not right and you had knowledge about these matters outside of the fact that they were mentioned to you by Mr Berezovsky and Badri.

Can you just explain the basis for that answer, please?

A. It was -- first of all, Boris and Badri, they were quite open with me about these meetings. They told me a lot. Second, I witnessed dealings between these people in these assets and also I participated in events.

Can I make an example?

Q. Please.

A. We had a meeting in Israel in 2004 where Badri invited

me to go with him and Dmitry Bosov to the house of Lev Chernoi and what the agenda for Mr Bosov was, he claimed that Badri, Boris and Mr Abramovich owed him commission for the acquisition of aluminium assets in 2000 and he wanted this discussion to be in the presence of Lev Chernoi because Lev Chernoi was also one of the sellers. And they discussed in front of me, people who were party to this transaction, who were sellers of these aluminium assets, because you know Lev Chernoi was a seller, Dmitry Bosov was a seller, and they discussed in front of me how they sold these assets to Badri, Boris and Mr Abramovich.

So I think it's also knowledge. This is just one of the examples. I may continue; I have many.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: Thank you, Dr Nosova.

MRS JUSTICE GLOSTER: Yes, I have one question for you.

The commission agreement that you have entered into with Mr Berezovsky, have you received any payment under it already in respect of any of the litigation recoveries?

A. No.

MRS JUSTICE GLOSTER: Nothing in respect of the North Shore litigation?

A. Nothing.

MRS JUSTICE GLOSTER: Very well. Thank you very much indeed for coming to assist the court.

THE WITNESS: Thank you. Thank you very much.

MR SUMPTION: My Lady, on that last point, we understand that actual recoveries on the North Shore litigation have been minimal.

MRS JUSTICE GLOSTER: Right. Thank you.

Right, next witness I think, please.

MR RABINOWITZ: Thank you, Dr Nosova.

MRS JUSTICE GLOSTER: Thank you very much.

(The witness withdrew)

MR RABINOWITZ: Mr Voronoff.

MR VLADIMIR VORONOFF (affirmed)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Voronoff.

A. Good afternoon.

Q. Mr Voronoff, just to confirm, you don't have a mobile phone or any other electronic device with you?

A. No, no, it's not even with me.

Q. Can I ask that you be given bundle D2, please, opened at tab 15 D2/15/73. You should, I hope, see a document titled "Witness Statement of Vladimir Voronoff" there.

A. I do.

Q. And can you go to page 88 of the bundle D2/15/188.

You should be looking at the numbers on the bottom right-hand corner.

A. I'm here.

Q. Can you confirm that that's your signature?

A. It is.

Q. And that this is your only witness statement in these proceedings?

A. That's right.

Q. Can you confirm that the contents of your witness statement are true to the best of your knowledge and belief?

A. Yes.

MR RABINOWITZ: Thank you. Can you wait there, please.

Cross-examination by MS DAVIES

MS DAVIES: Mr Voronoff, you first met Mr Berezovsky in 1994?

A. Correct.

Q. And after meeting him, you relatively quickly started assisting him in various ventures; is that right?

A. Generally, yes.

Q. Mr Goldfarb, do you know him?

A. Yes.

Q. He describes you as being "Mr Berezovsky's point man in Europe by late 1995", by which I understand him to mean a point of contact in Europe for Mr Berezovsky. Would

you agree?

A. To a large extent, yes. Not fully, though, because Europe is large.

Q. So parts of Europe, including the UK?

A. Definitely. Definitely including the UK, yes.

Q. And as a result did you see Mr Berezovsky and communicate regularly with him over the years that followed?

A. That's right.

Q. And you travelled extensively together?

A. We did, especially in the '90s.

Q. And you quickly became very good friends?

A. Well, let's not define "quickly" but, yes, over a certain period of time we became very good friends, very close.

Q. In your statement at paragraph 13 D2/15/76 you say:

"... we quickly became... close."

A. Yes, but I mean, we can go into discussion how quickly it was.

Q. Okay. And you remain --

MRS JUSTICE GLOSTER: Well, I don't think that's relevant.

MS DAVIES: Sorry, my Lady.

You remain close friends now?

A. We do.

Q. And you were also a close friend of Mr Patarkatsishvili

from 1997?

A. Probably even before then. But very close, yes.

Q. And so presumably you also saw and communicated regularly with Mr Patarkatsishvili between 1997 at least and his death?

A. That's right.

Q. Now, you've been based in London since 1991; is that correct?

A. Yes.

Q. Is one of the companies you're associated with a company called Stargate Management Limited?

A. Yes.

Q. And did that company share offices with Mr Berezovsky or Mr Fomichev in Savile Row for a time in 2000?

A. It did for a short time, yes. But not with Mr Fomichev; Mr Berezovsky, yes.

Q. Mr Berezovsky.

Did Mr Berezovsky purchase a property for your use in 2002?

A. In -- you mean an apartment?

Q. A property.

A. Yes.

Q. Is that the flat in Holland Park Avenue in which you state you currently live?

A. That's right.

- Q. And does Mr Berezovsky still own that property?
- A. For all my knowledge, yes.
- Q. Would it be fair to say you have strong feelings of loyalty to Mr Berezovsky?
- A. Well, we are very close friends.
- Q. Do you have any arrangement whereby you stand to benefit financially in the event that Mr Berezovsky succeeds in his claim?
- A. No.
- Q. Given your close friendship with Mr Berezovsky, you have no doubt discussed his claims against Mr Abramovich with him on several occasions?
- A. Yes.
- Q. Many times?
- A. No, not really, you know. Actually few times, very few times.
- Q. And have you been present in court?
- A. From -- as apart from today?
- Q. Apart from today?
- A. One day.
- Q. Which day was that, Mr Voronoff?
- A. Well, it was when Mr Berezovsky was giving evidence, it was last week, but I can't remember. But I can check, if you want me to check.
- Q. Can you remember what subjects were being covered?

A. It was already Rusal, it was not -- it was not Sibneft anymore, it was already Rusal.

Q. Okay, thank you. We can locate it.

Now, when did you first meet Mr Abramovich?

A. I think it was '95. I'm pretty sure it was '95.

Something is wrong with the glass. The glass is broken. Sorry. It's a mess here with the water.

Q. Do you need to clear that up?

A. Well, I'm being helped by somebody. The plastic is not really... is not very enduring. I'm okay.

Q. I don't want you to get all wet, Mr Voronoff.

A. Yes. Well, I am already so...

Pray continue.

Q. So we were just on when you first met Mr Abramovich.

A. I think it was in 1995.

Q. And was that through Mr Berezovsky at the Logovaz Club?

A. It was specifically through Mr Berezovsky who introduced us.

Q. And you did not have a business relationship with Mr Abramovich thereafter yourself?

A. Business relationship, no.

Q. In 1995 -- and I'm focusing on 1995 for the moment and the period prior to Sibneft's creation -- is essentially what happened that you would bump into Mr Abramovich sometimes when you were at the Logovaz Club wanting to

see Mr Berezovsky?

A. Yes, now I will be true: and I think also abroad sometimes when we travelled together, we travelled with Roman or, you know, see him abroad from time to time. But, yes, essentially it's true.

Q. But you did not actively participate in any meetings between Mr Abramovich and Mr Berezovsky, did you?

A. Not specifically, I mean, unless it was a special need for me to do so. What happened was, like in the case of Dr Nosova, you know, when I was in a group of people, things were discussed, you know, which did not necessarily have anything to do with me but, you know, I guess for a reason of being trusted I was never asked to leave the room, I was just there, you know, and then we would discuss other things.

And once or twice it was specific meetings, you know, with Boris and Roman and myself, specifically called, but that was rare.

Q. You were not yourself participating -- as in being directly involved in the discussions rather than just being in a room when they were going on -- in any detailed discussions between Mr Berezovsky and Mr Abramovich about the Sibneft project, were you?

A. No. I was not a participant, active participant.

Q. Now, you do tell us in your statement, and it's

paragraph 25 which is at page 79 D2/15/79 --

A. Just one second.

Q. -- that you had a small role in the project to create Sibneft; in particular you approached some contacts in the west to try and find funding.

A. That's correct.

Q. That was at Mr Berezovsky's request, was it?

A. Well, we had a couple of meetings before then with Roman as well, but it was essentially with Mr Berezovsky, you know.

Q. You see, Mr Abramovich's evidence will be that he wasn't aware of the steps you were taking in relation to western investors and indeed he doesn't recall meeting with you in 1995.

A. Well, that's -- I don't think his memory serves him well but I do remember very well.

Q. Now, you say that, as part of the steps you took, you organised and attended a meeting between Mr Berezovsky and Mr George Soros.

A. Not with George Soros, no.

Q. Well, if you could look at paragraph 25.

A. Yes.

Q. The third sentence:

"I approached a number of investment banks,  
including Morgan Grenfell, Rothchild's, George Soros and

some others, and organised meetings that Boris and I attended."

You weren't intending to indicate by that that you were at the meetings between Boris and any of those parties; is that right?

A. Yes, I was; not with George Soros but everybody else mentioned here and some others which are not.

Q. In the event, the efforts you made to attract western investment proved unsuccessful?

A. Totally.

Q. No western investor was prepared to take the risk?

A. That's -- unfortunately that statement is entirely correct.

Q. Now, apart from that, you were not involved yourself in a project that led to the creation or acquisition of Sibneft, were you?

A. No.

Q. And you didn't have any knowledge of which companies or which persons had acquired shares or by which auction, or anything like that?

A. Well, I mean, I knew about the auctions, I knew about the proceedings as were told me in passing by Boris and Badri mostly, and some other people like Alexander Mamut, for example, who is not mentioned here but we discussed it with him. But I was not directly involved,

I was not a participant to those. It was all sort of secondhand information, if you will.

Q. Your principal source of information in this respect was presumably Mr Berezovsky or Mr Patarkatsishvili?

A. Correct.

Q. Now, you tell us in paragraph 29 of your statement, over two pages, on page 81 D2/15/81, that your understanding was that Mr Berezovsky and Mr Patarkatsishvili owned 50 per cent of Sibneft.

A. Yes.

Q. Do you mean to indicate by that that you understood that at some point they directly owned 50 per cent of Sibneft, in the sense of either owning it themselves or through corporate entities that they owned?

A. Neither really. You know, I didn't really think of how exactly. I mean, I was pretty sure -- if I was questioned at that time, I would be pretty sure to say that not directly, but in actual fact, so de facto rather than de jure.

Q. And are you saying that that is the conclusion you drew from behaviour and meetings you witnessed or are you saying it's something you recall specifically being told by Mr Berezovsky or Mr Patarkatsishvili?

A. I recall specifically being told by Boris and Badri on many occasions but not like, "Look, I want you to sit

down and listen to this, I'm going to tell you now". It was really pretty much common knowledge. It was a fairly close circle of people and certain things were just taken entirely for granted and this one was -- was one of them.

Q. You were taking it for granted that they had an interest in Sibneft?

A. Well, no, no, not for granted. I mean, we were told but it's not -- like I said, it was mentioned many times in various contexts, in many conversations, you know, so obviously I took it like that.

Q. It must now, in 2011, be very difficult to distinguish any one conversation you had with Mr Berezovsky or Mr Patarkatsishvili with any other?

A. Well, it's hard. But, you know, it was mentioned on numerous occasions because I spent a lot of time with them, you know, and -- with Boris and Badri and we'd talk about a lot of different things. Sibneft was definitely one of them, many times, and the general nature of the relationship with Roman was discussed many times. And so it was really something that was mentioned numerous times.

Q. Now --

A. This partnership, and the word "partnership" was always used.

- Q. The word "partnership" was used?
- A. Yes.
- Q. You don't tell us that in your witness statement, Mr Voronoff.
- A. Well, I mean -- okay, I don't tell you this in the witness statement.
- Q. And nor, in fact, do you say in your witness statement that you were told by Mr Berezovsky or Mr Patarkatsishvili that they had a 50 per cent interest in Sibneft; what you say is that it was never suggested that they didn't.
- A. No, it was -- they said specifically many times that they owned 50 per cent of Sibneft and their relationship with Roman was, you know, 50/50 and they were partners.
- Q. Now, your evidence is that you continued to meet Mr Abramovich from time to time after 1995, in particular in France and sometimes in London.
- A. France, London, Moscow, you know, yes.
- Q. Over what period do you say you had such meetings with Mr Abramovich?
- A. Well, they pretty much stopped, I think, in the fall of 2000.
- Q. And you tell us in paragraph 33 of your statement D2/15/82 that you recall Mr Abramovich saying:
- "... he did not like Mr Berezovsky's political

activity... and wanted [him] to quieten down..."

A. That's right.

Q. When are you saying you had such conversations with Mr Abramovich?

A. Well, it was obviously in the late '90s. I think it was in Moscow he mentioned -- again, we'd talk about different things and he was -- Roman was concerned about that.

Q. You say it's obviously in the late 1990s. You've just told us that you continued meeting Mr Abramovich until the fall of 2000. Isn't it more likely it was in the fall of 2000, when Mr Berezovsky's difficulties with Mr Putin had surfaced?

A. No, no. That's -- surely not, because I don't remember meeting Roman anytime in the summer of 2000. You know, it may have been. But, I mean, those conversations were way before, when Boris was actually very much -- how shall I put it? -- well, you know, he's a visible figure, he was a political figure in Russia, he was giving a lot of interviews, and that's his nature and that's his political, you know, MO, but Roman didn't like it one single bit.

Q. You see, Mr Abramovich's evidence is that he didn't have any such discussions with you.

A. Well, I don't know what we've done to accept that

Mr Abramovich was always a very busy man and he had, you know, zillions of discussions with different people and he would never remember them all.

Q. Well, he wasn't concerned about Mr Berezovsky's political activity until 2000.

A. Yes, he was.

Q. Now, you also tell us in your statement that you attended Mr Berezovsky's birthday party in Cap d'Antibes in January 2001.

A. Yes.

Q. Is that the only birthday party of Mr Berezovsky held in Cap d'Antibes that you've attended over the years or have there been others?

A. Well, that one actually I remember very well. I think there were no others, no. I mean, I think his -- after that he was really confined to this country and all the birthday parties, you know, whether I attend them or not, were held here.

Q. Do you attend other birthday parties here?

A. Oh yes.

Q. Was --

A. Whenever I was in town, of course.

Q. Was the birthday party in January 2001 the first time you'd seen Mr Berezovsky since he fled Russia or had you seen him on other occasions between --

A. I saw him -- I see him actually quite frequently. So in the fall of 2000 I saw him quite a few times, you know, and it's just -- we do see each other often.

Q. How many people were present at the party in January 2001?

A. I would say, as a guess, about 50.

Q. Now, you tell us in paragraph 45 of your statement D2/15/85 that at this party in 2001 Mr Berezovsky told you about a meeting that he had had with Mr Abramovich in the south of France:

"... in which Mr Abramovich [had] claimed to be acting as a messenger for President Putin, and had used [Mr Glushkov's] release from prison as a bargaining chip, along with [making] threats [about] ORT..."

Did Mr Berezovsky tell you when that meeting had taken place?

A. Yes. He said "a few weeks ago" -- well, see -- yes, "a few weeks ago", something like this. December, I think it was.

Q. Before or after Christmas?

A. It had to be after Christmas, I think, or during Christmas time, because just before Christmas time we were together in another country.

Q. Which country were you in together with Mr Berezovsky?

A. US.

Q. Sorry?

A. US.

Q. In the US. You travelled to the US with him?

A. Yes.

Q. And he didn't tell you about this meeting then?

A. Not at that time, no.

Q. When did you travel with Mr Berezovsky to the US? Was that for the launch of the International Foundation of Civil Liberties in --

A. No, it was not that. I think that was the -- that was the only time we actually skied together, I think was December 2000.

Q. You went to Aspen with him?

A. Yes.

Q. And how long were you in Aspen with Mr Berezovsky?

A. About a week. I can check my diary.

Q. And that covered the Christmas period, didn't it? It was the week before Christmas --

A. No, just -- I think it just ran up to the Christmas period.

Q. Just running up to Christmas?

A. Yes.

Q. And you were skiing with him and therefore spent a lot of time with him every day, did you?

A. Well, spent a lot of time, yes. Talked a lot, probably

no, because we mostly skied. But we were together, yes.  
And I stayed in a different residence.

Q. But you met him for lunch --

A. Yes.

Q. -- and you generally socialised with him during that period?

A. Yes.

Q. Now, coming back to the birthday party in January 2001, when you say that at that meeting Mr Berezovsky told you about Mr Abramovich's visit to the south of France, what are you relying upon to pinpoint it as being at that meeting as opposed to any other conversation you had with Mr Berezovsky?

A. Well, that really sticks out in my mind because I didn't see Roman there and that was a surprise because Boris was close to Roman, they saw each other a lot, and obviously there were huge business interests together, partnerships, as I said. So when I didn't see Roman there, it kind of was strange. So I initiated the conversation.

Q. But you're not relying on a document, are you, a record you made or anything like that?

A. No. I make records of my comings and goings but not any conversations I have.

MRS JUSTICE GLOSTER: Ms Davies, will you choose your moment

for the break, please.

MS DAVIES: Of course. Just now, my Lady.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

Don't talk about the case or your evidence to anyone.

THE WITNESS: Of course.

(3.18 pm)

(A short break)

(3.35 pm)

MRS JUSTICE GLOSTER: Yes, Ms Davies.

MS DAVIES: Mr Voronoff, just before the break you told me you could check your diary in relation to the dates of your ski trip. Have you previously been asked to check your diaries for December 2000?

A. Yes.

Q. And did that not reveal the date of your ski trip?

A. Yes.

Q. And are those diaries available to Addleshaws?

A. Yes.

Q. Who else was in Aspen with Mr Berezovsky during your ski trip?

A. With Mr Berezovsky or with me or in our group?

Q. Who else did you meet when you met with Mr Berezovsky? Who else did you come across?

A. Boris was with his wife and his -- I think his friend

came for a couple of days from New York, but that's all, and I was accompanied by a girlfriend.

- Q. Which friend was that, Mr Voronoff?
- A. A gentleman called Ruslan -- not Ruslan Fomichev -- who lived in New York. He came for two/three days, didn't ski very well, but he left.
- Q. Coming back to January 2001, presumably you've spoken to Mr Berezovsky about Mr Abramovich's visit to Cap d'Antibes on more than one occasion?
- A. No, not really. I was -- that was a major specific question and then I got the answer I did not expect. But after that we referred to -- generally to Roman's turnaround and his role in the whole affair many times, but not -- I was not given an account of Cap d'Antibes for any -- in any more detailed fashion.
- Q. I wasn't suggesting that it was in any more detail but it must have come up again in the many conversations you've had with Mr Berezovsky?
- A. It did, a few times, yes.
- Q. Given that you've spoken to him so regularly, it must be possible, mustn't it, that what you're recalling in your witness statement is a conversation you had with Mr Berezovsky after 2001?
- A. I didn't get that at all.
- Q. Now, you're aware that Mr Abramovich's case in this

action is that the meeting you say Mr Berezovsky told you about did not take place and indeed couldn't have taken place as he was in Russia at all relevant times after Mr Glushkov's arrest?

A. Yes.

Q. Now, if that's right, that the meeting didn't take place, that leaves one of two possibilities about your evidence and I just want to identify them and give you an opportunity to comment, if I may.

A. Please.

Q. The first is that Mr Berezovsky never told you about any such meeting at his birthday party in January 2001, as the event you're describing never happened; or the second is that Mr Berezovsky made it up and did tell you. What would your comment be?

A. I would say neither is true.

Q. Now, you also say that in the summer of 2001 you were told by Mr Patarkatsishvili about a meeting he had had with Mr Abramovich in Munich in the summer of 2001. Do you recall that? It's paragraph 49 of your statement D2/15/87.

A. Yes, I recall that.

Q. And you suggest that at this meeting Mr Patarkatsishvili told you that Mr Abramovich had suggested that if they didn't sell Sibneft, it would be taken away from them,

whereas if they did sell Sibneft, Mr Glushkov would be released?

A. Yes, and they would get at least some money.

Q. And you say that before then you'd also been told by Mr Berezovsky and Mr Patarkatsishvili that they were being put under pressure coming from Mr Abramovich to sell their shares in Sibneft?

A. That's right.

Q. Now, those events are events that you've no doubt discussed with Mr Patarkatsishvili on a number of occasions before his death in 2008?

A. Yes.

Q. And also with Mr Berezovsky?

A. Not too many times. But they were referred to, you know, a number of times during our meetings after that.

Q. And, again, it must be impossible, mustn't it, Mr Voronoff, now to distinguish between what you've been told over the years by Mr Berezovsky from what you've been told over the years by Mr Patarkatsishvili?

A. No, it's not impossible at all. I happen to have a very bad memory for faces but a pretty good memory for dates and events.

Q. But conversations with friends, when you were told in one year rather than another?

A. No, I remember very well. I mean, the conversation with

friends, very often I can pinpoint them actually to pretty much the time of year, you know, and very often to months, years afterwards.

Q. You were here this morning when Dr Nosova was giving her evidence?

A. I was.

Q. And you recall that she confirmed when Mr Patarkatsishvili was interviewed in June 2005 by solicitors acting for Mr Berezovsky he said that there had been no specific mention of Mr Glushkov at the Munich meeting. Do you recall that evidence?

A. Not really. But --

Q. Well, Dr Nosova accepted this morning that that's what Mr Patarkatsishvili had said at the meetings in June 2005.

A. That there was no connection to --

Q. No specific mention of Mr Glushkov at the Munich meeting.

MRS JUSTICE GLOSTER: Well, she accepted that that's what the note said and that's what he had said at the meeting.

A. No, I recall very, very well that Badri specifically referred to Nikolai's fate in conversations with me. And I saw him and talked to him a number of times during the -- well, I talked to him regularly until his

untimely death but, I mean, at that time as well.

Q. You recall that Mr Patarkatsishvili mentioned Mr Glushkov's fate but what I'm suggesting to you Mr Patarkatsishvili didn't mention to you in the summer of 2001 is that at the Munich meeting Mr Abramovich had expressly mentioned Mr Glushkov and made a threat about him.

A. No, no, absolutely. He expressly mentioned it. He specifically told me he was very angry about this because already Boris and Badri and we all, in a way, who were friends of Nikolai, and I am one as well, we were let down severely in fact, you know, deceived.

Q. You feel deceived, do you?

A. Yes, absolutely, because the -- well, yes, the answer is yes, because the promise was that Nikolai would be out by Christmas 2000, he wasn't, and then the Nikolai card was dangled -- character was dangled again.

MS DAVIES: Thank you very much, Mr Voronoff.

MR MALEK: I have no questions, my Lady.

MR ADKIN: My Lady, no.

MR MUMFORD: No, my Lady.

MRS JUSTICE GLOSTER: Right, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Just one question, Mr Voronoff.

It was suggested to you by Ms Davies when she was

asking you questions -- this is at [draft] page 140 -- that you do not say in your witness statement that you were told by Mr Berezovsky or Mr Patarkatsishvili that they had 50 per cent and she said:

"... what you say is that it was never suggested that they didn't."

Can I just ask you to go to your witness statement, paragraph 29 on page 81 D2/15/81.

A. Yes.

Q. Do you see the sentence:

"... it was my understanding from the conversations for which I was present and which I had with Boris, Badri and Mr Abramovich, that Sibneft was owned 50% by Boris/Badri and 50% by Mr Abramovich."

Does this assist you as to whether the suggestion that was made to you about what is and isn't in your witness statement was an accurate one?

A. Well, what was accurate was that Boris told me many numerous times, and Badri did, that "we", meaning Boris and Badri, owned 50 per cent of Sibneft, in so many words.

MR RABINOWITZ: Thank you very much.

MRS JUSTICE GLOSTER: I have no further questions. Thank you very much indeed for coming along and giving your evidence.

THE WITNESS: My Lady.

(The witness withdrew)

MR RABINOWITZ: My Lady, we have one more witness. I don't know how long he will be but given that we're going to break until next week --

MRS JUSTICE GLOSTER: Well, I don't want to waste half an hour or three-quarters of an hour that we have today.

MR RABINOWITZ: Mr Goldfarb.

MR ALEXANDER GOLDFARB (affirmed)

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Goldfarb.

A. Hello.

Q. Again, Mr Goldfarb, can you confirm that you don't have any mobile phones with you or electronic devices?

A. No.

Q. Can I ask that you be given bundle D1 open at tab 3, please.

A. Yes.

Q. And if you turn, please, Mr Goldfarb, to page 56 of the bundle, page 19 of your statement D1/03/56.

A. Yes.

Q. You should see a signature there. Can you confirm that that's your signature?

A. Yes, I do.

Q. Thank you very much.

Can I just ask you to go back to the first page of your witness statement D1/03/38.

A. Yes.

Q. As I understand it, there is an issue both with your current address and indeed with the age that you give there at the time you made the statement.

A. Yes.

Q. Can you just explain?

A. Well, I've moved from this address since, actually it was before my last statement, third statement, so the current address is different. It's 71 Knapps Road, with K, Stephentown, New York, 12168 zip code.

And with regard to my age, the statement was given on my birthday. So I, by mistake, said that I'm 63 where I -- whereas I should have been 64 on that day.

Q. All right. Subject to those two corrections, can you confirm that the contents of your first witness statement are true to the best of your knowledge and belief?

A. Yes, I do.

Q. Thank you. Can you then be given bundle D4, please, open at tab 5.

A. Yes, I have it.

Q. And if you go in this tab to page 27 of the bundle, page 5, I think, of your statement D4/05/27.

A. Yes.

Q. Again, you see a signature: can you confirm that that's your signature?

A. It's mine.

Q. And can you confirm that subject to, again, the change of address, that the content of this statement are also true to the best of your knowledge and belief?

A. I do.

Q. Thank you. And then you have a third witness statement which, if you go to tab 10, hopefully you will see.

A. 10, yes.

Q. Can I ask you to go to page 98 of the bundle D4/10/98. It's the seventh page of your statement.

A. Seventh page.

Q. You're not on the right page there.

A. Yes, I have it.

Q. Do you have it?

A. Yes.

Q. Again, you should see a signature.

A. Yes, it's mine.

Q. Can you confirm that that's your signature?

A. Yes.

Q. And again, subject to the point about your address, can you confirm that the contents of this statement is also true to the best of your knowledge and belief?

A. Yes, it is.

MR RABINOWITZ: Thank you very much. Can you wait there, please.

Cross-examination by MS DAVIES

MS DAVIES: Mr Goldfarb, I understand you've known Mr Berezovsky since 1995?

A. Correct.

Q. And you regard him as a good friend?

A. Yes, I do.

Q. And you've been in his employment for various periods since then?

A. Yes, mostly since 2000, late 2000, and for a brief period in 1997/98.

Q. The brief period in '97 to '98 was when you provided political consultancy services to Mr Berezovsky from New York?

A. That is correct.

Q. And your fees for those services were the expenses that were paid by Runicom?

A. It was -- I never paid attention at that time who was the entity -- which was the entity that transferred the money. It was Runicom. But my invoices were given to Sibneft.

Q. Your invoices were addressed to Mr Shvidler at Sibneft's offices and they were paid by Runicom?

- A. Correct.
- Q. And your understanding was that Runicom was a company owned and controlled by Mr Abramovich?
- A. At the time, as I said, I didn't know what Runicom was. I learned about it years later and then I discovered in my records that it was actually Runicom. But when I learned about it, I thought that Runicom was some sort of a subsidiary of Sibneft.
- Q. You didn't investigate?
- A. I didn't, no.
- Q. You were just happy to have your bills paid, presumably?
- A. Yes. That's correct.
- Q. Then from late 2000, as you've just told us, you became directly involved again with Mr Berezovsky. Was that principally in connection with the foundation, Mr Berezovsky's Foundation for Civil Liberties?
- A. Yes, we set up a foundation in December 2000 in New York and I was the -- essentially the chief operating officer of this foundation and Mr Berezovsky was the sole funder.
- Q. And you remained active in that foundation until 2006?
- A. Well, technically it's active still now. I mean, it's there, it has some operations, it files tax reports. But since 2006 it was essentially toned down; it's much less activities than it was before.

- Q. But you continue to provide consultancy services to Mr Berezovsky?
- A. On and off, yes, on an on-and-off basis.
- Q. So is it right that over the last ten years you've largely been working for Mr Berezovsky?
- A. I would say that up until 2006 from 2000, for those six years, yes; and since 2006 I probably spent on Mr Berezovsky's related effort probably 40 per cent to 50 per cent of my time.
- Q. And do you continue to receive consultancy fees from Mr Berezovsky now?
- A. Yes, to a much lesser extent. I'm now running another non-profit entity funded by several Russian exiled, so to say, oligarchs and Mr Berezovsky is one of the sponsors.
- Q. Do you have any arrangement whereby you stand to gain financially if Mr Berezovsky wins this litigation?
- A. No.
- Q. Turning to the various meetings you had with Mr Berezovsky in the second half of 2000 --
- MRS JUSTICE GLOSTER: Sorry, just before we leave this point, you say you still receive consultancy fees but to a lesser extent?
- A. Yes.
- MRS JUSTICE GLOSTER: What percentage of your overall fees

are your consultancy fees from Mr Berezovsky?

A. I mean, from 2006 until now?

MRS JUSTICE GLOSTER: Yes, from 2006.

A. I would say that -- just ballpark -- maybe 20 per cent of my income that comes from Mr Berezovsky's side is structured as consultancy fees and the balance is my salary in different entities, like the one I've just mentioned.

MRS JUSTICE GLOSTER: Yes. Where Mr Berezovsky is one of the founders?

A. Yes, one of the founders. So altogether I would say 40 per cent, as I said, of my income comes from there. But I also have income from the book, for example, that I wrote and that sort of...

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: Now, you had a number of meetings with Mr Berezovsky in the last few months of 2000. If we can start with your visit to see Mr Berezovsky in Moscow in late August 2000, in the immediate aftermath of the Kursk tragedy --

A. Yes.

Q. -- but before Mr Berezovsky had fled Russia.

A. Yes.

Q. You tell us you went to stay with Mr Berezovsky at his house in Moscow, arriving on 20 August?

- A. No, I never stayed at his house in Moscow, I usually stayed at a hotel, but I came to Mr Berezovsky's house to see him. I might have occasionally spent the night there, but basically it's not where I was staying.
- Q. But you did go and see Mr Berezovsky at his house?
- A. That's correct.
- Q. And do you recall how long you were in Moscow for this period?
- A. Well, I could give you exact dates because I keep a record of my comings and goings but at the moment I wouldn't be able to tell you. But I never spent there more than two/three days at a time.
- Q. Now, it seems as if you were still in Moscow on 23 or 24 August because you tell us in paragraph 50 of your statement D1/03/51 that after a meeting Mr Berezovsky attended with Mr Voloshin that day, he told you about it upon his return within an hour?
- A. That's about so. Maybe within two hours but...
- Q. How good a recollection would you say you have today of that conversation with Mr Berezovsky?
- A. Well, that was a very, I would say, seminal event in modern history of Russia and I would say that I have repeated that conversation so many times on different occasions to different people, including in writing, that I would say that the recollection is good.

- Q. You must have had numerous conversations with Mr Berezovsky about the events on this date over the years, mustn't you?
- A. I had some, yes.
- Q. Now, in paragraph 50 of your statement D1/03/51 you say that Mr Berezovsky told you that Mr Voloshin made two separate demands during the meeting he'd had with Mr Berezovsky, the first being that Mr Berezovsky surrender control of ORT --
- A. Yes.
- Q. -- and the second being that Mr Berezovsky surrender his 49 per cent stake in ORT to a friendly entity?
- A. Yes.
- Q. Are you sure that Mr Berezovsky told you on his return from the meeting that Mr Voloshin had made both of those demands?
- A. Well, I wouldn't say that it was structure -- put as structured as you've just said because it was kind of a package situation. He did own 49 per cent and the control came not only from this 49 per cent but from the structure of ORT and from the arrangements and influence he had on the ORT management. He didn't tell me all that; it was common knowledge. And so the gist of this conversation was that he should surrender the -- his stake and with it his control.

- Q. Are you saying that's your understanding of the conversation or are you saying that Mr Berezovsky told you that that's what Mr Voloshin said?
- A. He told me that Mr Voloshin said that, "You have to surrender your stake".
- Q. Now, have you read Mr Voloshin's statement in these proceedings?
- A. I did look through it briefly yesterday, yes.
- Q. And you're aware, are you, that he says that he did explain to Mr Berezovsky that the government wanted Mr Berezovsky to stop using ORT for his own political and financial benefit and to stop influencing ORT, but that he is certain that he did not discuss with Mr Berezovsky whether he should sell or give up his shares in ORT?
- A. Yes, I've seen that.
- Q. And he also says that he doesn't believe that President Putin wanted to run ORT himself or that he mentioned Mr Gusinsky.
- A. Yes.
- Q. Do you think it's possible, Mr Goldfarb, that you might be misremembering when you say that Mr Berezovsky told you that Mr Voloshin had said those things?
- A. No, I don't think I could say that. I'm absolutely positive that this is what Mr Berezovsky told me about

what's being said because we did discuss specifically what was and what was not being said a couple of months later, when I was in Cap d'Antibes and helped him draft his letter where he announced the creation of teletrust and actually revealed the fact of this conversation, which I remember very well starts with, "a high member of your administration threatened me", or told me something to that effect, "in the Kremlin".

Q. Could you be given bundle R(E)1 at tab 4, please R(E)1/04/356.

A. Yes.

Q. This is a statement that you made in support of Mr Berezovsky's application for asylum in the United Kingdom.

A. Correct.

Q. And if you turn forward to the last page, page 361 R(E)1/04/361, you see you made it in August 2003.

A. Yes.

Q. Now, you address what Mr Berezovsky told you about his meeting with Mr Voloshin in paragraph 8 of this statement at page 359 R(E)1/04/359.

A. Yes.

Q. If you just want to remind yourself of what you said in that paragraph. (Pause)

A. Yes.

Q. You say there that:

"Mr Berezovsky said that he had been told by Mr Voloshin that [President] Putin wanted him to surrender control of ORT because 'the President wants to run the station himself'. Mr Berezovsky at that time had 49% of ORT... But he had an effective veto on top management appointments... Mr Voloshin told Mr Berezovsky that he would have to change the management..."

But you don't make any reference to a statement by Mr Voloshin that Mr Berezovsky should surrender his ORT shares to a friendly entity.

A. I think it's quite obvious from the context because right after I'm talking about control, I talk about the equity split between the State and Mr Berezovsky.

Q. You talk about the equity split and go on to explain that nonetheless Mr Berezovsky had "an effective veto on top management appointments".

A. Yes.

Q. But you don't say in this paragraph, as you do if you look back at paragraph 50 and compare the two, that "[Mr] Voloshin told [Mr Berezovsky] that he would have to surrender his 49% stake in ORT to a friendly entity", do you?

A. That depends on the -- how you read this. My

understanding when I made this statement that what was demanded from Mr Berezovsky is to surrender both his 49 per cent stake and the control, which was essentially the provision that a majority -- that 70 per cent, as I understood then, was important for control. And I don't see how you could surrender control without surrendering 49 per cent if you need 70 for control.

Q. Now, it would obviously have been relevant to Mr Berezovsky's asylum application for you to have said, if you recalled it at the time, what you now say at paragraph 50: that Mr Voloshin specifically told Mr Berezovsky he would have to surrender his 49 per cent stake? That would have been a relevant thing for you to put in this statement in support of Mr Berezovsky's asylum application?

A. What would be the relevance? I think there is no essential difference between the two statements. Here I say that he has to surrender 49 per cent stake; here I say that he was supposed to surrender control, with clarification that the control consisted of two components: one is 49 per cent stake and another, because 49 per cent by itself would not be a control without the provision of larger -- of this requirement for the majority vote.

So I don't think you could come to any -- there is

any real discrepancy here.

- Q. Well, Mr Berezovsky could have surrendered control of ORT by simply allowing the State, who was the 51 per cent shareholder, to appoint the manager, couldn't he?
- A. I think we're in guesswork here. What I remember exactly, that the conversation was about surrendering 49 per cent stake and control because what Mr Putin wanted, as far as I could guess, was to run ORT by himself, as far as he told me.
- Q. Would you at least agree this, Mr Goldfarb: your recollection in 2003 about the conversation you had with Mr Berezovsky, as set out in your asylum statement, is much more likely to be accurate than your recollection now, in 2011?
- A. Well, obviously it was, and my recollection on the day he told me was probably better. But in this specific case I would stand by what I said in both statements. I don't see any difference in substance.
- Q. You tell us in your statement that you made three visits to Cap d'Antibes in late 2000. I just want to identify them and then I'm going to ask you about them, but let's just set the framework if that's possible.
- A. Well, it depends how you call late 2000. I made two visits in December and at least two in November.

- Q. The visits you tell us about in your statement are a visit between 11 and 14 November 2000?
- A. Yes.
- Q. A second visit between 7 and 10 December 2000?
- A. Oh yes, that's right.
- Q. And a third on 28 December 2000?
- A. Yes. Then it was one in November, sorry. There was one in October too.
- Q. There was one in October, but those are the three visits in November/December?
- A. Yes.
- Q. Those are the three visits after Mr Berezovsky has fled Russia?
- A. Well, for me it was a different milestone: it was the three visits after I brought Mr Litvinenko to this country and that was the watershed for me. That's my point of reference.
- Q. Now, starting with the visit in November, you address that in paragraphs 57 to 60 of your statement --
- A. Yes.
- Q. -- at page 53 of D1/03 D1/03/53.
- A. It's page...?
- Q. D1/03, page 53.

At paragraph 57 you say that you went to stay with Mr Berezovsky on 11 November and that whilst you were

there he received a summons to appear as a witness in the Aeroflot investigation.

A. That's correct.

Q. Well, in fact Mr Berezovsky had known since the end of October that the State intended to prosecute him in relation to the Aeroflot matter, hadn't he?

A. I think the formal summons was much later and I remember it quite correctly, although I may be mistaken. There were two summonses issued at about the same time: one for Mr Berezovsky, one for Mr Gusinsky. And Mr Gusinsky immediately, he was by that time in Spain already, that he's not going to go on this summons. So I think my recollection, without checking the sources, would be that it was -- the actual summons was much closer to that date.

Q. Well, Mr Berezovsky tells us in his witness statement -- we don't need to turn it up; you can take it from me -- at paragraph 331 D2/17/267 that:

"On the same day that I left Russia..."

Which was the end of October.

"... Deputy Prosecutor Vasiliy Kolmogorov announced on television an intention to prosecute me."

A. Yes.

Q. And:

"On the following day... I was summoned... to face

charges on 13 November 2000."

And we have press reports that show that at the end of October there was an announcement that he'd be prosecuted.

A. My recollection that there was an announcement about intention of him being prosecuted maybe, but at the same time I clearly remember that his legal status in this investigation at the time was that of a witness and that the possibility of him being arrested, for example, or even charged with something was discounted by himself and it took quite an effort to talk him out of going to Moscow on that day.

Q. Have you been here during the course of this trial, Mr Goldfarb?

A. Most of the time, yes.

Q. Were you here when Mr Berezovsky was giving evidence?

A. I think I missed a day.

Q. Do you recall which day that was?

A. I can't tell you right now. One of the days.

Q. You see his oral evidence -- and for the transcript it's at Day 7, page 22 -- was that he definitely knew by this time that he and Mr Glushkov were going to be charged.

A. I can't comment on that. My understanding from that time, as I said, I was with Mr Berezovsky in Moscow on his last visit in October and then I saw him next on

November 13, when I came to Cap d'Antibes, and on the morning of that day he had the plane ready to go to Moscow and a big discussion that morning was whether he should or should not go and his inclination was to go.

One of the reasons was that he didn't want to make it look that he runs and by doing that he admits some guilt, he never thought. And so in the -- and another was of course, as I learned later that day maybe, that his concern was that if he doesn't go, he puts Mr Glushkov in jeopardy. So it was clear to me at least, and I would confirm it now, that on that day Mr Berezovsky was not 100 per cent sure that he would be arrested or anybody who lives in Russia can be arrested any day.

So it's all a matter of probability. But he thought that there is a chance that he would go and come back.

- Q. You knew when you went to visit Mr Berezovsky on 11 November that he'd fled Russia, didn't you?
- A. No, he hadn't fled Russia because his intention was initially to go to Moscow and to talk to the prosecutor. And we collectively, myself and his wife Elena and a friend of mine, the widow of Nobel Laureate Andrei Sakharov, on the phone took a lot of effort to persuade him not to go.
- Q. Could you be given Mr Berezovsky's fourth witness

statement, which is in bundle D2, tab 17, at page 267  
D2/17/267.

A. Yes.

Q. Paragraph 330, under the heading "ORT: my departure from  
Russia", Mr Berezovsky tells us:

"I understood very well that when President Putin  
made the threat to deliver 'a crushing blow'..."

And he's referring to the interview with  
President Putin published in Le Figaro on 26 October,  
which is quoted in paragraph 328.

"... it meant that I was in imminent danger of  
arrest or worse. As a result, on 30 October... I left  
Russia and travelled to France."

A. Yes, what can I tell you? That interview by Mr Putin  
about the cudgel in Figaro was one of the major  
arguments that helped us persuade Mr Berezovsky not to  
go to Moscow on 13 November. So I would say that we're  
now discussing a very vague issue of the probability of  
being arrested. Mr Berezovsky is rather a careless  
person and he takes risks. And I can tell you that my  
understanding of what was happening then, and it is  
still now, is that he was willing -- he knew about the  
dangers, he was willing to take this risk, for the  
reasons I've mentioned, and it took some effort to  
persuade him that this risk was not worth taking.

- Q. Your fear was that if he returned to Moscow, he would indeed be arrested once he got back there?
- A. Oh yes.
- Q. Now, you also knew, didn't you, at this time that Deputy Prosecutor Kolmogorov had announced an intention to charge Mr Glushkov?
- A. No, I didn't know that at the time. I mostly was worried about Boris. I simply didn't know about Glushkov. I learned about Glushkov's problem more -- in more detail when I read the interview in Kommersant.
- Q. But when you visited Mr Berezovsky in November in Cap d'Antibes, he expressed his concerns to you about Mr Glushkov, didn't he?
- A. No, he expressed his concerns to me about Mr Glushkov after we persuaded him. So it was at that visit but probably after he took the decision not to go. He was --
- Q. But during your visit between 11 and 14 November Mr Berezovsky explained to you that he was concerned about Mr Glushkov's position, didn't he?
- A. He was -- that was one of the reasons why he wanted to go. He thought that by not going there he put Mr Glushkov in graver danger than he was.

I mean, the thing is that I remember that discussion very well. It was -- I was trying to persuade him that

this is the MO of the Russian State when they are out to get somebody and they took hostages. That was the case with Mr Gusinsky earlier, when they held one of his financial persons in prison trying to get something out of him, and that was the case later with Mr Khodorkovsky and that's their MO.

So obviously it was clear that Mr Glushkov is in jeopardy in Russia and, as I said already, that was a real consideration of whether or not Mr Berezovsky should or should not go.

MS DAVIES: My Lady, I'm about to move on to another meeting and I just wonder whether that might be a convenient moment.

MRS JUSTICE GLOSTER: Very well.

Mr Goldfarb, you mustn't talk about this case or your evidence over the break. Do you understand?

THE WITNESS: I understand that, yes.

MRS JUSTICE GLOSTER: Very well.

Monday, 10.15; does that suit the parties?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Does that suit you --

MR RABINOWITZ: Yes, my Lady.

MRS JUSTICE GLOSTER: Very well. 10.15 on Monday. Thank you very much.

(4.15 pm)

(The hearing adjourned until  
Monday, 24 October 2011 at 10.15 am)

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Monday, 24 October 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Ms Davies.

MR ALEXANDER GOLDFARB (continued)

Cross-examination by MS DAVIES (continued)

MS DAVIES: Mr Goldfarb, when we broke on Wednesday --

THE WITNESS: Excuse me. My Lady, I wish to correct something that I said on Wednesday.

MRS JUSTICE GLOSTER: Right. Have you been reading the transcript?

THE WITNESS: Yes, and I looked at my witness statement and there is a discrepancy and what I said in the witness statement is right and what I mentioned on Wednesday is wrong. And that relates to the period between 2001 and 2006: I said that I worked full-time for Mr Berezovsky, which is not correct. I of course held a faculty position in New York all this time and so I never had more than 50 per cent income from Mr Berezovsky's side.

MRS JUSTICE GLOSTER: Right, thank you.

MS DAVIES: When we broke, we had just been discussing your visit to Cap d'Antibes in November 2000.

A. That's correct.

Q. And I now want to move on to your next visit to Cap d'Antibes, which was between 7 and 10 December 2000; is that correct?

A. Yes.

Q. Now, you do not suggest that you saw Mr Abramovich at Mr Berezovsky's property at any point during that visit, do you?

A. No. I should explain that I went there primarily for the purpose of seeing my son, who came from London, and it was kind of an emotionally important moment for me because I was banned from entry into United Kingdom a few weeks before that for bringing the Litvinenko family, someone who brought asylum seekers to this country. So they didn't allow me to come to London, where my son was in school.

So that was our rendezvous in Cap d'Antibes. And I arrived on the morning --

Q. Yes, I don't want to interrupt you but we're going to come on to deal with your son's arrival and in fact your movements through --

A. So what I meant is that I spent most of the time with him.

Q. Okay. Now, you travelled to Nice from New York overnight on 6 December, arriving at Nice Airport at 9.50 am on 7 December?

A. Judging by the plane schedule, yes.

Q. And from Nice Airport you travelled immediately to Cap d'Antibes?

A. That is correct.

Q. So you would have arrived at Mr Berezovsky's property at around lunchtime on 7 December?

A. Yes, around noon or so, maybe later.

Q. Can you recall whether or not you immediately went to Mr Berezovsky's house, the chateau?

A. No, of course not. I would probably be taken straight to the Clocher and most likely I would just go sleep because it was an overnight flight and I was jet lagged.

Q. But once you arrived at the Clocher and after you changed and rested, you must have been keen to go and see Mr Berezovsky, mustn't you?

A. Not necessarily. As I said, I was looking forward to seeing my son and that was my first purpose -- main purpose.

Q. Let's take in this stages, Mr Goldfarb. First of all, your son was not due to arrive until the next day, 8 December?

A. Correct. Correct.

Q. And at the moment I'm just focusing on 7 December, okay?

A. Yes.

Q. So let's just stay with 7 December for a moment.

A. Okay.

Q. So you had travelled from New York all the way to Cap d'Antibes to see Mr Berezovsky, who was your host.

Isn't it the most natural thing to do, once you've freshened up from the journey, to actually go and say hello to your host?

- A. Well, as I said, I travelled to Nice primarily to see my son and not Mr Berezovsky. That was my second, obviously, priority on that visit. That's number one.

Number two, I could tell you straightaway that I do not remember on which of these three days that I was there I saw Mr Berezovsky. What -- the way memory works is that there are certain highlights kind of, milestones of the visit, and on that visit the dinner and the meeting with Mr Berezovsky and Badri was obviously such a highlight but I do not recall whether it was on the first evening or the second evening or the third evening.

- Q. Okay. Well, what we're going to try and do, if we can, Mr Goldfarb, is explore what you can and can't remember.

Now, what you tell us in your witness statement is that you had found out about the arrest of Mr Glushkov on your way from the airport to Mr Berezovsky's property?

- A. What I think I said in the witness statement is that as I was driving or I was driven rather to the property, probably closer to the end of the trip, I got a phone call from a journalist in Moscow, most likely it was

Mr Korsunsky, who told me about the rumour that is making rounds in Moscow that Mr Berezovsky has dumped the idea of setting a teletrust for holding the share in ORT. That was essentially the major point. He may have mentioned about Mr Glushkov's arrest, he may have not, but I can tell you that what was really hot issue is that the teletrust was dead. And at the time, for me at least, it was the main point of concern because so much effort was -- has been put into this teletrust that I may have noted that Glushkov was arrested but I didn't kind of link it to teletrust immediately; it might have come some minutes later.

Q. You say in your second witness statement at paragraph 12 -- this is D4/05/25, if you want to look at it:

"I also learned in that phone call..."

And this is the phone call about the teletrust.

"... of the arrest of Nikolay Glushkov."

A. Well, that is true. I could -- it is likely that he could have mentioned that in that context. But the reason for the call, for the phone call and the urgency of the matter was about teletrust, not about Glushkov.

Q. And the individual who called you on your journey also mentioned, didn't he, that Mr Berezovsky's announcements in relation to the teletrust had caused some

controversy?

- A. Oh, yes. I'm not -- I am not 100 per cent sure whether by that time Mr Berezovsky has already announced his decision to drop teletrust; it might have come right after that. But the man I spoke to, who called me, is kind of part of the journalistic milieu in Moscow and the rumour was out that the teletrust is finished, yes.
- Q. So you believe that the conversation that your journalist friend had was before Mr Berezovsky had made his public announcement?
- A. It might have been before, I cannot say.
- Q. But what was clear to you from this telephone conversation was that he had decided to abandon the teletrust proposal --
- A. What was clear to me is that my friends, the journalists in Moscow who essentially stuck their neck out for Mr Berezovsky by agreeing to go into teletrust in spite of the obvious danger such a decision would have vis-a-vis Mr Putin, felt kind of abandoned and, if I may use the word that has been coined here, kinut: they were kind of misled by Mr Berezovsky because he abandoned this idea.
- Q. Now, having had that conversation on the way to Mr Berezovsky's house and knowing, as you did know also, that Mr Glushkov was an individual who Mr Berezovsky was

very concerned about, you must have been interested, mustn't you, to find out what was actually going on?

A. I was very much interested, of course.

Q. So indeed the first opportunity you got to go and see Mr Berezovsky, you would have taken, wouldn't you?

A. Absolutely correct, yes.

Q. And doesn't that make it more likely that you went to see him at some point on the afternoon of 7 December?

A. Well, first of all, if he was there. Again, as I said, I don't remember the particular details of that visit: it could have happened on the 7th, it could have happened on the 8th. The fact is that the moment I saw him, I asked him that question. But I really do not remember when -- on which day it was.

Q. When you were staying at the Clocher, where did you take your meals, Mr Goldfarb?

A. Well, sometimes they serve it in the Clocher, sometimes they would invite you to join the hosts in the chateau. But, as I said, when Tim, my son, arrived that morning, I would have probably gone to the airport to meet him because he was 12.

Q. I'm going to come on to -- I'm still on the 7th, Mr Goldfarb.

A. We could have eaten out because most of the time we spent out of the property with him.

Q. Now, you told us a moment ago that the main purpose of your visit was to go and see your son.

A. Yes.

Q. But in fact in your witness statement you say that the purpose of your visit was to discuss the set-up of Mr Berezovsky's new foundation, the International Foundation for Civil Liberties?

A. That is true and there is some confusion between my first, second and third witness statement. Initially, when I made my first witness statement, I was under the impression that I had two visits in December, one on the 7th, 8th and 9th and the next one after Christmas. I had the initial recollection in my mind that my son came during the second visit, after Christmas. So in my first witness statement I wrote that the purpose -- obviously it was more reconstruction than recollection -- was to see Boris about the foundation.

However, when I went back to New York and checked the travel records and the tickets and the boarding passes and invoices and all that, I realised that my meeting with my son was during the first visit. Then everything kind of fell into place. And the truth is that my primary purpose was to -- on that visit, was to see my son and my secondary purpose is, of course, to discuss with Boris the foundation that we've been

launching at the time.

Q. The foundation was a non-profit-making foundation based in the US --

A. That's correct.

Q. -- which was founded and funded by Mr Berezovsky?

A. Correct.

Q. You were to become its executive vice president?

A. Yes.

Q. And does that mean you were essentially in charge of its day-to-day management?

A. That is correct.

Q. It was formally to be launched in Washington on 18 December 2000?

A. Right, yes.

Q. A week or so after your visit to Cap d'Antibes?

A. Yes, and a week or so after we have incorporated it.

So...

Q. And it was just about to be incorporated?

A. Yes.

Q. And your professional relationship with Mr Soros had only come to an end at the beginning of November 2000?

A. Yes, in connection with the Litvinenko.

Q. So your involvement in this foundation was a new matter so far as you were concerned?

A. Yes, and we started working right away in November, even

before the foundation was formally incorporated.

Q. And there must at this time -- and I'm focusing here again on 7 and 8 December --

A. Yes.

Q. -- have been much to discuss with Mr Berezovsky about the foundation and the details of its launch, mustn't there?

A. That is correct, but it was not the first opportunity, obviously.

Q. But that's presumably why you felt it was appropriate to charge your travel expenses for your trip to France to the foundation?

A. That's correct.

Q. You must therefore, Mr Goldfarb, mustn't you, have seen Mr Berezovsky a fair bit during your visit?

A. Can you repeat the question?

Q. You must have seen Mr Berezovsky a fair bit during your visit?

A. No. As I said, I recall one dinner which kind of was impressed in my memory for three reasons. If you want, I can go into this. One of them was the teletrust conversation. But I don't think that I saw much of him because usually my relationship with him about this foundation was like I was chasing him and he was always busy. So it does not necessarily mean that he was so

eager to talk to me. And now, as we know, he had many other things on his mind.

Q. Now, you told us a moment ago that as soon as you saw Mr Berezovsky --

A. Yes.

Q. -- you raised with him the teletrust issue.

A. Yes, and that was before dinner.

Q. That was before dinner?

A. Yes.

Q. That was on a separate occasion?

A. No, it was not a separate occasion. Before dinner, when kind of I came to the building, to the chateau for dinner, I saw him and I told him what's going on as such.

Q. Can you actually recall that, Mr Goldfarb?

A. I recall asking him about that, yes.

Q. Can you recall that it was just before your dinner?

A. I would think so, yes.

Q. Well, aren't you reconstructing?

A. Well, no, I think it was before my -- before the dinner, yes.

Q. Now, you mentioned your son Timothy was due to arrive on 8 December from London.

A. Yes, in the morning.

Q. And you've explained again this morning that your

earlier recollection that he was at Cap d'Antibes on your second trip in December is incorrect?

A. Yes.

Q. And your son was 12, I think you just told us?

A. Yes, about that.

Q. So he was still at school in England when he made this visit?

A. Yes.

Q. And presumably his school week was a Monday to Friday?

A. Yes.

Q. Now, you tell us in fact in your statement that 8 December was a Friday --

A. Yes.

Q. -- and 10 December was a Sunday.

A. Presumably. I don't remember now.

Q. So it looks like he came to see you for the weekend?

A. Yes.

Q. Rather than taking time off school, isn't it likely that he travelled out to see you after school on the evening of 8 December?

A. Not necessarily. He could have easily asked for a day off.

Q. You've mentioned several times today that he arrived in the morning of 8 December.

A. Yes.

Q. Do you suggest you recall that?

A. No, I think that is my reconstruction from his plane ticket, unless --

Q. Well, his plane ticket --

A. It should be in the case.

Q. His plane ticket, are you referring to the document you've exhibited?

A. Yes.

Q. That tells us that the flight number was BA352 --

A. Yes.

Q. -- and for the transcript that's at D4, tab 10, 110 D4/10/110 -- but it doesn't actually reveal the time of the flight, Mr Goldfarb.

A. Well, I think it could be easily checked.

Q. Well, we have checked it --

A. Okay.

Q. -- and we've managed to obtain some records. It's not perhaps as easy as one might think. But that indicates that the flight was not scheduled to depart London until 18.50 pm --

A. Uh-huh.

Q. -- and to arrive in Nice at 21.45 pm.

A. I'll take your word for it.

MS DAVIES: My Lady, we do have the records and we can circulate them, but --

MRS JUSTICE GLOSTER: Well, if there's any dispute, no doubt the matter can be raised with Mr Rabinowitz.

MS DAVIES: So it looks, doesn't it, as if your son did not in fact arrive in Nice until late on 8 December 2000?

A. Possible.

Q. Presumably you were hoping to spend some time with your son once he arrived at Cap d'Antibes, as well as seeing Mr Berezovsky?

A. Yes.

Q. And as you just explained you weren't able to travel to England to see him, so you no doubt wanted to get as much of your work out of the way as you could before your son arrived?

A. Possible, yes.

Q. And given that he was not arriving until late on 8 December, doesn't that again make it likely that you spent time with Mr Berezovsky on 7 and 8 December 2000?

A. Well, as I said, I do not recall now, after all these years, on what day I had this dinner and on what day we spoke with him.

MRS JUSTICE GLOSTER: Did you just have dinner with Mr Berezovsky on one occasion?

A. Yes, there was one dinner, there was a kind of large dinner. There were definitely Badri and him and me and maybe somebody else which I do not recall. Maybe Elena

was there. Maybe my son was there. I really do not recall that. But the three of us I remember because I remember the issues that were raised.

MS DAVIES: You told us a moment ago you went to airport to collect your son.

A. I would certainly do that unless there were some circumstances against it. I didn't say I went there; I said that it would be normal for me to go and meet him.

Q. This dinner that you're describing, do you recall going to the airport after the dinner to collect your son?

A. No, I don't recall anything like that.

Q. In fact, Mr Goldfarb, you did spend a good deal of your time prior to the evening of 8 December with Mr Berezovsky, didn't you?

A. No, I don't think so, not necessarily. I don't remember but not necessarily, given that he is a busy guy.

Q. You travelled all this way to see Mr Berezovsky, to discuss his new foundation with him, and your son was not yet there. So you must have, mustn't you, Mr Goldfarb?

A. Well, the first day was probably spent mostly relaxing because -- after the jet lag. It is possible that I bumped into him, if he was around on the 8th, but I don't really remember.

- Q. You've been sitting in court through much of this trial --
- A. Yes.
- Q. -- and appreciate, don't you, that the events on 7 and 8 December are important to Mr Berezovsky?
- A. Yes.
- Q. The only reason, Mr Goldfarb, I would suggest to you, that you're seeking to down play the extent to which you were at the chateau on those dates is that you know it does not suit Mr Berezovsky's case that he had a visitor at the chateau at the time who did not see Mr Abramovich.
- A. Not at all.
- Q. Well, once your son arrived in Nice, you presumably took him to see Mr Berezovsky at the chateau?
- A. Not necessarily, no.
- Q. You didn't take your son to visit your host?
- A. Well, he's seen him many times before that, so it's -- if he was there, I would -- first of all, the host, the setting of the whole thing was that the host would really be not Boris but Elena. I could have bring him over to see Elena but not necessarily to see Boris. But again, it's all guesswork. I do not really remember those things.
- Q. And presumably you would have made sure you said goodbye

to your host before you left on 10 December?

A. If he was around, yes.

Q. Now, you told us in your first statement, and it's paragraph 62 on page D1/03/55, that when you first saw Mr Berezovsky during this visit to Cap d'Antibes, he did not tell you about any visit by Mr Abramovich.

A. No, he didn't.

Q. But your evidence is that he did subsequently tell you --

A. That's correct.

Q. -- he'd been visited in France by Mr Abramovich and that Mr Abramovich had promised that Mr Glushkov would be released from prison if they sold ORT and that if they didn't sell ORT, the Kremlin would take it away.

A. Yes.

Q. When do you believe that Mr Berezovsky told you that?

A. It could be on my -- one of my next visits shortly after that. I was there in the end after Christmas, as I said, for half a day and then there was this big birthday party.

And the context of it is that right after the New Year, sometime in January, we were much involved in trying to save another TV network in Moscow, that is NTV, by Mr Gusinsky. And we discussed a lot an opportunity -- a possibility of Mr Berezovsky and Badri

giving Gusinsky a loan to repay his debt to Gazprom, which was the basis for expropriation of his network at the time. And that was, I think, was to be channelled through the Foundation for Civil Liberty, that loan.

And in the context of these conversations, which happened essentially in mid-January, the issue of Mr Putin's drive to take control of all electronic media in Russia was discussed and it's quite possible that it was sometime in January that I learned about the details of it.

Q. You can't recall, can you, Mr Goldfarb?

A. Can't recall what?

Q. You can't recall when you were told about --

A. I can't recall it. As I said, it should be at one of my next meetings with Mr Berezovsky within late December because it was 27 December or his birthday party in the end of January. I have to look in my diary when actually I saw him. But that conversation, when he essentially told me kind of in their roles who said what at the meeting, which I kind of recreated in my book, probably was in the context of all this heated situation with media being taken under control by the government.

Q. Now, we've seen from your own statements, Mr Goldfarb -- and this is not a criticism -- that it's very possible to confuse dates and events, given how long ago all of

this was.

A. Well, I should perhaps quote another witness saying that what you remember is the sequence of events and the context, the logic of them. So I would not, obviously, remember on which day this or that happened unless I have, you know, a documentary proof of my presence, but I do remember what came after what. And, as I said, I learned about Mr Abramovich's kind of explicit warnings or threats, if you will, in the context of the whole media takeover, which happened in January actually.

Q. You just said you remember what comes after what.

A. Yes.

Q. But, for example, in your second witness statement, you remembered -- and I use your words -- that your son came to stay at the chateau in Cap d'Antibes in late December 2000.

A. Yes, that was my initial recollection until I was able to check it by documents and it turned out that it was a wrong recollection. So I --

Q. So the sequence was incorrect?

A. Yes.

Q. Could you be given bundle R(E)1, tab 4, please R(E)1/04/356.

A. Yes.

Q. This is your witness statement in support of Mr Berezovsky's asylum application --

A. Mm-hm.

Q. -- which we looked at on Wednesday, sworn on August 10, 2003.

A. Yes.

Q. Now, you don't make any reference in this statement to the meeting between Mr Abramovich and Mr Berezovsky in Cap d'Antibes, do you?

A. Well, if you say so, I don't, then I don't.

Q. But it would clearly have been relevant to mention it, wouldn't it?

A. No, I wouldn't think so, because Mr Abramovich, in my view, then and now, in this particular case of ORT expropriation was not principal party. He came as a messenger from Mr Putin and presidential administration and he just conveyed information that was given to him and that's -- at least that's how I understand the ORT situation.

Q. But what you were addressing in your witness statement in support of Mr Berezovsky's asylum application was the pressure that you understood had been placed on Mr Berezovsky to part with his shares in ORT.

A. Yes.

Q. That pressure, according to your evidence today,

includes pressure that came via Mr Abramovich at the meeting in France.

A. This includes it, but it was by no means the first moment of pressure. The pressure started right in front of my eyes in August, during the Kursk submarine treaty (sic), and it came personally from Mr Putin and Mr Voloshin. So Mr Abramovich was, I would say, the third in this line of pressure people.

Q. But the evidence you're giving about the meeting with Mr Abramovich in France is the first occasion on which Mr Glushkov had been mentioned in connection with this pressure, isn't it?

A. That is correct.

Q. So, again, I put to you, it would have been relevant to mention in your statement in support of Mr Berezovsky if at the time you'd made this statement you recalled having been told about that meeting?

A. Perhaps in retrospect it would, but at the time it didn't seem that important to me.

Q. Well, the real reason you didn't mention it in this statement is that you hadn't been told about the meeting by August 2003, had you?

A. No, of course I'd been told about it, as I just told you a minute ago.

Q. In between your visits to Cap d'Antibes in December

2000 --

A. I should add -- one sec -- to this question.

The taking of hostages is not an unusual method in these situations. It happened with expropriation of NTV from Mr Gusinsky before the situation with Glushkov; it happened later with Khodorkovsky, who was lured back to Russia by taking one of his associates.

So I remember very distinctly my impression of January 2001 that Mr Glushkov was clearly taken hostage and that was clear even before the visit of Mr Abramovich, and that is in October, when we persuaded Mr Berezovsky not to go to Moscow to answer this witness summons.

So Glushkov was a clear situation, we discussed that.

Q. Your understanding before you'd even heard about the meeting that Mr Berezovsky suggests took place with Mr Abramovich in the south of France was that Mr Glushkov was being taken as a hostage and that the ORT shares were being delivered in order to secure his release; is that what you're suggesting?

A. No. Mr Glushkov was not taken as a hostage until 7 December, obviously. He was arrested on 7 December. But his vulnerability from the -- and his -- as a potential hostage was obvious from the moment Boris

refused to go to Moscow for this prosecutor's questioning. It was obvious it was mentioned.

Q. And that was on 13 or 14 November?

A. Yes. Yes.

Q. Now, in between your visits in December 2000 to Cap d'Antibes, you had also been to Washington with Mr Berezovsky for the launch of the foundation.

A. Correct.

Q. Was that the only occasion on which Mr Berezovsky came to Washington for an event associated with the foundation or were there others?

A. Well, he was in Washington several times and after the foundation was launched he was kind of presented to the Washington scene as the chairman of our foundation. At the moment I couldn't tell you whether it was -- it was definitely the only occasion in December 2000, but after that he came several times.

Q. And on some of those other occasions he came after December 2000 --

A. Yes.

Q. -- was he accompanied by Ms Gorbunova?

A. Not always. For example, he came after September 11, right after the terrorist attacks, and I took him around Washington. I don't remember Elena around.

Q. Sometimes was he accompanied by Ms --

A. Sometimes, yes.

Q. You say in your third statement that you believe that Ms Gorbunova attended the launch and that you may have gone to New York with Mr Berezovsky and Ms Gorbunova the next day, 19 December, to view an apartment and some proposed offices.

A. Well, she was obviously around. I don't remember whether she was sitting at the National Press Club in the audience, after all this years, when it was announced, but she was in Washington and she was during that trip. And I didn't return to New York with them because I took a flight and their tickets in the case back from Washington to New York with my secretary, Julia. So I most probably flew to Washington on their plane from New York but I came back to New York on my own.

Q. Isn't it possible, Mr Goldfarb, that you're mistaking this trip with another trip that occurred subsequently?

A. No, I cannot mistake. I have tickets.

Q. Sorry, not your trip, but Ms Gorbunova being in Washington or New York. You're mistaking that with another trip that took place subsequently?

A. I don't think I'm mistaking because I have this recollection, subject of course to all these years that passed, and I checked with my secretary, Julia, who is

no longer working for me, and she definitely remembers Elena, whom she says is hard to forget.

Q. Well, you suggest you went to view an apartment and offices on 19 December but Mr Berezovsky's travel records suggest he flew to Aspen on 18 December.

A. Yes, it could be on the 17th. I wouldn't give you 100 per cent for that. It all actually puzzled me: why did I come back from Washington to New York not on their plane? I asked Julia and she said: no, they definitely flew to Aspen on the 19th. And now that you tell me that his records are different, so it must have been that we went to see those offices before we went to Washington; maybe in the morning, I don't remember.

Q. Ms Gorbunova's passport does not have an entry stamp for America at this time of year.

A. It's not surprising. When you go to -- in those years, before September 11, when you entered America on a private plane, quite often they wouldn't stamp your passport and I know a couple of other cases like this. People had then problems with immigration because they couldn't prove how they entered the country.

Q. Well, Mr Berezovsky's passport is stamped on the same day.

Now, you tell us in your first statement -- it's paragraph 22 D1/03/44 -- that when you first met

Mr Abramovich, Mr Berezovsky introduced him to you as his partner.

A. Yes.

Q. Are you suggesting that Mr Berezovsky described Mr Abramovich as his partner in Mr Abramovich's presence or are you simply suggesting that Mr Berezovsky told you that you would be meeting his partner, Mr Abramovich?

A. Well, this I cannot remember. But the context of this introduction was my plan to set up a foundation in Moscow by what has later become known as oligarchs, Russian oligarchs, to replace the Soros fund, which were coming to an end. And in the context of this effort I met with all the -- or most of the people who were the oligarchs, such as Mr Fridman or Mr Smolensky or Mr Potanin, Gusinsky, all through Boris's introduction.

And in the context of these meetings he introduced me to Roman and I should say that I was quite surprised that a person who is totally unknown, of his age, would be suggested by Boris to sit on the board of this new foundation with all these billionaires. So he clearly -- what -- the impression that I had from that meeting is that Boris obviously introduced to me -- him to me as someone with substantial financial weight.

Q. In paragraphs 30 to 31 of your first statement, D1/03/46, you're describing certain conversations you

say you had with Mr Shvidler in connection with some negotiations that you say were about a possible joint investment between Mr Berezovsky and Mr Soros in Gazprom in 1997.

A. Yes.

Q. And in particular you refer to a meeting with Mr Shvidler in Moscow at which you say you learnt:

"... that [Mr] Abramovich... was a major shareholder of Sibneft along with Boris."

A. Yes.

Q. Can you explain exactly what you recall Mr Shvidler saying about Sibneft's shareholders?

A. I cannot recall what he said explicitly. I remember that we met for a meal, or coffee maybe, at a hotel in Moscow which was right next to the headquarters of Sibneft and in that conversation I kind of -- it was -- I didn't learn; it was confirmed to me that Shvidler was in Sibneft, was second in command to Roman, and I knew that Roman was a shareholder. It was -- everybody knew that.

Q. Mr Shvidler didn't say, did he, that Mr Berezovsky was a shareholder in Sibneft?

A. Oh, it went without saying because he -- everybody knew that he is the principal there.

Q. You also refer in your first statement to two trips you

made to Cap d'Antibes in May and June 1998, during one of which Mr Shvidler also came to Cap d'Antibes.

A. I didn't see Mr Shvidler on Boris's property, I should say, at that visit. I saw him, I think, on a boat, or maybe on the beach or maybe on a boat. There were several boats with Russian connection parked there and on one of them there was Mr Shvidler. So... and actually I didn't even spend the night during that visit, I'm not sure even that I stayed overnight there, but we stayed there several hours. It was right after our meeting with Soros in Budapest. We flew to Cap d'Antibes -- I mean, we flew to Nice and there was this yacht scene and I remember distinctly Mr Shvidler there and then we flew to New York.

Q. You saw Mr Shvidler meet Mr Berezovsky?

A. It was a social, more or less, setting and I think Boris was around and he was around, but I do not -- cannot say that there was a formal, you know, business setting meeting then.

Q. And you did not yourself participate directly in the discussions between Mr --

A. No.

Q. You were just witnessing them from a distance?

A. No, not from a distance. As I said, it was on board of a boat most likely.

Q. Now, finally, Mr Goldfarb, you mention in your first statement a meeting you had with Mr Berezovsky in London on or around 14 April 2000. It's paragraph 39 of your statement.

A. Yes. This I need to see.

Q. D1/03/49.

A. Can you repeat the date, please?

Q. You tell us it was a meeting on or about 14 April 2000.

A. April 2000, yes, it was right -- it was before inauguration, right. Mm-hm. So what do I say there? Which paragraph is that?

Q. It's paragraph 39.

The first question I have for you is: what is it about this date that sticks in your mind?

A. Well, the date comes from my travel records. I remember generally the time, it was spring, early April, so I placed the date simply from my -- because I keep precise travel records. And how precise it was, it depends on other visits to London, of course.

Q. You must have had many visits to London over the years where you've met Mr Berezovsky, mustn't you?

A. I had many -- well, at the time I was not working for Mr Berezovsky, I was working for Mr Soros and in my academic job, so my visits were mostly to Moscow and not to London. London started after Litvinenko because

I could no longer go to -- none of us could go back to Russia after 2000. But I cannot tell you right away, without looking at my diary, when was the visit before April 13 and when was the next visit. But most likely, if I put it there, it means that it's pretty precise.

Q. Since that time you have had many visits to London where you have met Mr Berezovsky, haven't you?

A. After he moved to London. He hadn't moved to London until I think 2001.

Q. Although you tell us in your statement that during the first half of 2000 Mr Berezovsky spent most of his time out of Russia?

A. That is correct, and I didn't see him much.

Q. He was travelling a lot, was he?

A. He was travelling a lot, I was travelling a lot and we lived in totally separate universes.

Q. Now, in your statement at paragraph 39 you say you believe that Mr Berezovsky mentioned having acquired interests in aluminium at the meeting in April 2000.

A. Absolutely. Yes, I remember this scene very well. We went to see the exhibition of Salvador Dali next to, you know, the bridge where the London Eye is. There was a... and we were walking across the bridge and he said that he essentially doesn't know what to do now because they've got all they wanted with Mr Putin's election.

Specifically he mentioned Sibneft and ORT and aluminium and he thought that, "I don't really -- I feel under-used now because maybe we should go into the dotcom thing. What is it all about? Tell me". So that's what was the conversation on that bridge.

Q. You have had so many conversations over the years with Mr Berezovsky, Mr Goldfarb --

A. Yes.

Q. -- it must be impossible to recollect that it was on this conversation on this date, 11 years ago --

A. No, this area, as I said, if you can put a conversation into a particular setting, both, you know, specifically where it happened -- and, as I said, it happened over the bridge near the Salvador Dali showroom -- and secondly that it was in the context of Mr Putin being successfully -- project Putin succeeding, and the inauguration was on May 1 or May 3, I think that's pretty easy to place.

Q. Do you recall Mr Berezovsky was happy about President Putin being elected?

A. Oh, yes. He considered it his -- one of his most successful projects.

Q. And he was happy with his position in life generally?

A. Yes.

MS DAVIES: Thank you very much, Mr Goldfarb.

MR MALEK: No questions, my Lady.

MR ADKIN: No questions, my Lady.

MR MUMFORD: No questions, my Lady.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: A few questions for you, Mr Goldfarb.

You mentioned very recently that after 2000 you could not go back to Russia. Why, in your case, could you not go back to Russia?

A. Because on November 1 2000 I facilitated the entry of a group of asylum seekers to this country and this got in the press, and the family was Mr Litvinenko. Before he came here I facilitated his interview with the CIA in the American embassy in Ankara and all of this was out and as a result of that, no sane person would go to Russia. And Mr Soros fired me for that and that was a big change in my life.

Q. Why was Mr Litvinenko seeking asylum?

A. Mr Litvinenko was a former, as we all know, officer of the FSB. He was associated with Boris back in Russia. He spent some months in prison and it's a long story --

Q. Don't give us the long story.

A. -- I won't go into that, but in a nutshell when Boris -- when it was clear that Boris is not going back to Russia, it was clear that -- and that he quarrelled with

Putin, he would not be -- no longer would be able to protect him and it was a natural decision to flee. Otherwise he'll end up dead five years before he actually ended up dead.

Q. You referred -- you were asked a series of questions about events on 7 and 8 December. You mentioned the dinner being a memorable one --

A. Yes.

Q. -- with Mr Berezovsky and Mr Patarkatsishvili.

A. Yes.

Q. And you said that it was memorable for three reasons.

A. Yes.

Q. I think your first reason that you identified was the discussion about teletrusts.

A. Yes. The second reason was the discussion about Glushkov, and that is when -- it happened actually very shortly after Glushkov has been arrested, it was right then, and it happened a week after I got in the news because of Litvinenko.

So Badri took me aside -- and Litvinenko spent time in the same prison where they took Glushkov, namely the Lefortovo prison of the federal security service. So Badri took me aside and asked me to talk to Litvinenko and to see whether he could find some ways of communication, maybe through prison guards or some other

ways, with Nikolai, because he was an expert in that thing. That was the second thing.

The third thing that I remember very well is that Boris took me aside, probably after dinner, and asked me to arrange to have an American visa for Mr Andrei Lugovoi, who was at the time head of security for Badri and also helped with security for Cap d'Antibes, and he couldn't enter the United States. I told him that, "No, sorry, Boris, I won't do it. I don't understand your fascination with former KGB colonels, be it Mr Putin or Mr Lugovoi". But it turns out that I have been right.

Q. Can I just ask you this. On Wednesday of last week you were asked about whether or not on 13 November 2001 (sic) Mr Berezovsky had finally decided whether he would be returning to Russia.

A. Yes.

Q. And you explained that in fact Mr Berezovsky, as you recollected, had a plane ready to go to Moscow.

A. It was 2000.

Q. 2000.

A. 2000, yes.

Q. Sorry, you're quite right. I said 2001.

You explained that in fact Mr Berezovsky had a plane ready to go to Moscow and that there was a big discussion in the morning of 13 November about whether

he should go or not.

A. Yes.

Q. And that Mr Berezovsky's inclination was in fact to go back.

A. Yes.

Q. That, for the transcript, was at Day 12, page 175.

A. Yes.

Q. And in the course of describing this discussion on 13 November at Mr Berezovsky's chateau at Cap d'Antibes, you refer to the fact that collectively you, Ms Gorbunova and the widow of Nobel Laureate Andrei Sakharov sought to persuade Mr Berezovsky not to return.

A. Yes.

Q. Can I just ask you, please, to go to Day 2 (sic), tab 17, page 268.

Sorry, I meant D2, not Day 2. I'm sorry.

MRS JUSTICE GLOSTER: Would you give the reference again, please.

MR RABINOWITZ: D2, tab 17, page 268 D2/17/268.

Do you see paragraph 333 at the top of the page?

A. Yes.

Q. There is a reference there to:

"... a discussion with the widow of Andrei Sakharov, who told me, 'Boris, you will achieve more with your

freedom than from a jail'."

Can you tell me if that was the same conversation as the one that you're referring to?

A. Yes.

MR RABINOWITZ: Thank you very much, Mr Glushkov.

MRS JUSTICE GLOSTER: Thank you very much indeed.

MS DAVIES: My Lady, I do apologise. We have just checked, in the time available to us, and discovered that the Dali exhibition did not open until 3 June 2000 and I felt I ought to raise that in case Mr Goldfarb should be given a --

MRS JUSTICE GLOSTER: Well, put a further question in relation to that if you wish.

Further cross-examination by MS DAVIES

MS DAVIES: Mr Goldfarb, you told us a moment ago that you particularly remember this meeting on the bridge on 14 April because you remember leaving the Dali exhibition.

A. Mm-hm.

Q. In fact the Dali exhibition did not open until 3 June. So that suggests your recollection is incorrect, doesn't it?

A. It might be incorrect about Dali exhibition.

MS DAVIES: Thank you very much, Mr Goldfarb.

MRS JUSTICE GLOSTER: Yes, do you have any further questions

arising out of that, Mr Rabinowitz? No. Very well.

Thank you, Mr Goldfarb, for coming along. You can be released.

(The witness withdrew)

MR RABINOWITZ: Our next witness is Mr Jacobson.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: My Lady, would it be sensible for your Ladyship to take the break before Mr Jacobson rather than ten minutes in? I ask that question entirely neutrally.

MRS JUSTICE GLOSTER: Okay. Well, I'm easy. Are you content with that?

MR RABINOWITZ: I'm content with that.

MRS JUSTICE GLOSTER: Very well. I'll take the break.

(11.09 am)

(A short break)

(11.19 am)

MR RABINOWITZ: I call Mr Jacobson.

MRS JUSTICE GLOSTER: Yes.

MR JAMES JACOBSON (sworn)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr Jacobson.

Mr Jacobson, can you just confirm that you don't have with you any mobile phone or electronic device?

A. Yes, that's correct.

Q. Thank you very much.

Can I ask that you please be given bundle D2 open at tab 16, please D2/16/92. You should have a document there, "Witness Statement of James Edwin Jacobson". Do you have that?

A. I do.

Q. Can you go to page 191 of the bundle D2/16/191. It's page 99 of the statement.

A. Yes.

Q. Can you confirm that the signature on that page is your signature?

A. It is.

Q. Can you confirm that this is your first witness statement in these proceedings?

A. It is.

Q. Now, I understand that there are four corrections that you'd like to make to this witness statement. You should, I think, have in front of you a document, "Corrections to James Jacobson's Witness Statement". Do you have that?

A. I do.

Q. Can you first go to paragraph 38 at page 103 of the bundle, please D2/16/103. Now, you should have paragraph 38 at the bottom of the page.

A. Yes.

Q. Can you confirm that the correction that you have at the first point of your corrections document is in fact the correction that you want to make to paragraph 38 of the statement? Effectively you're clarifying your understanding --

A. Yes, that's correct.

Q. -- of whether Mr Abramovich or any of his companies were ever clients of Curtis & Co.

A. Mm-hm. That's correct.

Q. Can I ask you next to turn, please, to page 118, paragraph 105 D2/16/118. It's page 118 of the bundle, paragraph 105. Looking again at the document entitled "Corrections to [your] Statement", is it right that the correction you want to make to paragraph 105 is shown at point 2 of the document? It's a minor correction.

A. Yes, that's correct.

Q. Thank you.

Can I ask you next, please, to go to page 121 of the bundle and look at paragraph 123 D2/16/121. It's at the bottom of that page.

A. Yes.

Q. Do you have it?

A. Mm-hm.

Q. Again, looking at your corrections document, it's right,

is it, that the correction you want to make to paragraph 123 is that shown at point 3 of the document?

A. That's correct.

Q. Thank you. And then can you turn next to paragraph 415 at page 182 of the bundle D2/16/182. It's page 90 of the statement. Do you see point 4 is where you make a correction to paragraph 415?

A. Yes.

Q. And I think the emails that you refer to in the correction, are they the ones which are in fact attached to the corrections document? They should be behind the second page. Are those the two emails?

A. I think they are, yes. Yes.

Q. Can you next, please, go to -- I think those are the only corrections you make to this statement. So, subject to those corrections, can you confirm that the contents of this, your first witness statement, is true to the best of your knowledge and belief?

A. I do.

Q. Thank you.

Now, can you then be given bundle D4, please, and if you open that at tab 7. Can you turn to page 53 of the bundle D4/07/53. It's page 5 of the statement. Do you see a signature there?

A. I do, yes.

Q. Can you confirm that this is your signature and this is your second statement in these proceedings?

A. It is.

Q. Now, I understand that there is a small correction you want to make to paragraph 15 of this statement, which is the signature page. Again, if you've got the corrections document, you'll see point 5 deals with a correction to paragraph 15, changing the dates.

A. Yes.

Q. Can you confirm that that's the correction you want to make to that?

A. It is, yes.

Q. And subject to that correction, can you confirm that the contents of this your second witness statement are true to the best of your knowledge and belief?

A. It is.

MR RABINOWITZ: Thank you. Can you wait there, please.

Mr Sumption will have some questions.

Cross-examination by MR SUMPTION

MR SUMPTION: Mr Jacobson, I don't know whether you've been following the course of the trial to any extent so far?

A. Only in the papers.

Q. Sorry, can you speak up a bit?

A. Only in the papers.

Q. Only through the papers, I follow.

Now, there's one point I would like to make clear to you at the outset. I shall be suggesting to you in the course of your cross-examination that in 2001 Mr Curtis devised sham transactions for Mr Berezovsky and Mr Patarkatsishvili in order to deceive banks about the origin of their funds. The reason I'm telling you this is that I want to make it clear to you at the outset so that you appreciate this, but it's no part of my case that you personally had any intention of deceiving banks or assisting in money-laundering.

Now, can I ask you, please, when did Sheikh Sultan become a client of Curtis & Co?

A. I think it was late '99/2000.

Q. Late '99 or 2000?

A. Yes.

Q. Does that mean that he was a very recent client at the time when the firm was dealing with Mr Berezovsky?

A. Probably, I suppose, about 12 months maximum.

Q. About 12 months?

A. Mm-hm.

Q. Would you describe Sheikh Sultan as having been an important client of the firm in terms of the volume of fees that his work generated?

A. Well, I didn't do any work on any of his matters but I would say he was -- you said "work generated"?

Probably not a huge amount, no.

Q. I see.

Can you help us with the reintroduction of Mr Berezovsky to the firm. You talk about this in paragraph 31 of your first witness statement D2/16/102, where you say:

"[You] believe that Mr Berezovsky was re-introduced to Curtis & Co by Christopher Samuelson of Valmet in the summer of 2000."

Is that something that you remember?

A. No.

Q. Do you know anything about how that reintroduction came about?

A. No.

Q. Can you help us at all on what business the reintroduction was initiating?

A. No.

Q. Now, was it Mr Berezovsky who introduced the firm to Mr Patarkatsishvili?

A. I couldn't say. It might have been Valmet. I assume that they came as a package.

Q. Yes, but you have no knowledge about that?

A. No.

Q. Do you remember when it was that Mr Patarkatsishvili first started dealing with the firm?

A. I don't know.

Q. Now, I want to ask you first, please, about the ORT transaction.

Curtis & Co prepared two agreements relating to ORT initially in January 2001, didn't they?

A. They did, yes.

Q. Now, just for the record, the first was an option agreement, wasn't it, under which Spectrum General Trading bought options over shares in ORT from Mr Berezovsky and Mr Patarkatsishvili for \$70 million each?

A. I think so, yes. It might have been ORT-KB.

Q. Yes, you're quite right, ORT-KB.

The second document that was drafted was an assignment agreement under which Spectrum assigned the benefit of the option to a company called Akmos; is that correct?

A. It is.

Q. Now, Spectrum General Trading, as you confirm in your witness statement, was a company owned by Sheikh Sultan?

A. Correct.

Q. Now, when was the firm first instructed to prepare these documents?

A. Well, I don't know. It has to come from the documents that we've seen. Probably in January.

Q. Yes, I see. Can you help us on who the instructions to prepare these documents came from?

A. No.

Q. From whom did you first find out the background and purpose of these documents?

A. Stephen.

Q. And what did he tell you about their background and purpose?

A. Well, he didn't tell me anything; it was just reading the correspondence that was flowing.

Q. He didn't know anything?

A. No, he didn't tell me anything.

Q. He didn't tell you anything?

A. No.

Q. Right. At paragraph 61 of your first witness statement D2/16/108 you refer to a letter from Curtis & Co to Mr Sykes at Clydesdale Bank -- hold on a moment -- and you refer to Mr Curtis having been asked by Dr Jumean to assist in the establishment of accounts in the United Kingdom to receive the proceeds of the ORT transaction.

Now, I'm going to turn to that letter in due course. But so far as you're aware, was -- sorry, I'll start again. Do you have any knowledge of Dr Jumean having asked Mr Curtis to assist with the opening of those accounts, other than what can be inferred from that

letter?

A. No.

Q. So far as you are aware, was Dr Jumean's request for assistance in opening the accounts the firm's first introduction to the ORT transaction?

A. Possibly. I wouldn't know.

Q. For whom were these accounts to be opened?

A. Boris and Badri.

Q. And were they the accounts that were opened for both of those gentlemen at Clydesdale Bank?

A. Yes, I think so.

Q. Was it Mr Curtis therefore who was instrumental in the opening of those two accounts?

A. Yes.

Q. Would that request from Dr Jumean have involved making contact, first of all, with Mr Berezovsky and Mr Patarkatsishvili?

A. Possibly. I don't know.

Q. Do you know how Clydesdale was identified as a suitable bank for this purpose?

A. No.

Q. Had the firm had previous dealings involving Clydesdale Bank?

A. Yes.

Q. Were they dealings involving the sheikh also?

A. I don't think so, no.

Q. They were dealings for other clients?

A. Yes, I believe so.

Q. Now, presumably Mr Curtis would have had to make contact with Clydesdale Bank, get some forms, obtain evidence of account holders' identity and so on, before he could do much to open those accounts?

A. Yes, correct.

Q. And indeed he would also have had to ensure that he had the authority of the account holders?

A. Of course.

Q. So before the accounts were opened, there must have been a certain amount of communication between Mr Curtis, the bank and Messrs Berezovsky and Patarkatsishvili; would you agree?

A. Yes, I would agree with that.

MRS JUSTICE GLOSTER: Excuse me, are you drinking coffee over there? You're not allowed to eat or drink in court.

Right. Continue, Mr Sumption.

MR SUMPTION: Now, are you aware of the dates on which the account application forms were presented or prepared?

A. I don't think so, no.

Q. Right. Have you ever seen them?

A. I don't think so.

Q. Right. Now, let me tell you then that the account application on behalf of Mr Patarkatsishvili was dated 28 December 2000 -- for the transcript, the reference is H(A)26/126 -- and the corresponding application by Mr Berezovsky was dated 6 January 2001. For the transcript the reference is H(A)27/248.

Now, does that suggest that the request from Dr Jumean referred to by Mr Curtis must have happened sometime before 28 December?

A. Yes, I would agree with that.

Q. You agree?

A. Yes.

Q. Indeed, given that 28 December was only three days after Christmas, it must have been quite a few days before 28 December, not much happening in the United Kingdom over the Christmas holiday; would you agree?

A. Mm-hm. I would agree.

Q. In his own application Mr Berezovsky describes himself or the form describes him as the chairman of Spectrum. Do you know whether Mr Berezovsky was in fact the chairman of Spectrum?

A. I wouldn't have thought he was.

Q. Sorry?

A. I wouldn't have thought he was the chairman of Spectrum.

Q. No. If he was the chairman of Spectrum, do you think

you would have known?

A. No.

Q. Why do you say you wouldn't have thought that he was the chairman of Spectrum?

A. Because Spectrum is owned by the sheikh.

Q. Right.

Now, the first document that we have from Curtis & Co's files about this is at H(A)28/29 and I will, if I may, ask you to look at that.

MRS JUSTICE GLOSTER: You have the documents on the screen as well as in hard copy.

THE WITNESS: Oh, okay.

MRS JUSTICE GLOSTER: Suit yourself as to which you would prefer to look at.

MR SUMPTION: Now, this, I think, is your note of a conversation with Pavel, and that's Mr Ivlev, isn't it?

A. That's correct.

Q. Mr Ivlev was Mr Berezovsky's lawyer in Moscow; is that right?

A. Yes.

Q. Now, you will see that the heading of this note, which was presumably put there by you, is "Fomichev -- Option Agreement". Do you see that?

A. I do.

Q. Why was it headed in that way?

A. I've no idea.

Q. Well, did your --

A. I must have assumed that Fomichev, representing Boris and Badri, had some involvement with the option agreement.

Q. Yes. Well, does it look as if Mr Fomichev had asked the firm to prepare an option agreement?

A. Possibly.

Q. Now, your instructions must have come, must they not, at least in part from either Mr Fomichev or someone else on behalf of Mr Berezovsky or Mr Patarkatsishvili? Would you agree?

A. They would have given us information. I don't know formally where the instructions would come from.

Q. Well, if you were contacting Mr Ivlev for details of the ORT holdings and Mr Ivlev was Mr Berezovsky's lawyer in Moscow, you must have satisfied yourself that you could talk directly to Mr Ivlev with Mr Berezovsky's consent; do you agree?

A. Me personally?

Q. Well, somebody in the firm, not necessarily you, must have done that; do you agree?

A. I assume so, yes.

Q. Now, you suggest at paragraph 59 of your first witness

statement D2/16/107 that the firm was acting for Spectrum. May I suggest that if it was acting for Spectrum, it was also acting for Mr Berezovsky and Mr Patarkatsishvili?

A. In relation to establishing the accounts?

Q. Yes -- well, and in relation to the transaction generally, surely?

A. Well, I wouldn't know at the time. I'm just looking now in hindsight, reviewing the documents.

Q. With the benefit of the documents, would you agree?

A. I think there was an overlap in some respect.

Q. Right. Were you aware that unconditional agreements for the sale of the shares in ORT-KB had been executed which were dated 25 December?

A. No.

Q. You were not?

A. No.

Q. You're aware now, presumably, or are you not?

A. I think I've read it in one of the letters.

Q. I see.

Now, I'd like to look at the information recorded in the note which you've got on screen. Where did you understand that Mr Ivlev had obtained this information?

A. I've no idea.

Q. Well, looking at it, at the sort of information it was,

where would you have expected him to obtain it?

A. He must have checked with someone who knew about ORT.

Q. Well, when you say, "Pavel confirmed to me the following", does it suggest that you had at some earlier stage asked him to find out these facts and he was coming back to you with the answers?

A. Possibly.

Q. Presumably you would have asked him to check in the Moscow Companies Registry, wouldn't you?

A. I didn't.

Q. Sorry?

A. I didn't.

Q. You didn't?

A. No.

Q. Somebody must have done?

A. Well, I assumed it was literally, "Can you just confirm the ownership of this company".

Q. Do you see that under 1 and 2 it is said:

"... that ORT was owned 49% by ORT (KB)..."

And:

"... ORT (KB) was owned in turn by Mr Berezovsky and Bardrey."

I'm interested in the past tense. Did you understand that this information related to the shareholding position at some earlier stage?

A. No, that was how I'd have -- how it was at that date.

Q. I see.

Well now, the transfer of shares in ORT-KB to Akmos, which was an Abramovich company, had been registered at the Moscow Companies Registry by 29 December 2000; we know that from the document from the registry. Did Mr Ivlev tell you that in this conversation?

A. I don't think so, no.

Q. Were you aware of it at any stage during the course of the following weeks and months?

A. I wasn't.

Q. You weren't? Could we have a look, please, at bundle H(A)28/84. The same bundle if you're looking at the hard copy. It will come up on screen in a moment. Have you got that? If you want to wait for it to come up on screen, by all means do, but since this is a two-page document you might prefer to have the ability to flip over.

A. Okay.

Q. It isn't so easy on the screen.

Now, this is a letter from Mr Curtis dated 17 December (sic) to Clydesdale Bank. Now, you tell us that you didn't draft this. When did you first see it?

A. You mean 17 January?

Q. Yes.

A. I couldn't tell you when I first saw it.

Q. It's a letter that presumably would have been on the transaction file within the firm, isn't it?

A. Possibly.

Q. So you must have seen it pretty shortly afterwards?

A. Yes, I mean, it wasn't -- the files weren't always --

Q. Sorry?

A. The files weren't always up to date.

Q. I see. But this document has to be typed out by somebody in the office --

A. Yes.

Q. -- and then signed?

A. Mm-hm.

Q. Presumably it would have appeared without too much delay in the files of the transaction; otherwise it would be impossible for anybody picking the file up, as you later did, to discover what was going on. Don't you agree?

A. Yes, but this was pretty much Stephen's transaction, so the involvement was quite limited.

Q. Well now, we see in this letter Mr Curtis is asking the bank to accept the \$70 million from each of Mr Berezovsky and Mr Patarkatsishvili on the basis that it represents the proceeds of an option that they have sold to Spectrum. Do you see that?

A. Mm-hm. Yes.

Q. Now, at this stage do you know whom Mr Curtis had discussed this proposal for an option with?

A. I don't believe so.

Q. You don't.

Now, the next document that we have chronologically on the file is a discussion draft prepared on 18 January which you emailed on that date to Mr Jumean, and you refer to that in your statement, don't you?

Paragraph 62 D2/16/108. I'm happy to turn this document up if it would help you, but I'm just taking it from your statement.

A. Okay.

Q. Now, perhaps you could turn in bundle H(A)28 to page 125 H(A)28/125. Page 125 is the email front page, so to speak, listing the attachments --

A. Mm-hm.

Q. -- which you were sending to Dr Jumean. That's Eyhab, isn't it?

A. That's right, yes.

Q. If you look at page 127 you'll see the first page of the draft agreement H(A)28/127. Over the page, on page 128, you'll see that among the definitions, "the Option Price" and there's a note:

"PAVEL -- I believe the aggregate price to be paid for all of the shares equates to \$10 million. Can I

impose on you to calculate value per share in Roubles."

Did you put that note into the draft?

A. No.

Q. You did not?

A. No.

Q. Can you help us on whether the \$10 million was for the totality of the shares, ie both Mr Berezovsky's and Mr Patarkatsishvili's, or whether it was \$10 million each?

A. I can't help you.

Q. I see. We just have to draw our own conclusions from the document?

A. Yes.

Q. Now, you, I think, were responsible for sending this letter of 17 January to Mr Sykes of the Clydesdale Bank. Do you agree? Do you remember that?

A. I think so, yes.

Q. You think you were? We can establish that if you would like to be shown -- I'm sorry to encumber your desk with paper, but if somebody could show you H(D)2 at page 2 H(D)2/2.

Now, at page 2 you will see an expurgated version of this letter and I think, if the bundle you have been given is up to date, it will have a 2U after it which has the unexpurgated version. It's on Magnum.

Does that suggest that you took the 17 January letter that I showed you at bundle H(A)28/84 and yourself sent it to Mr Sykes of Clydesdale Bank?

A. I pp-ed the letter, yes.

Q. Yes. So in fact that does establish, doesn't it, that you must have seen it on about that date?

A. Yes.

Q. Now, if we can go back to page 128 of the bundle which you've got open, H(A)28 H(A)28/128, on the footing that the \$10 million related to the whole of the shares, ie \$5 million for each of them, this was a draft agreement under which the sheikh or Spectrum was buying, for a total of \$140 million between the two agreements, an option to acquire the shares in ORT-KB; that's right, isn't it?

A. Yes, that appears to be the case.

Q. And the option itself, once exercised, once the option was exercised, the shares were going to cost \$10 million because that was the option price? If you look at clause 3.4.1, top of page 129:

"The consideration payable for each of the Option Shares shall be the Option Price."

And that's defined at the top of the previous page.

A. Yes, it says that.

Q. Now, do you think that there was anything rather odd

about the notion of paying \$140 million to buy an option to buy shares for \$10 million?

A. I wouldn't have -- I wouldn't have thought about it.

Q. Well think about it now. Nobody would do that, would they, unless they'd already decided that the option was undoubtedly going to be exercised? Otherwise you'd be throwing \$140 million away. Do you agree?

A. Possibly, yes.

Q. It looks a bit artificial, doesn't it?

A. It looks a bit strange, yes. It looks a bit unusual.

Q. Well now, could I ask you, please -- you can put away bundle H(A)28 and I'd like to ask you to turn to H(A)29/13.

This is a letter from Mr Ivlev to Mr Curtis and, since I know you're fairly familiar with the file, at least now, you probably are aware that this was originally received from Mr Ivlev in unsigned form and then on 13 February the same letter in signed form.

A. That's right.

Q. You're aware of that?

A. Mm-hm.

Q. Now, let's look at the -- what we've got in front of us is in fact the signed version but the unsigned one would have been received about 5 February, would it not?

A. That's right.

Q. Now, Mr Ivlev reports in this letter, in the bottom paragraph on page 13, what he says by way of explanation is:

"There are two Share Sale and Purchase Contracts both dated 25 December 2000, one between Boris BEREZOVSKY (the seller) and [Akmos]... and the second one between [Mr] PATARKATSISHVILI and the same Purchaser, in accordance with which on 29 December 2000 [Mr] BEREZOVSKY and [Mr] PATARKATSISHVILI transferred all of their shares in the Company to the Purchaser."

Now, does that suggest that the firm, at least by 5 February, was aware that agreements for the sale of these shares by Mr Berezovsky and Mr Patarkatsishvili to Akmos had been made on 25 December? The firm was aware of that by 5 February, was it not?

A. Yes.

Q. Does it also suggest that by that date at the latest they were also aware that the shares had actually been transferred to Akmos, the purchaser, on 29 December 2000?

A. Yes. Yes.

Q. Now, would you agree that if Mr Berezovsky and Mr Patarkatsishvili had already transferred their shares to the purchaser on 29 December, there was nothing over which they could grant a call option to Spectrum?

A. Yes, but the rest of the paragraph...

Q. Yes, but what that says is:

"I was advised by Mr Ruslan FOMYCHEV,  
a representative of Messrs BEREZOVSKY and  
PATARKATSISHVILI, that the consideration under the Share  
Sale and Purchase Contracts has not been paid as it was  
subjected by the execution of performance of the call  
option agreement between Messrs BEREZOVSKY and  
PATARKATSISHVILI... and the company named Spectrum..."

Now, what Mr Fomichev is recorded there as  
explaining is that the payment of the consideration was  
being held up until the option agreement was executed;  
that's what he's explaining, isn't it?

A. It seemed to be some sort of conditional arrangement.

Q. But if the shares had already been transferred to Akmos  
on 29 December then whenever the consideration was paid,  
there was nothing over which an option could be  
exercised, was there?

A. Apparently not, no.

Q. Now, does it look therefore as if this option agreement  
was in fact a sham because one thing it could not  
achieve was a transfer of shares to Spectrum? That had  
already happened: the shares had gone to Akmos.

A. Are you asking me what I think now or what I thought at  
the time?

Q. What you think now.

A. Well, possibly it does look a bit like an agreement that may have been signed before, but I think Mr Curtis was relying on Mr Ivlev and Mr Fomichev.

Q. Well, Mr Curtis was aware that the registration of the shares to Akmos had already happened, wasn't he?

A. I don't think he was aware of the registration.

Q. Well, okay. He was aware that, in accordance with the agreement of the 25th, on 29 December they had transferred all of their shares to the purchaser? Those are his very words, aren't they, Mr Ivlev's very words?

A. That's true. But, you know, he does go on to say that the call option is not illegal under Russian law. So --

Q. Well, Mr Jacobson, if the shares had already been transferred to Akmos, it wasn't going to be possible, was it, to grant an option to Spectrum over them?

A. Theoretically not, yes.

Q. Because the two agreements that were drafted by Curtis & Co, one was an option in favour of Spectrum and the other was an assignment of that option back to Akmos, and all that was completely pointless if Akmos had already got the shares at the end of the previous month, wasn't it?

A. Seemingly so.

Q. Now, could I ask you, please, to turn to H(A)29/41,

the same bundle. This is Clydesdale Bank telling Mr Curtis that their due diligence had been completed and they were in a position to accept the \$140 million split equally between Mr Berezovsky and Mr Patarkatsishvili. Do you see that?

A. I do.

Q. Now, was Mr Curtis aware, so far as you are aware, at the time this letter was received that funds were being paid by Mr Abramovich's companies into Spectrum's account?

A. I've no idea.

Q. Can you help us on whether Mr Curtis was aware that in fact the payment which included the \$140 million had been made to Spectrum between 8 and 25 January 2001?

A. I've no idea.

Q. You weren't aware of that?

A. No.

Q. For the transcript, that appears, among other places, from H(A)41/128.

Now, you accept, I think, that Mr Curtis must have been aware that funds were paid by Spectrum to Mr Patarkatsishvili's and Mr Berezovsky's account at Clydesdale Bank --

A. Yes.

Q. -- on 13 February. You accept that, don't you?

A. Yes.

Q. He was aware at the time?

A. Yes.

Q. And as I understand it, that was because Curtis & Co had access to the Clydesdale Bank statements. Is that correct?

A. That's correct.

Q. Did they have access to Spectrum's account also?

A. No.

Q. They did not.

Now, if the money was being paid by Spectrum to the Clydesdale Bank accounts on 13 February, it was obvious, wasn't it, that corresponding sums must have been paid into Spectrum's account by Mr Abramovich's companies at some time before or possibly on 13 February? Do you agree?

A. Are you asking me now or --

Q. Yes.

A. Yes, I agree.

Q. Now, the execution copy of the option agreement executed on behalf of Spectrum was not in fact received until June, was it?

A. I think it was June.

Q. Yes. What happened, I think -- correct me if I'm wrong -- was that on 11 or 12 June Curtis & Co received

from the sheikh's financial office executed copies of a number of agreements, including the Devonia agreements and the Spectrum agreements. Is that right?

A. That's right, yes.

Q. Right. Now, that was, of course, some four months after the receipt of the funds into the Clydesdale account, which, as we've seen, occurred on 13 February.

A. Correct.

Q. When you nod, it doesn't get into the transcript.

A. I know, sorry. Yes.

Q. Now, does it look as if this arrangement was also a sham for that reason, namely that at the time the agreement was executed, everything had already been done?

A. I mean, are you saying when we receive the agreements or --

Q. Well, the sheikh --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption. What is the date of the executed option agreement? You told us in your question that it was received by Curtis & Co on the 11th or 12th.

MR SUMPTION: Yes, let me take the witness to the document that establishes that. It isn't apparent from the agreement itself, which is undated. But if the witness could be shown H(A)39/105.

Have you got that either on screen or in hard copy,

Mr Jacobson?

A. Yes.

Q. Sorry?

A. I've got it here.

Q. At page 105 you will see a fax cover page, "Subject: devonia". This is addressed to Stephen Curtis and it sends the full deed of assignment.

Over the page one sees the signature page which has been signed -- there were a number of originals, I think this is right, and this is the original that was being signed on behalf of Devonia and by the sheikh as guarantor. Is that correct?

A. That's correct.

Q. That's correct. So this is effectively the sheikh's financial office sending to the firm the executed copy of the assignment agreement; is that right?

A. Yes, that's correct.

Q. Now, at page -- I'm sorry, that's the Devonia agreement. If you look at page 109, you'll see the deed of assignment H(A)39/109.

A. Is it 107?

Q. Sorry?

A. Are you -- the executed page?

Q. The executed copy of the deed of assignment starts at 107 and the signature page is at 109. This appears to

be -- this is all an attachment to the fax which is at page 105. Can you confirm that?

A. Yes, that's correct.

Q. Now, the option agreement, I think we can also demonstrate, arrived at the same time; is that correct? Or about the same time, Mr Jacobson?

A. I believe so.

Q. Sorry?

A. I believe it was, yes.

Q. Yes, well, we'll just check, but I think you're right about that. I think you say so in your witness statement.

Now, looking at -- I'm told it's page 91 of the same bundle H(A)39/91, where we have another fax cover page, also from the same source, and that attaches on the same date, 11 June, the executed copy of the Spectrum option. Do you see that? 91 is the fax cover page, 92 is the first page of the agreement and 98 is the signature page which, I think, confirms what you've just told us.

A. Yes, that's correct.

Q. Now, at the time when this was received in your office, that's to say on 11 June, the money had already been paid in its entirety both by Mr Abramovich to Spectrum and by Spectrum to Clydesdale Bank and you were -- or

the firm was clearly aware of the latter part of that payment system, ie between Spectrum and Clydesdale Bank, and had been for some four months.

A. That's correct.

Q. What did you understand to have been the point of the assignment of the option back to Akmos, given that payment had been made four months before?

A. I didn't have any thoughts of it at all.

Q. I see.

Now, what you received in June was the execution copy sent to the sheikh in February, which was then being sent back by the sheikh or his financial office to the firm in June, signed by the sheikh but not by Akmos. This is the assignment agreement. You make that point in your witness statement, don't you?

A. Yes, that's correct.

Q. Now, in August 2002 you -- and I mean you personally here -- sent the assignment to Mr Joseph Kay's office, did you not? You make that point in your second witness statement.

A. I think I did, yes.

Q. When you sent it in August 2002 to Mr Kay's office, the document which you sent was signed not only by the sheikh but apparently by Akmos as well? You're nodding and it's --

A. That appears to be right, yes.

Q. Right. Can we just have a look at that:

H(A)47/128.003.

Now, 128.003 is a letter signed by you enclosing a copy agreement with Spectrum and copy deed of assignment. Okay?

A. Mm-hm. Yes.

Q. And Ms Olga Lihou, to whom you're sending it -- see top left -- was someone who worked in Mr Joseph Kay's office; that's right, isn't it?

A. That's correct.

Q. Now, we can see from page 128.025 and following H(A)47/128.025 the assignment agreement and the signature page is at page 128.027 and by this stage a signature purportedly on behalf of Akmos has appeared. Do you see that?

A. I do.

Q. Now, our evidence is -- and I'm not expecting you to comment on this because you wouldn't know -- that that signature was a forgery. Can you help us on how the signature came to be on the copy of the document which your firm had held since June?

A. I've no idea.

Q. The document that you were sending to Mr Kay had been in the custody of your firm since June 2001, had it not?

A. What, the original?

Q. Sorry?

A. Which document? This --

Q. Well, the document that you are sending to Mr Kay is the document that you had received or the firm had received back in June 2001, isn't it, but with the addition of a signature on behalf of Akmos?

A. Yes, it looks like that, yes.

Q. Now, does it look therefore as if what you were sending Mr Kay was a document that had been on the files of your firm since June 2001? We don't know at what stage the signature was added, but the document must have been in your firm's files throughout that time. Do you agree?

A. What, without the Akmos signature?

Q. Well, without it at some stage and then, after a point of time which we can't identify, with it.

A. Yes.

Q. You agree?

A. I agree, yes.

Q. Now, for that signature to have been put on the document by an officer of Akmos, Mr Curtis's firm would have had to send it to them directly or indirectly for that purpose, would it not? Some arrangement would have had to have been made by Mr Curtis's firm --

A. Wouldn't Spectrum have --

Q. -- to get Akmos's signature there?

A. Wouldn't Spectrum have done that?

Q. Well, Spectrum could hardly sign on behalf of Akmos, could they?

A. No, but hang on --

Q. They may have done so, but it would be a forgery if they did?

A. But we received a fax copy without the Akmos signatures in June 2001.

Q. Yes.

A. And then --

MRS JUSTICE GLOSTER: What paragraph of your witness statement are you looking at?

MR SUMPTION: It's in the second witness statement, my Lady, at D4, flag 7. It's dealt with between paragraphs 12 and 16 of that statement D4/07/52.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, we know that in August 2002 -- we've established this from your answers a few minutes ago -- there was this copy with an Akmos signature or a purported Akmos signature on it which you sent to Mr Kay's office.

A. Mm-hm. Correct.

Q. Now, for that document to have an Akmos signature on it by August 2002, some arrangement, some communication

must have occurred with the firm under which the document was supplied with an Akmos signature: either somebody sent it to them saying, "Here's another copy with Akmos's signature", or the firm must have arranged to get Akmos's signature. One of those two things must have happened, must it not?

A. If we received the fax copy in June 2001 --

Q. Yes.

A. -- I don't know when the original would have come --

Q. Yes.

A. -- but Spectrum could have arranged for the original to be signed by Akmos from wherever Spectrum was in Abu Dhabi.

Q. Well, is there any documentary record on the firm's file of the firm having received any other copy of the agreement as executed by the sheikh apart from the copy that was faxed to you on 11 June? Do you have any record --

A. No.

Q. -- on the firm's file of that having happened?

A. I think it was just the fax copy.

Q. Yes. Likewise, is there any record on the firm's file of the firm having itself arranged for an Akmos signature to be applied to it?

A. No.

Q. Now, if either of those things had happened, it would have left a documentary record on the firm's archives, wouldn't it?

A. Yes, should do.

Q. Does it look as if the Akmos signature was applied to this document in Curtis & Co's office?

A. No.

Q. Why do you say that?

A. Because the original would have still been in Abu Dhabi with Spectrum.

Q. Yes, but you had a version signed by Akmos by August 2002.

A. Yes, a fax version.

Q. Well --

A. Oh, no, sorry. Yes, original then, yes.

Q. Yes.

Now, how did the signature get there without leaving any trace of its having come into Curtis & Co's office unless the signature was applied in the office?

A. I don't follow. I'm missing something. Because I'm assuming the signatories were done in Abu Dhabi or elsewhere.

Q. Well, if that had happened, as you've just confirmed, Mr Jacobson, there would be some documentary record of the version with Akmos's signature coming into the firm,

and there isn't. Do you see?

A. No, I'm missing the point.

Q. What I put to you a moment ago was that if the firm had received the agreement from Spectrum at some stage after 11 June 2001 with Akmos's signature on it, there would have been a documentary record of that having been faxed in or emailed in, wouldn't there?

A. If it had been received -- well, if the original had come in by courier.

Q. If the original had come in by courier, you think that it would not necessarily have left any documentary evidence of receipt?

A. It would just be the document.

Q. Yes. Well, every other document that we have seen relating to this transaction came in either by email or by fax. Can you confirm that?

A. No, I don't think so, no. We obviously got original --

MRS JUSTICE GLOSTER: Can you speak up, please.

A. We obviously got original documents later on.

MR SUMPTION: Once you had received the faxed copy on 11 June, there would be no need for any haste and no need to courier the original to you, would there?

A. Are you talking about the assignment?

Q. Yes.

A. I assume not, no.

Q. Mr Curtis received a fee of \$600,000, described as a 0.66 per cent of the sheikh's turn on the deal relating to Spectrum, did he not?

A. I don't know whether he received it.

Q. Well, he certainly had an agreement that he was to receive it, did he not?

A. That appears to be the case in the instructions to counsel.

Q. Yes. Well, if we just have a look at H(A)32/20 --

MRS JUSTICE GLOSTER: Just before you leave the deed at page 128.027 H(A)47/128.027, is the document within Curtis & Co's firm the original or a copy, or is it not possible to say? The document that's on the screen at the moment.

A. That one would have been an original.

MRS JUSTICE GLOSTER: And the original comes from your files; is that -- well, let me ask Mr Sumption that.

Mr Sumption, the document that's on the screen at the moment, is it an original that comes from Curtis & Co's file?

MR SUMPTION: Well, it's only -- it comes from Curtis's files, yes. We can only be sure that it's an original so far as concerns the signature applied to Akmos. It's not clear that it isn't actually a signature that was applied to the faxed copy that had previously been

received. It's not clear one way or the other.

MRS JUSTICE GLOSTER: But so far as the signature is concerned, it's your case anyway that that is an original signature applied to that particular document?

MR SUMPTION: Yes, and a forgery.

Now, Mr Jacobson, if the document had in fact come in by courier, there would still be a documentary record, wouldn't there? Because if you send a document by courier you have to identify what it's about. So there would be a covering letter saying, "Please find enclosed..." whatever it is. That would happen almost invariably, wouldn't it?

A. Sometimes not with the Russians, no.

Q. Well, except I think you're envisaging that it was the Arabs.

A. Well, they're just --

Q. But are they just as bad?

A. Yes.

Q. You don't send a document to a solicitor's office without any kind of explanation of what it is or what it relates to or who it's come from, do you?

A. I don't. But it is done quite a lot where you just get something -- an original document. Or it could have been handed by --

Q. That wasn't Dr Jumean's practice, was it? We've seen

his practice from a number of other items of correspondence. He was quite meticulous about all this, wasn't he?

A. He was meticulous, yes.

Q. Now, if we can just return to the commission. If you would turn to H(A)32/20. This is a document that begins on page 19 and it's an attendance note of 29 May 2001 of your meeting, together with Mr Curtis, with Jonathan Fisher of counsel.

A. That's correct.

Q. And you refer to the commission on the second page, page 20 of the bundle, in the paragraph that begins just above halfway down the page. You refer to this in your witness statement. This is Mr Curtis discussing with counsel the \$600,000 fee which Mr Curtis said that he would be receiving from the ORT transaction.

Mr Fisher was a bit troubled by this fee, wasn't he?

A. Yes, he thought it should be written down.

Q. It should be...?

A. Written down.

Q. Yes, but it wasn't just that it should be written down, was it? He was a bit troubled because, as he points out, if you look at the three points made in the end of that paragraph: first of all it was "a very large amount"; secondly, "it was not referable to any time

expended which was unusual"; and thirdly, the point you've just made that "the basis had never been documented".

If you look two paragraphs further down:

"Counsel suggested... that the size of payment that was being given to SLC could in the worst light be interpreted as a payment for SLC to keep quiet about any... money laundering activities (this is obviously on the basis that the source of monies were proven to be illegal)."

That was his concern, wasn't it?

A. That's correct.

Q. Now, was the \$600,000 in addition to the firm's professional fees?

A. I've no idea.

Q. Sorry?

A. I've no idea.

Q. You don't know?

A. No.

Q. In your experience is it usual or unusual for a solicitor to receive a large profit commission on a transaction?

A. Unusual, I would say.

Q. Now, can we turn to the Devonian transaction.

I understand that your first recorded involvement in

this transaction was on 14 May, when you took a note of a telephone conversation between Mr Curtis and the Clydesdale Bank. Am I right about that? Or was there any other contact?

A. I think that's right.

Q. Yes.

Now, I wonder if you could turn to H(A)30/33.

This is the document in question and I think that you were listening in on this telephone -- was it a telephone conversation or a meeting? I understand it to have been a phone conversation. Is that right?

A. It's telephone.

Q. Right. And as I understand it, you were listening in on it and taking the note. Is that right?

A. That's right.

Q. Now, are you familiar with this document or would you like an opportunity just to remind yourself of its contents?

A. Yes, I'm okay with it.

Q. Right.

Now, did it become apparent in the course of this conversation that a receipt of very large sums originating from funds held by Mr Abramovich in a Latvian bank would cause difficulties for Clydesdale Bank?

A. Yes.

Q. And was that because they were likely to find it difficult to satisfy themselves about its origins?

A. That's correct, yes.

Q. Now, did the bank therefore say that because these problems would not apply to funds transmitted from Abu Dhabi by Sheikh Sultan, one possibility was that the funds should arrive from that source instead?

A. I think that's the gist of it, yes.

Q. Was that because the bank had already done due diligence in the past on Sheikh Sultan and his family and associates?

A. I think that's right.

Q. Now, three days after this telephone conversation, on 17 May, you tell us in your witness statement that Mr Curtis went to the south of France to see Mr Berezovsky, Mr Patarkatsishvili and Mr Fomichev. You remember that evidence?

A. I do, yes.

Q. Now, I'd like you, please, in bundle H(A)30 to turn to page 127 H(A)30/127. Now, you have described in your witness statement how this document was prepared at about the time that Mr Curtis went to France and a copy of it was in fact faxed by you to Mr Curtis in the south of France. You remember that evidence from your witness

statement?

A. I do, yes. Yes.

Q. Now, the bold-type comments before the actual draft agreement, that appears to be notes of advice which Mr Curtis was to give to them. Is that right?

A. I think that's right, yes.

Q. And I think your evidence is -- your first witness statement, paragraph 90 is where I get this from D2/16/114 -- that these five bold points reflected points dictated by Mr Curtis to Mr Gilchrist. Is that right?

A. That's right, although I think NB(5) may have come later.

Q. I see.

Well now, did Mr Curtis, so far as you can tell us, take a copy of a discussion draft, with or without these notes, with him to the south of France?

A. I don't know.

Q. You don't know?

A. No.

Q. Now, point 2, if you -- now, your evidence is that you faxed this at about midday UK time, allowing for the two-hour difference between Curtis & Co's internal clock and Greenwich Mean Time. You faxed this at about midday on the 17th; that's what you recall, isn't it?

A. That's right, yes.

Q. Now, point 2, if you will just have a look at point 2 in the list of points, suggests that Mr Curtis was going to advise that there should be a direct agreement with Mr Abramovich in order to be able to enforce payment against him in England. Do you see that?

A. Yes. Yes, I do.

Q. So does it look as if at this stage it was intended that there should be a contract between Mr Berezovsky and Mr Patarkatsishvili on the one hand and Mr Abramovich on the other, but that the money would be channelled through Sheikh Sultan? Does that seem to have been what was envisaged at this stage?

A. It's a possibility, yes.

Q. Can you think of any other possibility which is worth considering?

A. What, insofar as that the money couldn't come directly from Mr Abramovich?

Q. Yes.

A. No.

Q. So there was going to be a direct deal but a slightly roundabout route for the money?

A. That appears to be the case, yes.

Q. Yes.

Now, point 4 suggests that Mr Curtis thought that it

was desirable to "create evidence of the trust scenario". I'm quoting from the document; you'll see it in front of you.

A. Yes.

Q. Can you help us on what was meant by "creat[ing] evidence of the trust scenario"?

A. I'm assuming it's the relationship between Boris and Badri and Mr Abramovich.

Q. Yes, but why was it necessary to create that evidence?

A. Well, I think he wanted to have some sort of written evidence of it.

Q. You think what?

A. I think he wanted to have some sort of written evidence of it.

Q. I see.

Now, you faxed this document, as you've told us, to France, together with a shorter form of agreement which we can find at H(A)30/142, about 15 pages further on.

Now, this is what you call the short-form agreement and this is the version that you faxed at 14.29 on Curtis machine time; about half past midday actually. That's right, isn't it?

A. Yes, there's two forms of this agreement.

Q. Yes. Well now, this version is not in fact -- the first document is the sale agreement. This document is

actually a release, isn't it?

A. That's right. This -- the first version I think -- was it faxed afterwards?

Q. Well, it was faxed virtually simultaneously. If you look back at H(A)30/127 -- sorry I'm trying to find the version with your fax header sheet -- I think they were both faxed at about 2.30 on 17 May. I'll try and get chapter and verse for that.

If you look at -- 142 is the short-form, as you call it, and 145, which has a fax record going about a minute later --

A. Yes.

Q. -- is the -- no, that's the same document. 148 is the document we've just been looking at with the five bold advice points.

A. Yes, that's 14.47, isn't it?

Q. 14.47.

A. Okay.

Q. So it looks as if they've both been prepared at more or less the same time and were being faxed within a short time of each other to Mr Curtis in France; do you agree?

A. That's right, yes.

Q. Now, the document at 148 H(A)30/148 is the same as the one we've been looking at and that is a sale and purchase agreement directly between Mr Abramovich and

Mr Berezovsky and Mr Patarkatsishvili, isn't it?

A. That's correct.

Q. And the document at 142 H(A)30/142 is a release under which, in consideration of Mr Abramovich either paying to Mr Berezovsky or Mr Patarkatsishvili the sums of money set out below or procuring Sheikh Sultan to do so, Mr Berezovsky and Mr Patarkatsishvili release Mr Abramovich from all or any claims of any nature they may have in connection with 44 per cent of the issued share capital of Sibneft. That was its purpose, wasn't it?

A. That's correct.

Q. And was that because Mr Curtis appreciated that it would be necessary, if there was going to be an arrangement under which the money went via the sheikh, to ensure that Mr Abramovich was released from any liability in respect of the equitable interest referred to in the sale agreement? Was that the reason for that?

A. I wouldn't know. I mean, are you asking me now or at the time?

Q. Well, I'm asking you now, but in the light of your examination of these documents.

A. Yes, it was to show an agreement between Boris and Mr Abramovich.

Q. Now, as you tell us in paragraph 105 of your main

witness statement D2/16/118, that was sent for translation, but there is a note on one of the versions that it was abandoned on Saturday morning, ie the morning after it was sent for translation. Do you see that?

A. I do, yes.

Q. So can you help us on: what was it that was abandoned on the Saturday morning?

A. I'm assuming it was just that present format.

Q. Well, this was a note on a copy of the draft short-form agreement with Mr Abramovich, the release agreement, wasn't it? If you want to look at it, it's bundle H(A)45/8. Do you see? This is the release agreement and the note that you refer to in your witness statement is in manuscript at the top. Is that note in your handwriting?

A. It is, yes.

Q. Now, so it looks as if a decision had been made, very shortly after the discussions between Mr Curtis and Mr Fomichev, Mr Patarkatsishvili and Mr Berezovsky in France, to drop the idea of a release. Do you agree?

A. I do, although H(A)45/8 is different to H(A)30/142. One of them relates to -- specifically relates to transferring shares and the other one doesn't. There's quite a subtle difference there.

Q. You're quite right. But they are both releases, aren't they? They're successive drafts of a release?

A. I think so. I think -- yes, they are.

Q. The names have been blanked out because of confidentiality but they were intended to be Mr Berezovsky and Mr Patarkatsishvili in line 1 and Mr Abramovich in line 2, weren't they?

A. That's right, yes.

Q. Now, can you help us at all on -- you must have been told at the time, for you to make this note that it was being abandoned -- were you not told why it was being abandoned?

A. I doubt it.

Q. I see.

Well now, on 21 May 2001 was there a conversation between Mr Curtis and Mr Keeling of Denton Wilde Sapte in which you again took an attendance note?

H(A)31/47.

A. I don't think I took the note.

Q. Sorry?

A. I don't think I took the note.

Q. Okay. Let's have a look at the document. H(A)31/47.

Were you party to this conversation? It records in the first line that you were.

A. I think so, yes.

Q. This note is Mr Keeling's note. Did you take a note of your own?

A. No.

Q. I see. But you do confirm that you were party to the conversation?

A. I think so, because I spoke -- did speak to him about Devonia.

Q. Yes. Well, that was shortly afterwards, wasn't it?

A. Mm-hm.

Q. Now, this note records a conversation between Mr Keeling and you and Mr Curtis. Now, just to establish who Mr Keeling was, had Mr Keeling been retained to set up any offshore vehicles that might be required in order to deal with this sum of \$1.3 billion?

A. I don't know whether he was retained at that time.

Q. Well, it looks, doesn't it, as if there had been some previous contact with Mr Keeling because, if you look at the first paragraph:

"This follows on from the conversations of 27 April and 2 May and concerns the shares of Sibneft, apparently the second largest Russian oil company, after YUKOS.

"[Mr Keeling] was reminded [of certain things]."

Does it look as if there had been previous discussions with Mr Keeling?

A. It does.

Q. Now, Mr Keeling's function was in fact, whenever that was agreed, to set up any offshore vehicles that might be required, wasn't it?

A. I think so, yes.

Q. That's what he did?

A. Yes.

Q. So it looks as if he had received some kind of preliminary instruction at an earlier stage and this was a more detailed discussion of the background and what he was to do; do you agree?

A. Yes, I'm not -- yes, he would have been involved in some respect. I don't know if he was formally instructed on it.

Q. Right.

Now, Mr Curtis describes himself in this document, in this note -- see the third paragraph from the top -- as having been:

"... brokering a deal whereby Abramovich will buy out the shares of Beresovsky and Badre."

Now, was it your understanding that Mr Curtis was in fact in contact with Mr Abramovich on that subject?

A. I don't think so, no.

Q. No. At the time -- I mean, obviously you only saw this note much later. But at the time you were unaware of any contact, weren't you, between Mr Curtis and

Mr Abramovich?

A. I don't remember him speaking of any direct contact.

Q. Yes. And you don't remember Mr Curtis telling you that he'd been in contact with Mr Abramovich?

A. No.

Q. Now, there are some documents and you refer to them at paragraphs 136 and 137 of your witness statement D2/16/124 and 173 to 175 D2/16/132. I'm not going to ask you in detail about this but I'm just referring to it as background to the next question.

There are some documents recording the involvement of a Ms Khudyk, who was a member of Mr Abramovich's staff who was helping Mr Fomichev to set up an account for Devonia at the Latvian Trade Bank into which these sums to be paid by Mr Abramovich could be paid. She was dealing with some administrative arrangements for setting up that account, wasn't she?

A. I believe so. I don't know.

Q. Yes.

A. Was I involved in that?

Q. Well, your involvement was peripheral and is described in those passages of your witness statement. But you weren't involved and don't claim to have been involved in detail.

A. No.

Q. Now, is there any evidence in the firm's file of contact between Mr Curtis on the one hand and either Mr Abramovich or his staff on the other, apart from the dealings involving Ms Khudyk?

A. I don't think so.

Q. Now, Mr Curtis in this note H(A)31/47, as recorded by Mr Keeling, says that Mr Abramovich could not be seen to pay for the shares -- I'm looking at the fifth paragraph of the note -- because he had always publicly stated in Russia that he owned them. Do you see that?

A. Yes, I do.

Q. Now, can you help us on where Mr Curtis got that information from?

A. I can have a guess.

Q. What would your guess be?

A. Probably Mr Fomichev.

Q. Probably Mr Fomichev.

Now, the note goes on to describe a scheme under which there will be a direct contract between Mr Abramovich on the one hand and Messrs Berezovsky and Patarkatsishvili on the other which will serve as evidence of their beneficial interest in the shares. That's the fourth paragraph of the note. Do you see that?

A. Yes.

Q. Now, the agreement which he then proposes is described in the sixth paragraph of the note and that is an agreement under which Mr Abramovich would pay \$1.3 billion to the sheikh not, on the face of it, for shares in Sibneft but in return for an oil concession. Do you see that?

A. I do.

Q. Was the suggestion this: that the sheikh would grant Mr Abramovich or his companies an oil exploration concession over land in the Middle East which was known to have no oil in it?

A. It seemed to be -- yes, I think it's anticipated.

Q. Yes. That's the proposal that's being made?

A. Yes.

Q. Now, would you agree that to grant for \$1.3 billion an oil concession on land known to have no oil in it was obviously a proposal for a sham agreement?

A. Yes, that doesn't look correct.

Q. It's simply designed to generate documents to explain the payment, isn't it?

A. Pretty much.

Q. Now, was Mr Curtis troubled by that?

A. Well, I don't know whether it was his plan.

Q. Well, he was explaining it to Mr Keeling.

A. Yes, he seemed quite open about it --

Q. Yes.

A. -- to Mr Keeling.

Q. So he was untroubled about it?

A. He didn't seem overtly troubled, no.

Q. Yes.

A. But obviously it never went anywhere.

Q. Well you tell us in a memorable understatement, Mr Jacobson, that you yourself would no doubt have raised your eyebrows at it. You would have been troubled about a transaction like that, wouldn't you?

A. I think the fact there was no oil, yes. Maybe there was oil.

Q. Now, in fact you had drafted two oil concession agreements on the previous day, hadn't you, the day before this note was made?

A. Two licence agreements, yes.

Q. Yes. So it looks as if Mr Curtis was quite serious about this, does it not?

A. It was a proposal, yes.

Q. Now, Mr Keeling subsequently acquired, shortly after this telephone conversation, did he not, on Mr Curtis's instructions, an off-the-shelf company, Devonia Investments?

A. That's right, yes.

Q. Is that right?

A. Mm-hm.

Q. And Mr Keeling also -- is this right -- set up the Itchen and Test Trusts, of which he in fact became a trustee; is that right?

A. That's correct.

Q. And they were trusts for Mr Berezovsky and Mr Patarkatsishvili, were they not?

A. They were.

Q. Now, can you tell us: when was the plan for a direct contract between Mr Abramovich and Messrs Berezovsky and Patarkatsishvili abandoned? Because it was, you agree, at some stage dropped and replaced by a proposal for a sale of their interest to Devonian. Can you tell us when that change of plan occurred?

A. I can't, no.

Q. Are you aware of any documentary trace of the change of plan before 29 May?

A. I think there was -- was there a note, a telephone call on 25 May with Nick Keeling?

Q. I will check that. I'm not aware of it, but it's easy to overlook stuff in these enormous bundles and I will have it checked while I continue to ask you questions.

A. It was the first time he said that the transaction had become less complicated.

Q. Right. Well, we will see if we can lay our hands on

that and I will show it to you if we succeed.

On about 29 May -- is this right -- Mr Curtis prepared two draft letters, one addressed to Mr Fomichev and Mr Kay jointly and one to Dr Jumean explaining a change of plan. Do you remember those documents?

A. I do remember the letters, yes.

Q. Yes. Can I ask you to look at them: bundle H(A)32/12. This is the draft letter to Dr Jumean. And if you look back at page 8 H(A)32/8 you will see the draft letter to Mr Fomichev and Mr Kay. Do you see that?

A. Yes.

Q. Now, were you aware at the time that, in discussions with Mr Abramovich and his staff, Mr Fomichev had been trying to arrange for the \$1.3 billion to be paid in securities rather than in cash?

A. No.

Q. You were not aware?

A. No.

Q. So I think it must follow that you weren't aware that it was on this day, 29 May, that at a meeting in Cologne that suggestion was rejected by Mr Abramovich so that it was going to be cash?

A. I wasn't aware of that.

Q. I understand.

Now, these two documents, these two letters, both

explain that it has now been decided that there will be a sale to the sheikh rather than to Mr Abramovich directly. That's, in very bald summary, what they're both concerned with, isn't it? It's more obvious from the letter to Dr Jumean on page 12, where he summarises in the numbered paragraphs the deal as now envisaged.

A. That's right, yes.

Q. And he makes the point that now that the deal is going to involve the sheikh's company buying Mr Berezovsky's and Mr Patarkatsishvili's interests in Sibneft, he could no longer act for Mr Berezovsky and Mr Patarkatsishvili. That's one of the points he's making, isn't it?

A. That's right.

Q. Now, presumably if the sale to the sheikh had been decided earlier than this, Mr Curtis would have ceased to act for Mr Berezovsky and Mr Patarkatsishvili earlier than that, wouldn't he?

A. I believe so. I mean, there might have been a time delay, a little bit.

Q. The moment it became apparent that he had that conflict, he would inform his clients and withdraw from acting from them, wouldn't he?

A. I agree. But that attendance note of the 25th, I think it seems to suggest that the transaction had changed somewhat.

Q. Okay. Well, let's just have a look at that in case it assists: H(A)31/252. Now, I'm not sure this is correctly described as a "note" but it may be the document that you had in mind.

A. No. No, this isn't --

Q. That's not what you had in mind?

A. No. I think it's a fax from Nick Keeling on the 29th referring to a discussion --

Q. On the 29th?

A. Yes, it was -- referring to a discussion on the 25th --

Q. Right.

A. -- where Stephen confirmed that the transaction had --

Q. We will resume our searches, Mr Jacobson.

A. Yes -- had become less complicated and there would be a...

Q. Okay. Right.

Now, these two letters envisaged that there was now going to be a sale of part of the holding of Mr Berezovsky and Mr Patarkatsishvili's interests and a grant to Devonia of an option over the rest. That, in broad summary, was the structure proposed, wasn't it?

A. That's right, yes.

Q. Now, we've seen that Mr Curtis was going to cease to act, in consequence, for Mr Berezovsky and Mr Patarkatsishvili. In this letter to Dr Jumean...

Sorry, can I just break off and show you what we now think is the note: H(A)32/43. Is this the document that you had in mind?

A. That was it, yes.

Q. I see. What was it that you wanted to point out to us?

A. Well, just the -- obviously the conversation on the Friday afternoon, which was probably the 24th or 25th, where in the next paragraph he explains, probably for the first time, how the transaction is going to be detailed.

Q. Yes, I see. Well, it may be therefore, you think, that was what was explained on the Friday afternoon.

I entirely see that.

Now, if we can go back to the draft letters that we had open before, pages 8 and 12, in particular the one that starts at page 12 H(A)32/12. Do you see that on the second page of that letter to Dr Jumean, page 13 of the bundle, bottom of the page, he says:

"I am required to make yourself and His Highness aware of the potential dangers of acquiring a nebulous beneficial interest without any third party confirmations from Mr Abramovich as to ownership."

Do you see that?

A. I do.

Q. Now, why was it nebulous?

A. Because it was undocumented and unacknowledged.

Q. Well, it was undocumented; that was one point. It was also an interest which Mr Curtis knew, didn't he, Mr Abramovich was not going to acknowledge?

A. Well, he tried, obviously, to formulate agreements for him to be able to acknowledge it, but it seemed to be by that stage acknowledgement --

Q. By this stage at the latest he realised that Mr Abramovich was not going to acknowledge that there was any interest, and that is information I think you told us that you thought was probably derived from Mr Fomichev, or you hazarded a guess to that effect?

MRS JUSTICE GLOSTER: Can you say "yes" or "no" because nodding doesn't appear on the transcript.

A. Okay. My nodding -- yes to Mr Fomichev or I agree with what you said in relation to the -- to it being unacknowledged.

MR SUMPTION: Yes. But Mr Curtis also knew by this time, didn't he, that Mr Abramovich was not going to acknowledge that Mr Berezovsky and Mr Patarkatsishvili had any interest in these shares?

A. I think that's right, yes.

Q. And that was the information that a few minutes ago, when you said you could hazard a guess, you said that he was liable to have obtained from Mr Fomichev.

A. This precise information?

Q. The information that Mr Abramovich was not going to acknowledge their interest.

A. Okay.

Q. Do you agree?

A. I don't -- I guess.

Q. Well now, it was also, of course, the case, was it not, that by this time any attempt on Mr Curtis's part to get any kind of direct agreement between Messrs Berezovsky and Patarkatsishvili on the one hand and Mr Abramovich on the other had been dropped in favour of this new structure? That was also the case, wasn't it?

A. Appeared to be the case, yes.

Q. Now, these new arrangements were communicated, weren't they, to Clydesdale Bank? They were sent copies of these draft letters?

A. Yes, that's right.

Q. And did these new arrangements give rise to concern on the part of the bank that the money that it was going to receive might be just Mr Abramovich's money passing into their accounts by a circular route via the sheikh?

A. Yes, they wanted some confirmation that the money originated from the sheikh's own funds.

Q. Yes. They were concerned, weren't they, that it might be Mr Abramovich's money just being recycled through the

sheikh?

A. That's right.

Q. Now, can you help us on why this change of a sale to the sheikh was decided upon?

A. What, you mean the actual sale or...?

Q. Well, at some stage a decision was made that instead of selling to Mr Abramovich, they were going to sell to the sheikh. You may not be able to help on this, but can you help us on, first of all, who made that decision?

A. I don't know who made it.

Q. So I think it probably follows from that answer that you probably can't help us on why either?

A. No, probably not.

Q. Now, the first discussion draft of a sale to the sheikh's company was prepared, I think you tell us, on the following day, 30 May. The reference is H(A)32/82, same bundle. It's actually marked, I'm not sure in whose handwriting, at the top right:

"1st Discussion Draft 30/05/01."

A. Yes, that's Mark Gilchrist.

Q. That's Mr Gilchrist, is it?

A. Yes.

Q. Thank you.

Now, were you aware at the time that on the following day, 31 May, the first payment, namely

\$33 million, was made by Mr Abramovich's companies into Devonia's account with the Latvian Trade Bank?

A. No.

Q. You were not.

Could I ask you to turn to bundle H(A)34/23, please. This is a letter from Ms Khudyk, whose role I have mentioned in the context of an earlier question, sending to you various documents which need to be signed and sent back initially by fax and then by courier to an address in Moscow. Do you see that?

A. I do.

Q. Now, the documents that she attached were documents, were they not, relating to the first payment of \$33 million out of the \$1.3 billion?

A. I had no idea what they were.

Q. Well, they were addressed to you. If we just look at page 24, the first of them, this is a receipt for a share in Pex Trade Corporation. And the next page is a direction:

"... to transfer the dividends payable to our company..."

And that's Devonia.

"... as the shareholder of Pex Trade Corporation..."

Then there's an assignment of the subscription by Pex to Devonia and you will see that on page 29 the

amount is specified.

There's a payment order, Pex Trade Corporation, \$33.85 million to Devonia at Latvian Trade Bank in Riga.

Do you see that?

Now, the first payment of the \$1.3 billion was made by transferring bearer shares of a company called Pex to Devonia and then procuring Pex to pay a dividend to Devonia in the amount of \$33.85 million. It's the documents relating to that transaction that are being sent to you on this occasion on 31 May, isn't it?

A. Yes, that's right, although I didn't receive this payment order.

Q. Sorry?

A. I didn't receive the payment order.

Q. You didn't receive the payment order?

A. No. 34/29.

Q. I see. You think that that's part of a different document, do you?

A. Yes, that's not --

Q. I see. Okay.

A. That's not part of the... well, we can check, can't we?

Q. Right, I follow. But you did see the other documents, including the document at page 25 which asks you to transfer the dividend, but the amount is unspecified, to Devonia?

A. I did, but I had no idea what it related to.

Q. Yes, I see.

Well now, did you actually read these documents or not?

A. Probably not, no.

Q. Do you agree that even without the payment order they appear to show that payment was imminent even though the Devonia agreement had not even been drafted, let alone executed?

A. I had no idea what it related to in relation to the Devonia agreement.

Q. Can we look at page 33 in this bundle, please H(A)34/33, which is a copy of the same documents but with a note from I think Mr Curtis to you. Is that right?

A. Me to Mr Curtis and then Mr Curtis to me, yes.

Q. Sorry?

A. It's from --

Q. Yes.

A. Yes.

Q. The first bit immediately under the typed text:

"James -- I have told Ehab..."

That's Mr Curtis, isn't it?

A. That's right.

Q. So Mr Curtis is saying to you:

"I have told [Dr Jumean] we cannot act on this -- he is to refer to his [Abu Dhabi] lawyers -- he confirms that he has already received these direct from (Sibneft?) and is dealing with Sibneft... direct -- do not send."

Okay? Now, Mr Curtis didn't want to see this sort of documentation, did he?

A. I've no idea.

Q. Well, he had carefully arranged, hadn't he, that his firm would not be instructed on any dealings between Devonian and Mr Abramovich because he didn't want to be involved with that side of things?

A. I don't know whether he was careful; it was just he didn't want to be instructed.

Q. Yes. It was his decision that he should not be instructed --

A. I think so.

Q. -- on that side of the transaction, wasn't it?

A. I think so, yes.

Q. Now, can you help us on why that was, if it wasn't simply in order to ensure that he was not aware of what was going on, if anything, between Devonian and Mr Abramovich?

A. I'm assuming it was relating to the Clydesdale Bank. He wanted to stick with --

Q. Yes.

A. -- stick with them and also to -- I assume the fact that none of the parties were from the UK and the money wasn't coming into the UK felt --

Q. Well, he didn't -- sorry.

A. He felt it was probably something best dealt with by other lawyers.

Q. He didn't want to have to answer questions from Clydesdale Bank about the supposed onsale of these shares by Devonia to Mr Abramovich, did he?

A. I've no idea.

MR SUMPTION: My Lady, would that be a convenient moment to break?

MRS JUSTICE GLOSTER: Yes, certainly.

MR SUMPTION: I'm not going to be that much longer with this witness; probably half an hour.

MRS JUSTICE GLOSTER: Yes, very well.

Mr Jacobson, you mustn't talk to anybody about the case or your evidence over the break. Do you understand?

THE WITNESS: Yes, my Lady. Yes.

MRS JUSTICE GLOSTER: Very well. 2.05.

MR SUMPTION: My Lady, before your Ladyship rises can I just mention that there has been a minor change to the witness material. Mr Stephenson is going to be

available if we get to him, which we may well do, this afternoon.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: So if your Ladyship hasn't had an opportunity to read his statement --

MRS JUSTICE GLOSTER: Thank you very much. I'll go and read it over the break.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Mr Jacobson, can I ask you, please, to turn to H(A)34/33, which you won't have in front of you.

I think it will be brought to you.

A. It's here.

Q. You have got it, I see. Thank you.

Now, this is a letter of 31 May 2001 addressed to Ms Hilton, who was the compliance officer of the Clydesdale Bank, was she not?

A. Sorry, did you say 34/33?

Q. Sorry, forgive me, I've given you a false reference.

It's a different document. 33 --

MRS JUSTICE GLOSTER: That was the one we were looking at before lunch.

MR SUMPTION: Sorry, 34/2, forgive me. My mistake entirely.

This is indeed a letter to Ms Hilton from Mr Curtis dated 31 May; is that right?

A. That's right, yes.

Q. Ms Hilton was the compliance officer of Clydesdale Bank European Group, wasn't she?

A. That's right, yes.

Q. Now, if you look at this letter, do tell me if you want to take a moment just to remind yourself of its contents, but if you see the fourth paragraph, you will see -- well, in the first paragraph Mr Curtis thanks her for some diagrams that he's sent reflecting his understanding of the transaction and then there are discussions of possible further material. And in the fourth paragraph:

"As I explained over the telephone, the suggestion now is that the Sheikh will purchase the beneficial interest of Boris Berezovsky and Arkady Patarkatsishvili in installments."

Now, it looks, does it not, as if there had been a previous telephone conversation between Mr Curtis and Ms Hilton at which -- see the following paragraph -- Ms Hilton had expressed some concerns about the new form of the transaction? Would you agree with that?

A. Yes.

Q. Now, why -- you'll see that in the next paragraph:

"I have passed on to Eyhab your concerns with regard to the exposure of the Sheikh and we have similarly advised him of the potential dangers."

Now, can you help us on: why would a compliance officer like Ms Hilton have been concerned with the exposure of the sheikh?

A. I've no idea.

Q. Well, on the face of it -- would you agree -- this was an incredible transaction, wasn't it, because the sheikh was apparently going to buy for \$1.3 billion an undocumented equitable interest in a Russian oil company in circumstances where the registered owner of the shares was not prepared to acknowledge the existence of their interest?

A. That's right.

Q. Now, would you agree that on the face of it that's an incredible transaction?

A. It does seem quite incredible.

Q. Now, even if Sheikh Sultan had a back-to-back deal with Mr Abramovich to sell this interest on to him, the sheikh was exposed, wasn't he, unless security was given by Mr Abramovich to ensure that Mr Abramovich did duly buy and pay for the shares as and when the sheikh exercised his options?

A. I think that's right, yes.

Q. Now, the bank's concern -- is this right -- was that the oddities of this transaction, as described, raised the possibility that the sheikh was not really buying the interest at all but recycling the money; that was the possibility that was concerning the bank, wasn't it?

A. They were interested in the source of the funds, yes.

Q. Yes. They were concerned that there wasn't a real sale, just a roundabout method of getting the money to them?

A. Well, they didn't want Mr Abramovich's funds.

Q. No.

Now, was it in order to allay these concerns that Mr Curtis said, in the fifth paragraph on this page, that Mr Abramovich was going to make advance deposits with the Abu Dhabi Commercial Bank which the sheikh would draw down on as and when he purchased each instalment? Do you see that statement is made in the last paragraph on page 2?

MRS JUSTICE GLOSTER: Did you know that at the time?

A. No.

MR SUMPTION: Did you not see this letter at the time that it was written?

A. No. I would have seen it afterwards but I didn't see it at the time.

Q. How long afterwards? Shortly afterwards or --

A. Pretty shortly afterwards.

Q. Sorry?

A. I think I sent it to counsel.

Q. Yes.

Well now, it must have struck you that that concern of the bank was the reason why Mr Curtis told the bank that Mr Abramovich would be making deposits with the Abu Dhabi Commercial Bank to be drawn down by the sheikh as and when he exercised options to buy more shares?

A. I think that's right, yes.

Q. Now, can you tell us what steps, so far as you know, Mr Curtis took to satisfy himself that Mr Abramovich would be making advance deposits with the Abu Dhabi Commercial Bank?

A. I don't know whether he did.

Q. You don't know whether he did. In fact he didn't, did he?

A. No.

Q. Now --

MRS JUSTICE GLOSTER: Did you know that at the time?

A. No.

MR SUMPTION: But it's obvious now, isn't it, looking at the file?

A. I -- there's nothing on the file that suggests that he did.

Q. No. There's nothing on the file that records any

contact between the firm and Mr Abramovich or his staff that could have justified such a suggestion, is there?

A. No. He just says:

"... I am advised that Mr Abramovich will..."

So someone has told him.

Q. And equally I'm sure you can confirm that there's nothing on the file which records any contact between the firm and Sheikh Sultan or Dr Jumean which might have justified that statement?

A. Well, I'm assuming he got his instructions from Dr Jumean.

Q. Well, what makes you assume that?

A. Because that's where he got his instructions from.

Q. Well, he got his instructions partly from Dr Jumean but partly also from Mr Fomichev, didn't he?

A. Well, up until a certain date, yes.

Q. The sheikh was never asked, was he, for written confirmation of either the existence of a matching deal with Mr Abramovich or the security deposits? That's correct, isn't it?

A. I don't know.

Q. Well, I think I can help you with this. If you turn in bundle 34 to page 133 H(A)34/133, you'll find your own list of things which the sheikh was to be asked for or Dr Jumean, on behalf of the sheikh, was to be asked for.

This was a list you prepared, isn't it?

A. It is, yes.

Q. What you included in this list was confirmation that Mr Curtis was not instructed on any back-to-back deal with Mr Abramovich; is that right?

A. Yes, that's number 2.

Q. Yes. But you weren't asking him for a confirmation that such a matching deal was in place, were you?

A. No, I don't think so.

Q. And you intended to ask him, and indeed did ask him, for confirmation that he would be using his own funds to pay Mr Berezovsky and Mr Patarkatsishvili but not that there would be any security deposits; that's correct, isn't it?

A. And that there would be no intermingling with Mr Abramovich's funds coming in.

Q. Yes. But you didn't ask for confirmation that there would be security deposits?

A. No, I don't think so.

Q. Now, the sheikh, as you point out, confirmed that he would be paying money into Clydesdale's accounts from his own funds. If you could turn backwards to H(A)34/62, you will see that at page 62 there are the versions as sent. You may remember I showed you the drafts this morning which were sent to Clydesdale Bank

and these are the final versions, as signed and sent, at 62 and 64, both dated 1 June.

Do you agree?

A. These were the final letters sent, yes.

Q. Yes. And can you confirm that copies of these documents were sent to the Clydesdale Bank?

A. Yes, I believe they were.

Q. Now, the firm ceased to act for Mr Patarkatsishvili and Mr Berezovsky -- is this right -- on 1 June; was that the date?

A. That's the date of the letter, yes.

Q. And is it right that Reid Minty were appointed to act for Mr Berezovsky and Mr Patarkatsishvili on 3 June?

A. I don't know the exact date.

Q. Right.

A. But it was afterwards, yes.

Q. Well, was Reid Minty introduced to Mr Berezovsky and Mr Patarkatsishvili by Mr Curtis?

A. I imagine so, yes.

Q. When you say you imagine so, was that because Reid Minty was a firm that had an established association with Curtis & Co?

A. It did, yes.

Q. So that when you wanted to find someone else to advise a client, they were one of a number of obvious

possibilities?

A. Yes.

Q. Now, you're aware, are you not, that the agreement was actually executed by Mr Berezovsky and Mr Patarkatsishvili on 5 June?

A. I think that's right, yes.

Q. So Reid Minty didn't have much time to get into the transaction, did they?

A. A couple of days.

Q. No.

Now, would it be fair to say that Reid Minty were instructed to represent Mr Patarkatsishvili and Mr Berezovsky on a very limited basis, reflecting the shortage of time?

A. Well, I don't know really. I mean, they would have undertaken their responsibilities if they had to.

Q. Well, can I ask you to look at their retainer letter. You may not have seen it at the time, in which case do say.

Page 213 of this bundle H(A)34/213 is a letter dated 4 June, which is the retainer letter sent on that date by Mr Moss of Reid Minty to Mr Berezovsky and it refers to a meeting that had previously occurred between Mr Curtis and Mr Fomichev.

A. I didn't see this at the time.

Q. You didn't see this at the time. Were you aware of that meeting between Mr Curtis and Mr Fomichev at the time? Can you help us on when it happened, apart from the fact it was before this date?

A. I can't.

Q. Understood.

If you look at the next page of the letter, the second page, there's a description of the transaction and a heading in the side of the letter "Issues Involved" and the second paragraph under "Issues Involved" says:

"Advice so far as the ownership and interest of your shares in SIBNEFT has been given to you by your Russian lawyers, namely [Mr] Ivlev of ALM -- Feldmans and we are not providing any advice in relation to that interest or other applicable law to the actual ownership of the shares. Similarly, so far as any transactions is concerned that relates to the shares after the signing of this agreement in Abu Dhabi or elsewhere, you will seek separate advice should it be needed."

Now, that's why I suggested to you that they were instructed on a limited basis. But you may not have been involved; the letter may have to speak for itself.

A. I think so.

Q. Understood.

Were you aware that Reid Minty had no part in drafting the agreement? It was drafted entirely within Curtis & Co's office, was it not?

A. It was -- I think there was a few amendments we made on their suggestion.

Q. Yes.

MRS JUSTICE GLOSTER: Were you responsible for drafting the agreement?

A. I didn't draft the first one but thereafter I did, yes.

MR SUMPTION: Equally Reid Minty suggested, did they not, that Mr Berezovsky and Mr Patarkatsishvili should not be asked to give warranties of their title because their title was a matter of some doubt? That was a point that Reid Minty made, did they not?

A. I think that's right, yes.

Q. And that suggestion was firmly rejected by Mr Curtis, was it not?

A. Yes.

Q. Now, is it also right that in recognition of the limited role that they had played, Reid Minty agreed to charge a significantly reduced fee?

A. I've no idea.

Q. You don't know?

A. No.

Q. Well, I'll tell you the basis on which I say that and if

it's not something that you can help on, do say so.

H(A)35/240. I hope that that is Ms Minty's attendance note of 5 June. Is that what it is?

A. Yes, I do --

Q. Is this a document that you've seen before?

A. I've seen it before but obviously didn't see it at the time.

Q. But not at the time, okay. Well, in that case you may not be able to help us. But the basis on which I made the last suggestion was the last paragraph on page 240.

A. Okay. It's also been amended in the retainer letter.

Q. I'm sorry?

A. It's also been amended in the retainer letter.

Q. What has been amended in the retainer letter?

A. The fee. It looks like it was 100,000 reduced to 60.

Q. Yes, you're quite right.

Now, the Devonian agreement was executed by Mr Berezovsky and Mr Patarkatsishvili on 5 June and by the sheikh on about 11 June. I think the latter date we have established this morning.

A. That's correct.

Q. Now, you say in your witness statement that:

"... the first payment... under the Devonian Agreement [was made] on 12 June..."

And I'm referring to paragraph 234 of your witness

statement D2/16/147. I thought I was, but hang on.

A. That's right, yes.

Q. 234, yes.

A. Yes.

Q. Now, when you say you understand that that is so, is that something that you have extracted from the document that you then refer to, your fax to Mr Keeling on 22 November?

A. I think it was the first time -- well, it was when the first consideration payment was made.

Q. Yes. Well now, is that a reference to payments made from Devonia's account with the Abu Dhabi Commercial Bank to the accounts of the two trusts at Clydesdale Bank?

A. Yes, that's right.

Q. Right. Now, did you have any knowledge or did, so far as you know, Mr Curtis have any knowledge about the payments that were made into Devonia's Abu Dhabi account from the Latvian Trade Bank account?

A. No.

Q. Did you have any knowledge about the payments that were made into the Latvian Trade Bank account by Mr Abramovich's companies?

A. No.

Q. Right.

MRS JUSTICE GLOSTER: When you say "no", you were asked not only in relation to your own knowledge but also in relation to --

A. To Mr Curtis.

MRS JUSTICE GLOSTER: -- Mr Curtis's knowledge.

A. So far as I'm aware, yes, that was --

MRS JUSTICE GLOSTER: That was the position?

A. Yes.

MR SUMPTION: So all you knew was that the payment had been made into the Clydesdale Bank accounts on 12 June and you knew that presumably because you had access to those accounts, as you told us this morning?

A. That's right.

Q. So you would have known that at some earlier stage, but how much earlier you wouldn't have known, money had arrived in the Abu Dhabi account from somewhere?

A. I probably -- well, I wouldn't have applied my mind to it at the time, but it sounds logical.

Q. Now, the Devonia agreement was, I suggest, simply produced for the consumption of the Clydesdale Bank, wasn't it?

A. In what sense?

Q. Well, if -- I don't want to try and use you as an expert witness, but if the payments had been made to Devonia by Mr Abramovich before the agreement was executed then it

looks as if this agreement was simply a piece of paperwork to show the bank, doesn't it?

A. If that was the case, yes.

Q. Now, are you familiar with the terms of the Devonia agreement as executed?

A. Some of it, yes.

Q. Well, let me know if you want actually to see the agreement but I think this part of it is something you won't need to look at it for.

The proposal involved the sale of a one-thirteenth part of the Sibneft shares, or the interest in them, for 100 million and the grant of 12 options, each for a further thirteenth, exercisable over a period of a year. Do you recognise that as a description of the transaction?

A. That's right, yes.

Q. Now, would that mean that Mr Berezovsky and Mr Patarkatsishvili were only assured of getting the first 100 million, because the sheikh didn't have any obligation to exercise the option in relation to the other 12 thirteenths?

A. I think that's right.

Q. Now --

A. I think that's -- sorry.

Q. -- did you think that was what Mr Berezovsky and

Mr Patarkatsishvili wanted, only 100 million being assured to them?

A. I've no idea.

Q. Could I ask you to take, please, bundle H -- you can put away the bundles you've got in front of you, apart from your witness statement. Could I ask you to be given bundle H(D)2/61.

Hold on, I've given you a mistaken reference.

I will give you the right one in a minute. Page 59, I'm told. (Pause)

I seem to have two different versions of H(D)2. Is your version at page 61 a fax from Mr Curtis to the National Australia Group, attention Leigh Hilton, on 1 August?

A. No.

MRS JUSTICE GLOSTER: Are we in H(D) or H(A)? There's a confusion.

MR SUMPTION: H(D)2, I'm sorry.

MRS JUSTICE GLOSTER: The witness may have H(A). That was the earlier reference.

MR SUMPTION: I think the witness has got H(D) but the trouble is this bundle has been changed so often because of the arrival of new documents.

MRS JUSTICE GLOSTER: Perhaps the witness can look at it on the screen.

THE WITNESS: Yes, I've got it here.

MRS JUSTICE GLOSTER: It's on the screen.

MR SUMPTION: So does that mean that H(D)2/61 is the reference recognised by Magnum? I see.

MRS JUSTICE GLOSTER: It's H(D)2/29, page 147 H(D)2/29/147. Is that right?

MR SUMPTION: Yes.

Right. This is a letter from Mr Curtis to the Clydesdale Bank dated 1 August. Now, you may not have seen this letter before; it's not something that has been produced, I think, with your assistance. It comes from the files of the Clydesdale Bank.

Have you seen it before?

A. Well, it's from Curtis & Co so I assume I would have seen it.

Q. Well, the reason I say you may not have done is that it's a document we have not seen until the Clydesdale Bank produced it as a result of a summons about a week ago.

A. Okay.

Q. So you wouldn't necessarily have seen it. We haven't seen it among the documents that you prepared for disclosure in this action.

A. Okay.

Q. So would you just remind yourself of what it says.

(Pause)

A. Yes, I've read it.

Q. Do you think, having read it, that it's a document you've seen before?

A. I imagine I would have seen it before, yes.

MRS JUSTICE GLOSTER: At the time of the transaction?

A. Well, yes, I was more involved so I couldn't discount that I hadn't seen it.

MR SUMPTION: Right.

Do you see that the subject of the letter is the fact that the flow of payments into the Clydesdale Bank account doesn't correspond to what's in the agreement?

A. Yes.

Q. That's what it's talking about, isn't it?

A. That's right, yes. Yes.

Q. And therefore what Mr Curtis is telling the bank is that:

"All parties have agreed that they will enter into a variation agreement in relation to the agreement effective on 12th June..."

Now, the agreement effective on 12 June is the Devonia agreement as executed by the sheikh, isn't it?

A. That's correct, yes.

Q. And were you aware, being somebody who was rather more involved at this stage, that all parties had agreed to

enter into a variation agreement of that kind?

A. It doesn't ring any bells with me.

Q. No. We have found no other trace of the parties having agreed with that, but you can't help us on it?

A. I can't remember, no.

Q. Can you help us on why in fact no variation agreement of the kind suggested in this letter was in fact subsequently drawn up, so far as the documents we have show?

A. I think possibly because of the issues with the Clydesdale became a lot more important after --

Q. Was that because at the end of this very month the Clydesdale Bank refused to deal with the money any longer?

A. That's right, yes.

Q. Yes.

Now, at paragraph 272 of your witness statement D2/16/155 you deal with Mr Curtis's discovery in 2002 that the instalments in which money was being paid to Mr Berezovsky's and Mr Patarkatsishvili's various trusts bore no relation to those provided for in the Devonia agreement. That's the subject you're dealing with from paragraph 272 onwards, isn't it?

A. Well, he's talking about payments being made, not instalments, as in not the amount of the instalment,

just payments being made.

Q. Well, there were two problems, weren't there? First of all, the payments were being made to an account other than the one specified in the Devonian agreement?

A. That was the only problem.

Q. Well, secondly, the amounts of the payments didn't correspond to the instalments in which the options were being exercised; isn't that right?

A. That's true, but I don't remember that being such an issue. It was more about that payments were being made without reference to a document.

Q. Mr Jacobson, so far as you can recall, with or without the aid of any documents, were these 12 options granted to Devonian ever exercised?

A. Well, the first three or four were, I think. I think we've got certificates for the -- if I remember, for the first ones relating to Clydesdale Bank.

Q. Well, you got certificates a long time afterwards for some of them, didn't you, but no evidence of any exercise of the option?

A. The option was exercised by virtue of the payment being made before.

Q. Well, are you talking about the first payment?

A. As soon as payments were made, the very fact there was a payment, then the next option would have been

exercised.

Q. Are you saying that the price was paid before the option had been exercised?

A. I think how I remember it was that the payment would be made and on the payment the next option would be ready to go.

Q. That's the opposite of the order one would normally expect, isn't it?

A. I don't know.

Q. Well, normally --

A. I'd have to look at the agreement.

Q. -- you exercise the option, that means that you're entitled to buy the interest as to one thirteenth, and once you exercise the option, somebody pays you for it?

A. Yes, and then on -- when that payment has been received, the next option becomes exercisable maybe.

Q. The next option, exactly.

A. Yes.

Q. But it's slightly odd, isn't it, to -- the payment, as I understand your evidence, gave rise to the exercise of the option and not the other way round.

A. I think that's right, yes.

MRS JUSTICE GLOSTER: Sorry, I'm not understanding this.

Are you saying that there was no formal service of a notice exercising the option?

A. I never saw any notices for exercising options.

MRS JUSTICE GLOSTER: Not for any of the 12 tranches?

A. No.

MRS JUSTICE GLOSTER: So what you're saying is that the actual payment was in effect an exercise of the option?

A. I think that's -- that was right. I'd have to check the documents but I think that's my recollection of how it's supposed to work.

MRS JUSTICE GLOSTER: And was that provided for in the agreement, that mere payment would constitute effective exercise of the option?

A. I don't know. I can't remember. I think we'd have to look at the letters to Leigh Hilton.

MR SUMPTION: Now, does it look therefore as if what happened was that a payment was made and somebody then produced the documentation to identify it as a contractual payment afterwards?

A. Insofar as, what, the certificate is being made?

Q. The certificate was produced after the payment was made but there was no receipt of any document exercising the option?

A. I don't remember any documents, no.

Q. Right. And the certificates of transfer had all been signed in advance on 5 June by Mr Berezovsky and Mr Patarkatsishvili, hadn't they?

A. I don't think I was aware of that.

Q. Right.

Now, when, in 2002, Mr Curtis appreciated that there was a discrepancy between the payments as made and the payments as provided for by the agreement, he suggested, didn't he, that there should be a retrospect amending agreement which would bring the obligations of Devonian into line with what had already happened?

A. That's right, yes.

Q. And as I understand it, Mr Curtis told you -- I'm taking this from paragraph 307 of your witness statement D2/16/162 -- that Reid Minty, who had acted for Mr Berezovsky and Mr Patarkatsishvili briefly on the original agreement, had declined to act for them on the amending agreement. Does that suggest that Mr Curtis had asked them to act for Mr Berezovsky and Mr Patarkatsishvili on the amending agreement?

A. I think that's -- in paragraph 306 there were some conversations with Mr Curtis and Mr Moss at Reid Minty.

Q. Yes. Now, why did Reid Minty feel uncomfortable?

A. I've no idea.

Q. No idea?

A. No. They just didn't want to do it.

Q. They were beginning to feel that there was something fishy about this transaction, were they not?

A. Well, I don't know what "uncomfortable" really means.

They may not have been paid enough money.

Q. It's the word you use in describing what Mr Curtis told you.

Now, I think you also learnt in 2002, did you not, that Mr Curtis received, on top of the professional fees of his firm, a commission of \$13.8 million from the Itchen Trust? And you refer to that at paragraph 335 of your witness statement D2/16/166.

A. This is for the fund.

Q. Sorry?

A. For the fund.

Q. When you say "for the fund", what do you mean?

A. In relation to his bonus for the fund.

Q. You mean the Rainbow Fund?

A. Yes.

Q. Well, have you seen the documents which record the agreements involving Mr Berezovsky and the sheikh to the payment of those sums?

A. The letters that they signed?

Q. The letters that they signed relating to separate sums of \$13.8 million --

A. Yes.

Q. -- and \$4.5 million.

A. Yes, I've seen those.

Q. Yes. Now, those indicate that the commission was being paid for Mr Curtis having introduced the Devonia transaction; that's right, isn't it?

A. I think so, yes.

Q. And they were only paid in respect of the Rainbow Fund because Mr Curtis in 2002 decided to move to Gibraltar and wanted them attributable to his work in Gibraltar because that would reduce his tax bill?

A. I think that's the -- that's probably the idea, yes.

Q. Right.

Now, were you aware at the time that, in addition to commissions being paid to Mr Curtis, commissions were also paid to Dr Jumean? Were you aware of that?

A. I wasn't, but I kind of guessed that there probably were.

Q. What made you guess that Dr Jumean was getting a cut?

A. I just assumed that him and Mr Fomichev would be receiving commissions.

MRS JUSTICE GLOSTER: From whom?

MR SUMPTION: Well, why did you assume that?

MRS JUSTICE GLOSTER: Sorry, could you answer my question.

Who did you assume that they would be getting commissions from?

A. From the sheikh.

MR SUMPTION: Did you assume that the sheikh would be

granting them those commissions or that they would simply be taking the commissions from the money as it went through? You didn't have any view on that?

A. I didn't have any idea. It was just a feeling.

Q. Now, something must have given you the impression that Mr Fomichev and Dr Jumeau were going to get, from whatever source, a commission out of this. What was it?

A. I don't know. It was just a feeling. I can't be precise, but there was -- I just got a feeling.

Q. You just got a feeling that there was -- part of the iceberg was under the sea?

A. Hmm.

Q. Right. What about Mr Joseph Kay: were you aware that he was getting a commission as well?

A. I don't think so, no.

Q. I see.

Now, just a couple of other minor matters, Mr Jacobson. Can you confirm that Mr Curtis did not speak Russian?

A. He didn't speak Russian, no.

Q. Secondly, on Curtis & Co's headed notepaper in 2001, we see that they had the legend "In association with Streathers". Do you remember that?

A. I do, yes.

Q. Can you tell us what the nature of the association

between Curtis & Co and Streathers was?

A. Similar to the one with Reid Minty.

Q. Right. Which was what?

A. Just the referrals of work between the firms.

Q. Yes, I see.

Now, you subsequently went to work for Streathers after Curtis & Co closed down; isn't that right?

A. That's right, yes.

Q. And can you help us with the role played by Streathers: did they act at any stage as solicitors for Mr Berezovsky and Mr Patarkatsishvili?

A. During what period? Ever?

Q. In the period when you were aware of these matters, ie before you moved to Gibraltar.

A. Yes, they did, yes.

Q. They did. In relation to this dispute?

A. I think Jim Lankshear was involved.

Q. Sorry?

A. Jim Lankshear from Streathers was involved.

Q. Yes, but was it in relation to the dispute which is now before this court?

A. I think they're instructed with Carter Ruck, yes.

MR SUMPTION: Yes, I see. Thank you very much, Mr Jacobson.

MR MALEK: No questions, my Lady.

MR ADKIN: My Lady, very briefly.

## Cross-examination by MR ADKIN

MR ADKIN: Mr Jacobson, if you could take up your witness statement, please, and turn to paragraph 147.

A. Did you say 47?

Q. 147, which is at page 126 of the bundle D2/16/126.

You're talking here, as I understand it, about instructions which Mr Curtis gave to counsel, Jonathan Fisher, in May 2001 in relation to the Devonia transaction. That's right, isn't it?

A. That's right, yes.

Q. And you say in this paragraph that:

"Mr Curtis confirmed that he understood that Mr Abramovich was expecting to use profits from one of his aluminium operations in Russia to pay for [the Sibneft] shares."

That's right, isn't it?

A. That's right, yes.

Q. And that is in fact reflected in the note of the conference call with counsel which, for the transcript, is at H(A)32/19.

Now, you told us this morning that, so far as you were aware, at around this time, that is May 2001, Mr Curtis was not having direct contact with Mr Abramovich. Do you recall that?

A. Yes, I do.

Q. Is it therefore fair to assume that Mr Curtis's information as to where the purchase monies for Sibneft were to come from is information he derived from Mr Berezovsky, Mr Patarkatsishvili or one of their advisers?

A. That's correct, yes.

MR ADKIN: Thank you.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you. Mr Mumford?

MR MUMFORD: No questions, my Lady.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Just this, Mr Jacobson. You were asked earlier this morning, by reference to certain documents, to speculate as to why Mr Curtis did not want to be involved or see material in relation to the second part of the transaction. Just to explain what I mean, if the first part was the transaction between Mr Berezovsky and the sheikh, the second part would be the transaction between the sheikh and Mr Abramovich. Do you remember that?

A. I do.

Q. Can I ask you, please, to go to bundle H(A)38, page 91 H(A)38/91. You should have at H(A)38, page 91, a letter from Mr Curtis to Mr Keeling dated 13 September

but sent on 26 September. If you go to the second page of that letter, about two-thirds of the way down, do you see a paragraph beginning, "With regard to your request in relation to the background of Sibneft...?"

A. Yes.

Q. Can I just ask you to read that to yourself, please.

(Pause)

A. I've read it.

Q. Does that assist you in terms of answering the question as to why Mr Curtis did not want to be involved in the second part of the transaction?

A. Well, he does state that he's not in a position to control it or check on the background of the transaction.

MR RABINOWITZ: Thank you very much. No more questions.

Thank you.

MRS JUSTICE GLOSTER: Yes, thank you very much.

THE WITNESS: Thank you, my Lady.

MR GILLIS: My Lady, Mr Berezovsky calls his next witness, Mr Stephenson of Carter Ruck.

MRS JUSTICE GLOSTER: Very well.

MR GILLIS: My Lady, while he comes to the witness box, if I could just say this.

The court is aware that it's been held that there was a collateral waiver in relation to privilege in

relation to various of the Badri proofing sessions and that is the subject matter fundamentally of Mr Stephenson's witness statement.

Mr Stephenson obviously owes obligations to his former clients to maintain privilege in relation to all other matters and he is conscious that, as he takes the oath, he is taking the oath subject to the obligation to maintain privilege in relation to matters affecting his former client and is concerned that that may have consequences that there are questions that he cannot answer.

MRS JUSTICE GLOSTER: Well, if an issue arises as to privilege, I will have to rule on it having heard argument from the parties.

MR GILLIS: Exactly so.

MR STEPHENSON: My Lady, can I just clarify on that in relation to the wording of the oath, where I must say, of course, that I give the oath to tell the truth and the whole truth. This is the concern that I have.

MRS JUSTICE GLOSTER: Well, you take the oath and if an issue arises where you feel you are in difficulty, raise it with the court and I will rule on it.

MR STEPHENSON: Certainly.

MRS JUSTICE GLOSTER: Right. Silence, please.

MR ANDREW STEPHENSON (sworn)

MRS JUSTICE GLOSTER: Do sit down if you wish to.

Examination-in-chief by MR GILLIS

MR GILLIS: Mr Stephenson, can I just start by confirming that you don't have a telephone with you or any form of electronic device?

A. No, I don't.

Q. Could the witness please be provided with bundle D1 and if that could be opened at tab 11. Could I ask you to turn to page 256 of the bundle, so that's page 10 of the witness statement D1/11/256.

A. Mm-hm.

Q. And can you confirm that that is your signature?

A. That's my signature.

Q. And could you please confirm that this is your second witness statement in these proceedings? We can see that from the first page of the witness statement.

A. That's correct.

MR GILLIS: My Lady, just for the record, Mr Stephenson's first witness statement concerned service of the claim form on Mr Abramovich and we have that at bundle J1, tab 1, at page 2 J1/1.02/3.

MRS JUSTICE GLOSTER: Thank you.

MR GILLIS: Could you confirm that the contents of this, your second witness statement, are true to the best of

your knowledge and belief?

A. They are.

MR GILLIS: If you could wait there, please. I think Mr Jowell has some questions for you.

Cross-examination by MR JOWELL

MR JOWELL: Mr Stephenson, in your witness statement you mention five occasions when you met Mr Patarkatsishvili in connection with this litigation: twice in Georgia in 2005, once in England in April 2007 and then two more meetings in England in June 2007.

A. The one -- the middle one, I'm not clear that I discussed that Mr -- Badri was present on that occasion, when we had a discussion with Mr Berezovsky in April 2007.

Q. I see. But aside from those four or five occasions, there were no other meetings with Mr Patarkatsishvili in connection with this litigation?

A. I don't recall any discussion with him at all aside from those, concerning the matters in issue here, apart from the four meetings.

Q. Yes.

Now, can I take you back to your first meeting in Georgia that took place on 29 June 2005. Now, before that first meeting with Mr Patarkatsishvili, you had already acted for Mr Berezovsky previously; that's

right?

A. Correct.

Q. You'd acted for him on the litigation against Forbes and in the extradition proceedings and in a number of other matters; that's right?

A. That's correct.

Q. So you must have been already reasonably familiar by that time with Mr Berezovsky's business affairs and his personal history?

A. Most of the other matters I dealt with were of a political nature, I would say, rather than his business affairs.

Q. But before this meeting with Mr Patarkatsishvili you had been told by Mr Berezovsky that Mr Berezovsky alleged that he and Mr Patarkatsishvili had once held a joint interest in Sibneft and Rusal; that's right?

A. Yes, I was aware of that.

Q. And you'd been instructed by Mr Berezovsky to investigate potential claims against Mr Abramovich in relation to, amongst other things, Rusal, Sibneft and ORT?

A. Correct.

Q. And you were accompanied on the visits in 2005 to Tbilisi in Georgia by Mr Lankshear, who is an experienced litigation partner at Streathers?

A. Yes.

Q. And he'd also acted for Mr Berezovsky in the past?

A. Yes.

Q. Now, on the occasion of that first meeting you met with Mr Patarkatsishvili first over lunch, and then after lunch you also interviewed him in a private room in his residence; that's right?

A. I think it's the office, I'm not sure it's the residence. I think he has a residence nearby. This is the Wedding Palace, we call it, which I think he uses as an office -- or used as an office rather than a residence.

Q. I see. But in a private office after lunch?

A. Yes.

Q. And for the lunch but not the interview his wife was present?

A. That's my recollection, yes.

Q. And Dr Nosova was present for both the lunch and the subsequent interview?

A. Most of the time. I can't recall she was present throughout.

Q. But Mr Berezovsky was not present at all?

A. Not at all.

Q. And as far as you're aware, Mr Patarkatsishvili didn't speak with Mr Berezovsky on the phone during the

meeting?

A. Not as far as I know.

Q. And there was nobody else there who could interrupt or correct Mr Patarkatsishvili?

A. No.

Q. And at the meeting you asked him to give his account of his and Mr Berezovsky's dealings with Mr Abramovich, in particular those relating to ORT, Rusal and Sibneft; that's right?

A. Yes.

Q. And you encouraged Mr Patarkatsishvili to speak entirely freely about these transactions?

A. Correct.

Q. And as far as you're aware, he appeared to respond freely to your questions?

A. Yes.

Q. Now, you've said in your witness statement that the second half of the interview, after lunch in this private office, lasted about two hours. Is that right?

A. To the best of my recollection, yes.

Q. And you and Mr Lankshear took a careful note of the meeting?

A. Yes, we took notes.

Q. And presumably it would be your ordinary practice in a meeting like this, to interview a potential witness,

to try and take a note of anything important they said?

A. Yes. I ought to make clear now, if not later, although this document is headed "Proof of Evidence", or words -- or "Draft Proof of Evidence", the purpose was much more exploratory than that. I really wanted to find out a narrative of the sequence of events from Badri's point of view.

Q. Yes, I see that. I was just asking you about your notes, though. In your notes that you were taking at the time, it would be your ordinary practice to try and take a note of anything important that the witness said?

A. Yes. Yes, of course.

Q. So if there had been a comment made at the meeting that was not something said by the witness, by the potential witness or the interviewee, but rather something said by one of the lawyers, by you or Mr Lankshear, and you'd made a note of that comment, then you would be likely to indicate in your note that it was said by you or Mr Lankshear rather than Mr Patarkatsishvili?

A. I'm not sure I followed the question entirely.

Q. Well, I'm asking you: when you take a note, would you attribute the comment to the person speaking? And if the comment was made by a lawyer rather than the person you're interviewing, would you make sure to record that the comment was by the lawyer rather than attributing

it, confusingly, to the person you're interviewing?

A. I think in the circumstances where one is interviewing a witness, is the way you put it, you take a note of what the witness is telling you. So it may be that if a lawyer puts a question to say, "Do you agree with this?", then you don't put the question down, you put down the wording of the witness, if you follow me.

Q. Yes.

A. So it was prepared that way. I think both of us are -- both Mr Lankshear and I are experienced litigators and you tend to write down when you are speaking to a potential witness his words rather than yours. It's different when you are interviewing a client, where it's important that you get down the advice given to the client as well as what the client says in response.

Q. Yes, indeed.

So if it was the fact that, say, you yourself or Mr Lankshear had made a comment on a piece of factual information rather than a question, you would have made sure to attribute that to you or Mr Lankshear rather than to the person you were interviewing?

A. I'm sure we would have sought to do so if there was some issue about it. But the purpose of the meeting was to find out what Badri had to say.

Q. Yes.

Now, after the meeting in June you returned to England and you agreed with Mr Lankshear that he would prepare a first draft of a typed note of the meeting; that's right?

A. Correct.

Q. And you've explained in your witness statement that a few days later Mr Lankshear sent you a note in the form of a proof of evidence and you reviewed that and you made some amendments to it and those amendments, they were based on your own notes of the meeting and your own presumably fresh recollection of what had been said?

A. Yes, plus my familiarity with some of the names and places that Mr Lankshear may not have been familiar with.

Q. Yes.

Now, if I could ask you to take up the R(D) bundle, or be given the R(D) bundle, and to go to tab 6 of that. That's R(D)1/06/68. In your witness statement you state that, subject to two typographical corrections, that proof accurately reflects the substance of what Mr Patarkatsishvili told you at the meeting in June 2005. Do you recall giving that evidence in your witness statement?

A. Right.

- Q. If you turn to page 74 of this R(D)1/06/74, you will see a heading entitled "Sale of ORT".
- A. Yes.
- Q. I don't plan to read these, but if you then turn to page 78 R(D)1/06/78, you'll see a passage headed "Sale of Sibneft".
- A. Yes.
- Q. Now, after this meeting, the next meeting that you had with Mr Patarkatsishvili was in December 2005; that's right?
- A. Yes.
- Q. And that meeting was specifically concerned with Rusal, was it not?
- A. Correct, yes.
- Q. And as far as you recall, Sibneft was not discussed at that meeting?
- A. Not as far as I recall.
- Q. And ORT was not discussed either?
- A. Not as far as I recall.
- Q. So all of the information of importance that Badri conveyed to you in the two meetings in Georgia about Sibneft transaction and the ORT transaction is what we have in these passages of this first proof of evidence whose accuracy you've confirmed?
- A. From Badri, yes.

Q. Yes, thank you.

Could I ask you now to turn to paragraph 29 of your witness statement, which is in the D1 bundle at page 254 D1/11/254. Now, in this paragraph you make a number of comments about your view of the meaning of your note of the third meeting that you had with Mr Patarkatsishvili in England in April 2007.

A. Mm-hm.

Q. But I'd like to start, if I may, just with the fourth sentence of this paragraph, after the words "On the contrary". Do you see the words "On the contrary", about a third of the way down the page?

A. Yes, I do.

Q. "... at the time of preparing the draft letter of claim, I suggested that Mr Patarkatsishvili, who I had been told would know better than anyone else, the true market value of Sibneft at the relevant time, should be asked his opinion on the figure we proposed to include."

Now, just pausing there, the letter before action was sent on 14 May 2007 and this meeting was on 29 April 2007, so obviously this meeting occurred before the letter before action was sent. That's right?

A. Correct, yes.

Q. Now, I don't think we need to turn it up but there is a reference in the letter before action to Sibneft

having a supposed value in 2001 in excess of \$8 billion.

Do you recall that?

A. Yes.

Q. But you didn't show the letter before action to Mr Patarkatsishvili before it was sent, did you?

A. I didn't, no.

Q. So the figure of \$8 billion in the letter before action was not provided to you by Mr Patarkatsishvili?

A. No.

Q. Now, in the next sentence of your paragraph 29 you say:

"Subsequently, at a later meeting (I believe on 11 June 2009) at Downside Manor, I was told by Dr Nosova, in Mr Patarkatsishvili's presence, that his view was that the sum in our letter if anything represented an undervalue, given Sibneft's known oil reserves."

A. Correct.

Q. Now, the main purpose of both of the meetings in June 2007 was to get information together to prepare the particulars of claim; that's right?

A. Correct.

Q. And the market value of Sibneft in 2001 was an important piece of information that you needed to know or ideally would like to know for the claim that you were putting together for Mr Berezovsky because it was relevant to

the quantum of the claim on Sibneft.

A. Right.

Q. Do you agree with that?

A. Yes, it's one of the things we would look at. I'm not sure the market value would be -- what Badri is talking about here, through Natalia Nosova, is about, you know, the evaluation of the oil company. It's not necessarily to base it on the market price is what I'm saying. Perhaps it may be one indicator, more so probably in this country on a recognised stock exchange, where there is a market for it. It's a different situation to value an oil --

Q. But the valuation of Sibneft, the information that is referred to here, would have been important information for the particulars of claim?

A. Well, you can base the valuation, as I understand it, of an oil company in terms of its reserves.

Q. And in the particulars of claim you do mention an estimate of, I believe --

A. Yes.

Q. -- \$8.5 billion, do you not?

A. I can't remember the figure. I don't have it in front of me.

Q. Now, Mr Stephenson, if you turn back to the R(D) bundle, to tab 17 of that, that's R(D)1/17/124, we find your

notes of the meeting of 11 June 2007.

A. Yes.

Q. Or this is your typed-up version.

A. The transcript, yes.

Q. Your transcript.

Now, there are five pages of notes that you made and I've read through them myself and I have not found any mention at all of an \$8 billion valuation of Sibneft, whether on the part of Dr Nosova or Badri or anyone else at that meeting.

A. Yes.

Q. Isn't it likely that if this important information had been provided at that meeting on 11 June, you would have made a note of it?

A. No. I explained that it was actually over the lunch that we had, was where I had the discussion with Natalia Nosova specifically about the valuation. As far as I was concerned -- I mean, I am in difficulty, I'm not sure whether this will be covered by -- I would be bound by privilege in this respect, but the figure -- we had that figure from other sources. All I was looking for was whether Badri would agree with that figure because I'd been told that he was the person that I needed to check it with.

Q. Yes. Then wouldn't you have taken a note of it?

A. So I wouldn't have made a note of it.

Q. Why wouldn't you have made a note of it?

A. Well, I didn't make a note of it. I mean, it's for my information. I would have been concerned if he'd come up with a different figure. But by then the letter had already gone.

Q. You see, Mr Stephenson, are you aware that Mr Lindley also took a manuscript note of the meeting of 11 June?

A. Yes. But to explain also, my Lady, there's a very different situation here at the meetings in Leatherhead than I'd been in Georgia, where I'd been sitting one to one -- with Jim Lankshear -- one to one with Badri to take a statement from him.

What we had at Leatherhead, from my point of view, in terms of taking information down, there were a lot of people present, there were a lot of different discussions going on in relation to different matters. I was working with my pad for a lot of the time on my knee and I was not taking notes. There were some discussions that were informal over lunch as well.

Q. I see. But Mr Lindley's note, Mr Lindley actually -- there are two notes: there is a manuscript note and a typed attendance note. And again, as far as I can see, there is nothing in either of those notes that refers to a \$8 billion valuation of Sibneft.

A. Well, I don't know whether he would have heard my conversation with Natalia over the lunch.

Q. Well, Mr Stephenson, I would suggest that if this important information about an \$8 billion valuation wasn't reflected in either of the notes of the meeting, it is unlikely that it was conveyed at that meeting.

A. Well, I assure you it was, over the lunch.

Q. Very well. We'll have to agree to differ on that.

There was only one other subsequent meeting that you attended, on 13 June 2011, and you don't suggest that it was conveyed at that meeting, do you?

A. Sorry, can you ask the question again.

Q. There was one other subsequent meeting, on 13 June 2007 --

A. Yes.

Q. -- and you don't suggest that the information is conveyed at that meeting, do you?

A. No, I believe it was on the 11th, which was the day that, as I recall, that Badri cooked the barbecue for lunch.

Q. I see. Is it not possible that it was made on some other occasion by Dr Nosova when Mr Patarkatsishvili was not present?

A. I don't know whether Badri would have heard it from where he was standing.

Q. I see.

A. But I believe he would have done.

MRS JUSTICE GLOSTER: Sorry, can I be clear about that. I'm looking at paragraph 29 of your witness statement, where you say:

"... I was told by Dr Nosova, in Mr Patarkatsishvili's presence..."

Are you saying that it's not necessarily the case that Mr Patarkatsishvili would have heard what Dr Nosova said?

A. It was within about five yards, I suppose, maximum.

MRS JUSTICE GLOSTER: What, standing around at a barbecue, is this?

A. He was standing over the barbecue and moving from the barbecue to the table.

MR JOWELL: And it would have been said by Dr Nosova in English, would it?

A. Yes.

Q. You see, if we go back to the proof of evidence that you took in Georgia, I don't think we need to turn it up, but on that occasion Mr Patarkatsishvili gave you an estimate for the total value of Sibneft of \$6-7 billion; do you recall that?

A. I don't recall it. It's in my notes.

Q. It's in your notes, but you have seen it. You see, it

seems a bit surprising that his estimate would have gone up \$1-2 billion so quickly.

A. All I can say is that this is what I was told. The figure was checked with him and I was told specifically -- and I recall this very specifically -- it was because of his understanding of the oil reserves.

Q. I see. But, as you've said, he may well not have heard what she had said?

A. I think it's most unlikely. I think it's very probable that he would have heard. And my point anyway is that it was being said in his presence; now, therefore it would have been open to challenge had he heard it.

Q. Had he heard it, yes.

Could we just now turn to the transcript you made of the meeting note on 29 April 2007, which is in tab 15. Your typed-up version is in tab 15 of the bundle. That's in R(D)1/15/117.

A. Yes.

Q. And you'll see there it says "Meeting BB..."

That's Boris Berezovsky.

"... /Badri. Downside.

"ORT/Sibneft/Rusal --

"Badri thinks deal fair on Sibneft.

"Badri not party -- witness."

Now, could I ask you to come back to the last

sentence of paragraph 29 of your witness statement, where you advance your theory about what the meaning of this note was. What you say is:

"I believe that the note I made on 29 April 2007 related to questions Mr Berezovsky put to me as to the possible effect if Mr Patarkatsishvili did not agree to join in the proceedings as a co-claimant and as to whether he could join later if he so wished."

Now, from the fact that you start this sentence with the words "I believe" and not "I recall" --

A. Mm-hm.

Q. -- I take it that you are here presenting your reconstruction of what you think the conversation meant rather than your laying claim to an actual current recollection of it. Is that right?

A. Well, again, my Lady, this puts me in difficulty in terms of how that is reconstructed.

Q. But you accept it is a reconstruction?

A. It is not simply a matter of my imperfect memory this long after the event, my Lady.

Q. But you accept that you don't have an actual recollection of this actual conversation? It would be very surprising if you did, six and a half years later.

A. I remember where it was, the detail of it. It was extremely short. I can't even remember, and I think it

unlikely but it's possible, that Badri himself was present. I can't recall him being there.

Q. Although the heading does indicate that he was present because it says "Meeting BB/Badri". Does that help?

A. No, that doesn't necessarily -- because it was in Badri's house before the meeting with the representatives from Georgia.

Q. I see.

A. This particular conversation was extremely short.

Q. Could I just ask you one other point of clarification about the line in the attendance notes that records:

"Badri thinks deal fair on Sibneft."

A. Mm-hm.

Q. Now, just to be clear, I'm not asking you yet about what is meant by "fair" in that note or even about the context in which the phrase was used. I just want to understand one very specific thing about your evidence about that.

The "deal" on Sibneft that is referred to in the note, is that on your approach, on your theory, a reference to the deal by which Mr Abramovich agreed to pay \$1.3 billion or is it a reference to some other deal on Sibneft?

A. My recollection of the conversation was a discussion about what it would look like if Badri were not a party

to the proceedings that Mr Berezovsky was contemplating bringing. So therefore would it look -- this is the question -- that he therefore thought the transaction on Sibneft, the \$1.3 billion, was a fair price?

Q. Yes. So the answer to my question is that it was a reference to that transaction?

A. Yes.

Q. And could I ask you just about the last part of the last sentence on paragraph 29 D1/11/254:

"... and as to whether he could join later if he so wished."

That is a reference -- you're talking there about --

A. Sorry, which?

Q. This is the very last clause of paragraph 29.

A. Oh, sorry. Yes.

Q. You say:

"... and as to whether he could join later if he so wished."

A. Yes.

Q. It's referring there to whether Mr Patarkatsishvili could join the proceedings later if he so wished?

A. Yes.

Q. If we just go back to the note in the R(D) bundle, there is no reference in the note there that could be construed as a reference to whether Mr Patarkatsishvili

could join the proceedings later if he so wished, is there?

A. I've got three lines crossed out; I don't know whether that helps.

MRS JUSTICE GLOSTER: Well, before we get into that, your statement, "I believe that the note I made", is your belief based on the redacted lines in that document or any part of your belief that that's what the earlier passages referred to? Is your belief based on the redacted parts of your note?

A. Not on that, but on other...

MRS JUSTICE GLOSTER: What you say is privileged information?

A. Yes, my Lady.

MR JOWELL: But it's not based on these other lines?

A. I don't know what these three lines are because they're redacted. I can't recall.

Q. But there's nothing in the lines that are unredacted that refers anywhere to whether he could join proceedings later if he so wished at all, is there? There's not even a hint of it, is there?

A. Well, there's an indication:

"Badri not party -- witness."

That can be ambiguous. But I agree with you then, there is nothing here that specifically records whether

there was any discussion at that point -- there's nothing here that records that -- any discussion at that point about Badri being joined as a co-claimant.

Q. And again, if I could just try to understand your position, who are you suggesting you were recording when you wrote the words, "Badri thinks deal fair on Sibneft": was it you or Mr Berezovsky or Mr Patarkatsishvili or do you not know?

A. I believe it was a question put to me by Mr Berezovsky: what would it look like if Badri were not also a party?

Q. So you're recording your own advice?

A. No, I'm just -- it was what Mr Berezovsky was asking me: what impression would be conveyed?

Q. But the answer, "Badri thinks deal fair on Sibneft", you're saying those were words that you used?

A. I can't recall whether it's me. I think it's far more likely it is Mr Berezovsky saying to me, "Would it give the impression that Badri thinks the deal is fair on Sibneft if he is not also a party to these proceedings?"

Q. I see.

Now, the proceedings that Mr Berezovsky was at that stage, in April 2007, contemplating included not just a claim in respect of the Sibneft transaction, did it; it also included a claim in respect of Rusal and a claim in respect of ORT, didn't it?

A. Not in relation to ORT.

Q. Well, the letter before action includes a claim in respect of ORT?

A. That was included in effect as the background leading up to the claims in relation to Sibneft and to Rusal, to explain the context in which the discussions took place. As far as my recollection is -- again, this may be taking me into areas where I can't go -- but my recollection is that at the time that the letter of claim went, it was not contemplated bringing a claim in respect of ORT.

Q. But it did include also a claim in respect of Rusal?

A. Yes.

Q. And Mr Patarkatsishvili was a key participant in the events relating to Rusal as well, wasn't he?

A. Yes.

Q. So if Mr Patarkatsishvili had not agreed to join the proceedings, it would have had an effect not just on the Sibneft claim but also on the Rusal claim, wouldn't it?

A. Possibly. All I'm saying is that wasn't a conversation we had. I can't give a --

Q. You see, if you were discussing the effect of Mr Patarkatsishvili not joining proceedings, why would you have specified "deal fair on Sibneft" rather than on the other transactions?

A. I'm not sure I did. I was answering -- I can't recall at this distance, as I've explained, as to whether it is Mr Berezovsky making the point or me making the point in return. Either way, it is the discussion about what is the impression that is conveyed, both publicly and towards the court, if Badri is not a party to the proceedings.

I don't recall as to whether -- because I had my notes simply to rely on -- as to whether we also discussed a separate situation in relation to Rusal rather than simply a conversation about the effect generally using Sibneft as an example.

Q. Well, you see, Mr Stephenson, if you go back to the note, it says "ORT/Sibneft/Rusal".

A. Right.

Q. Now, if you were talking about the effect of him not joining the proceedings, you wouldn't have specified, "Badri thinks deal fair on Sibneft"; you would have said, "Badri thinks deal fair on Sibneft, Rusal and ORT".

A. No, I don't think you can draw that conclusion whatsoever. As I said, this particular conversation, I can assure you, would have been less than five minutes and we were not discussing it in any detail. All we were doing was talking about the effect if Badri was not

to be a party to the proceedings.

Q. You see, Mr Stephenson, I suggest that there's a much more straightforward explanation: the reason that you recorded the words "Badri thinks deal fair on Sibneft" was because, quite simply, you all recognised that Badri thought that the deal in respect of Sibneft was a deal that was freely and fairly negotiated.

A. No, no, no, and you know that because you've also put to me earlier about what he was saying about the valuation when we were in Georgia. I mean, it was a different amount but you know from that, from the question that you put to me earlier, that he didn't think the deal was fair.

Q. Well, as I understand the first part of paragraph 29, the reason that you say the note can't mean what it on its face means is because you say that he didn't consider that he had received a fair price for his interest in Sibneft, by which I think you mean a price that reflected its full market value. That's what you say in the first two sentences of paragraph 29?

A. Well, I didn't say "market value", with respect, and I take issue with that. Do I say "market value"?

Q. Well, you say that he didn't --

A. Do I say "market value"?

Q. You say, "I suggested that Mr" -- you then talk about,

in the third sentence, you talk about "the true market value of Sibneft at the relevant time".

A. Okay, yes.

Q. Do you see that?

A. Yes, I do.

Q. But the precise words in your note are that Mr Patarkatsishvili thinks that there's a fair deal on Sibneft, not that there is a fair price or a fair market price, isn't it?

A. All I can say is that you're putting a completely misconceived -- a misconception approach towards these words, out of context.

MRS JUSTICE GLOSTER: Mr Jowell, I think we've been round this note now. I think I'm going to take the break. Ten minutes.

You're not to talk about your evidence, Mr Stephenson, to anyone, or the case.

(3.22 pm)

(A short break)

MRS JUSTICE GLOSTER: Yes, Mr Jowell.

MR JOWELL: Mr Stephenson, before the break I asked you whether in April you were contemplating proceedings against ORT and you indicated that you were not. Could I ask you to take up or be given, please, bundle K2/01, page 1 K2/01/1. This is the letter before action. It

was sent on 14 May 2007.

Do you see the first paragraph of that, it says:

"We act for Boris Berezovsky. We write in connection with transactions concerning the sale of his beneficial interests in three companies, [ORT, Sibneft and Rusal]... In each case he was forced to dispose of his interests at a very significant undervalue, in each case you unconscionably and improperly took advantage of the threats and persecution he suffered at the hands of the Russian authorities in order, directly in relation to Sibneft and RUSAL, to enrich yourself and your partners."

Then there's a long description of the ORT transaction and if you see over the page, I don't think it's necessary to read it all, but you'll see in the penultimate paragraph there is a description of the Spectrum arrangement. And then, in the last paragraph, above "Sibneft":

"Your assurance that Mr Glushkov would be released, without which our client would not have agreed to sell his interest, proved to be false. The price our client was forced to accept for the sale of the shares represents, we are advised, a substantial undervalue."

Then you'll see there's a reasonably long description of Sibneft and then Rusal. And then do you

see on the final page, on page 3, the final paragraph, "Commencement of proceedings":

"Our client's intention is to commence proceedings against you in order to recover the losses identified above, if you do not intend to compensate him fully. Our client is prepared to agree..."

And so on.

That seems to me to indicate that at that stage you were certainly leaving open the possibility that you would be claiming in relation to ORT as well as Sibneft and Rusal, doesn't it?

A. I take your point. That was not the intention at that time. It was already understood on my instructions that the claim would be in relation to Sibneft and to Rusal.

Q. And you're sure that was understood even by April, by the meeting on 29 April?

A. That's my recollection, yes.

Q. Mr Stephenson, just two final questions.

Do you still continue to act for Mr Berezovsky on any other ongoing matters?

A. Yes, we do.

Q. You do. And I'm sure you appreciate that, in light of the revelations that have come to light, I have no choice but to ask this: could you please confirm that neither you nor your firm stand to gain financially if

Mr Berezovsky is successful in this litigation?

A. We have no commission arrangement at all with Mr Berezovsky.

Q. And you don't stand to gain financially if he's successful?

A. Well, indirectly, I suppose, if Mr Berezovsky were to lose the claim, as to whether, since we were involved in advising at the outset, whether there could be some indirect value to us in him winning it. You follow?

Q. But no direct financial value?

A. No, no. No.

MR JOWELL: I'm grateful. Thank you, Mr Stephenson.

MRS JUSTICE GLOSTER: Yes, thank you very much. Is there any further cross-examination?

MR MALEK: I have no questions.

MR ADKIN: There is very briefly from me, my Lady.

MRS JUSTICE GLOSTER: Very well, Mr Adkin.

Cross-examination by MR ADKIN

MR ADKIN: Your Ladyship is already aware that we had obtained in the Chancery actions unredacted versions of a lot of these documents and I propose to take the witness to the unredacted version of the note of the meeting on 29 April 2007. We will, of course, make sure that this goes into the trial bundle.

MRS JUSTICE GLOSTER: Are they available for use in this

action?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: There's no dispute about that,

Mr Gillis, is there?

MR GILLIS: My Lady, no, so long as it is in relation to an overlap issue.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: My Lady, yes. If I could pass...

MRS JUSTICE GLOSTER: Usher, could these be handed up, please. (Handed)

THE WITNESS: Shall I put this with the redacted one?

MR ADKIN: This is the unredacted version of the document that you were being --

THE WITNESS: Should I put it in the bundle after that?

MR ADKIN: Yes, we will insert it in -- this is for the transcript -- we'll insert it at bundle

R(D)1/15/117.001; in other words behind the document that has the redacted -- behind the redacted version.

Mr Stephenson, you'll see that the last four lines were redacted and they are unredacted in this. Can I firstly ask you this: as far as the last four lines that you now see in unredacted form are concerned, would you accept that they don't deal with the impression that Mr Patarkatsishvili's not being a party to the proceedings would give to the court or the public, do

they?

A. No, it doesn't relate to that at all.

Q. No. And if one looks at the third line from the bottom, one sees:

"ORT/plus evidence of loss -- advertising revenue."

We understand therefore that you were still discussing a possible claim on 29 April 2007 in relation to ORT. Would you accept that now, having had your memory jogged from the unredacted note?

A. Yes, that is helpful. I think to put it at that -- obviously now that we have this note and it makes it easier for me to answer. There were, as I understood it, clear limitation issues regarding the position of Sibneft. It was something that we -- sorry, with ORT.

Q. With ORT?

A. Yes. There were wider issues as well which I am --

MR GILLIS: My Lady, if I could just --

MRS JUSTICE GLOSTER: Yes, just a second. Yes, Mr Gillis.

MR GILLIS: The effect of the collateral waiver is that there has been a waiver of privilege in relation to what was said at this meeting in the presence of Badri because it was on that basis that the court held that there was a collateral waiver. So that is the extent of the collateral waiver: what was being discussed in Badri's presence at this meeting. It is not a waiver in

relation to anything which is the subject matter of this note such that there has been a waiver in respect of any discussion there may have been in respect of limitation periods.

MRS JUSTICE GLOSTER: Okay. So the waiver is just in relation to what was discussed with Badri in his presence?

MR GILLIS: Exactly so.

MRS JUSTICE GLOSTER: Well, Mr Adkin, please be careful in your cross-examination.

MR ADKIN: My Lady, yes. I'm not sure that we would necessarily accept that analysis of the waiver but in any event I think it doesn't matter because, as we understand it from paragraph 28 of Mr Stephenson's statement, this was a meeting at which Mr Patarkatsishvili at least may well have been present, although you don't recall whether he was an active participant in the brief discussion.

Is that a fair summary?

MRS JUSTICE GLOSTER: Well, I don't think the unredacted four lines require any further cross-examination if they're going into disputed areas of privilege. We can all see what they say and those are issues that may or may not be around --

MR ADKIN: Well, I was going to ask a question on the last

line.

MRS JUSTICE GLOSTER: You ask the question and I'll rule on it.

MR ADKIN: Well, let me ask a prior question which may help.

Mr Stephenson, do you recall whether Badri was present when you were discussing the issues that are noted at the last four lines and in particular in the last line?

A. I don't recall Badri being present at all, specifically.

Q. You don't have any specific recollection of whether he was or whether he wasn't present for that; is that right?

A. That's correct.

MR ADKIN: That's correct.

Well, I'll ask my question, my Lady, if I --

MRS JUSTICE GLOSTER: Right.

MR ADKIN: The question I have relates to the last line of this note, Mr Stephenson.

Is it right that at this meeting you were discussing with those present, whoever they may have been, the question of whether the Rusal claim would be time-barred?

A. Well, it's clear from the note. It speaks for itself.

Q. Yes. You agree? The transcript doesn't pick that up, Mr Stephenson, sorry.

A. Sorry, it is clear from the note. I mean, I have no particular recollection of discussing it, but it is clear from my note that it was something that was discussed.

Q. And it's also clear from your note that the reason why there was a concern over limitation in relation to the Rusal claim was because it was understood to be governed by Russian law?

MR GILLIS: I'm afraid I don't think that's a legitimate question because it's not in relation to what was being discussed at the meeting but is trespassing upon questions of what was understood, which must flow from discussions between the client and the solicitor.

MRS JUSTICE GLOSTER: Well, I don't think it's going to help me further. There obviously is an issue about the Russian law of limitation.

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: I just don't think this is helpful.

MR ADKIN: My Lady, your Ladyship has the note and the witness can't recollect, so it probably is as far as I can sensibly take it.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, no further questions.

MRS JUSTICE GLOSTER: Mr Mumford?

MR MUMFORD: No questions.

MRS JUSTICE GLOSTER: Mr Gillis, do you have any re-examination?

MR GILLIS: My Lady, I have no re-examination.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming along, Mr Stephenson.

(The witness withdrew)

Discussion re housekeeping

MR SUMPTION: My Lady, we understand there are no further witnesses available this afternoon. Can I raise with your Ladyship the position of three witnesses who are due to be heard in the following days.

First of all, Mr Chernoi. We have been informed that Mr Chernoi is, for various reasons, not willing to give evidence even by video-link.

MRS JUSTICE GLOSTER: Even by video-link?

MR SUMPTION: Even by video-link. I'm not sure it's necessary to go into the reasons that he has given for that, but that is his position.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: In those circumstances we assume that it is common ground that his witness statement will be withdrawn from the bundle, no application having been made to put it in as hearsay evidence, and we would rather assume that it's accepted that it would not be appropriate since he's --

MRS JUSTICE GLOSTER: Well, that may be an optimistic assumption. I assume I'll have an application to have it received as hearsay evidence but I can't anticipate that.

MR SUMPTION: Well, if there's a difference about that, your Ladyship will have to hear argument on the subject. But I think that your Ladyship should be told that he will not be appearing and it may therefore be sensible not to study his witness statement pro tem.

MRS JUSTICE GLOSTER: Right. Just a second. Mr Gillis, what's the position in relation to Mr Chernoi?

MR GILLIS: We're certainly content that your Ladyship should not look at the statement for the present time. We were just notified, I think it was on Friday, that Mr Chernoi --

MRS JUSTICE GLOSTER: Well, I've read it already.

MR GILLIS: I'm sure your Ladyship has. I'm happy that you do not refresh your memory then.

We were just told on Friday that he was not willing to give evidence. There is a letter from his solicitors. As your Ladyship will recall, it's a slightly complex situation in that Mr Chernoi is involved in litigation with Mr Deripaska.

MRS JUSTICE GLOSTER: Was the position that I made a video order in relation to him some time ago?

MR GILLIS: I think you did.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: My Lady, we'll consider the position, if we may, and whether we wish to make an application for that evidence to be admissible as hearsay evidence.

MRS JUSTICE GLOSTER: Okay.

MR GILLIS: But we'll deal with that at a later stage if that's convenient.

MRS JUSTICE GLOSTER: Well, I'll deal with that application as and when it's made and as and when objection is taken to it. But I think if you are going to apply for the evidence to be admissible as hearsay evidence, the sooner you do so, the better.

MR GILLIS: Certainly.

MR SUMPTION: My Lady, the second witness that I wanted to mention was Mr Dubov.

We received late last night from Ghersons, who acted in the asylum proceedings, Mr Dubov's witness statement of 2009 in support of Mr Glushkov's asylum application. This is a statement that your Ladyship may recall I asked Mr Dubov whether he was prepared to release.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: He has obviously consented to its release because otherwise we presume we would not have got it from Ghersons. It does raise an issue which I have

mentioned to my learned friend Mr Rabinowitz we need to ask for Mr Dubov to be recalled to deal with. We would have dealt with it if we'd had that statement before. It's not going to take very long and I understand arrangements are being made for Mr Dubov to attend for that purpose on Thursday or Friday, when your Ladyship is next sitting.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: Thirdly, there is the position of Mr Reuben. There is a witness summons extant in his case and we therefore assume that he is obliged to turn up at a time which is convenient for the general progress of the trial. We also assume that that will be either on Thursday or on Friday.

We are concerned that we should not be in the position either of having to defer the start of our own evidence or of having to interpose Mr Reuben's evidence after Mr Abramovich has given evidence. The position is that there are a number of other solicitors involved in the taking of the Badri notes who are due to give evidence on Monday morning because they can't give evidence any earlier. We would therefore assume that it will be possible to proceed to Mr Abramovich's evidence on Monday afternoon, but that very much does depend on there being no undue delay in hearing Mr Reuben's

evidence.

MR GILLIS: My Lady --

MRS JUSTICE GLOSTER: Just a second. I've got the timetable for witnesses in my room. Could either you or Mr Gillis give me an update on who we've still got to go before the defendant starts?

MR SUMPTION: Yes, we've got Mr Giroud and Mr Ivlev who are expected to give evidence on Thursday, along with Mr Lindley.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: There is then Mr Nevzlin, who is expected to give evidence on Friday. It has to be the afternoon because he is giving evidence by video-link from New York and it is an unsocial hour of day in New York in the morning.

That leaves as witnesses Mr --

MRS JUSTICE GLOSTER: Dubov again?

MR SUMPTION: Well, Mr Dubov will give evidence, we think, in one of the vacant slots on Thursday or Friday.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: That leaves as witnesses Mr Lankshear, Ms Duncan and Mr McKim. They are all short witnesses. We expect that their evidence would be completed -- they can't give evidence before Monday because they're away for the school half-term. We would expect their

evidence to be completed by about the midday break on Monday.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Meaning that we would proceed to our own evidence on Monday afternoon. Our first witness would be Mr Abramovich.

My reason for raising this timetable now is that we would very much like to know when Mr Reuben is going to appear and we would very much hope that it will not be at a time which will either delay Mr Abramovich's evidence or involve interposing him after that.

MRS JUSTICE GLOSTER: Mr Gillis, can you help me?

MR SUMPTION: There's also, I should say, Mr Pompadur. He is going to have to be interposed anyway but it would not be inconvenient to interpose him after Mr Abramovich's evidence so that if that's necessary, we have no concerns about it. We are much less relaxed about the possibility of interposing Mr Reuben after Mr Abramovich has given evidence.

MRS JUSTICE GLOSTER: Yes, very well. Mr Gillis, can you help on this?

MR GILLIS: My Lady, we're thankful for the confirmation in respect of Mr Pompadur.

In respect of Mr Reuben, the position, as I understand it, is that the witness summons has to be

issued for a returnable date and that's 3 October (sic). That's obviously inconvenient because matters have moved more quickly.

MRS JUSTICE GLOSTER: 3 November, you mean?

MR GILLIS: 3 November, I'm sorry.

The position is, as we understand it, that Mr Reuben is in France. We're trying to contact him in order to encourage him to come and give evidence on Thursday or Friday of this week, but at the present time we have not had a response from him.

Because the summons has been issued for --

MRS JUSTICE GLOSTER: You can't issue a witness summons that is effective in France, can you?

MR GILLIS: No, I don't think we can. Exactly.

So we served him with the witness summons when he was in England for 3 November. That is the only date that he is presently compelled to come. We are seeking to prevail upon him to come on Thursday or Friday this week. If your Ladyship indicated that that would assist trial management, we would certainly pass that on to Mr Reuben.

MRS JUSTICE GLOSTER: Well, it certainly would be very helpful if he could come on Thursday and Friday and we can slot him in on one of those days.

MR GILLIS: Exactly so. So we are doing what we can do in

order to have Mr Reuben here on Thursday or Friday.

MRS JUSTICE GLOSTER: Well, perhaps to speed things up a bit it might be helpful if I were to say I would like to be notified not later than 4.00 pm tomorrow afternoon as to what the position is in relation to Mr Reuben.

MR GILLIS: We will do that.

My Lady --

MRS JUSTICE GLOSTER: With, obviously, copies to the other parties.

MR GILLIS: Yes, and we will notify our learned friends as soon as we can do.

My Lady, there is just one point in relation to the video conference link. Two of the witnesses, Mr Ivlev and Mr Nevzlin, are giving evidence from New York as you've heard by video-link on Thursday and Friday. It's probably not the most interesting point your Ladyship has had to consider so far, but paragraph 15 of annex 2 to the practice direction 32, dealing with video -- I wasn't going to ask your Ladyship to turn it up; it's on page 997 -- indicates that a video recording should be made of the evidence.

In circumstances where we have a LiveNote transcript being made of the evidence, we wonder whether your Ladyship requires a video recording also to be made or whether you're happy to dispense with that, given the

fact that we're going to have the transcript of the evidence in any event.

MRS JUSTICE GLOSTER: Do I also have a sound recording automatically of the video recording? I think an email has been sent to me today raising the issue.

MR GILLIS: I think that comes through automatically with the --

MRS JUSTICE GLOSTER: LiveNote?

MR GILLIS: -- LiveNote. Certainly there is an audio recording. I will check that. My question to your Ladyship is certainly put on the premise that there is an audio recording that is being made as part and parcel of the LiveNote transcript.

MRS JUSTICE GLOSTER: Yes. I mean, one doesn't have normally a visual recording of a witness either for the assistance of the judge or the parties.

MR GILLIS: No. So provided there is an audio recording made, is your Ladyship content with that?

MRS JUSTICE GLOSTER: Well, I'll hear what the others say.

Mr Sumption, do you want a --

MR SUMPTION: We think that is a sensible suggestion. There is no reason why he should be singled out for having a video recording as well as an audio.

MRS JUSTICE GLOSTER: No. Does any other counsel want to mention anything? No.

Mr Gillis, I'm happy to dispense with the requirement that there should be a video recording of his evidence. If any questions do arise, we'll have it on the transcript and we'll have it on the audio recording.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: But perhaps somebody could check that it is all right for the audio recording. It should be.

MR GILLIS: We will do.

MRS JUSTICE GLOSTER: Very well.

Right. Now, do you want to start earlier on Thursday because of the two days we're missing?

MR GILLIS: My Lady, we're very much in my learned friend's hands.

MR SUMPTION: My Lady, I don't believe that will be necessary. We are likely to go short on both Thursday and Friday anyway because of the availability of witnesses and the constraints on the time at which they can give evidence.

MRS JUSTICE GLOSTER: Yes, I see, because there is no possibility of getting the half-termers back for Friday.

MR SUMPTION: Exactly.

MRS JUSTICE GLOSTER: Very well. Then I'll sit again at 10.15 on Thursday morning. Thank you very much.

(4.00 pm)

(The hearing adjourned until  
Thursday, 27 October 2011 at 10.15 am)

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Friday, 28 October 2011

(10.15 am)

(Proceedings delayed)

(10.39 am)

MRS JUSTICE GLOSTER: I'm sorry I have kept the parties waiting but I was doing another case over in the main building.

MR GILLIS: Not at all, my Lady.

My Lady, Mr Berezovsky calls his next witness, Mr Reuben.

MRS JUSTICE GLOSTER: Very well.

MR GILLIS: Can Mr Reuben come to the witness box, please.

My Lady, I'm sorry he's not in court. I thought he was.

MRS JUSTICE GLOSTER: Right. This afternoon, everybody's got the headphones, have they?

MR GILLIS: Yes, I think the suggestion is that there should be a trial run over the lunch break and I think the technicians are fixing that up.

MRS JUSTICE GLOSTER: Yes. I think someone is going to need to tell me at lunchtime how to use the headphones so we don't waste time.

MR SUMPTION: My Lady, I told your Ladyship yesterday that there were 50 available; I understand that that number has been increased to 125.

MRS JUSTICE GLOSTER: Yes. That's for Monday?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Presumably also for this afternoon.

MR SUMPTION: I imagine so, but I doubt whether there will be quite as many takers.

MR DAVID REUBEN (sworn)

MRS JUSTICE GLOSTER: Please sit down, Mr Reuben, if you would like.

THE WITNESS: Thank you.

Examination-in-chief by MR GILLIS

MR GILLIS: Good morning, Mr Reuben. My name is Richard Gillis and I represent Mr Berezovsky.

Could you please start by giving the court your full name?

A. My full name is Reuben David Reuben, but I'm known as David Reuben.

Q. Thank you. And could you please give the court your present main address?

A. At the moment I would say Millbank Towers, Millbank, London.

Q. Thank you. And please could you confirm that you do not have a mobile phone or an electronic device with you?

A. At this moment?

Q. Or if you do, that it's off.

A. I don't have one with me.

Q. Thank you.

Mr Reuben, I understand that you are a reluctant witness and that you attend under a witness summons. Is that correct?

A. That is correct.

Q. Well, in those circumstances, I particularly thank you for attending.

Mr Reuben, I understand you have a brother.

A. I do.

Q. And could I ask what your brother's name is?

A. I have two brothers: one is called Simon and another one called Ellis.

MRS JUSTICE GLOSTER: Excuse me, could you please face the court while you're giving your evidence.

A. I beg your pardon.

One called Simon and the other is Ellis.

MR GILLIS: And in late 1999 did you and your brother Simon have business interests in Russia?

A. Our company had business interests in Russia.

Q. And what was that company?

A. Trans-World -- it was the Trans-World Group.

Q. Thank you. Now, in what sector of the industry were those business interests?

A. In many sectors: they were in aluminium, in steel, in minerals and in trading.

- Q. I'd like to focus just on the aluminium industry.
- A. Okay.
- Q. And at this distance in time, could you give the court the name of the aluminium interests in which TWA was interested and which were sold in 2000?
- A. There was Bratsk, there was Krasnoyarsk, there was Sayanagorsk, there was Bogoslovsky, there was -- that's in Russia you're talking about, right?
- Q. In Russia.
- A. Okay. Those are in Russia.
- Q. It's not intended as a memory test. Could Mr Reuben be provided with bundle R(B)1, open at tab 22  
R(B)1/22/211.
- Mr Reuben, as you can see from the top of the page, this is a contract that's dated 10 February 2000 and it refers to having been made in Moscow.
- A. Yes.
- Q. Now, my first question is: do you recognise this contract? A long time ago.
- A. It's a long time ago. I assume it is.
- Q. Could I just ask you to turn to the next tab, tab 23 --
- A. Okay.
- Q. -- and go to page 43 R(B)1/23/43. We have the numbers in the bottom right-hand corner.
- A. 43?

Q. Yes. So it's tab 23, page 43.

A. Okay.

Q. Now --

A. I see it.

Q. I don't know, do you read Russian at all?

A. No.

Q. No. If you can take it from me that against the number 3, I think it's party 3. Now, is that your signature?

A. No.

Q. That's not. All right. Could I take you back to tab 22.

A. Tab 22, sure.

Q. I should ask you: do you recognise who that signature is? It's just that the Russian version is signed but the English version isn't.

A. Yes.

Q. On page 43. Tab 23, page 43.

A. It seems like Dmitry Bosov equals party number 3.

Q. I see. Does your signature appear on that page?

A. No, it does not.

Q. All right. Could I take you back to tab 22 so that we can look at the English version.

A. Okay.

Q. Could you look at the fourth line of the text.

A. That is correct.

Q. And are you described as being --

A. Correct.

Q. -- party 3?

A. Yes.

Q. Then can I ask you to look at paragraphs 1 and 2.

A. Yes.

Q. In particular the wording after "Party 3", which you've indicated is yourself.

A. Yes.

Q. Does this contract describe the interests in the aluminium assets that you and the companies that you are associated with, which is the terminology we see opposite your name, it's the aluminium assets that you and those companies controlled?

A. Roughly speaking, yes, if I'm not reading everything. But then generally, yes.

Q. So I think --

A. You're talking about "Party 3 controls"; is that where you mean?

Q. Yes, that's right.

A. "... about 14.5% of [the] shares... of [Kraznoyarsk], including, without limitation..."

That is correct. That is correct.

Q. I think you mentioned KrAZ and Bratsk --

A. Right.

Q. -- as we refer to it.

A. Right.

Q. And then I think if one looks at paragraph 2, we see a reference to Achinsk. Now, is that the Achinsk aluminium refinery?

A. Alumina. Alumina refinery.

Q. Alumina refinery?

A. That is correct.

Q. I should know better. The alumina refinery.

A. Right.

Q. And that was also an aluminium asset --

A. That's right, part of the aluminium assets.

Q. -- that you controlled?

A. That is correct.

Q. Now, despite the fact that you are described as being party 3 here, you've indicated on the signed version --

A. Yes.

Q. -- which we have at tab 24 at page 43 R(B)1/24/43 that your name does not appear?

A. Did you say tab 23, 43?

Q. Yes.

A. Let me look at it again. Yes, my signature doesn't appear. That's not my signature.

Q. All right. Are there any signatures there that you

recognise who may have been signing on your behalf?

A. No.

Q. All right.

So far as you understand, is this the operative contract under which the interests that you controlled were sold?

A. Yes.

Q. Despite the fact that your signature does not appear?

A. That's right.

Q. Your brother Simon, did he have an interest in TWA as well?

A. Yes, he did.

Q. Your brother Simon does not appear to be mentioned in this contract.

A. My brother Simon did not participate in any part of the metal business in -- so he would not be involved. I was representing this part of the business.

Q. So your brother Simon had no interest in the aluminium assets?

A. He had equal interest to me in the aluminium assets but did not participate in this side of the business at all, or very little, if any.

Q. He had an equal interest in the aluminium assets?

A. Equal interest with me.

Q. With you?

A. Yes.

Q. In general terms, what was the nature of your business relationship with your brother in relation to the aluminium assets?

A. He allowed me to run that -- I ran that segment while he ran a different segment of investments in which I very rarely participated, except in discussions or at the board meetings.

Q. Did you -- I think you've indicated you shared the interests?

A. Yes, we are. But it just so happens he had not very much knowledge of the metal business at all and I had very little knowledge of his investment business. We stuck to two businesses although we were partners in that -- in those businesses.

Q. You were partners in those businesses, okay.

A. Right.

Q. Coming back to the contract, could I ask about the other parties, 2 to 5 --

A. Yes.

Q. -- who are identified in the contract. Now, party 2.

A. Yes.

Q. Who is party 2?

A. Party 2 is Lev Chernoi, who was also a shareholder equal to me in many of these assets. We were --

Q. That's what I was wanting to look at.

A. Right.

Q. So --

A. We were like partners in the assets.

Q. So you were partners in the assets?

A. Right.

Q. So can I just clarify exactly, if one looks at paragraphs 1 and 2, I think you have indicated, again if one looks against party 2, one can see that there are shared interests that are controlled in KrAZ and Bratsk and Achinsk.

A. I think they are mirror, mirror with me.

Q. Thank you. And can we just quickly identify parties 4 and 5 and --

A. Yes.

Q. Who is party 4?

A. Party 4 is Dmitry Bosov, somebody who was associated with us and had some shares in some of the businesses.

Q. And did he have a position within TWA -- sorry, Trans-World?

A. He had no position in TWA but there was a -- he had a company, he ran a company in which TWA was a partner.

Q. So that is Mr Bosov.

A. Yes.

Q. And then party 5?

- A. Party 5 is Mr Vasiliiy Anisimov and we had common interests in two plants: one of them is he had shares in Krasnoyarsk and the other was in another company called Bogoslovsky.
- Q. Does paragraph 2 also indicate that he had an interest in the Achinsk alumina refinery?
- A. At this moment I can't remember if he did. It indicates it here, and if it indicates it here, he probably did have.
- Q. If I can ask you in paragraph 2 where it says:
- "Parties 2, 3, 4 and 5 together control about 10% of AGK shares."
- A. Yes.
- Q. And then if you look at the line above, is "AGK" the Achinsk alumina refinery?
- A. Yes, it is.
- Q. And then, just before we leave the contract, could I ask you to go back to the top of this page.
- A. Yes.
- Q. And can you see that we have a definition of party 1?
- A. Yes.
- Q. And party 1 is described as Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili; is that correct?
- A. Yes, that is correct.
- Q. Now, if I could ask you to look at paragraphs 4 and 5 of

the contract.

A. Yes.

Q. If I could just ask you to read those paragraphs.

A. Yes.

Q. I'm not going to be asking you a detailed question.

A. Which one, the fourth?

Q. Paragraphs 4 and 5.

A. "Party 4 controls... 25%" --

MRS JUSTICE GLOSTER: No, just read it to yourself I think.

THE WITNESS: Oh, I beg your pardon.

MR GILLIS: No, paragraph 4 and paragraph 5, which just starts, "Party 1 shall..."

A. Okay, I've done that.

Q. And having read those paragraphs, could you very briefly explain to the court the nature of this contract? What is happening under this contract?

A. Under this contract our aluminium positions in total was being sold.

Q. Thank you. So it's a contract of sale and purchase?

A. A contract for sale.

Q. And going back to the definition of party 1, is Mr Patarkatsishvili identified as being one of the purchasers?

A. That is correct.

Q. Is Mr Patarkatsishvili someone who was known to you in

1999, before this contract was concluded?

A. Yes.

Q. So, Mr Reuben, I'd now like to move backwards in time from 10 February contract to the negotiation of the contract and to ask a few questions about the negotiation and the ultimate conclusion of that contract. Do you follow?

A. I follow.

Q. Do you remember when the negotiations started which led to the ultimate sale of these aluminium assets?

A. I would say a few months prior. Exactly I can't remember, but maybe three/four months prior to that.

Q. So the back end of 1999?

A. Yes, the back end.

Q. Do you recall who was involved in those first negotiations?

A. Negotiate -- there were two negotiations: I was negotiating personally to find a buyer myself; and this group of people, which is, well, shareholders common with me, were looking -- were talking to other people at the time and one of them was Badri, Mr Patarkatsishvili.

Q. So who was undertaking the negotiations with Badri?

A. These negotiations weren't being taken where we coordinated -- we were not -- it was not what you would call -- I was not -- they kept it away from me, their

part of the negotiation, and I kept my part of the negotiation away from them, trying to find a solution to present to them.

MRS JUSTICE GLOSTER: Could I be clear. When you say "they kept... their part of the" --

A. My own parties. This is not the -- I'm not talking about Mr Abramovich or -- I'm talking about my own partners.

MRS JUSTICE GLOSTER: Yes.

A. There were -- these three were together negotiating to find a buyer on their own accord. I had no involvement in it except by general lip service. No details were given, just --

MRS JUSTICE GLOSTER: But Mr Chernoi, Mr Bosov and Mr Anisimov?

A. They were in discussions.

MRS JUSTICE GLOSTER: When you say the three of them --

A. That's it. They were --

MRS JUSTICE GLOSTER: -- you're talking about them?

A. That's right.

MRS JUSTICE GLOSTER: So the three of them were in discussions with --

A. Discussions with that group, that's right.

MRS JUSTICE GLOSTER: -- certain parties and you were in discussions --

A. I was with somebody else.

MRS JUSTICE GLOSTER: Yes.

A. In other words, we both had different preferences where we would like to have seen the sale. And --

MRS JUSTICE GLOSTER: Yes. And were you negotiating with Mr Patarkatsishvili?

A. No, I was not.

MR GILLIS: So if I understand it, it's as if there were two parallel sets of negotiations?

A. That is correct.

Q. So can we just take it in stages. The negotiations that you were involved with, could I ask just very briefly who you were negotiating with?

A. With another group which had nothing to do with any of this case or action.

Q. All right. And the three that you have identified of Mr Chernoi, Mr Reuben (sic) and Mr Anisimov --

A. Not Mr Reuben, Mr Bosov.

Q. Mr Bosov, I'm sorry. Mr Chernoi, Mr Bosov and Mr Anisimov, I think you indicated that they were negotiating with Badri?

A. Right.

Q. How did you know that to be the case?

A. Excuse me. When I say they were negotiating with Badri, they weren't negotiating with Badri; they were having

their own negotiations. The fact that I met Badri and I saw them, we were discussing things, I can't swear who exactly they were negotiating with when I'm not there.

Q. No, all right.

MRS JUSTICE GLOSTER: So the position is you knew Mr Patarkatsishvili?

A. I knew them. I never met Mr Abramovich at this time; I never even heard of Mr Shvidler at this time.

MRS JUSTICE GLOSTER: Yes. But although you knew Mr Patarkatsishvili you were not yourself involved --

A. Negotiating --

MRS JUSTICE GLOSTER: -- with him?

A. No, not negotiating with him. No, I wasn't.

MR GILLIS: Can I now move on just a little bit.

A. Yes.

Q. Was there a time, once these negotiations that the three were conducting with Mr Patarkatsishvili, was there a time after that when you met Mr Patarkatsishvili?

A. No, I met him before, some months before. I was on a plane going to Moscow with him and I believe Mr Anisimov and during this trip the discussions were taking place in general between them, mostly in Russian, talking about how they would go about selling this or how he would -- they were trying to get him to buy the product and he was -- they were talking about tactics of

how they would go about it. From time to time Mr Badri would translate to me part of the conversations that was of interest to me.

- Q. Can you identify to the best of your ability when this discussion took place, this flight?
- A. I would say it was about a few months prior to the actual sale of this contract, before the signatures were signed.
- Q. And is this right: that they were discussing the possible purchase of aluminium assets?
- A. That is correct.
- Q. And who did you understand the prospective purchasers to be?
- A. I understood it to be like this. You see, I didn't know at that time the names, I never met Mr Shvidler, so therefore I would say I understood this to be like the Sibneft people, you know, who were buying it.
- Q. When you say "the Sibneft people", what did that --
- A. I would assume it was Mr Berezovsky, Mr Badri and, I assume -- funny enough, it was during this conversation I asked Mr Patarkatsishvili, "Is a Mr Deripaska behind you in this aluminium?" And he said, "No", and he said, "No, we would only do it if Mr Abramovich was in it". "Roman", he used the word "Roman", because I asked somebody, "Who is Roman?" and

they explained to me.

Q. And did you know who Mr Berezovsky was?

A. I knew Mr Berezovsky. He was -- he was known in Russia at the time.

Q. And in your conversations with Mr Patarkatsishvili about the purchasers and the purchaser not being Mr Deripaska, was mention made of Mr Berezovsky?

A. No, just -- and even if it is, I can't remember.

Q. You said earlier that reference was made to Sibneft.

A. Yes.

Q. Is that something that Mr Patarkatsishvili himself said?

A. No, my own partners were talking as well, they were discussing this. You see, we never specifically mentioned who one person is or one company is. So when we talk about the sale, we are talking about Badri and his partners. It was common knowledge Mr Badri was a partner of Mr Berezovsky; he said so, it was a known factor, so I assumed it to be that way. I have never seen any documents or papers. I was not a friend of either of them to say. I was not the enemy either. But I really had no idea what or where or how. That was how we assumed it to be.

Q. Thank you.

Can I now move on from the plane journey and can you recall how the negotiations for the sale of the

aluminium assets was progressed?

A. I had an offer from the party that I was discussing and I .phoned up Mr Lev Chernoi and Dima Bosov and I tried to explain to them that I'm talking to these people and they -- I had a call and they said they were going to come to London to meet with me. And when they came to London, they told me that they now have a fixed offer and that was the price. I refused the price. Then they came back and they increased it to -- a bit, where we all agreed to sell it, and that was in London. And we shook hands and they left and then I was called to come and sign that agreement.

Q. All right. We'll come to that in a moment.

A. Okay.

Q. You have explained previously that you were concerned to establish that Mr Deripaska was not behind the purchase?

A. I was not concerned, I just asked that question: is Deripaska behind? In other words, I was afraid that Mr Patarkatsishvili is going to partner this deal, buy it and sell it to -- or combine with Deripaska. And he said: no, he was not going to do it, that they were going to do it with Roman. They were going to do it with Roman and if he didn't do it, they wouldn't do the deal.

Q. So he indicated that it was to be done with Roman?

A. That is right.

Q. So Mr Patarkatsishvili was not acting just for himself, he was acting on behalf of others as well; is that correct?

A. Yes.

Q. And who were the others, so far as you were aware, that he was acting on behalf of?

A. I can identify a name because Mr Abramovich is a big name today, but at that time I had not known of him too much. I never -- so I would say in my mind I thought it is the people who owned Sibneft and Sibneft was the -- whoever owned Sibneft was the same party that was buying this.

Q. And what was your understanding of who owned Sibneft at the time?

A. At that time?

Q. Yes.

A. I knew Mr -- I knew Badri was involved, I knew Mr Patarkatsishvili (sic) was involved, I knew Mr Abramovich was involved, and those are the only three names that I ...

Q. Sorry, I think you said you knew Mr Badri was involved and you knew Mr Patarkatsishvili was involved and you say --

A. No, Badri is Patarkatsishvili.

- Q. Well, exactly. That's why I wanted to come back.
- A. Yes.
- Q. You said you knew these three names, but two of the names you gave were actually for Badri.
- A. Sorry, I beg your pardon.
- Q. So who was the first?
- A. I said Mr Abramovich probably was in -- Roman was inside.
- Q. I think if you look at the transcript, you've indicated you were referring to three names?
- A. Yes: Badri, Berezovsky and Mr Abramovich.
- Q. Thank you. Can we then move to the conclusion of the 10 February contract.
- A. Yes.
- Q. I think maybe you still have that open at tab 22 R(B)1/22/211.
- A. Yes.
- Q. Is it right that we can see that it refers to Moscow, 10 February 2000?
- A. It does.
- Q. Did you attend in Moscow for the signing?
- A. I did.
- Q. Can you recall the approximate date of the meeting?
- A. Approximate date?
- Q. Yes.

- A. No, I can't. I assume it was on 10 February 2000.
- Q. But that is simply because of the date that appears on the contract?
- A. Absolutely.
- Q. Do you recall where in Moscow the signing took place?
- A. It took place which I believe the offices of Mr Abramovich.
- Q. And was that his private office or was it a company?
- A. I have no idea. I've never been there before. I never asked. I just went there and we were around a table, a few people talking, and it was there. I didn't know whose office it was; I just assumed because I was told it was Mr Abramovich's office.
- Q. All right. And can you recall who attended the meeting?
- A. The ones I can remember that attended the meeting was a Mr Shvidler, because I was introduced to him, Mr Patarkatsishvili, myself, Dima Bosov, Mr Anisimov, Lev Chernoi, and there may have been others, I just can't remember. But they were the main people that I can recollect.
- Q. Was that the first time you'd met Mr Shvidler?
- A. First time I was introduced to Mr Shvidler.
- Q. And was Mr Abramovich at the meeting?
- A. No, he was not at the meeting.
- Q. Did you subsequently meet him?

A. Yes.

Q. At this stage, was your understanding as to who the purchasers were the same as you have already described to the court?

A. Yes.

MRS JUSTICE GLOSTER: You say you subsequently met Mr Berezovsky; had you met him --

MR GILLIS: No, Mr Abramovich.

MRS JUSTICE GLOSTER: I'm so sorry, Mr Abramovich. You had not met him before?

A. No.

Q. Do you know who Mr Anisimov regarded the purchasers to be?

A. No, I don't know. In other words, I would be speculating if I answered that question.

Q. You described the discussion that you had on the aeroplane. Was Mr Anisimov a party to that discussion?

A. Yes, he was.

Q. Then a few final questions.

Can I take you back to the contract that we have at R(B)1 at tab 22 R(B)1/22/211.

A. R(B)1, tab -- yes.

Q. Tab 22. We see that party 1, that is the purchaser, is described as being Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili.

A. Right.

Q. Do you see that?

A. Yes.

Q. Now, did you regard Mr Patarkatsishvili as being one of the purchasers?

A. Yes.

Q. Did you attach any significance to the fact that Mr Berezovsky was not made as one of --

MR SUMPTION: My Lady, with great respect, there are limits beyond which one should not be suggesting the answer to the witness.

MRS JUSTICE GLOSTER: I think you've got to formulate it a bit more carefully, Mr Gillis, please.

MR GILLIS: Well, I'm content to leave it.

Did you subsequently meet Mr Berezovsky?

A. What do you mean "subsequently"?

Q. Subsequent to the conclusion of the 10 February contract did you meet Mr Berezovsky?

A. I met Mr Berezovsky after that contract, yes.

Q. Yes.

MRS JUSTICE GLOSTER: Had you met him before the contract?

A. Yes, I did.

MR GILLIS: When you met him, was there on any subsequent occasion any discussion about this aluminium transaction?

A. I met him once, I believe, and I congratulated him on the deal because it was all -- if I'm not mistaken, I think it was in the press that he was -- or something quoted him and one time I just congratulated him on a good buy.

Q. And can you recall when that meeting was approximately?

A. No, I can't recall.

Q. Can you recall where that meeting was?

A. I can't recall. I think it was either in London or in Moscow. But I can't recall because this is very significant to you in this case; to me it's just another man that I met. It's not something that I would remember or was not of any importance to me.

MR GILLIS: I understand.

Mr Reuben, thank you very much. I think Mr Sumption may have some questions for you.

MR SUMPTION: I have no cross-examination.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, neither do I.

MRS JUSTICE GLOSTER: Mr Malek?

Cross-examination by MR MALEK

MR MALEK: Yes, just one question. Mr Reuben, I act on behalf of Mr Anisimov.

Can you confirm Mr Anisimov and you do not speak a common language, do you?

A. That is not -- we do not.

MR MALEK: I've no questions.

MRS JUSTICE GLOSTER: Any re-examination?

MR GILLIS: My Lady, no.

MRS JUSTICE GLOSTER: Mr Reuben, thank you very much indeed  
for coming to the court.

THE WITNESS: Thank you very much.

(The witness withdrew)

MR GILLIS: My Lady, I think with that we can resume with  
Mr Lindley.

MRS JUSTICE GLOSTER: Shall I take the break now?

MR GILLIS: That might be convenient.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.15 am)

(A short break)

(11.28 am)

MR MICHAEL LINDLEY (continued)

MRS JUSTICE GLOSTER: Mr Lindley, you're still on your oath,  
you understand.

Cross-examination by MR ADKIN (continued)

MR ADKIN: Mr Lindley, yesterday you will recall I was  
asking you about the work you had done with  
Mr Patarkatsishvili and I took you to paragraph 9 of  
your statement D1/07/94, in which you said that you  
were first instructed by Mr Patarkatsishvili in relation

to a personal matter in the spring of 2006 and had periodic dealings with him, including professional dealings, up until his death in February 2008. Do you remember that?

A. Correct.

Q. Yes. And it's clear, isn't it, from the 1 per cent commission agreement you entered into with Mr Berezovsky that you're now assisting him, Mr Berezovsky, in his actions against Mr Patarkatsishvili's estate?

A. I think I made it clear yesterday that I'm assisting Mr Berezovsky in the management of his litigation.

Q. Did you at any time inform Mr Patarkatsishvili's estate that you were acting for Mr Berezovsky in his claims against the estate?

A. What do you mean by "claims against the estate" and "acting for Mr Berezovsky in his claims against the estate"?

Q. You've confirmed that you are assisting Mr Berezovsky in his claims against the estate?

A. That's correct, in a management --

Q. Have you at any time informed --

A. -- in a management role.

Q. Have you at any time informed Mr Patarkatsishvili's estate that that is what you are doing?

A. I haven't, no.

- Q. To your knowledge, did Mr Berezovsky or anyone else acting for him inform Mr Patarkatsishvili's estate of what you are doing?
- A. Not to my knowledge.
- Q. Have you taken any steps to ensure that knowledge which you have obtained from Mr Patarkatsishvili whilst acting for him is not passed on to those acting against his estate?
- A. I think this goes back to correspondence. There's been correspondence in relation to this which goes back to 2010 with the interim administrators. Do you recall?
- MRS JUSTICE GLOSTER: Well, don't ask the questions, please, just answer the question.
- A. I think that it's been dealt with to a certain extent in the correspondence that I engaged in with the interim administrators.
- MRS JUSTICE GLOSTER: Why is this relevant to the overlap issues, Mr Adkin?
- MR ADKIN: My Lady, that's the last question I have on that topic.
- Mr Lindley, you said yesterday that one of the functions you perform for Mr Berezovsky is financial management in relation to the litigation.
- A. Correct.
- Q. Were you involved in negotiating, producing or recording

any agreement between Mr Cherney and Mr Berezovsky?

A. I've got no knowledge of any dealings between Mr Berezovsky and Mr Cherney, so the answer to that is no.

Q. Could you go, please, to bundle R(D), tab 24 R(D)2/24/30. This is your note or the typed-up version of your handwritten note of a meeting with Mr Patarkatsishvili and Mr Berezovsky on 13 July 2007.

Could you go, please, to page 41.001 of this tab R(D)2/24/41.001. Do you have that?

MRS JUSTICE GLOSTER: Just for the record, this is bundle R(D)2, tab 24.

MR ADKIN: I'm so sorry, my Lady. Bundle R -- on Magnum, I'm so sorry, there seems to be a disconnect between the hard copies and the Magnum.

MRS JUSTICE GLOSTER: Well, otherwise it doesn't get hyperlinked. That's why I'm bothering to do it.

MR ADKIN: My Lady, yes.

Do you have that page, Mr Lindley?

A. No.

MRS JUSTICE GLOSTER: Well, can you look at it on the screen, please.

A. Okay, I've got it.

MR ADKIN: This is still in the same document. Six lines down from the top you will see the word "Contract". Do

you see that?

A. Yes.

Q. Then:

"Sibneft contracts governed by English law."

A. Yes, I see that.

Q. And so is it a fair assumption from that note that you were discussing the law governing the Sibneft contracts?

A. I think I explained yesterday but if I didn't make myself clear, I'll explain myself now.

Q. Could you just answer that question, Mr Lindley, please.

A. I think I just need to explain this to be able to answer the question. I wasn't involved in any of the discussions and I think by the time this note was taken on the 13th, I was a passive observer. So I don't think it's right to say that I was in a position to be taking part in discussions and negotiations. I just want to make that clear.

Q. I understand that, Mr Lindley, and you made that clear yesterday but I'm grateful for your having repeated it. What I want to understand is what you understand your note to mean.

Do you understand your note which says, "Sibneft contracts governed by English law", to mean that you were discussing at that time the governing law of the Sibneft contract? (Pause)

A. I think the comments obviously that were in the notes is a reflection of something that was said during the course of the meeting. Beyond that, I can't really comment.

MRS JUSTICE GLOSTER: Do you have any independent recollection apart from what's in the note?

A. No, my Lady.

MR ADKIN: You may not be able to recollect this but I'll ask you to see if you can help. The next line down:

"Rusal -- important -- BB -- place where the deal was done."

Are you able to help us with what that means and are you able to help us with what discussions it reflects?

A. Again, I'm in the same position as I was a minute ago in relation to "Sibneft contracts". I can see what's written there; beyond that, I don't have any independent recollection.

Q. Thank you.

I want to ask you briefly about Mr Patarkatsishvili's grasp of English. You said in your witness statement -- and for the transcript this is D1/07/94 at paragraph 12 -- that "Mr Patarkatsishvili had a reasonable grasp of English", but during your meetings in June 2007 he occasionally needed the assistance of others to interpret what he said.

Now, as I understand that, you are talking there only about what was spoken, so Mr Patarkatsishvili's understanding of spoken English. You're not talking about his ability to read English?

A. I think that's a fair comment.

Q. So far as you are aware, the position with Mr Patarkatsishvili's written English was different, wasn't it? Or do you just not know?

A. I don't know.

Q. Thank you.

Could you please go to bundle H(A)95 at page 56 H(A)95/56. Do you recognise this document?

A. Yes, I do.

Q. And you can take it from me that this is the last in time of a number of draft deeds and we understand, having been told this by Mr Berezovsky's solicitors, that you produced these draft deeds. That's correct, isn't it?

A. That's correct.

Q. Would you please go to page 59 H(A)95/59, and that records the first -- on that page at the bottom, you'll see "The First Schedule". Do you see that?

A. Yes.

Q. And over the page is a second schedule. Yes? I'm sorry, Mr Lindley --

A. Yes I -- yes, I see it.

Q. -- unfortunately the nod doesn't make its way on to the transcript.

And you can take it from me as well that the schedules are set out in three of the draft deeds and are the same save that one asset moves from the second schedule to the first schedule because it appears to have been sold.

Now, as we understand the draft deeds, these schedules are intended to set out joint investments held by Mr Patarkatsishvili and Mr Berezovsky. Is that your understanding?

A. These were provisional schedules and they were by no means a comprehensive list of assets which form part of the joint venture.

Q. Were you ever instructed by Mr Berezovsky, Mr Patarkatsishvili, Dr Nosova or any other person to place into these schedules any of the assets I'm about to name: Metalloinvest or MGOK?

A. Can you repeat the question, please.

Q. Were you ever instructed by Mr Berezovsky, Mr Patarkatsishvili, Dr Nosova or any other person to place into these schedules any of the assets that I'm about to name, and I'm going to list three assets and you can take it from me that none of them appears in the

schedule.

    Metalloinvest or MGOK? If you simply can't remember, Mr Lindley, just --

A. Sorry, I'm just reading your question so I can answer it properly.

Q. Of course. (Pause)

A. Okay, what's your question?

Q. Well, you've just read it, I assume.

A. I've read that. I thought you said something else afterwards.

Q. Metalloinvest?

A. I didn't know about that asset at the time.

Q. Kulevi Port?

A. I wasn't aware of that asset at the time.

Q. The Mosselprom factory?

A. I wasn't aware of that asset at the time.

MR ADKIN: Mr Lindley, thank you.

    My Lady, I have no further questions for this witness.

MRS JUSTICE GLOSTER: Thank you.

MR MUMFORD: My Lady, I have no questions either.

MRS JUSTICE GLOSTER: Thank you, Mr Mumford.

    Yes, Mr Gillis.

MR GILLIS: My Lady, just a few short questions.

    Re-examination by MR GILLIS

MR GILLIS: Mr Lindley, you were asked about the circumstances giving rise to the conclusion of your commission agreement and we have that agreement at H(A)98/43.004. You've explained that Mr Berezovsky wished to ensure that the litigation could continue in the event of his death.

Could I ask you to look at recital D of the agreement.

A. Mm-hm, yes.

Q. Does that reflect your understanding of that aspect of the agreement?

A. Yes, Mr Berezovsky was very concerned that the litigation should continue in the event of his death and at the time that this agreement was prepared Mr Berezovsky was very worried that there were threats to his life. So it was something that was, you know, an important part of this agreement.

Q. You were asked about your attendance at the Badri proofing sessions on 11 and 13 June. Could I just ask you to elaborate on how much you understood about the Abramovich action at the time you attended those meetings?

A. Absolutely -- well, virtually nothing.

Q. For example, do you think you had read the claim form at that stage?

A. I think that I might have read the letter before action and I may have seen the claim form if it had been issued. But in terms of knowledge of that case, I couldn't profess to have any real knowledge of that case whatsoever. It's just something that I wasn't involved in.

Q. Do you think you had done any other pre-reading, as it were, before the meeting?

A. No, because I attended the meeting expecting to discuss other issues and I wasn't even aware that the Roman Abramovich case was going to be a major item for discussion during the course of these meetings.

Q. Can I take you to bundle R(D), which you may have before you. I'm wanting to look at tabs 19 and 25.

Now, can we start at tab 19 at page 150

R(D)1/19/150. Do you have that?

MRS JUSTICE GLOSTER: Again, for the transcript, it's R(D)1, tab 19.

MR GILLIS: My Lady, I'm obliged. I'm sorry, mine is labelled just R(D).

MRS JUSTICE GLOSTER: No, it doesn't matter. I'm just reading it so it gets hyperlinked.

MR GILLIS: Do you see the passage that starts in the middle of the hole-punch:

"- verbal agreement 50-50 of all business.

"- when buy Rusal..."

Do you see that section?

A. I do.

Q. You were asked some questions about that and you were then asked to look at tab 25 at page 45.001, R(D)2, tab 25 at page 45.001 R(D)2/25/45.001 --

A. I've got it.

Q. -- and you were asked some questions about the first three paragraphs.

A. Right.

Q. And it was put to you that that was referring to the same 50/50 partnership as was referred to in the earlier note. Do you recall that?

A. I do.

Q. Now, Mr Lindley, I would just like to clarify. Going back to tab 19 in R(D)1 R(D)1/19/141, are those your notes of the 11 June meeting? If I could ask you to look at page 141.

A. Mm-hm. Yes, they are the notes of my meeting of 11 June.

Q. And the note of the meeting that we have at R(D)2 at tab 25 R(D)2/25/45, is that the attendance note of the meeting on 13 June?

A. I think it is because there's a reference to the discussion of a potential criminal case being brought

against Roman Abramovich in relation to Nikolai Glushkov being placed in prison and I can see the reference in this note to that discussion:

"The discussion... turned to the potential criminal case."

And I think if you look at my notes, my handwritten notes of the 13th, a substantial part of the discussion is taken up in connection with Nikolai Glushkov and a criminal case. So I think that this note probably relates to something that was discussed on the 13th.

Q. Can I ask you to turn back to R(D)1, tab 20

R(D)1/20/151.

A. Yes.

Q. Is that your attendance note in relation to the 11 June meeting?

A. That's correct.

Q. One final question. This morning you were asked some questions by Mr Adkin about the economic divorce deeds and you were asked if Mr Berezovsky or Mr Patarkatsishvili had ever asked you to paste into the economic divorce deeds references to Metalloinvest, Kulevi Port or Mosselprom.

So far as you are aware, did Mr Berezovsky or Mr Patarkatsishvili ever see the economic divorce deeds?

A. The schedules were prepared by myself in conjunction

with LMC. I don't think that -- well, I'm sure that Mr Berezovsky never even -- never saw these deeds. I think that the deed of 4 September was shown to Mr Patarkatsishvili but he rejected that document in quite forceful terms.

But in relation to the preparation of those schedules, neither Mr Berezovsky nor Mr Patarkatsishvili had any involvement in that and those schedules were provisional and they were produced in conjunction with discussions with LMC. I mean, ultimately that document was rejected by Mr Patarkatsishvili.

MR GILLIS: Thank you.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Right.

Very well, you may be released.

THE WITNESS: Thank you.

(The witness withdrew)

Discussion re housekeeping

MR GILLIS: My Lady, we next have Mr Nevzlin --

MRS JUSTICE GLOSTER: On the video?

MR GILLIS: -- on the video at 2 o'clock.

If the Chancery defendants are content, there is one matter of housekeeping that we could get out of the way and that is in relation to the definition of the overlap issues.

MRS JUSTICE GLOSTER: Right. Are there any other witnesses today apart from Mr Nevzlin?

MR GILLIS: My Lady, no.

MRS JUSTICE GLOSTER: So on Monday we've got...?

MR GILLIS: On Monday we've got Mr Lankshear, Ms Duncan and then Mr McKim.

MRS JUSTICE GLOSTER: Yes. And what about --

MR SUMPTION: My Lady, can I tell my learned friend and your Ladyship that we will not require Mr Lankshear to attend.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: And that will conclude the witnesses for Mr Berezovsky, will it?

MR GILLIS: Subject to interposing at a later stage Mr Pompadur.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: Yes, that would then be the close of Mr Berezovsky's evidence.

MRS JUSTICE GLOSTER: Yes, apart from Mr Pompadur.

So the housekeeping issues are?

MR GILLIS: Yes. This, I think, is agreed. Your Ladyship may recall that at the beginning of the trial Mr Berezovsky sought permission to amend paragraphs C64 and C59B of his particulars of claim in the Commercial Court action.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: The purpose of that amendment was to plead  
a resulting trust or a constructive trust as --

MRS JUSTICE GLOSTER: That was ultimately agreed, was it?

MR GILLIS: That was ultimately agreed as between  
Mr Berezovsky and Mr Abramovich in the Commercial Court  
proceedings.

My Lady, that then just left the question of whether  
those additional claims, which are obviously  
Rusal-related claims, should also be determined as  
against the Chancery defendants as overlap issues. My  
Lady, the position is that that has now also been  
agreed, subject to your Ladyship's consent.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So it's been agreed that your Ladyship should  
determine those resulting trust/constructive trust  
issues as against the Chancery defendants as well as  
overlap issues.

That's subject to one proviso, which I'll show you  
in a draft order that I'll be handing up, but it's  
a proviso which I don't think will affect your  
Ladyship's determination of those issues. The proviso  
is this: that the Chancery defendants wish to reserve  
their right to argue in the Chancery actions that no  
such claims have been pleaded against them and that if

permission to amend were to be sought, it should be refused on grounds including that those claims would be time-barred against them.

So, my Lady, in essence, in order to avoid disrupting this trial while those applications are made to the Chancery Division and determined --

MRS JUSTICE GLOSTER: So I'm sort of deciding them

de bene esse in relation to the Chancery defendants, without deciding the limitation issue.

MR GILLIS: My Lady, exactly so.

So, my Lady, might I hand up a copy of the draft order which has been agreed between Mr Berezovsky and the Chancery defendants. (Handed)

MRS JUSTICE GLOSTER: Thank you. So whether they arise out of the same cause of action is basically an issue that's being parked?

MR GILLIS: Exactly.

My Lady, if I could just start by taking you to the annex because --

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: -- as your Ladyship will recall, we have the overlap issues defined in your Ladyship's order of 16 August 2010, which we have at bundle I2, at tab 6 I2/06/24.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: We have some amendments to that.

Fundamentally, the main amendment is subparagraph 4, which is to bring in as the alternative to 3(c), which is the express English law trust claim:

"Did the claimant acquire an interest in Rusal under an English law resulting trust or constructive trust, other than as a result of the joint venture agreement alleged by the claimant in the main Chancery action?"

So, my Lady, essentially that mirrors the claim that we see in paragraphs C64(2) and (3) in the Commercial Court proceedings. So that is the issue that your Ladyship is being invited to determine as against the Chancery defendants as well.

Then we have the formulation of the proviso in paragraph 2 of the order. So paragraph 1 is indicating that the overlap issues to be tried and determined, as set out in paragraph 1 of the 16 August order, be amended in the way I've shown you.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Then your Ladyship is to decide that issue without prejudice to the Chancery defendants' right to contend in the Chancery action that those claims have not been pleaded against them and that if an application to amend were to be made, it should be refused inter alia on grounds of time bar.

MRS JUSTICE GLOSTER: Yes, I see. So this is effectively saying that Mr Berezovsky can't rely on this order as the grounds for an argument that there has been an agreement to an amendment in the Chancery action?

MR GILLIS: Exactly so.

MRS JUSTICE GLOSTER: Mr Adkin, is that agreed?

MR ADKIN: My Lady, it is, and your Ladyship has it exactly right.

MR GILLIS: My Lady, I understand the Salford defendants, Mr Mumford is content with that order and it has also been approved by Ms Tolaney on behalf of the Anisimov defendants.

MRS JUSTICE GLOSTER: Right. That's the position, is it Mr Mumford?

MR MUMFORD: My Lady, that's absolutely right.

MRS JUSTICE GLOSTER: And Mr Malek, that's the position?

MR MALEK: That's correct.

MRS JUSTICE GLOSTER: Very well. I make an order in those terms.

What's the position in relation to the Customs officials, the border officials?

MR GILLIS: My Lady, we are in the process of writing to Skaddens to indicate that we will not be pursuing that application and maybe I could update your Ladyship on that. It may be that I should do that after Skaddens

have actually received the letter.

MRS JUSTICE GLOSTER: Okay. It's just I have got the application, as it were, on my table to deal with and if I'm not going to be asked to deal with it, that's fine.

MR GILLIS: We're not going to be pursuing it, but I would like to show your Ladyship the correspondence which has been received.

MRS JUSTICE GLOSTER: Presumably there will still be an argument, will there, as to the weight of the evidence?

MR GILLIS: Absolutely so.

MRS JUSTICE GLOSTER: Or there may still be an argument.

MR GILLIS: As your Ladyship will recall, we weren't trying to suggest that the consequence of the Polanski decision was that if you made the order and there was a non-attendance, the evidence would be shut out, because --

MRS JUSTICE GLOSTER: So I'm going to have to hear argument, am I, about what the consequences are?

MR GILLIS: No, because I'm not going to be pursuing the application.

MRS JUSTICE GLOSTER: I see.

MR GILLIS: We accept that even if your Ladyship made the order and there was noncompliance with it --

MRS JUSTICE GLOSTER: They could still use the evidence?

MR GILLIS: -- the evidence would still be admissible; it's

just another factor that goes to weight.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: But your Ladyship is going to have to determine what weight to attach to the hearsay evidence in any event and we can make our submissions in relation to that in consequence of the responses that we have received, which is basically -- and I can take your Ladyship to it later. Mr Sumption was not happy, I think is how he put it, with how I had summarised it previously.

MRS JUSTICE GLOSTER: Okay. Well, I'll wait until you get the response from Skaddens. There's no point doing it until then.

MR GILLIS: Essentially we're being told that no further information can be provided above and beyond the information provided in the last letter, which I'll show your Ladyship in due course.

MRS JUSTICE GLOSTER: Very well. Mr Sumption, you're content with that course?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Right. Are there any other housekeeping matters I should deal with?

MR GILLIS: Not at the moment.

MRS JUSTICE GLOSTER: Where is the list of issues?  
Am I getting that?

MR SUMPTION: I understand that this was supplied to your Ladyship's clerk a week ago.

MRS JUSTICE GLOSTER: I have the dramatis personae. It may be --

MR SUMPTION: It was supplied by Addleshaws two weeks ago.

MRS JUSTICE GLOSTER: Well, then he's just overlooked it. I'll chase it up with him.

MR SUMPTION: The fault may well be ours, but that's what I'm told.

MRS JUSTICE GLOSTER: No, no, no, I'm sure it's on this side. I will track it down.

MR SUMPTION: My Lady, on this apparatus, all one does is plug it in to the thing that looks like a mobile phone but I hasten to say is not --

MRS JUSTICE GLOSTER: Shall we just -- since we've got five minutes.

MR SUMPTION: -- and switch to channel 1.

MRS JUSTICE GLOSTER: So we're all happy to use it.

MR SUMPTION: Well, I don't know about that.

MRS JUSTICE GLOSTER: Before I put them on, we switch to channel 1?

MR SUMPTION: We switch to channel 1, having simply plugged the socket into the hole at the top. Then there's an on/off button halfway up the front of it. On the side your Ladyship will see there's a channel thing which

will enable you to get from zero to channel 1 and that's the English-language version.

MRS JUSTICE GLOSTER: Yes. And if we want it in some other language, you go to another channel?

MR SUMPTION: If your Ladyship wants to listen to it in Russian, I think it's channel 2.

MRS JUSTICE GLOSTER: Very well. Have members of the press been provided with them or will they be available this afternoon?

MR SUMPTION: I presume that they will be available somewhere --

MRS JUSTICE GLOSTER: Well, I will just check they are.

Can I say to members of the press or indeed members of the public, none of these headsets are to leave the building or to leave this room because they're very valuable. So can you make sure -- because I don't want you all to be searched as you leave the building -- that you do leave them on your seats.

Very well.

MR GILLIS: My Lady, could I just raise I think two other points.

Firstly, Mr Sumption has indicated that Mr Abramovich does not require Mr Lankshear to attend for cross-examination. Is that the same for the other Chancery defendants as well, that they do not require

him to attend?

MRS JUSTICE GLOSTER: Right. What's the position?

MR MALEK: Yes, that's correct.

MR MUMFORD: So far as we're concerned, yes.

MR ADKIN: My Lady, I think the answer is likely to be yes but I had better take instructions and I will let Mr Gillis know as soon as I've done that, which will be later today.

MRS JUSTICE GLOSTER: Yes, very well.

MR GILLIS: My Lady, the second thing is just to note this: my learned friend Mr Sumption indicated that there was a further witness statement from Mr Abramovich which he indicates he hopes to be able to serve today. My Lady, depending upon the length of that and the issues that it deals with, it may impact the timing of the start of cross-examination on Monday.

MR SUMPTION: My Lady, it's a short witness statement which deals with a small number of issues that have arisen in the course of the evidence that has been called to date.

MRS JUSTICE GLOSTER: Very well. Well, if there is going to be an argument about that, I'll hear that tomorrow afternoon, when you've seen the statements.

MR GILLIS: On Monday?

MRS JUSTICE GLOSTER: Oh, you're quite right. I lost track of time. Have you seen it yet?

MR GILLIS: No. My Lady, that's the difficulty.

MR SUMPTION: We expect to serve it in the course of today.

MR GILLIS: My Lady, it may not be an issue but I thought I would just raise it.

MRS JUSTICE GLOSTER: Yes. Since I presume you're working over the weekend anyway, Mr Gillis, it will have to be quite a long statement for you not to be able to take it on board, for your team not to be able to take that on board.

MR GILLIS: I will pass that on to Mr Rabinowitz. I'm sure he will thank you for your Ladyship's observation.

MRS JUSTICE GLOSTER: Very well. There's no point in sitting earlier? If you wish me to sit earlier for the video, I can do so, but --

MR GILLIS: No, I think because of the time difference, 2 o'clock is the earliest we can start.

MRS JUSTICE GLOSTER: Very well. Then I'll adjourn until 2 o'clock.

(12.05 pm)

(The short adjournment)

(2.00 pm)

MR GILLIS: My Lady, as I think you know, English is on channel 1. It has been pointed out if people could keep receivers away from microphones that would help, because otherwise there tends to be a problem with feedback.

MRS JUSTICE GLOSTER: Yes, okay.

Right, shall we swear the interpreter first, please.

MADAM INTERPRETER (sworn)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Thank you. Could the translator in New York be sworn as well.

MRS JUSTICE GLOSTER: Yes. Could the translator in New York be sworn as well, please.

MADAM INTERPRETER (sworn)

MRS JUSTICE GLOSTER: Thank you very much, madam interpreter.

Right, may the witness be sworn now.

MR LEONID NEVZLIN (sworn)

(All answers interpreted unless otherwise indicated)

MRS JUSTICE GLOSTER: Thank you very much. Please sit down.

THE WITNESS: (Not interpreted) Thank you.

THE INTERPRETER: Just explaining to the witness that he will hear Russian, he won't hear English.

MR GILLIS: Good morning, Mr Nevzlin. My name is Richard Gillis and I represent Mr Berezovsky. Can you hear me?

A. (Not interpreted) Good morning.

(Interpreted) Yes, I hear you.

Q. Before we begin, could you just confirm that you have no mobile telephone or no electronic device or, if you do,

that they have been switched off?

A. I do not have any electronic device.

Q. Thank you.

Could Mr Nevzlin be provided with bundle D1 open at tab 4 D1/04/58.

A. Yes.

Q. That should be the first page of your witness statement and could I ask you to turn to page 72 in the bundle D1/04/72. We have the numbers in the bottom right-hand corner.

A. Okay, I have it.

Q. Is that your signature?

A. It is my signature.

Q. And can you please confirm that this is your first and only witness statement in these proceedings?

A. It is my first and only witness statement in the course of these proceedings.

Q. And can you confirm that the contents of this, your witness statement, are true to the best of your knowledge and belief?

A. This witness statement is the truth, to the best of my knowledge, information and belief.

MR GILLIS: Thank you. Could you just wait there.

Ms Davies has some questions for you on behalf of Mr Abramovich.

## Cross-examination by MS DAVIES

MS DAVIES: Mr Nevzlin, you first met Mr Berezovsky in the late 1980s or early 1990s; is that correct?

A. Beginning of the '90s would be most correct.

Q. And you subsequently became friends; is that right?

A. Yes, you could call our relationship a friendship.

Q. And you remain friends today; is that right?

A. Yes, you could indeed say that.

Q. And over the years since the early 1990s, you have been in regular contact with Mr Berezovsky; is that correct?

A. Yes, that is.

Q. And you remain in regular contact with Mr Berezovsky today, 2011?

A. We meet fairly often, as far as we can, Mr Berezovsky and I.

Q. Have you seen Mr Berezovsky in Israel recently?

A. Yes.

Q. When was that exactly?

A. It was literally a few days ago, a week ago I'd say.

Q. And during that meeting did you discuss any matters relevant to this case?

A. Yes, we did.

Q. What did you discuss that was relevant to this case?

A. Only the overall information for Mr Berezovsky that I was going to be a witness and that on all the

questions that I was asked, I would speak the truth and nothing but the truth.

Q. When did you first meet Mr Patarkatsishvili?

A. I think that too was at the beginning of the '90s, later than I met Mr Berezovsky but not significantly later.

Q. And did you also become friendly with him?

A. We had a good relationship but I wouldn't call it as close as a friendship.

Q. Did you keep in regular contact with him until his death in 2008?

A. Yes, I was in regular contact with him, as much as the way we both moved around a lot permitted, but more I was in contact with Mr Berezovsky.

Q. Mr Nevzlin, I presume, but please correct me if I'm wrong, that you have a broad understanding of the nature of the claims that Mr Berezovsky makes against Mr Abramovich in these proceedings?

A. I think I do understand what is it about.

Q. And over the years you must have spoken to Mr Berezovsky or Mr Patarkatsishvili about the events that give rise to those claims on a number of occasions; is that right?

A. We certainly very often discussed the events which led to the situation that we all find ourselves in.

I couldn't say that we discussed it in terms of the actual court case that the claimant has brought, but

certainly we discussed it in general terms, without doubt.

Q. Now, when you saw Mr Berezovsky last week in Israel, did you discuss the evidence that he had given to the English court? Did he tell you anything about that evidence?

A. I don't remember us discussing that.

Q. Does Mr Berezovsky or any entity associated with him owe you any money?

A. No. Neither Berezovsky, neither he himself nor anyone connected to him owes me any money.

Q. You have not loaned Mr Berezovsky or an entity associated with him \$5 million then?

A. No, I haven't loaned anything to Mr Berezovsky or to anyone connected with him.

Q. Mr Nevzlin, is it fair to say that you are a critic of the current political administration of Russia?

A. It would be fair to say that I am not a supporter or an admirer of that regime.

Q. And in particular you're not an admirer of Prime Minister Putin?

A. Not a supporter of Mr Putin, prime minister.

Q. But you are a supporter of Mr Berezovsky's opposition to that administration; is that right?

A. I don't really understand your question.

- Q. You agree with Mr Berezovsky's opposition to the political administration in Russia; is that right?
- A. I know that Boris Berezovsky is also in opposition to that government and I consider that there are issues on which we would agree but issues on which we would not agree. We -- Mr Berezovsky and I can be both in opposition but have different views on various things.
- Q. Is it also fair to say, Mr Nevzlin, that you do not like Mr Abramovich?
- A. Yes, I think rather -- I find him rather anti -- not very sympathetic, rather antipathetic. I have reasons for that which are in my witness statement.
- Q. Now, you tell us in your witness statement that you did not meet Mr Abramovich until 1996. Would I be right in understanding that prior to your meeting in 1996 you had not previously heard of Mr Abramovich?
- A. No. Many years have now passed, at least 15, because it was the end of 1995/the beginning of 1996. That was then and certainly I had not heard of Mr Abramovich before I actually met him; that I can say without any doubt.
- Q. And is it right also that you had not had any dealings with any of the companies that he owned before you met him?
- A. As far as I know, none.

- Q. And again putting ourselves back in the position you were in in 1996, is it right that you did not know at that time what Mr Abramovich's commercial background was?
- A. I found out various things after I met him from people who knew him, but not from him personally.
- Q. What did you know in 1995/6 about the financial situation of the trading companies that Mr Abramovich owned?
- A. No, I can put it like this: the fact that then I knew nothing about his business affairs means that he was not a very significant figure in the Russian Federation.
- Q. You see, you say in your statement, for example at paragraph 16, which is on page D1/04/62 for the transcript, that in 1995 Mr Abramovich had no money. Do you see that?
- A. I said that very specifically about the situation with Sibneft.
- Q. You did not know in 1995 or 1996 how much money Mr Abramovich actually had, did you?
- A. At that time I knew the main information about the various elements in Russia who would be capable of participating in the privatisation and Mr Abramovich did not have that kind of fortune. Even if he had enough money to live on, to run his business, he didn't have

the kind of fortune on the scale that would be necessary to participate in the privatisation. That's what I knew about him.

Q. Now, you were not personally involved in the events that led to the creation of Sibneft; is that right?

A. I was not part of the Sibneft project.

Q. You tell us in paragraph 21 of your statement, at bundle D1/04/64, that you had "a high-level role" in relation to Bank Menatep's support for the bid made by SBS and NFK in the Sibneft loans for shares auction. What do you mean by --

A. What I meant was that, as a shareholder in the bank and then later in Yukos at the high level, in fact I was number two after Khodorkovsky, that I was working on the overarching aspects but I wasn't dealing with the specifically business and documentary aspects.

Q. What involvement did you actually have in the provision by Bank Menatep of a guarantee to support the bid?

A. As a shareholder in the bank, a large-scale shareholder in the bank, I would, as a minimum, have been aware of the situation and not objected to it.

Q. Now, Bank Menatep provided a guarantee in relation to the loan that was provided by SBS in support of the bid; were you aware of that?

A. I think that is the case. I did know.

- Q. Bank Menatep did not itself provide any funding to support the bid; its role was solely that of guarantor. That's correct, isn't it?
- A. I don't quite understand the question. Be it a guarantee or be it provision of funds, both are money for a bank. So for a bank, SBS-Agro or Menatep, these banks, if they provide a guarantee, that means they're taking on part of the risk in this transaction.
- Q. Well, the loan that SBS Bank provided to support the bid was in the amount of US\$97 million. Would you have been aware of that?
- A. I remember it was around US\$100 million.
- Q. That amount, we know from other evidence in this case, was fully secured by funds that had been deposited in a bank account with SBS Bank on behalf of Mr Abramovich. Were you aware of that?
- A. Firstly, I didn't know anything about that; and secondly, I don't think that there could have been a deposit on behalf of Mr Abramovich.
- Q. Why don't you think there could have been a deposit on behalf of Mr Abramovich?
- A. Because I'm absolutely sure that Mr Abramovich at that time did not have \$100 million in his assets.
- Q. The truth is, Mr Nevzlin, that you don't know the details of the deposits that were made with the

SBS Bank, do you, and where they came from?

- A. It would be strange if I did know the details of all deposits going into SBS Bank, on the one hand. On the other hand, as a participant in some of the meetings, I can say that Mr Smolensky, the head of the SBS Bank, had two requirements: the first was a Menatep Bank guarantee and the other was the personal guarantee because the money was being advanced to Mr Berezovsky and not to Mr Abramovich.
- Q. The money was in fact being advanced to the Russian State, wasn't it, Mr Nevzlin, as part of the loans for shares auction?
- A. So now you're asking about Abramovich's money in the SBS Bank deposit or about something different?
- Q. I'm asking about the SBS loan. That was in fact advanced to the Russian State?
- A. If you are asking me about the conditions for the loans for shares auctions at that time, the point of those loans for shares auctions was to provide loans to the Russian government's budget.
- Q. And Bank Menatep provided a guarantee in relation to the SBS loan but, given that the SBS Bank was fully secured by deposits, Bank Menatep had no financial exposure as a result of the guarantee, did it, Mr Nevzlin?
- A. No, it is not the case. The point of giving a guarantee

is that you take on the risk if that guarantee is called upon. Naturally, I don't know anything about the deposits you were talking about, but if SBS didn't require a Menatep Bank guarantee it would not have asked for one; and Menatep Bank, by providing the guarantee, took on the exact same degree of risk as the amount that their guarantee provided.

- Q. Well, the guarantee was necessary as a result of the rules of the Central Bank, which limited a bank's commitments to a proportion of its capital. Presumably you're aware of those rules?
- A. You know, I worked in the bank for long enough and certainly sometimes situations arose to do with liquidity and capital when banks were limited in the amount of their own capital they could provide. I don't know if this is about that; I think not.

And in general I would like to say that over these 15 years the banking rules and regulations in Russia have changed so much that now the rules and the law in place for that particular case, I cannot say that I remember or that anybody else does.

- Q. You were not involved, were you, in the negotiations that took place between Mr Abramovich and Mr Kagalovsky in relation to Bank Menatep's involvement in the bid?
- A. I did not participate in the negotiations between

Mr Kagalovsky and Mr Abramovich, obviously.

- Q. Now, you refer in the last sentence of paragraph 21 of your statement D1/04/64 to the fact that the detail of the arrangements was a matter for "others, in conjunction with Mr Abramovich's managers". Do you see that at the end of paragraph 21?
- A. Yes, I do.
- Q. And you identify various people there including Mr Davidovich, Ms Oiff and Ms Panchenko. Were you intending to suggest -- sorry.
- A. Given the names of those people who worked very closely with Abramovich and who I remember in various situations as being close to Abramovich, I can say for sure that I was just listing the people who normally drew up documents for Abramovich. But certainly the key person here was Evgeny Shvidler.
- Q. Were you intending to suggest that Mr Davidovich, Ms Oiff or Ms Panchenko were individuals working on the loans for shares auction on Mr Abramovich's behalf?
- A. No, I would not say that exactly. I listed the people who normally were the ones who drew up documents at Mr Abramovich's request.
- Q. Are you suggesting that those people normally drew up documents on Mr Abramovich's request back in 1995 or 1996?

- A. I cannot say that about them all for sure; I just listed the people who often appeared on behalf of Mr Abramovich when this or that document was being drafted. If any of these people was not participating in the negotiations in 1995/1996 preparing for the auction, I may be mistaken by giving somebody's name along with the others in that long list; and if I am mistaken then I apologise. But I've given the names of the people who I remember as being there always when there was a negotiation, a transaction that Mr Abramovich was engaged in.
- Q. Would you agree, Mr Nevzlin, that you do not know who was involved in the loan for shares auction on Mr Abramovich's behalf?
- A. You know, if you are asking me can I give you 100 per cent answer about who, 15 or 16 years ago, was there on behalf of Menatep or Khodorkovsky, my bank, I would find that quite difficult to do.
- Q. I understand, Mr Nevzlin. It wasn't a criticism. I was just trying to establish what you knew. The answer, I think, is: no, you don't know?
- A. Yes. I can assume, knowing the people who always worked with him, but I cannot give you an exact, truthful guarantee that I know.
- Q. Now, save for your involvement with Bank Menatep, you

did not have any other personal involvement in the Sibneft loans for shares auction, did you?

A. My participation, as I said, I didn't participate in the Sibneft loans for shares auction; I only know about it as a shareholder in the Menatep Group, the Yukos bank, and Yukos later, only because I was one of the large shareholders and was well informed.

Q. You also did not have any involvement in any of the auctions by which the shares in Sibneft were sold to private investors, did you?

A. Of course not.

Q. Nor did you subsequently have any direct involvement in the business or management of Sibneft, did you?

A. I hope that that is the case. I certainly did not take any part in managing Sibneft, nor could I.

Q. So your information about the management of Sibneft must be derived from what other people have told you; that must be right, must it not?

A. Certainly, as in all such cases, information always comes from people. There is no other way to get information.

Q. And your principal sources in that respect no doubt included Mr Berezovsky and Mr Patarkatsishvili?

A. Yes, and Mr Abramovich and Mr Shvidler, if we're talking about Sibneft.

- Q. If you turn to paragraph 18 of your statement at page D1/04/63, you say there that Mr Patarkatsishvili explained to you that the arrangement was that Mr Abramovich's people would become the managers of the company in return for getting a share of the company. Do you see that?
- A. Yes. I do, yes.
- Q. When are you suggesting that Mr Patarkatsishvili told you that?
- A. That was immediately after the Sibneft loans for shares auction. I, like many others, was interested in the shareholder structure of Sibneft and I received the information, which I have both from Patarkatsishvili and from Berezovsky and from Abramovich and later Shvidler. And as it says rightly here, Mr Abramovich and his team would be managing the company but the partners would be Berezovsky and Patarkatsishvili and Abramovich.
- Q. Taking it in stages, Mr Nevzlin, at that time, immediately after the loans for shares auction, no one owned any Sibneft shares, did they? All they'd obtained was a right to manage Sibneft.
- A. You know, when people acquire or invest in any business and agree on the partnership relationship within the business, they're, as it were, on the shore. And as we know from the process itself, all the companies which

participated in these loans for share auctions, all, further down the line, became the owners of these privatised countries (sic). And the question of ownership structure was discussed and decided by them before they entered the auction, before they made their investment.

- Q. You see, you also refer in paragraph 18 to Mr Patarkatsishvili having said that Mr Abramovich's people who would be managing Sibneft included Mr Davidovich. Do you see that?
- A. I get the feeling that Davidovich actually joined Sibneft somewhat later and that that's what you're asking me about and I bring his name in at an earlier stage. If that's what you're asking about, I have to admit that I don't know the exact date on which any specific manager appeared in Mr Abramovich's team, but I do know that this person played an active part in the management of Sibneft.
- Q. You're right, Mr Nevzlin: Mr Davidovich did not join Sibneft until 1997. So if Mr Patarkatsishvili mentioned Mr Davidovich, this conversation must have been after 1997?
- A. It all is possible, you know, but that doesn't affect the sense of this conversation, especially as Patarkatsishvili was not the only source of information

about the shareholder structure of the Sibneft company. So if I made a mistake in naming Davidovich before he actually joined the company, then I apologise, but I can assure you that in subsequent years he was either the right hand or the left hand of Mr Abramovich or Mr Shvidler.

Q. Mr Nevzlin, I understand the difficulty because it must now be impossible, must it not, for you to distinguish any one conversation you have had with Mr Patarkatsishvili over the years about Sibneft from any other?

A. That is not the case. I basically remember all conversations on important subjects from my past and I could say that conversation with Badri Patarkatsishvili was not the most important conversations I had on this subject but in my memory I have several other discussions about the ownership structure of Sibneft.

Q. In paragraph 18 you also say that Mr Patarkatsishvili also told you that he and Mr Berezovsky "would always have the final say in any major decisions affecting the company", that is Sibneft.

A. Yes, that is the case; and more than that, Mr Abramovich and Shvidler confirmed that to me later.

Q. Well, taking it in stages, Mr Nevzlin, firstly,

Mr Patarkatsishvili didn't say that, did he?

- A. Let me read my statement again. What I've written here is the truth: that is what he said to me.
- Q. Well, you see, in his oral evidence to this court Mr Berezovsky repeatedly said that Mr Abramovich was responsible for managing Sibneft and was responsible for everything so far as Sibneft was concerned; and if that evidence is correct, Mr Patarkatsishvili cannot have told you what you say here about decision-making at Sibneft.
- A. I insist that the management of the company was carried out by Abramovich and his team but the partnership relationship was that they were equal partners and the final say was Berezovsky's and Patarkatsishvili's. But I'm not talking about the day-to-day running of the company; I'm talking about the taking of major decisions by shareholders.
- Q. You said a moment ago that both Mr Abramovich and Mr Shvidler told you the same thing. But neither of them actually did, did they, Mr Nevzlin?
- A. No, that is not the case. Mr Abramovich and Mr Shvidler, at the first attempt to combine Yukos and Sibneft, told me several times that the final say would be Boris Berezovsky's and we found ourselves in a situation when Berezovsky did actually have to use

that right to have the final say on Sibneft.

Q. What situation are you referring to?

A. I mean the situation in 1998 when we'd almost completed the merger and almost set up a new company called Yuksi, which was announced by Mr Chernomyrdin, the prime minister of Russia, as a done deal, and at the last meeting Mr Abramovich said they are not going to participate, they're going to leave.

Q. Exactly. That was Mr Abramovich's decision, wasn't it?

A. No, because Abramovich said this was the decision agreed with Mr Berezovsky but if we wanted to change that decision and complete the merger then we would have to talk to Berezovsky.

Q. Could you look at paragraph 32 of your witness statement, halfway through it, at the top of page D1/04/67, at the end of paragraph 32, where you're dealing with the first Yuksi deal and where you say that:

"During that time, I also recall that Mr Berezovsky said in conversations with me that Mr Abramovich and Mr Shvidler opposed the deal, and on this basis the deal would not go ahead."

That's correct, isn't it: it was because Mr Abramovich and Mr Shvidler opposed the deal?

A. I say that Abramovich and Shvidler opposed the deal

which they had said and that Berezovsky had to take a decision; in other words, he had to side with his shareholders or side with the Yukos shareholders to complete the deal. So what happened is in tune with what it says here in writing.

Q. Well, Mr Nevzlin, Mr Berezovsky in his own evidence does not suggest he was the person who decided to halt the first Yuksi deal. That's not what happened, is it, Mr Nevzlin?

A. He said the same thing to me and to Khodorkovsky. Moreover, after Abramovich and Shvidler said, "No, we won't complete the deal", and they recommended that we talk to Berezovsky, the decision was halted for a certain degree of time until Mr Berezovsky took his final decision; it was a period of something like two or three weeks. And later he said to both me and to Khodorkovsky that he really wanted that deal, but he had discussed it with his junior partners and decided with them because it was more important for him to be in tune and to be living in harmony with his partners.

Q. Mr Nevzlin, if any of that had happened, it would have appeared in your witness statement; the truth is it didn't.

A. I haven't understood. Could you clarify? What didn't happen?

- Q. The conversations you've just told us about with Mr Berezovsky.
- A. Firstly, they certainly did happen and I came to this court to tell the truth and I swore that I would tell the truth. You keep trying to accuse me of lying but neither in my written statement nor in my current testament have I said a single word in lie. I could forget something, I could forget names on a list or I could add somebody who wasn't there, but on all the factual issues I am giving honest factual witness.
- Q. After Sibneft's creation did you personally monitor Sibneft's financial performance?
- A. Inasfar as any business person or any investor monitors the activities of the biggest companies in their country, I was aware of what was happening in Sibneft, mostly from the media.
- Q. You knew then, did you, that Sibneft did not declare any dividends until the year 2000?
- A. I don't remember.
- Q. Now, in relation to the first Sibneft-Yukos proposed merger that you've just been telling us about, at that time you were the first deputy general director of Itar-Tass, a State-owned media company; is that right?
- A. Yes, and it still is. It's still the State media company to this day.

- Q. So at that time you did not have any day-to-day involvement in Yukos; is that correct?
- A. I had a pretty active participation in Yukos's affairs as a large-scale shareholder in Yukos but I didn't have anything to do with the operations of the company.
- Q. You were not personally involved in any of the negotiations that led to the first proposed merger between Yukos and Sibneft?
- A. It's not exactly the case. I didn't participate in the negotiations on the specific legal and practical steps to be taken; but on the overall decision to merge and on the meetings about that merger decision between the shareholders, those I did participate in.
- Q. Well, you tell us in paragraph 20 of your witness statement, if you could look at the top of page D1/04/64, that you were not personally involved during the merger negotiations.
- A. Yes, but -- now I'll clarify this. Yes, but of course I was in constant contact with Khodorkovsky and other shareholders and managers and the Yukos company, but I didn't participate at the signing process. I wasn't part of the technical and legal procedures, part of those negotiations, and I could not have participated.
- Q. Now, you also suggest in this paragraph that Mr Khodorkovsky told you:

"... that he had been shown [some] papers by Mr Abramovich which made it clear that Mr Berezovsky and Mr Patarkatsishvili had a fifty per cent stake in Sibneft."

Do you see that?

A. Yes, I did say that.

Q. Do you recall --

A. Because Khodorkovsky, when he met Dubov and me, other Yukos shareholders, told us that he had seen with his own eyes the partnership agreement, the partnership documents signed between Abramovich and Berezovsky -- Patarkatsishvili, Abramovich and Berezovsky. And, as I wrote in my statement -- and I don't think I'm wrong -- they were Runicom papers, I think.

But I have not seen those papers myself, I don't know any of the details; all I know is that there was no point in Mr Khodorkovsky saying that to me and Mr Dubov if that was not the case.

Q. So you recall Mr Khodorkovsky telling you that he had seen a signed partnership agreement between Mr Abramovich and Mr Berezovsky; is that right?

A. No, to be exact, he said that he saw documents which illustrated, which showed that they had a 50 per cent partnership. I didn't ask him anything and he didn't tell me anything about whether these were signed or not

signed; I just heard that word, "Runicom", and that is all I know. I don't know or remember anything more.

Q. Do you have a transcript in front of you?

A. Yes.

Q. If so, could someone please stop it and could we scroll back to [draft] lines 14 to 15 on page 70, where you said that:

"... [Mr] Khodorkovsky... told us that he had seen with his own eyes the partnership agreement" --

A. Yes.

Q. -- "the partnership documents signed between [Mr] Abramovich and [Mr] Berezovsky..."

A. In paragraph 20 of my written statement you will find exactly what I saw. This is what I remember as reality.

Q. So you didn't see a partnership -- no, Mr Khodorkovsky didn't say he'd seen a partnership agreement or signed documents relating to the partnership between Mr Abramovich and Mr Berezovsky; is that correct? What you said a moment ago was wrong?

A. Let me say it again so that there should be no difference between the written and the oral and no translation mistakes. I said that Mr Khodorkovsky told Mr Dubov and me that he saw papers that showed that Abramovich, Berezovsky and Patarkatsishvili were 50 per cent partners in Sibneft. That is what I said

and I'm looking at the transcript and I see that this time it's been translated correctly.

Q. Did Mr Khodorkovsky tell you what those papers comprised?

A. No, he didn't. As I said earlier, all I remember from the conversation was that he mentioned the Runicom company but he didn't give any details.

Q. You see, Mr Abramovich's evidence is that there were never any Runicom papers showing Mr Berezovsky as a shareholder; and if that's right, Mr Khodorkovsky cannot have told you this, can he?

A. Yes, certainly if Khodorkovsky had not seen anything then this situation would not have arisen. If he told us he'd seen something, then that would be what had happened.

Q. Now, at the time of the merger Mr Khodorkovsky gave some public interviews and I just wanted to look at one of them with you. It's in bundle H(A)10, page 29 H(A)10/29, and 29R is the Russian version. You should have been handed an interview with Mr Khodorkovsky given to the Kommersant newspaper on 20 January 1998. Do you have that? It's at H(A)10/29 in English and H(A)10/29R in the Russian.

A. (Untranslated)

Q. Now, if you look at the Russian version -- and you'll

have to bear with me a little bit, Mr Nevzlin, because I don't speak or read Russian, so we might just have to try and find the right paragraph together. Page 30R, the second page of the Russian version. Are you looking at page 30R, the second page of the Russian version?

A. Mm-hm.

Q. The fourth bullet down, do you see a bullet starting with the word "Yes"?

A. Yes.

Q. If you could read that. For those following in English, it's the last bullet on page 29:

"Yes. We have discussed this deal. And with Mr Berezovsky also, though he is not a direct Sibneft shareholder."

A. Yes, I've read it.

Q. So you can see that Mr Khodorkovsky is there publicly confirming that Mr Berezovsky is not a Sibneft shareholder, although he will become a shareholder in the new company. Do you see that?

A. You know, yes, I do see it. Unfortunately, though, I have to disagree with you.

Q. Well, my question --

A. What Khodorkovsky meant was that Mr Berezovsky is not a Sibneft shareholder but he is part of the group as one of the co-owners and for that reason he will be

a shareholder in the new company. He is not in the list.

Q. Well, what I suggest --

A. So I can fully confirm that factually Mr Berezovsky was a shareholder in Sibneft.

Q. Well, what I suggest to you, Mr Nevzlin, is that Mr Khodorkovsky did not tell you that he had seen papers showing Mr Berezovsky had a 50 per cent stake in Sibneft.

A. You're wrong. As I said, I came here to tell the truth and the interview which you're showing me, which obviously he gave before he saw those partnership documents, is just confirmation of the fact that Berezovsky was a partner in the group which owned Sibneft. That's what I state.

Q. You just said obviously Mr Khodorkovsky gave this interview before he saw the partnership documents. On what basis do you say that?

A. Firstly, the meaning. And secondly, logically, this interview was from 20 January, the very beginning of 1998, but as I remember it wasn't January, it wasn't -- it was later; not much later, February maybe. But in any case, we can see from this interview that Khodorkovsky had an interest, had a stake in knowing who were the real shareholders in Sibneft and, as

I understand, as you know from my written testimony, he learnt that, he understood that during the course of the merger.

Q. You can't possibly recall now, in 2011, can you,

Mr Nevzlin, whether your discussions with

Mr Khodorkovsky about this topic were before or after this press interview?

A. You know, that isn't significant, firstly. Secondly, what Khodorkovsky said in the interview and what he later said to me are fully in tune with reality and the truth because one confirms the other. Perhaps there was a mistranslation from Russian into English and that threw you. But these words saying that Berezovsky is part of the group who own it explains the situation of how things stood with the ownership of Sibneft at that time.

Q. Now, in paragraph 42 of your statement, at page

D1/04/68 --

A. Yes.

Q. -- you refer to a dinner you had with

Mr Patarkatsishvili in Jaffa in Israel.

A. Yes. I can even tell you why I remember that dinner so well, if it's of interest.

Q. Well, can we start by trying to place the dinner in time because you tell us that Mr Glushkov was still in prison

but it was a few years later. Does that mean it was a few years after Mr Glushkov had been arrested?

A. I think -- I think, yes, he was still in prison.

Q. And you also tell us that you moved to Israel in August 2003 and this dinner took place in Israel.

A. That's absolutely correct. But this does not have anything to do with 2003; this was much later.

Q. Well, Mr Glushkov was released in March 2004. So did this dinner --

A. So that means this was at the very beginning of 2004.

Q. What exactly is it that you recall Mr Patarkatsishvili told you about Mr Abramovich during this dinner?

A. Just what I put in my witness statement: he said that they were counting on, after the sale of their share in Sibneft to Mr Abramovich, that Glushkov would be released, but they were tricked and that didn't in fact happen.

Q. And was that the first occasion on which Mr Patarkatsishvili told you that about Mr Abramovich?

A. I think, yes. I don't remember. The reason why I remember this meeting is because both Patarkatsishvili and Berezovsky arrived in Tel Aviv at the same time. As I understood it, Patarkatsishvili had a period when he couldn't travel to Israel because of his legal business going on with Russia and this was quite a significant

event, that they both had come to Israel and they invited me to dinner to talk.

- Q. Now, in paragraphs 43 to 50 of your statement you provide some evidence relating to the second proposed merger between Yukos and Sibneft in 2003, starting at page D1/04/69.
- A. (Untranslated)
- Q. By this time, 2003, you were a member of the upper house of the Russian Parliament, so you were not directly involved in the management of Yukos; is that right?
- A. Yes. It's not very different from the situation of '97, when I was second in the list of shareholders in terms of size of shareholding. And therefore all the policy and investment decisions were agreed and discussed by the owners, so I was very much a part of what was happening as a shareholder in Yukos.
- Q. But you were not directly involved in the negotiations that led to the merger being documented and agreed in 2003?
- A. This is absolutely in line with the first attempt at merger; the same is true. I didn't take part in any of the political or legal negotiations or the drafting of any documents.
- Q. And nor were you involved in the negotiations which were also ongoing in relation to the further merger of the

new Yuksi company with a western oil company; is that correct?

- A. Naturally I didn't participate in those kind of negotiations, although I did participate in some of the meetings at the top level and I was informed about what was happening with the merger, the merger between Yukos and Sibneft and the negotiations with Chevron and ExxonMobil.
- Q. Presumably you discussed those matters with Mr Khodorkovsky?
- A. As far as was of interest or as far as he considered it necessary to tell me, we discussed them.
- Q. And prior to his arrest in October 2003, Mr Khodorkovsky was the chief executive of Yukos; is that right?
- A. Yes, you could put it that way. I think his actual job title was president.
- Q. And he was also the major shareholder?
- A. That's absolutely right.
- Q. Now, you did attend two meetings with Mr Abramovich and Mr Shvidler in Israel which took place after Mr Khodorkovsky's arrest?
- A. Yes, that is so.
- Q. Those took place also after the merger had started to be implemented; is that correct?
- A. Could you clarify the question?

- Q. The merger between Yukos and Sibneft had started to be implemented before Mr Khodorkovsky was arrested and before your meetings; is that correct?
- A. Without any doubt, that is so.
- Q. Would you agree that the period immediately after Mr Khodorkovsky's arrest was a very difficult time for Yukos?
- A. Not only for Yukos. That period after the arrest of Khodorkovsky, it was a difficult time for all his friends and partners, including those who were in Israel.
- Q. But Yukos had lost its president and there was no obvious person to fill Mr Khodorkovsky's shoes, was there?
- A. That is not the case.
- Q. Now, have you read the account given by Mr Abramovich and the account given by Mr Shvidler in their statements of the meetings with you in Israel?
- A. No, I haven't read them.
- Q. Could you be given Mr Abramovich's fourth witness statement, which is in bundle E5, tab 11. The Russian version, which I assume you will want to look at, Mr Nevzlin, starts at page 143 E5/11/143. It's paragraphs 163 and onwards that I'm interested in, which start at page 66 in the English version E5/11/66. So

143 in the Russian version; 66 in the English version.

A. Mm-hm.

Q. Could you just read paragraphs 163 to 167, please,  
Mr Nevzlin. (Pause)

A. How many paragraphs should I read?

Q. Through to 167, please, Mr Nevzlin. (Pause)

A. I've read them.

Q. Just for the record, my Lady, there's a very similar  
account given by Mr Shvidler in his fourth witness  
statement, but it's in English so I wasn't going to take  
Mr Nevzlin to it. But it's paragraphs 107 to 115 of  
Mr Shvidler's witness statement at bundle E4, tab 10  
E4/10/195.

Mr Nevzlin, Mr Abramovich's account of events at the  
two meetings with you in those paragraphs you have just  
read is what actually happened at those meetings, is it  
not?

A. Not entirely. I've read here a description of the  
situation as told by Roman Abramovich so as to make  
himself look positive, in a positive light.

Q. There was no attempt by Mr Abramovich to take advantage  
of Mr Khodorkovsky's arrest, was there?

A. That's not true, there was.

MS DAVIES: Thank you very much, Mr Nevzlin.

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR MALEK: I've no questions, my Lady.

MR ADKIN: No questions.

MR MUMFORD: No questions from me.

Re-examination by MR GILLIS

MR GILLIS: Mr Nevzlin, if I could ask a few questions in re-examination.

You were asked about your recent meeting with Mr Berezovsky in Israel; do you recall that?

A. Yes.

Q. Would many people have been aware of that meeting taking place?

A. Nobody at any point, including this last meeting, tried to make these meetings secret. They were perfectly open. We spoke in public places, at a cafe table by the seaside in Tel Aviv and so on. So I can say that since we're people who are easy to recognise, people see us in Israel and recognise us, then I think anyone could know about those meetings; but I didn't tell anyone specifically that I was going to these meetings. I can't speak for Boris.

Q. Thank you.

You were asked about SBS's funding of the loans for shares scheme and you said that Mr Smolensky had two requirements: firstly a guarantee from Bank Menatep; and then secondly a personal guarantee.

Now, I'm not sure that you said who the personal guarantee was going to be from. So can you explain who --

- A. I said the personal guarantee of Berezovsky, in the context that Smolensky insisted that he was giving the money under Berezovsky's personal guarantee, it was his authority, his high profile, the fact that he was known in the business community, the fact that he had those contacts, and what was important for Smolensky was that it was Berezovsky who asked him for the money. That is how things stood at that time.

- Q. Thank you.

You said that after the loans for shares auction you were interested to understand the ownership structure. Do you recall saying that?

- A. Yes, I said that it would be interesting to know the ownership structure because it was such a big oil company in the Russian oil sector.

- Q. And you said that you heard about the ownership structure from Mr Abramovich and Mr Shvidler as well as from Mr Patarkatsishvili.

Now, can you recall what Mr Abramovich said to you about the ownership structure?

- A. Yes, and Mr Berezovsky too, of course. Now, even -- now that so many years have passed, I can just remember the

overall, the overall meaning. He said -- and he said this several times -- that they were equal partners, him and Berezovsky, but that Berezovsky had the final say. So he was like the *primus inter pares*, the senior among equal shareholders.

Q. Can I be clear: is that what Mr Abramovich was saying?

A. Yes.

Q. Did you have conversations with Mr Shvidler about the ownership structure?

A. Yes. As I said earlier and in my statement, this issue arose and became significant for us during the first merger, during that period. That was when we discussed that subject together and nobody had any doubt that Shvidler, Abramovich and Berezovsky all knew that they were equal partners in the Sibneft company, with a slightly senior position with the right of final say in Mr Berezovsky's hands.

Q. And can I just ask one final question about the proposed Yuksi merger.

Would Mr Khodorkovsky have had an interest in knowing the identity of the major shareholders in the company he was proposing to merge with?

A. Without doubt, that was necessary to know during the merger process. In any case, that information would become public, but of course it was desirable for

Khodorkovsky to find out before it was published.

Q. And would Mr Khodorkovsky have permitted the merger to proceed to the point where it was practically completed without knowing this information?

A. No, he was absolutely convinced that we know the ownership structure and nothing further would have happened because for Khodorkovsky it was very important that there was transparency and honesty; that the business that he was doing should be to international standards on transparency and honesty.

MR GILLIS: Thank you. I have no further questions. Does your Ladyship?

MRS JUSTICE GLOSTER: No. Thank you very much indeed for coming along, Mr Nevzlin, to give your evidence over the video-link. You may be released.

THE WITNESS: Thank you, my Lady.

(The witness withdrew)

Discussion re housekeeping

MR GILLIS: My Lady, looking forward to Monday, the family defendants have confirmed that they do not require Mr Lankshear to attend for cross-examination so there is no need for your Ladyship to read that statement before Monday.

So on Monday it will be Ms Duncan --

MRS JUSTICE GLOSTER: Well, it's still part of your

evidence?

MR GILLIS: It's still part of the evidence, of course, but there's no need for your Ladyship to refresh your memory.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Then it will be Ms Duncan and Mr McKim.

MRS JUSTICE GLOSTER: Yes, very well.

MS DAVIES: My Lady, there's one further matter of housekeeping that's arisen during the course of today that I wonder if I may raise.

MRS JUSTICE GLOSTER: Yes, please do.

MS DAVIES: It relates to the evidence from various witnesses who say they saw Mr Abramovich in Chukotka after the date of 10 December.

In light of the evidence given by Mr Berezovsky, we had written to Addleshaw Goddard asking for their confirmation that they accepted that the alleged Cap d'Antibes meeting did not take place in the period 10 to 26 December 2000 and we received a letter to that effect today. So they've now conceded that it did not take place after 10 December.

My Lady will recall that Mr Abramovich flew to Chukotka on 10 December and on that basis one would have thought that the evidence of his movements in Chukotka and all the Chukotka witnesses are therefore irrelevant

to the issues my Lady has to decide. However, in their letter Addleshaw Goddard also indicated that it was for Mr Abramovich and his legal team to decide which witnesses he wants to call and asked us to confirm whether or not we proposed to continue to call the Chukotka witnesses.

My Lady may recall that a number of those Chukotka witnesses are witnesses in relation to which my Lady made an order at the PTR on the claimant's application, giving the claimant permission to call them to give evidence and be cross-examined on their statements, we having put in letters from them which we intended to rely on on a hearsay basis. The basis on which that application was made -- and it was not opposed -- was set out in Mr Hastings's ninth witness statement, which is at bundle J10/1, tab 2, page 8 J10/1.02/8, in which it was suggested that it was proportionate to require cross-examination of these individuals because they supported the contention that Mr Abramovich remained in the territory of Chukotka for the very substantial part of December 2000.

Of course, at the stage that my Lady made this order, which was the PTR, Mr Berezovsky was still saying that the meeting at Cap d'Antibes took place at the very end of December 2000, a day or two before Christmas, and

we did not oppose the application in those circumstances.

However, in light of the letter that we've received today, matters have obviously changed. Mr Abramovich's movements in the period after 10 December have no relevance to the issues my Lady has to decide and we therefore ask my learned friend whether, given that he had obtained this order and obtained permission to call these individuals, he still wanted them to be called; to which we understand that they do, but only because of issues of credit.

Now, in those circumstances we would in fact invite my Lady to rescind the order that she has made because we would submit that had my Lady been asked in July, at the PTR, for these individuals to be cross-examined on their statement solely on the grounds of credit, the order would not have been made and the changed circumstances therefore require the order to be revisited.

Now, I raise this today because there are practical implications, obviously, about sorting out --

MRS JUSTICE GLOSTER: Sorry, whose credit? The credit of?

MS DAVIES: My learned friend Mr Gillis may have to explain that.

MRS JUSTICE GLOSTER: Right.

MS DAVIES: There are practical implications about the Chukotka witnesses and the video-link and so on, so we really need to know what's happening about these witnesses. But we do submit it's not an appropriate use of the procedure, or indeed in fact now the court's time at this trial, to require video-link evidence from Chukotka of six individuals solely on the grounds of something to do with credit.

MRS JUSTICE GLOSTER: Right. Can you just take me back -- I was closing off some documents. Can you just take me back to what you've said in the transcript about the dates?

MS DAVIES: Yes, of course, my Lady.

In terms of the events in December 2000, Mr Abramovich flew, on our evidence, to Chukotka on 10 December, arriving on 11 December, and he remained there until 26 December. There are six individuals, whose names I'm afraid I will mispronounce --

MRS JUSTICE GLOSTER: No, never mind about that. Yes.

MS DAVIES: -- who gave evidence that they had seen him in Chukotka on various dates in that period and in relation to whom my Lady made an order at the PTR --

MRS JUSTICE GLOSTER: I remember that. I remember that. I just want to get the dates.

MS DAVIES: Those are the dates that, in the letter that we

received over the short adjournment, have now become irrelevant. I'm afraid I don't have copies of it but I can read the relevant sentence:

"Our client accepts that the Cap d'Antibes meeting did not take place in the period 10 to 26 December 2000."

None of these individuals give any evidence about Mr Abramovich's movements outside those dates because --  
MRS JUSTICE GLOSTER: Do they give evidence about anything else?

MS DAVIES: It's all about his movements in Chukotka.

(Pause)

MRS JUSTICE GLOSTER: Right, I've got the dates.

MS DAVIES: And that was the sole ground on which it was sought to cross-examine them.

MRS JUSTICE GLOSTER: Can you just take me to the order I made?

MS DAVIES: Yes, it's in bundle L(2011)12 at page 239 L(2011)12/239. I hope it will come up on the screen because we don't have hard copies of the L series. It's paragraph 1.

MRS JUSTICE GLOSTER: Just a second. (Pause)

Not including Deripaska?

MS DAVIES: No, it's solely individuals who -- I'm afraid I don't have it. I think it's the first six, certainly

the first four, but I can't see the second page at the moment.

MRS JUSTICE GLOSTER: Yes, I see. Thank you. So you're saying that --

MS DAVIES: Yes, five and six.

MRS JUSTICE GLOSTER: What do they say in the letter about their intentions in relation to cross-examination?

MS DAVIES: My Lady, they say:

"Nevertheless, it is for Mr Abramovich and his legal team to decide which witnesses he wants to call. If the witnesses to which you refer are not called, we reserve the right to make adverse comments during closing submissions. Accordingly, please now confirm before your client commences his evidence which witnesses are intended to be called in the time period presently allocated in the timetable for Chukotka, including which of Ms Rudchenko..." et cetera.

MRS JUSTICE GLOSTER: Hang on a moment, Ms Davies. Are there hearsay statements? Are there notices from your client stating his intention to rely on the contents of the following statements as hearsay statements?

MS DAVIES: Yes, they were served at the time that these statements were served, yes.

MRS JUSTICE GLOSTER: So you don't have to call them?

MS DAVIES: We don't have to call them.

My learned friend then made an application for permission to call them to cross-examine them on their statements --

MRS JUSTICE GLOSTER: Yes, and that was agreed to.

MS DAVIES: -- which is the order that my Lady then made.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: So once we received this letter telling us it was actually for us to decide whether to call them --

MRS JUSTICE GLOSTER: But you're not proposing to call them?

MS DAVIES: We're not proposing --

MRS JUSTICE GLOSTER: You're just relying on the hearsay statement in the notice?

MS DAVIES: We are, because it's irrelevant. But my learned friend said to us over the short adjournment that he still would like them to be called because there are issues going to credit. So he's --

MRS JUSTICE GLOSTER: Well, I'll hear from Mr Gillis.

Mr Gillis, why do you need to call -- I don't understand where we're at on these.

MR GILLIS: My Lady, the position I think is this: the main factual question which is going to be before your Ladyship is Mr Abramovich's whereabouts between 7 and 10 December but there are issues which we wish to raise with Mr Abramovich as to the credibility of the evidence that he has adduced as to his whereabouts during that

period.

Now, prior to cross-examination I obviously don't want to say too much about that, but we will be questioning the credibility of the evidence that has been adduced in relation to that and in that context we also want to look at the credibility of the evidence that he has adduced in relation to his whereabouts in Chukotka in the period of the 11th to the 26th.

MRS JUSTICE GLOSTER: Okay. So you want to say, although it's no longer a main issue in the proceeding, you want to say, "You lied when you said you were in such-and-such a town because you can't have been for the following reasons", or whatever, to take an example.

MR GILLIS: Exactly so.

So, my Lady, that is why, although the concession has been made in respect of the period after 11 December, in our view there are relevant issues which will be before your Ladyship --

MRS JUSTICE GLOSTER: Do you want these people to be cross-examined by you or not?

MR GILLIS: My Lady, yes, we do. We want the opportunity to cross-examine certain of them and the nature of that cross-examination will be more apparent --

MRS JUSTICE GLOSTER: To demonstrate, for example, if it were to suit your book in relation to cross-examining

Mr Abramovich as to credit, that when they said they saw him post a letter in the postbox or whatever, they were lying; that sort of example?

MR GILLIS: My Lady, yes. Obviously I don't want to say too much, but that would be an example.

MRS JUSTICE GLOSTER: Okay. Well, then you had better give me some learning, hadn't you, on whether or not it's legitimate?

So you're maintaining your wish to cross-examine these people solely as to credit --

MR GILLIS: Yes, we are.

MRS JUSTICE GLOSTER: -- where the purpose for which they were called, namely to demonstrate where Mr Abramovich was, is now no longer in contention in the proceedings.

MR GILLIS: Yes. If it were the case, to take an example, that we were able to demonstrate that evidence had been fabricated in relation to that latter period, your Ladyship may regard that as being relevant in the assessment of the evidence that had been adduced in relation to the earlier period.

So, my Lady, that is why we maintain the position that we wish to cross-examine these individuals.

MRS JUSTICE GLOSTER: So it goes to Mr Abramovich's credit?

MR GILLIS: Yes. My Lady, these issues are likely to become clearer in consequence of cross-examination of

Mr Abramovich.

MRS JUSTICE GLOSTER: When are witnesses 1 to 6 due to appear by way of video-link? They're all video-link, are they?

MR GILLIS: My Lady, they are.

MRS JUSTICE GLOSTER: So it's not too much of a hassle; it's just a question of --

MR GILLIS: In our submission the appropriate way to proceed is that the order for permission of cross-examination should remain. It is hoped that the parties can continue to cooperate in terms of organising these individuals to give their video-link evidence. If, in the light of the cross-examination of Mr Abramovich, it becomes apparent that it's not necessary, then that can be discontinued.

But at the present time our position is that we wish to cross-examine these people and I don't have the letter in front of me but the point we make is that if those individuals are not available for cross-examination, we reserve the right to make adverse comment.

MRS JUSTICE GLOSTER: There is actually some learning, isn't there, on the law relating to the ability to cross-examine witnesses as to credit?

MR GILLIS: My Lady, yes, there is.

MRS JUSTICE GLOSTER: I don't know whether there's a point there or not. But you're saying I don't need to visit that at this stage, until we've heard what Mr Abramovich says in cross-examination?

MR GILLIS: My Lady, that is our position.

MRS JUSTICE GLOSTER: When are they going to turn up in front of the video camera?

MR GILLIS: I think they're not due for about two and a -- I don't have the detail to hand, but I think it's about two and a half weeks' time.

MS DAVIES: No, my Lady, it would be the end of the week after next, so the 11th.

The reality is we do actually need to know because these are six separate individuals who need to make arrangements and Mr Abramovich, on the current timetable, is not due to finish his evidence until the beginning of that week and that just won't give us enough time. It's also fair to say that we've previously indicated -- and it's also correct -- that if they are to come, it needs to be earlier rather than later because the weather deteriorates in Chukotka and so getting people there is very dangerous.

But I would say, my Lady, we would submit that it's not appropriate to subpoena people, effectively, or make this sort of order where it goes solely to credit. That

is an issue that, if my Lady would like to see some learning on, we ought to --

MRS JUSTICE GLOSTER: I think I would because I can see there might be a point there, but I haven't got the principle at my fingertips.

MS DAVIES: My Lady, perhaps we can then raise it first thing on Monday morning. What I would be very concerned about is leaving this over until whenever Mr Abramovich finishes his evidence which will not be until the 7th.

MRS JUSTICE GLOSTER: Well, I'm not going to cut down on court time; we'll just have to do it around court time, if you see what I mean.

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: Perhaps you could see, if there are any cases or if there is a principle that guides me, perhaps you could fish it out.

MS DAVIES: I'm sure there are, Mr Sumption also tells me there are, both on the principle of whether it is appropriate to require witnesses to be called solely as to credit and secondly whether it's possible to cross-examine solely as to credit another witness.

MRS JUSTICE GLOSTER: That's the bell that's ringing.

MS DAVIES: Both of those we would say are engaged here and they create a problem with what is now proposed.

MRS JUSTICE GLOSTER: Yes, okay.

I don't know what my schedule is on Monday but what I suggest is that at 4.15 on Monday you can let me know what the legal principles are and perhaps also somebody could identify where the letters are.

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: But I'm not proposing to do anything on this particular issue over the weekend. But I think, Mr Gillis -- I do see the points of both sides, but I do think I need to look at the law a bit on this.

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: Very well. What time would the parties like to start on Monday?

MR GILLIS: We're content with 10.15.

MS DAVIES: Yes.

MR GILLIS: I'm sorry, could I suggest 10.30 because I think Mr Rabinowitz is wanting to bring all of his papers into court before Mr Abramovich gives his evidence.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: I think probably McKim and Duncan are likely to be relatively short. So could I suggest we start at 10.30.

MRS JUSTICE GLOSTER: Are you content with that, Mr Sumption?

MR SUMPTION: I don't want to quarrel about a quarter of an hour but the rest of us have all had the experience

of humping our things over to court; it's just a question of leaving chambers in time. 10.15 seems a perfectly acceptable --

MRS JUSTICE GLOSTER: Is Mr Rabinowitz going to be here for the first two witnesses or is he coming over at the break?

MR GILLIS: My Lady, I don't know. All of Mr Rabinowitz's H files have gone, so that's 100 and whatever it was. I don't know how many of the other files have --

MRS JUSTICE GLOSTER: I think what I'll do is I'll start as normal at 10.15 and if we need a bit more of a break to set everything up when the witnesses come in, we can just have a longer shorthand --

MR GILLIS: I'm content with that.

MRS JUSTICE GLOSTER: If you need any more time. I'm sure the clerks at 1 Essex Court can manage, Mr Gillis.

Very well. 10.15.

(3.37 pm)

(The hearing adjourned until  
Monday, 31 October 2011 at 10.15 am)

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Monday, 31 October 2011

(10.15 am)

Discussion re housekeeping

MRS JUSTICE GLOSTER: Two things. I have a law student sitting with me as a marshal this week.

Secondly, can I reiterate, please, that no headphones are to leave the court. If anybody is seen leaving the court with a headphone, they will not be allowed back into this court. Is that clear? Thank you.

Just a second, Mr Gillis. (Pause)

Yes, Mr Gillis.

MR GILLIS: My Lady, before Mr Berezovsky calls his next witness, could I just deal with one matter arising from Mr Nevzlin's evidence on Friday and that's a note that the interpreter has provided correcting two mistakes in the translation. My Lady, could I hand that up.

MRS JUSTICE GLOSTER: Yes, please do. (Handed)

MR GILLIS: As my Lady will see, it's a note from Natasha Ward, who was the translator, and she has listened to the Russian audio tape and, having done so, has corrected two errors in the English translation. We ourselves had some concerns about some other errors which we thought we had picked up.

But the two errors that she has picked up is, first

of all, in the context of the discussion about whether Mr Khodorkovsky had seen copies of the partnership documentation, Ms Ward indicates that she interpreted the word "signed" when in actual fact, having listened to the audio tape, she now believes that was just electronic distortion.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Then the second mistake that she has identified is that she missed out the word "list" in the description of whether Mr Berezovsky figured in the list of shareholders.

MRS JUSTICE GLOSTER: Yes, that's extremely helpful. Is this a routine that's being done with all translations and all translators? Somebody is checking from the --

MR GILLIS: I think Ms Bayliss is saying no.

MR SUMPTION: My Lady, I think this arises because there are two of them in the booth: the one who is not actually translating listens out while the other is and picks up things that need to be checked with the tape later, and they have access to the tape for the purpose of doing that. I don't believe it's systematic but it is a system which is likely to pick up the more obvious errors.

MRS JUSTICE GLOSTER: Well, it's a very good system, if I may say so, and it's one that ought to be used so that

everybody is comfortable with the integrity of the final transcript at the end of the day.

MR SUMPTION: May I suggest, since these changes have not actually been made on the transcript, that notes like this should simply be filed with the relevant transcript.

MRS JUSTICE GLOSTER: What, the hard copy and the electronic copy?

MR SUMPTION: Yes. The alternative would be issuing a new transcript, which --

MRS JUSTICE GLOSTER: Yes. Well, perhaps those sitting behind you and behind Mr Gillis can make arrangements so that this note is reproduced at the back of the electronic transcript and at the back of any hard-copy versions of the transcript.

MR SUMPTION: I imagine that can be done.

MR GILLIS: My Lady, yes. If I can say, from our part, we did in fact check the Russian audio tape against the translation over the weekend.

MRS JUSTICE GLOSTER: Yes. That's a matter for you, obviously. Anybody can raise points that arise.

MR GILLIS: Exactly so. I don't know whether there are any points that arise out of that that we may wish to raise but if we do, we'll do that at a convenient point.

MRS JUSTICE GLOSTER: Very well. I'm also reminded that

it's important to leave the headphones away from the microphones. Very well.

Yes, Mr Gillis.

MR GILLIS: My Lady, Mr Berezovsky calls his next witness, Ms Duncan.

MRS JUSTICE GLOSTER: Thank you.

MS MICHELLE DUNCAN (affirmed)

MRS JUSTICE GLOSTER: Do sit down, Ms Duncan, if you would like to.

THE WITNESS: Thank you.

Examination-in-chief by MR GILLIS

MR GILLIS: Ms Duncan, could you just start by confirming that you don't have a telephone or electronic device with you?

A. No.

Q. Thank you very much indeed.

Could the witness be provided with D1, open at tab 6. Could I ask you to turn to page 7 of that document D1/06/90. Is that your signature?

A. Yes.

Q. And can you please confirm that this is your first and your only witness statement in these proceedings?

A. Yes.

Q. And can you confirm that the contents of this, your statement, are true to the best of your knowledge and

belief?

A. Yes.

MR GILLIS: Thank you. Can you wait there. Mr Jowell has some questions for you.

Cross-examination by MR JOWELL

MR JOWELL: Ms Duncan, Cadwalader was retained on this case at the end of October 2007; that's right?

A. Yes.

Q. And you received the papers from Carter Ruck in the course of the last full week of that month?

A. Yes.

Q. And am I right in assuming that at that time you were instructed, you had not previously acted for Mr Berezovsky; he was new to you?

A. No.

Q. So you cannot have had great knowledge of his business dealings or his history other than what you got from the papers or what was in the public domain?

A. None whatsoever.

Q. Now, you say in your witness statement that Mr Berezovsky himself was unavailable to meet you at the end of October and early November. Do you recall that?

A. Yes.

Q. And in November Mr Dubov, of Mr Berezovsky's office, organised a meeting for you with Mr Patarkatsishvili in

Tel Aviv that took place on 29 and 30 November 2007?

A. Yes.

Q. You recall. So at the time you attended those meetings, you had been on the case for just a little over a month?

A. Yes.

Q. And in that month, between the time that you were officially instructed on the case at the end of October and your meeting in Tel Aviv, had you attended any previous meetings about the case with Mr Berezovsky himself? I'm not asking you about the content of the communications but simply whether such meetings took place.

A. No.

Q. So you had not attended any meetings with Mr Berezovsky other than your original --

A. Only the initial meeting we had in mid-October where we were beauty-parading.

Q. Yes, where you were pitching for the case?

A. Yes.

Q. Did you know in advance that Mr Berezovsky was going to attend the Tel Aviv meeting with Mr Patarkatsishvili?

A. No.

Q. So when you saw that Mr Berezovsky was there, you must have seen that this was an important opportunity to get information from Mr Berezovsky as well as from

Mr Patarkatsishvili, since this was your first meeting with your client?

A. Yes, although I think we understood that the primary purpose of the meeting was to meet with Badri. Sorry, it's easier for me to call him Badri.

Q. Yes. No, please do.

A. But, yes, it was obviously an important opportunity for us to get some evidence or to have a discussion with Mr Berezovsky.

Q. Obviously, yes.

Now, in advance of the Tel Aviv meetings Mr McKim had prepared a draft witness statement in Mr Patarkatsishvili's name; that's correct?

A. Yes.

Q. But that was never, as far as you know, sent to him?

A. I don't believe so. I think it was just for our internal purposes.

Q. And at the meeting you didn't show the witness statement to him?

A. No.

Q. And you didn't refer to it?

A. No.

Q. Now, you've said that there were two meetings in Tel Aviv: a roughly four-hour meeting on 29 November and a much shorter meeting early on 30 November. Is that

right?

A. Yes.

Q. At the much longer meeting you allowed Mr Berezovsky and Mr Patarkatsishvili to talk so that you could get a feel from them for their account of the events relevant to the case?

A. Yes.

Q. And it was Mr Berezovsky who did most of the talking, wasn't it?

A. Yes.

Q. Now, ms Duncan, could I ask you to be given bundle R(D) at tab 29, page 91. This is your manuscript note of the meeting. This is R(D)2/29/91.

A. Yes. Sorry, I've got the original manuscript notes here with me and if you want to ask me about these, I'm happy for you to look at them, but I'd rather look at the original original rather than the photocopy, just because it's clearer.

Q. It's difficult because your original original is probably not paginated in the same way that this is. So you may have to look from --

A. The original original is, but not the transcript, obviously. But it's fine, I can look at this, but --

Q. It's just that the pagination we have for the bundles I assume won't be on your original, so it's difficult

for me to --

A. Okay, I understand. That's fine.

MRS JUSTICE GLOSTER: Well, if you need to look at your own original notes, you can do so if the need arises.

THE WITNESS: Thank you.

MR JOWELL: In any event, for present purposes right now, I don't think we're going to need to look at the precise detail just yet. Page 91 is the beginning of the note and if you turn forward to page 113, so that's R -- you'll see the pagination is confusingly on the left-hand side. So it's R(D)2/29/113.

A. Headed "Day 2"?

Q. We get to "Day 2".

So it appears that your notes of the meeting on day 1 start at page 91 and go through to page 112, so 21 pages in all; is that right?

A. Yes.

Q. You've confirmed that the first meeting was a four-hour meeting?

A. About four hours.

Q. About four hours. So with 21 pages of notes, you were taking notes at a rate of a little over five pages an hour; is that about right?

A. Maths isn't my strong point. But yes, I'm sure that's right.

- Q. And your notes on the second day start on page 113, as we've seen, and they go through to page 119?
- A. Yes.
- Q. And that's a little over five pages of notes and that meeting was about an hour long?
- A. Yes.
- Q. So that also tallies with a rate of note-taking of about five pages an hour?
- A. Yes.
- Q. Now, I'm sure that if anything important had been said by either Mr Berezovsky or Mr Patarkatsishvili of clear relevance to one of the main issues in the claim, you would have expected that to be reflected in your notes, wouldn't you?
- A. I would have hoped so.
- Q. Now, if we turn to the next tab in this bundle, to tab 30, so that's R(D)2/30/120. Do you see that?
- A. Yes.
- Q. This is your typed version of the same meeting?
- A. Yes.
- Q. And in the left-hand column you've tried to attribute who said what at the meeting either to Mr Berezovsky, which is a "BB", or to Mr Patarkatsishvili as an "AP"; that's right?
- A. Yes.

- Q. And each horizontal grey-shaded stripe across the page, that indicates a new page of your manuscript notes, doesn't it?
- A. Yes.
- Q. So if we just turn the pages of your typed notes, we see that on the first page that corresponds to about two and a half pages of your manuscript note, doesn't it?
- A. Yes.
- Q. And along the left-hand column that's all attributed to BB?
- A. Yes.
- Q. And if we turn over the page to the next page, again it's about two and a half pages and that is all attributed to BB?
- A. Yes.
- Q. And if we go over to the next page, 122, about the top third of the page, one manuscript page roughly is attributed -- or two-thirds of a manuscript page are attributed to BB?
- A. Yes.
- Q. So we can see that the first six pages of your manuscript notes effectively are attributed to Mr Berezovsky?
- A. Yes.
- Q. So, judging by your note-taking rate of about five pages

an hour, Mr Berezovsky probably spoke for about an hour before Mr Patarkatsishvili got a word in edgeways?

A. It wasn't quite like that. Mr Berezovsky did a lot of the talking but occasionally they would chat between themselves in Russian. But yes, broadly, in terms of going through the background -- and I think you see the first few paragraphs are largely historical -- pages, rather, are largely historical -- Mr Berezovsky did most of the talking.

Q. Yes. And it would be fair to say, wouldn't it, that this became a meeting as much with Mr Berezovsky as with Mr Patarkatsishvili?

A. Yes.

Q. Now, neither you nor Mr McKim speak Russian, do you?

A. No.

Q. Could I ask you to be given bundle D2 and to turn up Mr McKim's evidence, which is at tab 14 at paragraph 23 D2/14/61. Do you have that?

A. Yes.

Q. Do you have paragraph 23? It's at D2/14/61.

A. Yes.

Q. The first sentence says:

"During the meeting, Mr Berezovsky and Mr Patarkatsishvili frequently discussed matters between themselves in a foreign language, which I presume was

Russian."

And I think you've indicated the same --

A. Yes.

Q. -- so I would assume you agree with that?

A. Yes.

Q. And obviously you had no way of knowing what they were saying on those occasions?

A. No.

Q. So if they had been disagreeing between themselves privately, unless it was obvious from their tone of voice, you would not have known about that?

A. No.

Q. And Mr Berezovsky's English was much better than Mr Patarkatsishvili's English; that's right?

A. Yes.

Q. And there was no independent translator present for Mr Patarkatsishvili, was there?

A. No.

Q. Could I take you to another part of Mr McKim's statement, which is at paragraph 22, and the last two sentences of that. Do you see it there in D2/14/61?

He says:

"If the question from us was fairly simple and Mr Patarkatsishvili understood our English, he would often attempt to reply in English. However, if either

the question or the answer started to get in any way complicated Mr Berezovsky would act as a quasi-translator."

Do you agree that's essentially a fair description?

- A. I think -- the first sentence I think is fine, that -- I would agree with, in that if the question was simple, then Badri would answer it directly. I think right at the outset of the meeting Mr Berezovsky said that he wasn't there to speak for Badri but he was there to help with the translation because he also accepted, as did Badri, that his English wasn't as good as Mr Berezovsky's. And so if the question was complicated or it didn't appear that Badri had understood it, then Mr Berezovsky would translate it for him in Russian; but for the most part Badri attempted to answer in English.
- Q. Right. But the way the meeting went, it wasn't a formal question-and-answer session? So that you didn't pose a specific question to Mr Berezovsky or to Mr Patarkatsishvili and then one or other of them would answer independently? It wasn't --
- A. The first day, no, very rarely.
- Q. They would -- rather they would discuss a particular subject matter with each of them interjecting on occasion; is that right?
- A. Well, they were sort of -- we asked them to tell their

story, you know, from the beginning and to -- you know, some history about ORT, then Sibneft, going through to Rusal sort of chronologically, and that's the way they told the story. And occasionally we would interject with questions --

Q. Yes, and they would each chip in at times?

A. And they would each chip in from time to time.

Q. Now, again, going back to Mr McKim's statement, the second sentence of paragraph 23, he says:

"When Mr Berezovsky was explaining matters to us it was sometimes difficult to know whether he was explaining his personal knowledge of events, whether he was explaining his and Mr Patarkatsishvili's joint recollection or whether he was translating Mr Patarkatsishvili's answers directly."

Presumably you agree with that?

A. Well, not entirely because I think, as I've said, on the whole Badri attempted to answer the questions that -- or Badri spoke in English to us directly as regards his recollection. So there are certain bits of my notes that I quite clearly just remember Badri telling us directly in English; there are other parts where, yes, Mr Berezovsky appeared to be translating for him.

Q. But since -- and when Mr Berezovsky was translating, you weren't in a position to know whether the translation

was accurate or not?

A. No.

Q. Could I ask you next to turn to paragraph 40 of Mr McKim's statement which is at D2/14/67, and in this paragraph Mr McKim is talking about his notes of the meeting, which he says have been lost or destroyed. And if I could just ask you to look at the penultimate sentence, it says:

"I do not believe that my notes would have specified who was speaking at any given point; as mentioned above, the vast majority of the answers or explanations being given were coming jointly from Mr Berezovsky and Mr Patarkatsishvili, with Mr Berezovsky doing most of the talking."

Do you see that?

A. Yes.

Q. Now, with a few exceptions, your own manuscript note also generally doesn't specify whether it is Mr Berezovsky or Mr Patarkatsishvili who is speaking? The manuscript note.

A. Yes.

Q. They don't, do they?

A. No.

Q. But in your typed-up notes which you've kindly provided, you have sought to attribute statements to one or other

of them?

A. To the extent that I can recall.

Q. Yes.

Now, you've said in your statement that you created your typed note at the time you were preparing your witness statement. I wonder if you could tell us --

A. No, I created the typed notes when I was preparing this witness -- when I was preparing this witness statement, yes, sorry. I misheard you.

Q. Could you tell us approximately at what point in time -- since we don't know exactly when you prepared your witness statement -- you created the transcription with the attributions?

A. It would have been in May of this year.

Q. May of this year. So the meeting was in November 2007, so it was three and a half years afterwards?

A. Yes.

Q. So you must have had very little actual recollection of who said what, or who said precisely what at the meeting, three and a half years afterwards?

A. Some things I can distinctly recall. But on the whole, yes, a lot of it I can't recall accurately to the extent -- but I think when I went through the notes and the transcript, what I sought to do there was where I could actually recall who was speaking at the time,

that's where I've put the sort of "AP"/"BB" notations.

Q. I see. But after a while it becomes uncertain, does it?

A. Yes.

Q. I see. So the initial -- so in fact the attributions may be a bit misleading then. The initial bit of the attribution you're confident of, but after that, as it were, there's a long section that is attributed to an "AP" or a "BB"; one can't be sure that later in that long section it's not one or the other one?

A. Sometimes -- some of it I could recall from the way the notes are written because they spoke very different forms of English, so -- and some of those notes are literal sort of -- some of my manuscript notes are sort of literally writing down what they said and they both spoke in a particular way. Some of them I can recall because, for example, the meetings at Munich Airport, they were something that only Badri could have told me about.

Q. I see. But apart from those occasions where it's clear that only one or other of them could have been speaking because only they attended the particular meetings or where you've actually made the attribution in your note, it must be a very uncertain business now making these attributions?

A. Yes. It's not exact.

Q. And indeed Mr McKim has said that he couldn't have made the attributions even at the time. So that's rather indicative, isn't it, that it must be very difficult to do it three and a half years after?

A. It's not as easy as it would have been at the time.

Q. And your manuscript notes -- well, could I ask you first to go back to your witness statement, something that you said, at, in the D1 bundle, 06 at page 87, at paragraph 21 D1/06/87. Do you see -- it's the very last sentence of the paragraph; it just starts with the word "Mr" at the bottom of the page. If we turn over the page to D1/06/88, it says:

"Mr Patarkatsishvili would often start his answers in English, but would switch to Russian if he struggled to explain himself properly."

Now, your manuscript notes obviously don't distinguish which sentences of Mr Patarkatsishvili were said entirely in English and which were partly in English and partly in Russian, and which were entirely in Russian, do they?

A. No.

Q. And obviously it's impossible for you to now know, looking back at your manuscript note, which bits of information seemed to come from Mr Patarkatsishvili, were delivered by him in English or by him partly in

English and partly in Russian, or by him in Russian and translated by Mr Berezovsky?

A. With very few exceptions, yes.

Q. Yes.

Now, could I ask you just to confirm a few passages in your notes which are in shorthand. And I should say in advance, I'm not asking you to comment on these sentences; I just want you to make sure that I've not --

A. To translate them.

Q. Yes, exactly -- mistranslated them.

A. Sure.

Q. I think we can do this from the typed-up notes, which are in the R(D) bundle at tab 30.

A. Yes.

Q. So if we start at R(D)2/30/123 and do you see the last box at the beginning of the -- at the bottom of the page?

A. Yes.

Q. "BB..."

That's Boris Berezovsky.

"... [and] I decided 2.5 [billion]."

A. Yes.

Q. "We started to disc[uss] with him. I [understood] his pressure -- I had no choice but to take what he offered -- not poss[ible] to negot[iate because] if we

didn't agree w[ith] his price, he [could] walk away & give us nothing.

"[Mr Berezovsky] felt differently."

Is that a correct transcription of your --

A. Yes.

Q. And if we just go forward to the next page, 124 R(D)2/30/124, and again the top box with the "AP" against it.

A. Yes.

Q. The first full sentence, it says:

"We were outside [the] co[mpany], no other income -- [Mr Berezovsky] needed [dollars] to fund political career.

"So accepted 1.35 [billion]. Also agreed he needed to pay 500 [million] in three [months] and balance in 12-15 months.

"Agreed this, shook hands -- that is all.

"[Meeting] only took 1 hour."

That's a correct reading?

A. Yes.

Q. Just two more. Then at page 125, R(D)2/30/125, do you see in the middle of the page, just below the horizontal grey shaded area there's an "AP"?

A. Yes.

Q. And it says:

"[Nikolai Glushkov] not ment[ioned] directly at [the meeting] in Munich [because] others there -- oblique ref[erence] '[you] rem[ember] our main [point]'."

A. Yes.

Q. Correct?

And finally if I could ask you to go to 129, R(D)2/30/129, and I just want to make sure that I've read the last two lines correctly of this page:

"[Roman Abramovich] never threatened to walk away -- just an impression... BP [Mr Patarkatsishvili] had.

"V[ery] careful ab[ou]t negot[iating] strategy."

A. Yes.

Q. Thank you very much.

Ms Duncan, one final thing. Could I remind you of the last sentence of paragraph 29 of your witness statement, which is back in the D1 bundle, D1/06/89.

A. Sorry, which paragraph?

Q. It is paragraph 29.

A. Yes.

Q. You say there:

"Nor did Mr Patarkatsishvili contradict Mr Berezovsky when Mr Berezovsky said that Mr Patarkatsishvili might join the action later."

A. Yes.

Q. So are you suggesting there that Mr Berezovsky, at the

meeting in Tel Aviv, said that Mr Patarkatsishvili might join the action later?

A. I believe he said that at the outset of the meeting, when he explained why Badri wasn't party to the action now but was willing to cooperate.

Q. I haven't seen any reference to that in your notes. Is that because you didn't regard this as something important enough to note down?

A. Well, it was obviously important but in the context of what we were there for, which was to sort of really speak to Badri and, as we found out, Mr Berezovsky about their recollection of events, wasn't something that obviously I recorded; it was something that -- and as you'll see the notes, the notes really talk about the story they told us, not other matters that we might have discussed outside of that.

Q. I see.

Then in the next paragraph, in paragraph 30, you mention a car journey with Mr Glushkov and Mr Dubov --

A. Yes.

Q. -- where Mr Glushkov again told you that Mr Patarkatsishvili was thinking of joining the claim.

A. Yes.

Q. Now, could I ask you to look at Mr Dubov's statement about this, which is in D1, tab 12 in the same bundle,

at page 258. So D1/12/258. If you could go to page 294 of that D1/12/194 and could I just ask you to read to yourself paragraph 159 and over the page to 160.

(Pause)

A. Yes.

Q. I just draw your attention to the last sentence at paragraph 160 at D1/12/295. He says:

"I recall that Michelle..."

That's you.

"... was very pleased by the news as she had not previously been told that Badri might join the claim."

Now, are you saying that Mr Dubov's impression was wrong because you actually had previously been told that Badri might join the claim?

A. I think what we'd previously been told by Mr Berezovsky -- and Mr Dubov wasn't present when Mr Berezovsky said this -- is that, you know, Badri might join the claim later but that he didn't want to at that point because he still had a relationship with Mr Abramovich and was hoping for an amicable settlement. Sort of thinking about it, I think what Mr Berezovsky meant was he was -- he hoped that Badri might join the claim later.

But apart from that, I can't comment on this.

I think this was probably the first time where we sort

of got a more positive indication that Badri might join the proceedings, although at that point I think in fairness the conversation I had with Mr Glushkov was about Badri deciding that he wanted to sue Mr Deripaska.

Q. I see. And in the four weeks after that car journey and Mr Patarkatsishvili's death, you never heard once back from Mr Patarkatsishvili to indicate that he was going to join the claim, did you?

A. No. Mr Glushkov said on that Friday that he was going to arrange a meeting with Badri early in the following week that, you know, he didn't. I think I might have followed up with him a couple of times but it never happened.

Q. It never happened?

A. No.

MR JOWELL: Ms Duncan, I have no further questions. Thank you.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: I have no questions, my Lady.

MR ADKIN: No questions.

MR MUMFORD: No questions.

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

Re-examination by MR GILLIS

MR GILLIS: Ms Duncan, two questions.

You were asked if you had met Mr Berezovsky before

the Tel Aviv meeting at the end of November and you indicated that you hadn't. Could I ask you to look at Mr McKim's statement, which we have at bundle D2 at tab 14, and if I could ask you to turn to page 57 and it's paragraph 10 that I would ask you to look at D2/14/57.

A. Yes.

Q. Before the Tel Aviv meeting with Mr Patarkatsishvili and Mr Berezovsky, had you had access to those people who are named in paragraph 10?

A. Yes.

Q. The other matter I was wanting to ask you about was that you were taken to the notes of your meeting. We have the typed version at R(D)2, tab 30, at page 120 R(D)2/30/120.

A. Sorry, what's the reference again -- oh, tab 30.

Q. R(D)2, tab 30.

A. Yes.

Q. Page 120. And it was suggested to you that Mr Berezovsky spoke for about the first hour.

A. Yes.

Q. Now, given your appreciation of Mr Patarkatsishvili's understanding of English, I would like to ask you: did Mr Patarkatsishvili appear to understand what Mr Berezovsky was saying to you?

A. Yes.

Q. And did Mr Patarkatsishvili ever indicate to you that he disagreed with what Mr Berezovsky was saying?

A. No. He seemed quite content to simply sit back and listen.

Q. And when Mr Berezovsky was translating for Mr Patarkatsishvili, did Mr Patarkatsishvili give any impression of disagreeing with what Mr Berezovsky was saying on his behalf?

A. Not that I can recall.

MR GILLIS: Thank you. I have no further questions. Does your Ladyship?

MRS JUSTICE GLOSTER: No. Thank you very much indeed, Ms Duncan, for coming along.

THE WITNESS: Thank you.

(The witness withdrew)

MR GILLIS: My Lady, could I call Mr Berezovsky's next witness, Mr McKim.

MRS JUSTICE GLOSTER: Yes.

MR IAN MCKIM (sworn)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

THE WITNESS: Thank you.

Examination-in-chief by MR GILLIS

MR GILLIS: Mr McKim, good morning.

A. Good morning.

Q. Again, could I start by asking you to confirm that you do not have a telephone or an electronic device?

A. Not up here, no.

Q. Thank you.

Could Mr McKim be given bundle D2 at tab 14 D2/14/55. Is that the front page of your witness statement?

A. It is.

Q. And could I then ask you to turn to page 71 D2/14/71.

A. Yes.

Q. And is that your signature?

A. It is.

Q. Could you please confirm that this is your second witness statement in this action?

A. Yes. I believe I gave a very short procedural statement very early on, to introduce a document in an earlier hearing, but this is the -- my second statement in the action and the only statement of any substance I believe I gave.

MR GILLIS: So, my Lady, although it's described as being his first statement at page 55, it's his second statement. The first statement, for the record, is at bundle J1, tab 1 at page 10 J1/1.01/89. It's dated 15 April 2008 and is simply in relation to an application to amend the claim form.

Subject to that, can you confirm that the contents of this, your second witness statement, are true to the best of your knowledge, information and belief?

A. Yes, they are.

MR GILLIS: Thank you. If you could wait there, Mr Jowell has some questions for you.

Cross-examination by MR JOWELL

MR JOWELL: Mr McKim, you're a qualified barrister and until recently you worked at Cadwalader solicitors; is that right?

A. That's right.

Q. You were brought into this case by Ms Duncan, who was then a partner at Cadwalader, at the end of October 2007?

A. Yes.

Q. And at around that time you were provided with a copy of the particulars of claim dated 6 September 2000 (sic) that had been prepared by Carter Ruck; that's right?

A. Yes.

Q. And those particulars of claim had already been signed by Mr Berezovsky, hadn't they?

A. I believe so, yes.

Q. Excuse me, I said 2000; I meant to say 2007.

A. Yes, I assumed that's what you meant.

Q. And there was a dispute at that time over whether those

signed particulars of claim had been validly served on Mr Abramovich at the Hermes store; you're aware of that?

A. So I understand, yes.

Q. And Ms Duncan informed you in early November 2007 that she had agreed with Skadden that Cadwalader would serve a new version of the particulars of claim by 8 January 2008?

A. Yes.

Q. And she told you that one of the main tasks that you and she had was therefore to try and do all the preparatory work necessary to amend the particulars before Christmas?

A. Yes.

Q. And for that purpose you and Ms Duncan were no doubt keen to meet Mr Berezovsky?

A. Yes.

Q. And you were also keen to meet with Mr Patarkatsishvili, who was potentially an important witness?

A. Yes.

Q. And you had been provided with the final versions of proofs of evidence that had been taken by Mr Stephenson and Mr Lankshear following their interviews with Mr Patarkatsishvili in Georgia in 2005; that's right?

A. Yes.

Q. And in the course of November you took the initiative to

put together a further document, something you called a witness statement for Mr Patarkatsishvili; that's right?

A. Yes, the witness statement was solely my idea. It was clearly something that had to be done. It may have been discussed between ourselves and counsel that we needed to get this document up and running, but I certainly was the one that kick-started the drafting of it in that form.

Q. Yes. And near the end of November you learnt that Ms Duncan had arranged for you and her to meet Mr Patarkatsishvili in Tel Aviv?

A. Yes.

Q. But before you'd even gone to Tel Aviv, you had already created a first draft of Mr Patarkatsishvili's witness statement, hadn't you?

A. Yes, to save time afterwards, after we got back.

Q. Yes. And in preparing that you'd had no input from Mr Patarkatsishvili himself directly?

A. Not directly. It was based on documents that I'd seen.

Q. Yes.

Now, in order to produce that draft witness statement, you included the account of events contained in the two proofs of evidence that had previously been prepared, but you also made various additions to those

two proofs; that's right?

A. Yes.

Q. Could we just go to the first draft of the witness statement you prepared, which is in the R(D) bundle. Could I ask you to be given the R(D) bundle, R(D)2 at tab 28, page 62 R(D)2/28/62. You'll see this is the first draft of the witness statement that you prepared, isn't it?

A. I'd have to flip through it, but I'll take your word for it.

Q. It's the one dated 19 November at the bottom.

A. Yes, okay.

Q. And you see in the top right, it says:

"1. Claimant.

"2. Boris Berezovsky.

"3. First Statement."

And so on?

A. Yes.

Q. That's what one would normally put in the top right-hand corner of a witness statement by Mr Berezovsky, isn't it?

A. It is. I probably pasted that entire top table from another statement or asked a secretarial trainee to do that.

Q. Yes, indeed. And at paragraph 4 of the statement you

actually state:

"The contents of this..."

Quite properly, you state that:

"The contents of this witness statement are largely drawn from the draft proofs taken from Badri in 2005 and the prior witness statements given by Boris in other actions, supplemented by press coverage and other research."

Do you see that?

A. Yes.

Q. So you also included material in this document that had come from Mr Berezovsky and from other sources?

A. Yes.

Q. Now, before you went to Tel Aviv neither you nor, as far as you're aware, Ms Duncan had sent to Mr Patarkatsishvili a copy of this witness statement, did you?

A. Not directly.

Q. No. And he didn't receive a copy of it from other sources as far as you're aware?

A. Not as far as I'm aware.

Q. As we've already discussed with Ms Duncan, there were two meetings in Tel Aviv: one on the 29th and one on 30 November. And you confirm that, as Ms Duncan said, you didn't make any reference to this witness statement

during those meetings, did you?

A. No.

Q. But after the meeting you did create a second draft of Mr Patarkatsishvili's witness statement dated 7 December; that's right? Do you recall that?

A. Yes, I would have started work on that as soon as we got back and the date that you've just mentioned is probably a date it was circulated to somebody. But certainly there was a further drafting effort taking place after that.

Q. Yes.

MRS JUSTICE GLOSTER: Can I be clear. Did you take this statement with you to the meeting with Mr Patarkatsishvili?

A. I probably had it in my bag and on my person and there at the meeting, but there were no documents passed back and forth between myself and Ms Duncan on the one hand and Mr Berezovsky and Mr Patarkatsishvili on the other.

MRS JUSTICE GLOSTER: So there was no question of you going through the draft with Mr Patarkatsishvili at the meeting?

A. No. That didn't happen.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR JOWELL: Your notes of the meeting in Tel Aviv have unfortunately been lost or destroyed; that's right?

A. Yes, unfortunately that's right.

Q. But in order to prepare the second draft of the witness statement, you used those notes, presumably, as well as your understanding or impression you had gained from the meeting; that's right?

A. Yes.

Q. And in paragraph 34 of your witness statement D2/14/65 you explain that the way you prepared the second statement of Mr Patarkatsishvili, you sought to include everything relevant that was said at the meeting, whether it came from Mr Berezovsky or Mr Patarkatsishvili, and you didn't try to distinguish the information that specifically came from Mr Patarkatsishvili rather than from Mr Berezovsky. Do you recall that evidence?

A. Yes, I recall that.

Q. And you also explained in your witness statement at paragraph 40 D2/14/67 that your manuscript notes would not have specified who was speaking at any given point for the most part, whether Mr Berezovsky or Mr Patarkatsishvili? You will recall I took Ms Duncan to that passage earlier.

A. Yes.

Q. Yes. And the reason you didn't specify in your notes who was speaking at any given point was because, with

Mr Berezovsky acting as a quasi-translator, as you put it, for Mr Patarkatsishvili, you generally just assumed that the answers were given on his behalf; is that right?

A. Yes.

Q. And it was all too much of a muddle to really distinguish who was saying what precisely?

A. Well, that might be going a bit far. I mean, there were certain elements of the story that it was obvious had to be coming from Badri and it would have appeared from Mr Berezovsky's translation that he wasn't embellishing it or muddling his own recollection because he couldn't have had a direct recollection to muddle in. But I think it's fair to say that there were other aspects of the meeting where it wasn't crystal-clear whether there was an embellishment from Mr Berezovsky or whether Mr Patarkatsishvili's words were coming unfiltered.

Q. But, just to go back to what you said earlier, as you don't speak Russian, you weren't in a position to judge the accuracy of Mr Berezovsky's translation of anything?

A. No, I wasn't in a position to judge the word-for-word translation. It's an impression based on --

Q. You just assumed that it was correct?

A. Well, I just assumed the translation was correct. What I'm saying is that there were different spells during

which there was clearly a discussion going on between them and there were spells when the answer was coming very quickly from Mr Berezovsky.

- Q. But you had no way of verifying whether Mr Berezovsky, even when he was translating something that could only have originated from Mr Patarkatsishvili, you had no way of knowing whether he was translating it accurately?
- A. No, no way of knowing whether the translation was accurate, no.
- Q. And it was often difficult, wasn't it, to know if Mr Berezovsky was speaking for himself or on Mr Patarkatsishvili's behalf?
- A. Yes, that was often the case.
- Q. And, as Ms Duncan says in her witness statement, Mr Patarkatsishvili would often start a sentence in English and then revert to Russian, wouldn't he?
- A. Yes.
- Q. And Mr Berezovsky would then take over and act as quasi-translator?
- A. Yes.
- Q. So, except where you specifically now recollect Mr Patarkatsishvili having said something in particular at the meeting, it would be fair to say that the understanding or impression that you came away with from the meeting as to Mr Patarkatsishvili's position on the

various factual issues in this case, that could have come from what Mr Berezovsky said or from what Mr Patarkatsishvili said, or from something that Mr Berezovsky said translating what Mr Patarkatsishvili had said?

A. Yes. My -- my understanding of Mr Patarkatsishvili's position would have been based on a combination of --

Q. Of all of those sources, yes.

A. -- those factors.

Q. I'm sorry.

A. Yes.

Q. Yes.

And after the Tel Aviv meetings you had no further contact with Mr Patarkatsishvili himself; is that correct?

A. That's correct.

Q. And then after that, the second draft of the witness statement dated -- you produced a second draft of the witness statement dated 7 December and then you produced further drafts of the witness statement?

A. Yes.

Q. And further amendments were made in those further drafts?

A. Yes.

Q. But, as you say in your witness statement, none of those

further amendments made to the draft were as a result of comments from Mr Patarkatsishvili because you had no comments from Mr Patarkatsishvili?

A. Not after Tel Aviv, no.

Q. No.

Now, if I could, I'd like, if I may, just to trace through with you two specific aspects of the account attributed to Mr Patarkatsishvili in the various documents. Could I start --

MRS JUSTICE GLOSTER: Could I have a reference, please, to the next version of the draft witness statement?

MR JOWELL: My Lady, the next version of the draft witness statement is the one of 14 November and that is in R(D)3/33/54.

MRS JUSTICE GLOSTER: Thank you. Is that where you're going next?

MR JOWELL: No, my Lady, I'm going to... And then there's a final version which is at R(D)3/34/76 which is undated, but it must have been either in late December or in January, or possibly February.

I'd like, if I may, just to trace through what was said first about the position of Mr Glushkov at the meeting in Munich --

A. Okay.

Q. -- in May 2001. Could I ask you to start with the

Lankshear Stephenson proof of evidence of June, which is in the R(D) bundle at tab 6. So that is R(D)1/06/79.

A. Yes, I think I've got that.

Q. Are you on that page?

A. You're taking me to a page in the body of the document?

Q. Yes, indeed.

A. Yes, I think I've got that.

Q. And do you see starting at line 377 on the left-hand side it says:

"When negotiating this deal there was no specific mention made of [Nikolai Glushkov] but this was not necessary as it was clear that his release was one of the reasons we were prepared to sell."

A. Yes, I see that.

Q. Could I next ask you to go to the original particulars of claim, the Carter Ruck particulars of claim that had been signed by Mr Berezovsky by the time you came into the case. Those are in the K2 volume. If I could ask you to be provided with K2. If you could go to K2/03, page 8 K2/03/8.

A. Yes.

Q. So you'll see that these say -- picking it up at paragraph 14, these say that:

"In or around May 2001, a meeting took place between the Defendant and Mr Patarkatsishvili (representing

himself and the Claimant) at Munich Airport..."

Then if you go over to the next page, K2/03/9, paragraph 15, and you see it says:

"At the... meeting, the Defendant [Mr Abramovich] told Mr Patarkatsishvili..."

And do you see subparagraph (4):

"... that, notwithstanding that the assurances given by him in December 2000 had not been honoured, if the Claimant were to sell his beneficial interest in Sibneft, Mr Glushkov would be released from prison and, by implication, that if the interest were not sold, Mr Glushkov would remain in prison."

And then at 16 it says:

"In making the statements identified above to Mr Patarkatsishvili, it was the Defendant's intention that Mr Patarkatsishvili should pass them on to the Claimant..."

And then 17 again refers to "Each of the... statements".

So the particulars of claim allege that at the Munich meeting Mr Abramovich had made an express statement that Mr Glushkov would be released if he sold the Sibneft shares, whereas what was in the proof of evidence from Mr Patarkatsishvili was that it wasn't specifically mentioned at the Munich meeting. Do you

see that?

A. Yes, I see that.

Q. Now, in order to assist, what we've done is to create a version of the very first witness statement that you created in November 2007, the one that you created before the meeting in Tel Aviv, and we have marked it up against the 2005 proofs of evidence --

A. Yes.

Q. -- to see what it was that you added to those proofs. I think a -- I understand that a copy of this was provided to Addleshaw Goddard on Friday and they were asked to supply it to you. I don't know if you had a chance to look at it?

A. I got that document Friday night and I looked at it on Saturday. I don't have a copy on my person now. So I'm sure I'll get one.

Q. It's in the bundle at R(D)3/35/100. It should hopefully have made it into your R(D) bundle.

A. Is that a bundle I should have here?

Q. Have you got the R(D) bundle in front of you?

A. R(D), yes.

Q. Yes. At the very back, it should be at tab 35. Have you got that? We've got copies if --

A. What tab number, sorry?

Q. 35.

A. No, this one stops at 34. I'll see what's there.

Q. Yours stops at 34?

A. It stops at 34.

Q. Can we provide you the document.

MRS JUSTICE GLOSTER: I'd like a hard copy of this document,  
please. (Handed)

MR JOWELL: If I could ask you to turn to page 120 in this  
document --

A. Yes.

Q. -- and to look at paragraph 92 R(D)3/35/120. You set  
out in 92 the text from the proofs of evidence:

"We agreed a price... When negotiating this deal  
there was no specific mention made of  
[Nikolai Glushkov]..."

And then, quite properly in square brackets and in  
italics, you note:

"NB -- Particulars of Claim state that release of  
Glushkov was discussed -- confirm position."

You've quite properly highlighted the inconsistency  
between the proofs of evidence and what was in the  
particulars of claim and you raised the need to confirm  
the position; that's right?

A. Yes, I'm pleased to see that it's there at the first  
opportunity.

Q. Yes. Could I ask you next to go to Ms Duncan's note of

the meeting with Mr Patarkatsishvili and Mr Berezovsky, which is in the R(D) bundle, R(D)2/30/125. This is her typed-up version.

Do you see just around the middle of the page, I asked Ms Duncan to confirm the reading of this earlier this morning:

"[Nikolai]..."

Just below the horizontal break.

A. Yes, I see the point.

Q. "[Nikolai Glushkov] not ment[ioned] directly at [the meeting] in Munich [because] others there -- oblique ref[erence] '[you] rem[ember] our main [point]'."

After the meeting with Mr Berezovsky and Mr Patarkatsishvili you produced your second draft of the witness statement, as we've said. Could I ask you to turn to that now, which is at tab 32 of the R(D) bundle, to see how you dealt with this point. R(D)3/32, page 46 R(D)3/32/46.

A. Yes.

Q. And you'll see you leave in the sentence from the proof about there being no specific mention and then you say -- and then you've added in:

"We did not mention Glushkov by name, due to the presence of Irina and Ruslan Fomichev but I asked Roman whether he was aware of 'our main issue' and he

confirmed that he knew what I meant."

So you've added something similar to what is recorded in Ms Duncan's note, namely that Mr Patarkatsishvili raised the question of Mr Glushkov not by name, due to the presence of others, but obliquely referred to it as their main, his main or "our main issue". Do you see that?

A. Yes.

Q. And you've also added something that is not recorded in Ms Duncan's note, namely that Mr Abramovich confirmed that he knew what Mr Patarkatsishvili meant.

Now, given that that reference to a confirmation is not in Ms Duncan's note, is it possible that that was something that you just assumed took place?

A. I don't think so. I think it would have been either in my note or something I specifically recall.

Q. But you can't now be sure?

A. I can't now be certain. But I'd say it's more probable than not that I wouldn't have just put that in without hearing something about it.

Q. But you wouldn't have been told precisely -- if you were told that he confirmed it, you wouldn't have been told precisely how he confirmed it, whether it was a nod or a wink or a "yes" or in some other way?

A. No. The best of my recollection is that there was some

form of confirmation; but, as you say, the precise form of that, I don't recall that being pressed.

Q. And it's unlikely that you would have been told; otherwise you would have put it in the statement?

A. If there -- that extra detail had been given, I'm sure I would have put it in.

Q. Now, could I now ask you to go to the particulars of claim that was served by your firm on 8 January, which are in the K2 bundle, K2/04, at page -- they start at page 16 but I'm interested in page 29. So it's K2/04/29. So these are now the amended particulars of claim, if you like, that...

A. Yes.

Q. And could I ask you to look at paragraph 46 at the bottom of the page:

"The meeting took place at Munich Airport in early May 2001. It was attended by Mr Patarkatsishvili and Mr Abramovich. Also in attendance for some parts of the meeting were Ruslan Fomichev... who was acting for Mr Patarkatsishvili and/or Mr Berezovsky, and Irina Panchenko... an executive of Sibneft and financial adviser to and acting for Mr Abramovich. Mr Abramovich knew and intended that any statements made by him would be passed on to Mr Berezovsky; and understood that Mr Patarkatsishvili was acting for himself and for

Mr Berezovsky at this meeting."

And then subparagraph 1:

"At the meeting:

"(1) In the absence of Mr Fomichev and Ms Panchenko, who had left the room,

"(a) Mr Patarkatsishvili raised the issue of releasing Mr Glushkov from jail. Mr Abramovich told Mr Patarkatsishvili that, although Mr Glushkov had not been released in December 2000, if Mr Berezovsky and Mr Patarkatsishvili were to sell their interest in Sibneft to him, Mr Glushkov would now be released..."

Do you see that?

A. Yes, I see that.

Q. So that is an allegation that there was a direct -- prior direct conversation about Mr Glushkov, not in the presence of the others at the meeting and not one that was oblique. Do you agree?

A. Yes.

Q. Now, I'm not asking you what the source for that allegation was, but it clearly cannot have been what Mr Patarkatsishvili told you at the Tel Aviv meeting.

Do you agree?

A. Well --

Q. Because it's in contradiction to what he told you at the meeting, isn't it?

- A. Well, only if I'd finished putting things from my notes into the draft witness statement on the date you mentioned. But I can't clearly recall now what the source of that additional information was.
- Q. No, and I'm not asking you to recall what it was. But it can't have been Mr Patarkatsishvili because Mr Patarkatsishvili said that it was because of the presence of Mr Fomichev and Ms Panchenko it was mentioned obliquely, whereas what is said here is that in the absence of Mr Fomichev and Ms Panchenko the issue was -- there's a clear statement.
- A. I do have a recollection that at some point along the way the issue was fleshed out that there was a spell in Munich when the four of them were in the room and there was a spell in Munich when the two of them were in the room. And, as I say, it may be that there was something in my notes that hadn't made it into the draft witness statement by the time I prepared the drafts on 7 and 14 December, but I can't now recall what the situation is.
- Q. Well, it doesn't -- there was no other meeting with Mr Patarkatsishvili?
- A. There was no other meeting, no.
- Q. And the meeting notes of Ms Duncan say that it was not directly mentioned, don't they?

A. Ms Duncan's notes do say that, yes.

Q. Thank you.

Could I finally ask you to go to tab 34 of the R(D) bundle, which is the final version: R(D)3, tab 34, page 92 R(D)3/34/92. If you could go to paragraph 65 of that.

A. Yes, I've got that.

Q. Just incidentally, do you know what -- this is the last version of the witness statement of Mr Patarkatsishvili. Do you happen to know when this was prepared? Clearly it would have been after 14 December, but do you know when?

A. I don't know when.

Q. And at paragraph 65 this inserts some new text which says that -- which mentions that -- you'll see:

"A meeting was set up in Munich in April/early May 2001 to finalise a deal and agree a price. Roman came to the airport with his financial manager Irina Panchenko. Ruslan Fomichev also came with me, although neither he nor Ms Panchenko were present for the bulk of the discussions between me and Roman."

This is now an insertion of the allegation that they were not present for a large part of the meeting.

And then in paragraph 69 at the bottom of the page, it then states:

"Roman also indicated that, although Glushkov had not been released from prison after the sale of ORT, if we sold our interests in Sibneft then Glushkov would be released. There was no mention of Glushkov in the presence of Mr Fomichev and Ms Panchenko, but after they had returned I asked whether he was aware of 'our main issue' and he confirmed that he knew what I meant."

Do you see that?

A. Yes, I see that.

Q. Now, that rather suggests that there were two conversations about Mr Glushkov between Mr Patarkatsishvili and Mr Abramovich: first, a conversation like the one in the particulars of claim between Mr Abramovich and Mr Patarkatsishvili when they were alone in which Mr Abramovich indicated that Mr Glushkov would be released; and then a second conversation in the presence of Mr Fomichev and Ms Panchenko where they asked -- where it was asked if he -- where Mr Patarkatsishvili asked Mr Abramovich if he was aware of his main issue and he confirms that, "he knew what I meant".

Do you agree that that's the natural reading of that?

A. Yes, I do.

Q. Now, again, that version of events wasn't what

Mr Patarkatsishvili had told you in Tel Aviv, was it?

- A. As I say, I do recall at some point that additional information was clarified but I can't recall whether it happened at the Tel Aviv meeting or --
- Q. From somewhere. But presumably that was something that you hoped Mr Patarkatsishvili would be saying in evidence?
- A. Well, it's probably something we expected he would say. Like I say, I can't recall precisely the source, but I'm sure we wouldn't have gone that far in the particulars of claim unless we were reasonably confident that it would be substantiated.
- Q. But, as you said, these later amendments didn't come from Mr Patarkatsishvili, did they?
- A. Not directly, no.
- Q. Could I move on to how another point was developed through the documents. Could we go back to the proofs of evidence of Mr Lankshear and Mr Stephenson, again at tab 6 --

MRS JUSTICE GLOSTER: Just before you move on, you say, Mr McKim:

"... I can't recall precisely the source, but I'm sure we wouldn't have gone that far in the particulars... unless we were reasonably confident... it [could] be substantiated."

Who was your source providing you with information?

A. It would have been various sources. We -- after Tel Aviv we still had regular meetings with Mr Berezovsky's assistants and I believe did meet Mr Berezovsky between Tel Aviv and the service of the particulars of claim, but I can't now recall specific incidents which would have led to that additional wording being put in the draft.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR JOWELL: Could we go back to R(D) tab 6, Mr McKim, at page 78, R(D)1/06/78.

A. Yes.

Q. You'll see there's a passage here in the proof of evidence relating to the sale of Sibneft.

A. Yes.

Q. And if you just cast your eye -- could I ask you to cast your eye over that, from 361 and over the page.

A. I've read down to 375. Is that what you --

Q. Yes.

A. Yes.

Q. If I could just -- could I then particularly draw your attention over the page at 381, which says:

"Following the Munich meeting, I kept in contact with [Mr Abramovich]. He was always complaining that he was experiencing political pressure from the Kremlin.

I initiated the sale against the background of complaints from [Mr Abramovich]. I thought that it was a better option to sell and to relieve the pressure on [Mr Abramovich]. I believed from what [Mr Abramovich] said at the time that had we stayed in the company then there was a risk that the company would have become a target."

So you'll see there that that records Mr Patarkatsishvili saying that he believed, from what Mr Abramovich said, that "there was a risk that the company", meaning Sibneft, "would have become a target". Do you see that?

A. Yes.

Q. Could I ask you then to go back to the Carter Ruck particulars of claim, the ones you were provided with in November, at K2, tab 3, page 9 K2/03/9. Could I just draw your attention to paragraph 15, subparagraph (3).

A. Yes.

Q. That says that at the meeting the defendant told Mr Patarkatsishvili:

"... that if the Claimant did not relinquish his interest in Sibneft it would simply be seized by the Russian State without compensation. Accordingly, he had no alternative but to dispose of it to the Defendant."

Now, that seems to be alleging something rather

different from what is in the proof of evidence that we've just seen, namely that there was a statement not, or not just, that the Russian State might target Sibneft the company but rather or also that the Russian State would expropriate Mr Patarkatsishvili's and Mr Berezovsky's supposed specific interest in Sibneft.

Do you see that distinction?

- A. Yes, if you accept that the phrase "the company [becoming] a target" refers to the company itself and not shares in it, then yes, that is a construction.
- Q. Yes. There's clearly a distinction there, isn't there?
- A. Yes, there could be. Yes.
- Q. And if -- can we go now to the mark-up of the witness statement that you prepared before the meeting in Tel Aviv, the one with the compare version, which is at page 119 of that. This is how you've dealt with the sale of Sibneft.

Have you got that at page --

- A. Yes, I've got that.

MRS JUSTICE GLOSTER: This is R(D)3/35/119.

MR JOWELL: Yes, my Lady.

You'll see that in paragraph 87 you quite properly put in some questions about the proof, what's in the proof, and then at paragraph 89 you've added new material in square brackets, again quite properly. And

you say:

"[Mr Abramovich] made it clear that if [we/the Claimant] retained our shares, then Sibneft, its management and its owners would be faced with persecution from the Russian Prosecutor and tax authorities. He also said that if [we/the Claimant] retained our shareholdings Sibneft would come under attack in the same manner as companies owned by [Mr] Gusinsky had done."

Then in paragraph 90:

"Further, [Mr Abramovich] said that if we did not sell soon, the Russian State would seize our shares without compensation. We therefore had no alternative but to sell to him."

Now, those were all paragraphs which you added in; that's right?

A. Yes.

Q. Now, could I ask you to go back to K2 which are the original particulars of claim again, at K2/03, page 9 K2/03/9.

A. Yes.

Q. If we look at paragraph 15, 15(1) says the defendant told Mr Patarkatsishvili:

"... that so long as the Claimant continued to hold any beneficial interest in Sibneft, Sibneft, its

management and its owners would face continued persecution from the Russian Prosecutor's office and tax authorities..."

That is identical, pretty much, isn't it, to the first sentence of paragraph 89?

A. Yes, I probably drew from that language in the original particulars when I was drafting --

Q. Yes.

A. -- that additional paragraph in the statement.

Q. And 15(2):

"... that if the Claimant did not relinquish his interest in Sibneft, it would come under attack by those in power in Russia in a manner similar to companies controlled by Mr Gusinsky."

That's really the same as the second sentence of paragraph 89, isn't it?

A. Yes.

Q. And then (3):

"... that if the Claimant did not relinquish his interest in Sibneft it would simply be seized by the Russian State without compensation. Accordingly, he had no alternative but to dispose of it to the Defendant."

That's really identical to paragraph 90, isn't it?

A. Yes.

Q. So those subparagraphs presumably are what you hoped

Mr Patarkatsishvili would say in order to make his witness statement compatible with the particulars of claim?

A. Yes, there's an open square bracket at the beginning of paragraph 89 which, to me, suggests that I had that in as something of a confirmation rather than something that I was more confident that he was going to say.

Q. Yes. Now, if we go on to paragraph 91 of the comparison document R(D)3/35/120, we see that you've added the second sentence:

"Any sale to a third party would have required his cooperation..."

And then the last sentence of paragraph 91, you've added:

"I was also well aware of [Mr Abramovich]'s... relationship with Putin, and had absolutely no doubt that the state persecution and... seizure of our interests he referred to would happen if he wanted it to."

Now -- and you then add in additional material also in 93 and 94. Do you see that?

A. Yes.

Q. Now, could I ask you to be given bundle J2, J2/2. Could I ask you to go to tab 23 in that. So it's J2/2.23/275.

A. Yes.

Q. This is Mr Berezovsky's second witness statement, dated 17 July 2009. Do you see that?

A. Yes, I've got that.

Q. Could I ask you to go to page 296 of that. So that's J2/2.23/296.

A. Yes.

Q. Do you see in paragraph 117(b) he says:

"I was also well aware of Mr Abramovich's close relationship with President Putin... and had no doubt that the state persecution and the seizure of our interest that Mr Abramovich threatened would happen if he wanted it to."

A. Yes.

Q. And that's identical to what you had in paragraph 91 of Mr Patarkatsishvili's statement?

A. Yes.

Q. Now, all of those square-bracketed paragraphs presumably represented the evidence that you hoped you would get from Mr Patarkatsishvili. Is that correct?

A. It was evidence we anticipated we would get rather than evidence we were crossing our fingers and imagining he might not give. But, yes, as I've said, the fact that I've square-bracketed it meant it was something that we'd not seen being attributed to him before but it was

something that it looked like, from the context, should have been or was going to be attributed to him and something that needed to be asked of him.

Q. I see. You were very confident, were you, that he would give that -- he would be giving that evidence?

A. Less confident in the square-bracketed stuff.

Q. I see. Well, because that had not come from him, had it?

A. Well, not before I'd spoken to him, no. But it was something that looked like it should have been coming from him and therefore it was something we needed to put to him.

Q. Now, can we turn up the next version of the witness statement --

MRS JUSTICE GLOSTER: How much longer are you going to be with this witness? Just because of the break.

MR JOWELL: My Lady, I think probably about 20 minutes.

MRS JUSTICE GLOSTER: Right, well then I'll take the break now. Ten minutes, please.

You're not to talk to anybody about your evidence.

MR SUMPTION: My Lady, before your Ladyship rises, can I give your Ladyship the seventh witness statement of Mr Abramovich. It's quite short, but your Ladyship might find it useful to glance through it before he starts his evidence.

MRS JUSTICE GLOSTER: Yes. I'll hear any objections later,  
Mr Rabinowitz. Thank you very much.

(11.30 am)

(A short break)

(11.45 am)

MRS JUSTICE GLOSTER: Yes, Mr Jowell.

MR JOWELL: Mr McKim, can I ask you to turn next to the  
R(D) bundle, tab 32, R(D)3/32/46. This is your  
witness statement that you produced after the meeting in  
Tel Aviv.

If we look at paragraph 69, the last sentence is:

"I was also well aware of Roman's close relationship  
with Putin, and had absolutely no doubt that the state  
persecution and the seizure of our interests he had  
referred to in the preceding weeks would happen if he  
wanted it to."

Now, that is identical to what was in the previous  
draft, isn't it?

A. Yes.

Q. Likewise, over the page at page 47 R(D)3/32/47, in  
paragraph 71, the second sentence:

"I told him that the Kremlin definitely wanted us  
out of Sibneft, and that selling to Roman was the only  
option that would avoid the dire consequences threatened  
by the Kremlin."

That was also identical to what was in the previous draft?

A. Yes.

Q. Both of those you had inserted yourself, as compared to the proofs? I'm not suggesting there's anything wrong with that, I'm just --

A. Well, no, it was under my supervision. I may not have done it myself.

Q. Now, you've already told us that at the meeting in Tel Aviv you didn't refer to the witness statement that you'd prepared. So I take it that you obviously didn't then put these precise propositions to Mr Patarkatsishvili from the witness statement and ask him whether he agreed with them or not?

A. Not straight out of the witness statements; although, as I've said before, or said in my witness statements, at any rate there were certain areas we'd identified as being things we needed to cover with Mr Patarkatsishvili.

Q. But you didn't, for example, say to him -- read out the last sentence of paragraph 69 and say, "Do you agree with that?"

A. We didn't do that, no.

Q. No. You just came away from the meeting with the overall impression or understanding that he would

subscribe to those sentences, perhaps also from other information you had?

- A. Somewhere between those two extremes, perhaps. The -- I can't now recall precisely what words were used by myself or Michelle in questions to Mr Patarkatsishvili and precisely what words over and beyond what I've already set out in the witness statement were used in response. But there were areas that were put to him where we needed explanation and they would have resulted somewhere along the line in these statements.
- Q. Now, you said in your witness statement that if a question or answer got in any way complicated then Mr Berezovsky would act as quasi-translator. Do you remember that?
- A. Yes.
- Q. So if you had posed a question to the effect of, "Did you have absolutely no doubt that the State persecution and seizure of your interests you had referred to in the preceding weeks would happen if you wanted it to?", that would have presumably been something complicated that would have been translated by Mr Berezovsky?
- A. As I say, I don't recall what precise wording was used. It's entirely possible that the concept was got over in a more simple way, but I can't now recall.
- Q. But it's likely that if you spoke about a phrase like

"State persecution" or "seizure of interests", those would have been translated, surely?

A. I couldn't say.

Q. You couldn't say.

Now, in your witness statement you also say that you recall Mr Patarkatsishvili at the Tel Aviv meeting using the expression "playing a game" in relation to the alleged statements of Mr Abramovich referring to pressure from the Kremlin.

A. Yes.

Q. Do you recall that?

MRS JUSTICE GLOSTER: What paragraph?

MR JOWELL: It's in paragraph 31(c) D1/14/63, my Lady, and in paragraph 48(d) D2/14/70.

I just wanted to ask you: you can't now, I assume, at this distance of, time, state whether, when he used the expression "playing a game", that was an expression he used in English or it was something he said in Russian which was translated by Mr Berezovsky.

A. That I'm fairly confident is something he said to us in English.

Q. You see, I find that quite surprising because when Mr Berezovsky gave evidence, the expression "playing a game" seemed to be one of his favourite expressions. Are you sure about that?

- A. It may have been something that Badri repeated in English. But I'm -- as I say, I'm fairly confident that it was wording that Badri used.
- Q. But you can't be sure whether that was translated by Mr Berezovsky or not, can you?
- A. Well, if Badri had said it in English, it wouldn't have needed translation. And, as I say, I'm fairly sure that that was a word that Mr -- a phrase that Mr Patarkatsishvili used in English.
- Q. And you -- there was no way of knowing precisely the context in which he used that expression in English is there, now? You can't say precisely?
- A. Well, the context was the issue that was put to him about, "What precisely was Mr Abramovich saying to you? Was it" -- again, without -- I don't want to stray into privileged areas, but we were discussing the difference between what is a warning and what is a threat and so on with him, and we did put to him, "What precisely was Mr Abramovich saying and what impression were you getting from him?", and that's the context in which it came about.
- Q. But precisely what he meant by "playing a game", you couldn't -- you can't recall clearly what he meant by that?
- A. Well, my recollection is that Mr Patarkatsishvili said

that Mr Abramovich was trying to phrase his discussions between the two of them in the context of claiming to be on Mr Patarkatsishvili's side and potentially also a victim rather than being the instrument, and Mr Patarkatsishvili's characterisation of that was: "Yes, that's what he was saying, but he was playing a game. I knew all along that" -- again, this is what he -- I recall him saying -- "I knew all along that he was really the instrument and that by claiming to be a potential victim alongside us he was playing a game".

- Q. But that explanation of what was meant by "playing a game", that would surely have been something translated by Mr Berezovsky?
- A. Again, because it's something that we wanted to hear directly from Mr Patarkatsishvili and because it's something that evidently came out in more simple English than other parts of the eventual statement that you've identified, that's something that would have been a greater proportion coming directly from Mr Patarkatsishvili; but again it's something that, as we've discussed --
- Q. But some of --
- A. -- Mr Berezovsky may have interjected on.
- Q. Mr Berezovsky may have interjected, I'm grateful.

Could I ask you to go back to the proof of evidence

at tab 6 of this bundle, page 78. R(D)1/06/78. Could I just remind you again of lines 361 to 364 which state that:

"In early 2001 I proposed to [Mr Berezovsky] that we sell our shares in Sibneft. At this time it was clear that I would not be able to return to Moscow and would be forced to live as a political emigre. To live in such circumstances without money is difficult.

[Mr Berezovsky] resisted my proposal at first but finally agreed to sell. I spoke with [Mr Abramovich]".

Do you see that?

A. Yes.

Q. Could I next ask you to go to Ms Duncan's note, which is at tab 30 of this bundle, R(D)2/30, at page 124

R(D)2/30/124. You may recall -- the top box against "AP", you may recall that Ms Duncan transcribed this for us earlier this morning. Mr Patarkatsishvili says:

"We were outside [the] co[mpany], no other income -- [Mr Berezovsky] needed [income] to fund political career."

Do you see that?

A. Yes, I see that.

Q. So it is clear that Mr Patarkatsishvili's position, both in the proof of evidence and at the meeting in Tel Aviv, was that both he and Mr Berezovsky were in need of money

in early 2001 and that was at least one of the reasons why he wanted, as he put it, to sell his interests in Sibneft. That's what those notes record, isn't it?

A. Well, we can't rule out the possibility that they would have been quite happy to have peace restored between themselves and Mr Abramovich and the flow of dividends restored. So I'm not sure we can jump to that conclusion.

Q. Well, they do record that they were in need of money, do they not, those notes?

A. Yes, they do.

Q. And they do record that that was one of the reasons why they decided to sell? That's what they say.

A. Yes, that was possibly one of the reasons.

Q. Yes.

Could I next ask you to turn to your witness statement at paragraph 24, which is in D2, tab 14 D2/14/61. Do you see the second sentence? You say there:

"The one fact I recall being disagreed was the precise location of a meeting that they both had with Mr Abramovich somewhere in France, which I believe was in relation to the sale of Sibneft."

A. Yes, I see that.

Q. So can I take it from that that you do believe that you

were told at the Tel Aviv meeting that Mr Patarkatsishvili, Mr Berezovsky and Mr Abramovich did have a meeting in France with Mr Abramovich in relation to what they called the sale of Sibneft, but they disagreed on the possible location of where that meeting was in France? Is that correct?

A. I think that's fair.

Q. So, for example, the meeting could have been in Paris or it could have been in Megeve or it could have been somewhere else, but it was in France?

A. The two locations they were talking about was the Le Fouquet restaurant and Cap d'Antibes.

Q. Was that not in relation to the sale of the ORT shares?

A. Possibly. I can't recall now exactly what the detail of the meeting was, but I recall that factual disagreement between those two locations.

Q. I see. It must be very difficult to recall the detail of this meeting at this distance of time, Mr McKim?

A. Well, yes. That's my best recollection now, today.

MR JOWELL: Mr McKim, I have no further questions. Thank you very much.

MRS JUSTICE GLOSTER: Thank you. Mr Malek?

MR MALEK: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin?

MR ADKIN: My Lady, no.

MRS JUSTICE GLOSTER: Mr Mumford?

MR MUMFORD: My Lady, no.

MRS JUSTICE GLOSTER: Mr Gillis.

Re-examination by MR GILLIS

MR GILLIS: Mr McKim, just a few questions.

You were asked about occasions when Mr Berezovsky translated for Mr Patarkatsishvili. Given Mr Patarkatsishvili's English abilities, did he appear to understand, so far as you were concerned, what Mr Berezovsky was saying on his behalf?

- A. He seemed to understand, yes. He seemed to remain engaged.
- Q. And apart from the location of the meetings you were just being asked about, did he ever give any indication of disagreeing with what Mr Berezovsky was saying?
- A. Not that I can recall.
- Q. You were asked a series of questions about the comparite(?) document which we have at R(D)3 at tab 35 R(D)3/35/100, and could I just start by clarifying: is it your understanding that this is a comparison to the 19 November draft before the Tel Aviv meeting?
- A. My understanding is that this document is intended to show what I added to the previous proofs prepared by the previous law firms before I went to Tel Aviv.
- Q. Before you went to Tel Aviv?

A. Yes.

Q. Could I ask you to look at your witness statement, which we have at bundle D2, at tab 14, and if I could ask you to turn to paragraph 41, which we have at page 67 D2/14/67, and you explain there that:

"... within a few days of our return from Tel Aviv, I used my notes of the meetings to update Mr Patarkatsishvili's witness statement. Once that process had been completed, in accordance with my usual practice, I would have treated the draft witness statement of Mr Patarkatsishvili as [being] the best record of our meetings with him."

Can I just clarify: is the draft that you prepared in consequence of that process, is that the draft that we have at R(D)3 at tab 33 R(D)3/33/54?

A. There would have been various iterations. But yes, that's a more advanced, post-Tel Aviv draft of the documents I had up and running.

Q. And can I ask you this: did you regard that draft as having been substantiated by what you had been told at the meeting and the prior work that you had done?

MR JOWELL: My Lady, I hesitate to interrupt --

MRS JUSTICE GLOSTER: I think that's a leading question, Mr Gillis, isn't it?

MR GILLIS: All right.

Can I then just get you to confirm that this is the draft that you produced in consequence of the work that had been undertaken at the Tel Aviv meeting?

A. Yes.

Q. You were asked about the phrase "playing games" and whether this was a phrase used by Mr Patarkatsishvili.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. Could I ask you to look at R(D)2 at tab 30, at page 129 R(D)2/30/129, and looking -- do you have page 129?

A. Yes, I do.

Q. Looking between the hole-punches, can you see --

A. Yes, I think I can see what you're going to look at.

Q. -- "start to play his game"?

A. Yes.

Q. Could you identify who that phrase has been attributed to?

A. That's been attributed to Mr Patarkatsishvili.

Q. You were asked about R(D)1, tab 6, at page 78 R(D)1/06/78, where Mr Patarkatsishvili talked about living as an emigre. Do you remember that?

A. Yes, I do.

Q. Could I ask you to look at R(D)3 at tab 30, at page 128.

A. Is that R(D)2? I've got R(D)2/128.

Q. I'm sorry, R(D)2, tab 30 at page 128 R(D)2/30/128.

A. Yes, I've got that.

Q. And could I ask you to look at the very bottom of the page and over to the top of the next page.

A. Yes.

Q. Does that conform with your understanding of what Mr Patarkatsishvili was saying as regards his attitude to selling the Sibneft shares?

MR JOWELL: My Lady, I'm afraid that is a --

MRS JUSTICE GLOSTER: Yes, I think that's another one, isn't it, Mr Gillis?

MR GILLIS: Sorry?

MRS JUSTICE GLOSTER: It's another leading question. If you ask it in a leading form, it doesn't have much weight at the end of the day.

MR GILLIS: No, well -- no, I'm obliged.

Can I ask you whether that conforms with your recollection of what Mr Patarkatsishvili was saying?

MRS JUSTICE GLOSTER: Answer the question.

A. Yes, it does, to the best of my present recollection.

MR GILLIS: Thank you. I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much.

Thank you very much, Mr McKim, for coming along.

(The witness withdrew)

MR RABINOWITZ: My Lady, that is the last of our witnesses,

so...

MRS JUSTICE GLOSTER: Subject to one more who is being interposed: Mr Pompadur is coming.

MR RABINOWITZ: Mr Pompadur, yes.

I think we now move on to Mr Abramovich.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: Can I ask this, my Lady: that we have ten minutes just to rearrange ourselves, just so I can get my files in place and so on.

MRS JUSTICE GLOSTER: Yes, certainly. I'll rise.

(12.05 pm)

(A short break)

(12.15 pm)

MR SUMPTION: My Lady, unless your Ladyship wishes me to, I don't intend to ask each witness about electronic instruments but I do undertake that my solicitors will check with each witness before they take the stand that they have not got any.

MRS JUSTICE GLOSTER: Fine.

MR SUMPTION: Is that acceptable?

MRS JUSTICE GLOSTER: Okay. It's not just having it turned off; they mustn't have any electronic equipment.

MR SUMPTION: They shouldn't have it in their possession at all.

MRS JUSTICE GLOSTER: Yes, very well.

MR SUMPTION: We will make sure that that is something that they are told straightaway before being called.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: My Lady, I call Mr Abramovich.

MRS JUSTICE GLOSTER: Very well.

MR ROMAN ABRAMOVICH (affirmed)

(All answers interpreted unless otherwise indicated)

MRS JUSTICE GLOSTER: Sit down, Mr Abramovich, if you would like to.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Abramovich, I wonder if somebody would pass you bundles E1, E5 and E8. I'm going to start by identifying your various witness statements and I'm then, when I've done that, going to ask you whether they represent your evidence.

Could you please start by turning in bundle E1 to tab 3 E1/03/34. The Russian text of this statement comes at the back of the tab and the English translation at the beginning. Is this your third witness statement?

A. Yes.

Q. And is it signed by you on the final page, at page 234 of the bundle E1/03/234?

A. Yes.

Q. Leaving that open, could you please take bundle E8 at flag 18 E8/18/220 and could you please turn to

paragraph 16 in the Russian version of this statement.

Now, if you would look at paragraph 16 and then turn to page 162 of your third witness statement, the big one, paragraph 162 E1/03/83. Is that a modification that you wish to make to paragraph 162 of your main witness statement?

A. Yes.

Q. Now, if you look at the previous paragraph of the seventh witness statement E8/18/220, the second one I referred you to, there is a correction that you wish to make, I think, to paragraph 232.

Would you like to turn to paragraph 232 in your main witness statement E1/03/104. Do you wish to modify paragraph 232 in the way suggested at paragraph 15 of the shorter one that you've got open?

A. Yes.

Q. Now, could you please now take bundle E5 at flag 11 and turn to paragraph 7. Sorry, give me a moment. (Pause)

Sorry, in E5 you should be looking, forgive me, at tab 14.

MRS JUSTICE GLOSTER: Right, well, I'm lost.

MR SUMPTION: Yes, so am I. It's the fifth witness statement that I want to ask the witness to refer to: it's at flag E8, tab 3 E8/03/26. My apologies.

MRS JUSTICE GLOSTER: Right. Now, before you go any

further, Mr Sumption, the corrective affidavit --

MR SUMPTION: That was the seventh. I haven't formally proofed it yet, but I intend to do so.

MRS JUSTICE GLOSTER: Okay. The document which I have at E8, flag 18, is not a corrective affidavit --

MR SUMPTION: No, it --

MRS JUSTICE GLOSTER: -- and therefore I am confused when you've been referring the witness to that affidavit as a corrective affidavit. It didn't seem to me to have any corrections in it.

MR SUMPTION: Well, parts of it are, because if your Ladyship looks at page 7 --

MRS JUSTICE GLOSTER: Oh, I see. Paras 14 to 16 --

MR SUMPTION: Paras 14 to 16 are corrections.

MRS JUSTICE GLOSTER: Yes, right. So that is what you have been taking the witness --

MR SUMPTION: That is what I've been taking him to.

MRS JUSTICE GLOSTER: Right. I don't have, for those sitting behind you, tabs 16 and 17.

MR SUMPTION: You will by 2 o'clock.

MRS JUSTICE GLOSTER: Very well.

So now we are in tab 3, are we, of E8?

MR SUMPTION: We are now still in bundle E8 and we should be looking at the fifth witness statement behind tab 3  
E8/03/26.

MRS JUSTICE GLOSTER: Right. I'm with you. Thank you.

MR SUMPTION: Mr Abramovich, have you got bundle E8, tab 3?

And if you would like to turn to paragraph 7 on page 29 of that bundle E8/03/29. This is a paragraph that contains some corrections and clarifications to previous evidence.

Paragraph 7.1 is a correction to a reference given in your main witness statement at paragraph 262. Could you turn to paragraph 262 of your main statement E1/03/115, and just confirm that that's a correction that you wish to make?

A. Yes.

Q. Now, I would now like you to please close those bundles and take bundle E5, flag 11 E5/11/2. Is this your fourth witness statement?

A. Yes.

Q. And is it signed by you on page 148 in the Russian text?

A. Yes.

Q. Now, there is, I think, one correction that you wish to make to that, if you would leave it open and take in bundle E8 your fifth witness statement and turn to paragraph 8 on page 30 E8/03/30. There's some rather confusing duplicate numbering here. But if you look at page 30 and paragraph 8 on that page and the subparagraphs that follow, these are various corrections

made to your fourth witness statement. Are they corrections that you wish to make?

A. Yes.

Q. Now, your fourth witness statement has an annex, an appendix which you will find at bundles E6 and E7. Bundle E6 E6/01/1 contains the first part of an English and Russian text of the Le Bourget transcript. If you look at the extreme right-hand column, you'll see that there is a commentary attributed to you.

A. Yes.

Q. And is that a commentary that you have prepared as part of your evidence on the relevant parts of the Le Bourget transcript?

A. Yes.

Q. Could you please now turn in bundle E8 to flag 3 E8/03/26. Is this your fifth witness statement?

A. Yes.

Q. And is it signed by you on page 39 E8/03/39? Page 39 of the bundle numbering. Is that your signature?

A. Yes.

Q. And in the same bundle, perhaps you could turn to flag 8 E8/08/101. Is this your sixth witness statement?

A. Yes.

Q. And is it signed by you on page 126 of the bundle numbering E8/08/126?

A. Yes.

Q. Then in flag 18 of the same bundle E8/18/213, is this your seventh witness statement served very recently?

A. Yes.

Q. And is that signed by you on the second-last page of the bundle?

A. Yes.

Q. Now, subject to the corrections which are referred to in the later witness statements, are all of these five statements and your commentary on the Le Bourget meeting true to the best of your knowledge and belief?

A. Yes.

MR SUMPTION: Thank you, Mr Abramovich.

MR MALEK: My Lady, just to explain to your Ladyship what we're proposing by way of a procedure going forward as far as the Chancery defendants are concerned, it's agreed that we will go next and ask any questions that we have by way of cross-examination. As it is, we do not have any questions for Mr Abramovich and that's likely to be the case with all of his other witnesses. But what we have agreed, subject to your Ladyship's agreement, is that if any point emerges out of Mr Rabinowitz's cross-examination which affects us and which is new, with your Ladyship's permission, we may want to ask some questions before Mr Abramovich's

re-examination takes place.

MRS JUSTICE GLOSTER: Right. Does that go for Mr Adkin and Mr Mumford as well?

MR ADKIN: My Lady, it does.

MR MUMFORD: Yes, it does.

MRS JUSTICE GLOSTER: Thank you very much.

Yes, Mr Rabinowitz.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Abramovich.

Mr Abramovich, I think even the translator will need you to speak into the mic so that they can hear what you're saying, so it's something that will go on to the transcript. Do you understand?

A. Yes, I understand, but I don't hear myself.

Q. But we can hear you. So as long as we can hear you, that's okay.

I think also, just to explain, Mr Abramovich -- and perhaps to everyone else -- there's a delay between my asking you a question and you hearing it in Russian and that I think it's always worth waiting for me to finish before you start answering or you won't have the translation and I promise to try and do the same when you answer the question to me. Do you follow?

A. Yes, I agree.

Q. All right, thank you.

Now, can we just begin then by dealing fairly briefly with your personal history. You were born on 24 October 1996 (sic); that is right, I think?

A. '66. '66.

Q. That's wrong. 1966, I'm sorry. That is a good start. We can agree about that.

Do you recall in what year you graduated from high school?

A. I don't really remember. '82 or '83?

Q. If you were 18 when you graduated, that would be 1985.

A. I graduated at the age of 16 and then I went to uni, university.

Q. All right. So you graduated in 1983 or 1984, you think?

A. In 1984 I was already called up for my military service.

Q. So -- well, I'm not sure about that. Didn't you, after high school, be admitted to the Industrial Institute of Ukhta?

A. I -- I really -- I did go to Ukhta Industrial Institute.

Q. That was before you were drafted in the army, according to your witness statement.

A. Yes, it was before.

Q. But you didn't graduate at that stage; you left Ukhta and you were then drafted into the army. Is that right?

A. No, that's not so.

Q. Do you want to tell us what is so then, please?

- A. After leaving school, I entered Ukhta Industrial Institute. I studied there for a year and a half and then I was called up to the armed forces.
- Q. Right. And how long did you spend in the armed forces then?
- A. Two years.
- Q. So you would have finished the armed forces then, would you, in 1986?
- A. Yes, that's so.
- Q. And then do you say that after that you went to Ukhta?
- A. After that I went back to Ukhta, indeed.
- Q. And then when you graduated from the army you were still a private, not an officer; is that right?
- A. Yes, I was a private when I left the armed service, yes.
- Q. And even though you returned to the Institute of Ukhta, you didn't graduate; is that right?
- A. That is so.
- Q. In fact, rather than graduating from the Industrial Institute of Ukhta, you went into business in 1987?
- A. Partly so.
- Q. Do you want to tell me about the part which wasn't so then, please?
- A. I was working and I was studying in the Moscow Road Construction and Automobile Institute.
- Q. So you say that after 1987, when you went into business,

you were both working in business and, you say now, studying in the Moscow Road Institute?

A. Yes.

Q. You don't mention this in your witness statement, do you, Mr Abramovich?

A. Well, I describe my biography in general.

Q. Well, in fact, Mr Abramovich, you describe your biography in a way which is not in general; it's in quite detail. You never mention in your witness statement going to what you refer to as the Moscow Road Institute, do you?

A. Because I didn't graduate; I studied for four years and I left it. I didn't graduate it. I didn't have a degree.

Q. Can I then ask you, please, to go to bundle H(A)07 and go to page 41, if you would, please H(A)07/41. If you have that, can you go to page 83 in the bundle H(A)07/83.

Do you see that on page 83 of the bundle, Mr Abramovich, it lists the name of the management of Sibneft? And you can see that you are identified second in the list, "Head of the Moscow office of Sibneft". Do you see that?

A. Yes.

Q. If we then look at what it says about you, your brief

biography, "Roman Abramovich", it says:

"Mr Abramovich graduated in 1987 from the Moscow Road Engineering Institute."

Now, you've just told us that that is not true, Mr Abramovich, haven't you?

- A. I did not write the final diploma work but I did everything else.
- Q. But you did not graduate, did you?
- A. In the English language there isn't an analogous expression of unfinished higher education. But it is true: I didn't actually graduate, I did not finish it.
- Q. And didn't you tell us when you were answering the last question that after you finished the army and went into work, it took you four years, you said, while you were studying to finish at the Moscow Road Institute? Isn't that an answer you gave earlier?
- A. I didn't get the question, please.
- Q. Mr Abramovich, when I first asked you about your history and, as I suspect you anticipated, I was going to ask you about the Moscow Road Institute, I said to you, "What did you do after 1987? You went into work?" And your answer to me was: no, in 1987 you began work, but you also studied for four years at the Moscow Road Institute. Do you remember that?
- A. Yes.

- Q. Can you then explain to me, Mr Abramovich, why in this brief biography it says that you graduated in 1987 from this institute?
- A. It's a mistake.
- Q. Did you read the circular before it was distributed in 1987, Mr Abramovich?
- A. I don't remember. Most likely, yes, but I'm sure I didn't pay much attention to this part. It is obvious that in 1987 I couldn't have graduated from anywhere.
- Q. Well, it is obvious, Mr Abramovich, but I suggest to you this is the only part in this whole circular which relates specifically to your own personal situation and I suggest to you you must have read this. (Pause)
- Do you want to answer that?
- A. I don't remember, but it's a mistake of a technical arithmetical nature. In 1987 I couldn't have graduated from any university, even if I hadn't served in the army.
- Q. No, indeed you couldn't, Mr Abramovich. But you were willing to allow this statement to go out, a statement about which much has been made in other parts of this, where you must have recognised that what it was saying about you was untrue?
- A. I didn't understand it. The circular was prepared in English only.

Q. Can we then just go, please, to bundle H(A)97, page 2 H(A)97/2. Just so you know what this is, Mr Abramovich, this is a witness statement which you made in earlier litigation with which you were involved: it's the Yugraneft litigation. You can see that if you go back to page 2 of this bundle. Do you see that?

A. Yes.

Q. And go to page 20 H(A)97/20. You'll see that this appears to have been signed -- we don't have a signed version here; it was presumably signed in the Russian version -- on 28 February 2008. Do you see that?

A. I don't see it yet. I think it's only an English version here in this bundle.

Q. That is right. That's fine. Do you see that -- the only point I want to make to you is that it was produced on 28 February 2008. Do you see that?

A. Yes, I can see.

Q. Right. Now, can I ask you, please, to go to page 4 of the bundle H(A)97/4. At paragraph 8 on page 4 --

MR SUMPTION: My Lady, there is a Russian version of this which begins at page 21 in the same flag.

MRS JUSTICE GLOSTER: Yes. Mr Abramovich, you might prefer to read it in the Russian.

MR RABINOWITZ: And the relevant paragraph will be on page 23 H(A)97/23. We're looking at paragraph 8.

What this says, Mr Abramovich, in paragraph 8, where you are here describing what you say is your background:

"I attended the Industrial Institute in the city of Ukhta and I completed mandatory service in the Soviet Army. I then studied briefly at the Moscow... Transport Institute before I entered private business."

This seems to suggest, Mr Abramovich, that it was -- that you studied at the Moscow Auto Transport Institute before you went into business, whereas I think what you've previously said in answer today is that you were doing these things at the same time, over a period of four years.

- A. I was studying and I was doing business at the same time. I was studying -- I was studying in the evenings and then by correspondence. I don't know if the -- if in England people can do the same, but I was studying in evenings and then by correspondence.
- Q. The difficulty about that, Mr Abramovich -- and I don't want to spend too much more time on this -- is that this isn't what you say at paragraph 8. In paragraph 8 you say, in effect, that you studied briefly at the Moscow Auto Transport Institute before you entered into private business, and that suggests that your evidence in the Yugraneft proceedings was that the business followed a period of study at the Moscow institute. (Pause)

Do you want to comment on that or shall we move on?

A. Yes, I would like to comment. In my witness statement it says that at the time when I was studying in the Moscow Road Institute, I was working in a state organisation. I didn't mean I was in business. But later I also went into business.

Q. All right.

Can we just go back to what you say you did in 1987, when you tell us in your witness statement that you went into business. It's right, isn't it, that what you mean by this was that in 1987 you were head of a welding unit in a construction and installation directorate? Is that right?

A. And also that. And that as well.

Q. And how long was that for?

A. I don't remember now anymore.

Q. You say "that as well" and I now just want to be clear about what "as well" you say you were doing in 1987. Because you were working at -- you were studying for the Moscow institute, you were involved with this construction and installation directorate. Was there something else that you say you were doing in 1987?

A. And I was also involved in business.

Q. All right. After I think you finished with the construction and installation directorate, is this

right: you organised a cooperative called Uyut which made plastic toys?

A. Yes.

Q. And it was at Uyut, wasn't it, where you were making these toys, that you first worked with Mr Shvidler? Or had you worked with him before this?

A. I don't remember Mr Shvidler working in Uyut in particular, but it looks like it must be so.

Q. And is this also where you worked for the first time with people called first Valery Oiff -- and I apologise if I've mispronounced that -- and Andrey Bloch?

A. I think so.

Q. Now, next can we come to the question of your law qualification. At paragraph 3 of your third witness statement you told us that you had:

"... completed [your] higher education in May 2001, having graduated from the correspondence department of the Moscow State Law Academy."

Do you remember saying that?

A. Yes.

Q. And would it be fair to say that this paragraph gives the impression that you in fact have a law degree?

A. I don't understand very well what "a law degree" means. But to some extent, yes, I graduated from Moscow Legal Academy and I have a diploma certifying that

I graduated. That's what I mean.

Q. Now, is the position in relation to this law qualification that you have now further explained at paragraph 35 of your sixth witness statement? Can we just have a look at that, please: it's at bundle E8, tab 8, page 111 E8/08/111. In the Russian it's page 125, I'm sorry E8/08/125. Do you have that?

Just looking at what you said, paragraph 35, this is about halfway down, about five lines down, you say:

"In 2000, I entered the distance learning department of the law faculty and decided to major in state and legal sciences where focus is made on such disciplines as the theory of state and law and administrative law. In 2001, I graduated from this course..."

Now, can I ask you next, please, to go to H(A)97 at tab 2, which is where -- you may have it in front of you -- it's where you made your Yugraneft statement. Sorry, page 2. H(A)97, page 2 H(A)97/2. Someone will take you -- I think the Russian one starts at page 22 H(A)97/22.

You see, at paragraph 8 H(A)97/4, if you're there again, in the paragraph we were looking at earlier, after the reference to your studying at the Moscow Auto Transport Institute and entering private business, you said:

"I later received a law degree from the Moscow State Law Academy."

Perhaps you can clarify: do you or do you not have a law degree?

A. Yes, I do have a degree of a lawyer.

Q. A law degree; yes?

A. It's difficult for me to interpret what you mean by "a law degree". I have a diploma of a lawyer.

Q. All right. Would it be fair to say that the position you've taken is to wish to stress that there is nothing in your legal training that will have provided you with any knowledge or insight in relation to commercial or business legal matters?

A. Well, I'm giving the facts.

Q. I'm just trying to understand your position in terms of how much law you understand. What I asked you is: would it be fair to say that the position you have taken is to wish to stress that there is nothing in your legal training that will have provided you with any knowledge or insight in relation to commercial or business legal matters?

A. Once again, I just give you the facts: I have a diploma of a Moscow legal academy, I studied there for a year, and that's it. I don't quite understand what I should answer to your question.

Q. The answer that I'm asking you for, Mr Abramovich, in fact comes out of your own witness statement. You have bundle E8 there in front of you. In the English it's at paragraph 35 at page 111 E8/08/111. Someone will find it for you in the Russian: page 125 E8/08/125.

You see, the point I was making to you is the point that you yourself had been making in your witness statement:

"Nothing in that course provided me with any knowledge or insight in relation to commercial or business legal matters..."

I don't understand why you wouldn't agree with that.

A. I agree. I never insisted that I was a good student, that I knew everything about law.

Q. Can we just move on then from your early years and I'd like to understand your evidence about the team of people who have been around with you over the years.

In paragraph 14 of your third witness statement -- that's at E1, tab 3, page 38; in Russian at page 138. I'm not sure it's worth turning it up; I was just referring to it because you refer there to your "close friend and business colleague" Mr Shvidler, who has, you say, provided invaluable assistance in business in a number of industries. Do you recollect saying that?

A. Yes.

- Q. Mr Shvidler and you are very close, are you not?
- A. Yes, it's true.
- Q. You've worked together since about 1987?
- A. With a small break, yes.
- Q. And Mr Shvidler says that when you're in the same city you typically have both lunch and dinner together every day, is that correct?
- A. Yes, that is correct.
- Q. Can you explain what financial arrangements you have or have had with Mr Shvidler over the years?
- A. At present we are partners. In the past he was an employee, now if we talk about it formally, but I always considered him my partner.
- Q. You always considered him your partner. But are you saying that you've never actually been partners until very recently?
- A. It depends on what you mean by this word. Whether we invested money together in '87? Absolutely not.
- Q. Well, you tell me what you mean by this word. You can tell me how you're distinguishing what you identify and perhaps describe as being a partnership from what you think I mean by that.

What was your relationship from 1987?

MR SUMPTION: Well, my Lady, how can he possibly answer a question like that?

MR RABINOWITZ: I'll put it again.

What was your relationship from 1987?

A. It's difficult for me to say how you would interpret something.

Q. What was your relationship with Mr Shvidler from 1987?

A. We were friends.

Q. And you say he was your employee?

A. Yes, he was my employee.

Q. So you would have had a financial arrangement with him which, what, involved you paying him a salary?

A. Yes, I paid him a salary. That is true.

Q. And do you say that Mr Shvidler had no ownership interest in Runicom SA or Runicom Limited?

A. Runicom SA and Runicom Limited belonged to me.

Q. So it follows that Mr Shvidler had no ownership interest in either of those companies, does it?

A. As far as I know, none.

Q. Mr Abramovich, if you didn't know whether he had an ownership interest, who possibly could?

A. He didn't have any.

Q. What about in --

MRS JUSTICE GLOSTER: Just a second. Did he get performance-related remuneration?

A. It really depends on which year we're talking about.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: Can I just follow up --

A. Mainly he received a salary.

Q. When you say, "It... depends on which year we're talking about", can you identify which year you say he would have received performance-related payments?

A. Most likely when he worked in Sibneft he received bonuses that were performance-related.

Q. And that would have been from when, 1995?

A. Much later. In '95 Sibneft did not belong to us.

Q. You tell me which year you say he would have received performance-related bonuses then?

A. I don't know exactly, but I think probably starting from '97 or so.

MR RABINOWITZ: My Lady, this is as convenient a time as any. We've got a few more questions on this.

MRS JUSTICE GLOSTER: Oh, right. I hadn't noticed the time. Very well. 2.05.

Mr Abramovich, you mustn't talk to anybody about the case or your evidence during the break or in the evenings; you understand that, do you?

Very well. 2.05, please.

(1.05 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, just so you know, I've been asked to slow down. So if you I think I'm going inordinately slowly, that is because I've been asked to, so that the simultaneous translation can keep up.

MRS JUSTICE GLOSTER: And it's right I should be on channel 1, is it?

MR RABINOWITZ: Yes, I believe so.

Mr Abramovich, I was asking you about your financial arrangements with Mr Shvidler. Do you say Mr Shvidler never had any interest in any Sibneft shares?

A. Mr Shvidler never had, so far as I know, any interest in Sibneft shares.

Q. And it was Mr Shvidler who effectively ran Runicom SA; is that right?

A. Yes.

Q. And the documents show that Mr Shvidler effectively ran Sibneft from 1996. Would that be right as well?

A. I believe that prior to '97 maybe Mr Shvidler worked in Sibneft but the company was actually run and managed by Viktor Andreyevich Gorodilov.

Q. So Mr Shvidler was involved, you say, with Sibneft from 1996 but you think it was being managed by Mr Viktor Gorodilov?

A. Prior to the privatisation of the company, so far as I can recall, Mr Shvidler had never worked in Sibneft

before it was privatised.

- Q. Well, he was the chief financial officer and vice president from 1996 until July 1998, wasn't he?
- A. Could you ask that question again, please? I'm not sure I understood you.
- Q. He was the chief financial officer and vice president of Sibneft from 1996 until 1998, wasn't he?
- A. I think so.
- Q. Well, that's his own evidence, Mr Abramovich.
- A. I simply do not recollect. When I was writing the evidence I was working with documents, so that must be more correct.
- Q. And then Mr Shvidler became president of Sibneft and also president of the management board from 1998 until October 2005; is that right?
- A. Yes, that is correct.
- Q. Yet, Mr Abramovich, Mr Shvidler seems to have received, relative to the value he was generating for you, a minimal salary at Sibneft. Is that right?
- A. Unfortunately I'm not aware of this, I have no recollection of this.
- Q. Do you have any recollection of what his salary was?
- A. No, I do not recall what his salary was.
- Q. There's an offering circular of 2002 which I'd like to show you, if I may, for your comment. Can you please be

given bundle H(A)44 and go to page 79 H(A)44/79.

Just so you can see what this is, if you go back to page 41 of that file H(A)44/41, you'll see the beginning of the document. Do you see that at the bottom of the page -- you can see it's a Sibneft offer for a loan participation note, but at the bottom of that page it shows the date of the document, or at least the date of the offering circular, as being 1 March 2002?

A. Unfortunately it's all in English. I would love to be able to assist the court but the problem here is that it's all in English here. I can see the date here but I'm not sure I understand what it's all about, unfortunately.

Q. All right. So take it from me that the date of the circular is March 2002, okay?

A. I will take it from you. I trust you.

Q. Thank you, Mr Abramovich.

Can you go, please, back to page 79 H(A)44/79.

Now, at page 79 there is a heading, "Compensation and Share Ownership", and I will read that so that it can be translated for you, if I may:

"In 2000 Sibneft did not pay any of its Board of Directors any base salary bonuses and benefits in kind for acting as Directors of Sibneft. The total aggregate remuneration, including base salary, bonuses and

benefits in kind, paid or granted by Sibneft to certain Directors and members of the management board for management services in 2000 was approximately US\$200,000."

Okay? So the suggestion in the circular is that the aggregate amount of all payments made to directors, including bonuses, was \$200,000. Does that give you some assistance as to what Mr Shvidler's salary would have been, certainly in the year 2000?

A. Unfortunately it is of no help to me.

Q. Well, you'll have to explain why it's of no help because in a public document Sibneft has made clear that the total amount that it is paying all the directors -- and one would include Mr Shvidler in that -- was an aggregate amount of \$200,000. That suggests that his salary from Sibneft would have been fairly small, doesn't it?

A. Well, obviously the salary that was being paid to him was less than \$200,000; that much I can agree with.

Q. And that suggests that any wealth that Mr Shvidler will have accumulated was certainly not from a salary that he was paid by Sibneft, wouldn't it?

A. I really don't know what to say. What kind of assets are you talking about which were not a part of the salary? I'm not sure I understand the question.

Q. Well, the question is clear -- well, let me put it this way.

We've seen reports that suggests Mr Shvidler is worth many billions of dollars, with a chateau in France and property in England and elsewhere. Are you aware of the fact that Mr Shvidler is a very wealthy man?

A. Well, if you ask me, from my point of view this is a slight exaggeration on the part of the newspapers.

Q. Do you say that Mr Shvidler is not a very wealthy man?

A. Well, it's a rather bizarre description. It's really hard for me to say what is a wealthy person, what is not a wealthy person. Well, he's a rich person but I do not know to what extent he is satisfied with the income that he makes; that I don't know.

Q. Well, whatever his income, Mr Abramovich, what is clear is that he wouldn't have become wealthy on any basis from the salary that he was receiving from Sibneft; that is right, isn't it?

A. This is absolutely correct. In the year 2000 he simply did not have any of those assets or properties that you have just listed.

Q. So if he didn't make whatever money he has made from a salary in Sibneft and he did not have any stake in your businesses, can you explain how he came to make the substantial wealth that he has now made?

A. I have already mentioned that we had become partners, from a certain point of time we started investing money together, but also at the time when he was working in Sibneft he did not have that wealth that you are now referring to. Now, if you're asking whether or not he was my partner in Sibneft, the answer is: no, he was not my partner in Sibneft.

Q. It's right --

MRS JUSTICE GLOSTER: Just a second. Mr Abramovich, please could you tell me when Mr Shvidler became your business partner, roughly, the year?

A. I believe that it was in '03, maybe '04, maybe even later. I think Pharmstandard was the very first transaction that we did together but I wouldn't dare be very specific about this. I think it was when we were doing the Pharmstandard transaction.

MRS JUSTICE GLOSTER: And what is the percentage of your partnership or does it change depending on the transaction, the respective percentage interests of your partnership?

A. It changed depending on the company into which we were making our investments and depending on the transactions. We never had any ongoing partnership relationship. There were some projects into which we invested together, then there were other projects into

which we invested separately.

MRS JUSTICE GLOSTER: And was it as much as a 50/50 split in your business interests in some transactions, so far as he was concerned?

A. From what I recall, we never had a 50/50 split. Most probably not.

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: What was the split then, Mr Abramovich?

Let's take Pharmstandard. You mentioned a company called, I think, Pharmstandard. Can you just explain what that is?

A. It was a company that produced medication, medicines, for the Russian market.

Q. And what about a company called Chusovoy Metals Company: were you partners in that?

A. To be honest, I do not recall what the situation was with respect to Chusovoy. We only owned it for a very brief period of time. I think I was there alone actually. And also I think that our ownership interest there was really insignificant.

Q. And is it right that Mr Shvidler is the chairman of the board of directors of Millhouse LLC?

A. Yes.

Q. And this is right, isn't it: that Millhouse LLC is a company that you established in Russia in April 2006

which you use as an investment adviser?

A. Yes.

Q. You've mentioned so far, I think, just Pharmstandard. What other partnership interests do you say you either have or had with Mr Shvidler?

A. We have invested together into some real estate in Russia, if I recall correctly. Evraz as well, we also invested together into Evraz. I cannot recall anything apart from that off the cuff.

Q. Mr Shvidler has been assisting you in the conduct of this litigation; that's right, isn't it?

A. Yes.

Q. Can you explain in what way Mr Shvidler has been assisting you in the conduct of this litigation?

A. He is not assisting me; he's assisting the court by providing witness evidence.

Q. He's doing more than that, Mr Abramovich. He's assisting your team in the conduct of this litigation beyond just providing evidence; that's true, isn't it?

A. Well, maybe I misunderstood the term that you're using. So far as I understand, he is only providing witness evidence. So far as assistance in the litigation is concerned, I think Andrey De Cort is in charge of that.

Q. Let me show you a document which is at J4, tab 1.11, page 105 J4/1.11/105. If you look at paragraph 48

there, please. I'll just tell you what this document is: it's a skeleton argument that your counsel produced for a conjoined CMC -- that's a case management conference -- fairly recently. And if you look at the last sentence of paragraph 48 -- I'll just read this for you, then it can be translated:

"The final individual present..."

And he's referring to a note of a meeting where Mr Shvidler was present.

"The final individual present, Mr Shvidler, is an associate of Mr Abramovich and has been assisting in the Commercial Court Action."

Now, it's obvious from what is there said, Mr Abramovich, that they don't just mean that he's giving witness evidence. Do you follow?

- A. I'm trying -- I'm trying, I'm doing my best to understand what you're saying, but I'm not sure that I understand this exactly and fully.
- Q. Tell me this: have you discussed your evidence with Mr Shvidler?
- A. Yes.
- Q. And has he discussed the evidence that he is giving in this litigation with you?
- A. Could you kindly repeat the question?
- Q. Has he discussed the evidence that he is giving in this

litigation with you?

A. I have read his evidence.

Q. Mr Abramovich, that is not the question I asked you.

You told us that you had discussed the evidence that you are giving with him and my question to you was whether he had discussed the evidence that he's giving in this litigation with you.

A. I believe that this was a mutual discussion, possibly, if -- to the extent that I understand your question correctly. If you're asking me whether or not we agreed on our evidence, no, we did not agree on that. He has his evidence and I have my own evidence and there may be particular specific items on which I may disagree.

Q. But the two of you discussed the evidence that you were going to give; is that right?

A. Yes.

Q. Now, apart from Mr Shvidler, you have made clear in your evidence that you have, for a long time, had the same small team of people with you; correct?

A. Yes, that is correct.

Q. And these are people you say you know and trust and rely upon?

A. Yes, that is true.

Q. Can you tell us who are the individuals who make up the small team of people, please?

- A. I'm not sure I understand what you mean. Do you mean what kind of people they are, are they good people or bad people, or who they are by name?
- Q. Just -- if you could just identify them by name, please.
- A. Shvidler, Panchenko, Gorodilov, Tenenbaum. The majority of those people take part in these proceedings, but not all of them.
- Q. In fact I think all of those do take part in these proceedings, Mr Abramovich, the ones that you've listed.
- A. Yes, I listed those people who do take part in these proceedings. But whether or not these are all the people who are my friends and my partners, no, this is not an exhaustive list of my friends and partners.
- Q. Well, you say "friends and partners". Which of those people are your partners?
- A. Now, if I understand your question correctly, you're asking me who are the people who I invest together with. That includes Mr Shvidler and I think that Mr Gorodilov as well, but I'm not sure about the others.
- Q. My question to you, Mr Abramovich, was about the same small team of people that had been with you for a while, people who you say you know and trust and rely upon.

You've identified Ms Panchenko, Mr Tenenbaum, Mr Shvidler and Mr Gorodilov, all of whom are witnesses in this litigation. Is there no one else who you would

say is a part of your small team of people that you trust and rely upon?

- A. Well, the group of associates whom I trust and rely upon is larger than just those four or five people who are present here and those who are providing witness statements.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I think you've got to be a bit more specific as to the business context at which this question is directed.

MR RABINOWITZ: Let me ask it in this way: is Ms Khudyk not a person who has been with you for a long time and who you know and trust and rely upon?

- A. I know Ms Khudyk but, to be honest, prior to these proceedings I had seen her probably on six or maybe eight occasions. But I definitely do trust her.

Q. And there have been a number of names of witnesses from Chukotka who you may or may not be calling. Are any of those family members?

- A. Ruchina Ida is my cousin. She is my cousin.

Q. What about Mr Voloshin: is he someone you have known for a long time and trust?

- A. It is true. I've known him for a long time and I believe that he is a friend.

Q. And when preparing your pleaded case in these proceedings -- do you know what I mean by a "pleaded

case", your pleading? A defence? I'm just asking whether you know what I mean when I say "your pleaded case", "your defence": the document that you produced. Do you know what I'm referring to?

A. I'm not sure I understand your question fully. You've been referring to those papers. So what was the question: what papers I know?

Q. All I want to understand from you is this: do you know -- I was going to ask you a question about the position as it was when you prepared your pleaded case, your defence. Now, what I want to first ascertain is that you know what I'm referring to.

Do you know what I'm referring to when I talk about "your defence", your amended -- the defence in these proceedings?

A. Sorry, you mean the document that Paul Mitchard was preparing?

Q. Well, let me make sure that we're referring to the same document. Can you be given bundle A1 and go to tab 3, please A1/03/35.

This is what we refer to as the defence. This is the most recent version, but this is the document we refer to as your defence. Do you understand now what I'm referring to?

A. Yes, I understand. But unfortunately, because it's only

in English, from what I can see now, I cannot read it.

Q. That's not a problem at the moment, Mr Abramovich.

My question is this: when you were preparing your defence, your pleading in this action, were you assisted in your recollection by any of the members of your team? And I have in mind Ms Panchenko, Mr Tenenbaum, Mr Shvidler in particular.

A. The problem is that I cannot recognise this document.

I cannot answer your question. I cannot confirm this nor can I deny this. I simply do not know what this is.

Q. Well, Mr Abramovich, we have a problem that the only document that we have in this case, which is your defence, is the one in English. Now, it's one that, as I believe, you actually have signed. If you go to page 84 A1/03/84, you'll see that you have signed this document.

A. Yes, I can see that I have signed this document.

Q. So you have plainly seen this before?

A. I have seen this document, but I believe that it was in Russian and therefore at that time I felt more comfortable; or maybe it was a translation that I was happy with. But the way this document is shown to me now, I cannot recollect it.

Q. For the purposes of my question it doesn't matter whether you saw one in Russian or one in English because

my question to you was this: when you were preparing your defence in these proceedings, were you assisted in your recollection by any of the people who you've identified as being those closest to you, whom you trust?

A. Not so far as I can say, to the extent that I understand the substance of this document properly, but I cannot confirm this.

Q. Right. That's a rather convoluted answer to really what was a very simple question, Mr Abramovich.

The question is simply this: when you produced your defence, the written pleading, were you assisted by discussing the matter with the people who you say were closest to you and whom you trusted? I'm not asking you about any particular paragraph.

A. Most probably I have discussed this document with them. I'm trying to be of assistance but unfortunately I cannot tell you anything. Most probably we did discuss that. The question is: when was this document prepared?

Q. Well, whenever it was prepared, would you have been discussing it with your close team of advisers in their preparation?

A. With a -- yes, with a very high extent of probability, I would say.

- Q. And who do you say, with a very high extent of probability, you would have been discussing it with?
- A. I'm sure I discussed it with Shvidler and Tenenbaum but this is the way I feel about this: my problem really is that I don't know how to answer your question because I don't know what this document is about, what it says.
- Q. You've told us that you discussed your evidence in your witness statement with Mr Shvidler. Can you identify --
- A. (Untranslated)
- Q. Sorry, Mr Abramovich?
- MRS JUSTICE GLOSTER: What's the problem? Is there a problem with the loudspeaker?
- THE WITNESS: Unfortunately I did not hear that.
- MR RABINOWITZ: Let's start again. I thought you were trying to say something, but...
- MRS JUSTICE GLOSTER: Put the question again, Mr Rabinowitz.
- MR RABINOWITZ: You have explained to us that before producing your witness statement, you discussed your evidence with Mr Shvidler. Did you discuss your evidence also with Mr Tenenbaum?
- A. What I meant was my third witness statement and that I did discuss both with Mr Shvidler and with Mr Tenenbaum.
- Q. Did you, before producing that witness statement, discuss it with someone -- with people other than

Mr Shvidler and Mr Tenenbaum? Did you discuss it with Mr Gorodilov?

A. If you mean the third witness statement, then there is a high probability that I did.

Q. And did you discuss it -- and I do mean the third witness statement -- also with Ms Panchenko?

A. I don't think so.

Q. And you tell us you discussed what you were putting in your witness statement with those, I think, three individuals. Did they discuss with you what they were going to be saying in their witness statements as well?

A. What they were going to put into their evidence statement is not something that they discussed with me, but I did read their witness statements.

Q. So you say you discussed with them what you were going to put into theirs (sic), but they didn't discuss with you what they were going to put into their own statements?

MRS JUSTICE GLOSTER: No, it's the other way round, I think, Mr Rabinowitz.

MR RABINOWITZ: Sorry. They discussed with you what you were going to put into your statement, but they didn't discuss with you what they were going to put into their statements?

A. Could you kindly repeat your question, please?

- Q. They discussed with you what you were going to put into your statement, but they didn't discuss with you what they were going to put into their statements?
- A. We discussed the situation on the whole, in general. I cannot say that we went into the details of the witness statements or anything. I don't really know what to say in response to your question.
- Q. Just give us a straight answer, if you would, Mr Abramovich. You've told us that they discussed with you what you were going to put into your statement. I'm asking whether you also discussed with them what they were going to be putting into their statements, and the answer to that is either, "Yes, we did discuss that", or, "No, we didn't".
- A. We have never discussed who will say what in his or her witness statement. This is my answer.
- Q. Now, presumably you have spent some time preparing to come and give evidence in court today; is that right?
- A. Yes, that is right.
- Q. And have you been assisted by anyone in preparing the evidence that you're going to be giving today?
- A. Yes. I have been assisted, yes.
- Q. I'm not asking you about the lawyers from Skadden who are involved in this, but would you identify for us who else has assisted you in terms of preparing to give

evidence today?

A. There is a specialised company, Bond Solo or something like that.

MRS JUSTICE GLOSTER: What do they do?

MR RABINOWITZ: What do they do, Mr Abramovich? I think they're called Bond Solon.

A. They told us that you need to breathe slowly, that you have to look at the judge, there is a certain etiquette that you have to comply with. That's -- on the whole that's what they taught us.

MRS JUSTICE GLOSTER: Apart from that, I think the question that Mr Rabinowitz is putting to you is: amongst your own team, did someone help you prepare for giving evidence in court?

A. No.

MR RABINOWITZ: Are you sure about that, Mr Abramovich?

A. If I understood your question correctly, then yes, I am sure.

Q. But just so we're sure that you did understand the question correctly, in terms of preparing to come and be giving evidence today -- leave aside Bond Solon, who don't deal with the substance -- the question is: did anyone else, part of your team, assist you in preparing to come and give evidence today?

A. No.

Q. Very well. I want to turn next to deal with the substance of the Sibneft claim with you.

Our case, as you know, is that discussions leading to the 1995 agreement between you and Mr Berezovsky, and then between you, Mr Berezovsky and Mr Patarkatsishvili, began in 1994 and continued until shortly before the decree creating Sibneft in 1995.

Now, I know we will disagree on the substance of what was agreed between the three of you, but do you agree with the timing?

A. Could I ask you to repeat that question? It's a very long question and I'm not sure that I understood everything.

MRS JUSTICE GLOSTER: Mr Rabinowitz, you're going to have to put specific timings or at least ballpark timings to the witness if you want him to agree with "the timing".

MR RABINOWITZ: Very well.

There were discussions between you, Mr Berezovsky and Mr Patarkatsishvili beginning in December 1994; is that correct?

A. No, this is not correct.

Q. Let me just put the other part of the question to you: and those discussions continued until shortly before the decree creating Sibneft in August 1995; is that correct?

A. This is not correct.

- Q. When do you say the agreement was reached between you and Mr Berezovsky in relation to the plan with respect to Sibneft?
- A. If the name Patarkatsishvili does not appear in your question, then the answer is that the agreement was reached I believe in February 1995.
- Q. Now, just so you know what we say, we say the agreement reached over the period, finally arrived at in August 1995, was to the effect that the three of you, as partners, would work together to bring about the creation of and then to acquire ownership and control of Sibneft, and you dispute that, I think.
- A. What you're saying is wrong.
- Q. I just want to tell you what our case is and to get your response to it. Okay?
- Now, our case is that you would each have certain roles. You were going to coordinate contacts in the oil industry and would manage Sibneft following the acquisition of control. Do you agree that that was to be your role?
- A. No, I do not agree with that.
- Q. And we say that Mr Berezovsky would be responsible for lobbying and he and Mr Patarkatsishvili would secure access to necessary funds as well as leading commercial negotiations with key business counterparties, such as

Omsk Oil Refinery and Noyabrskneftegas. Do you agree with that or do you disagree with that?

A. I do not agree with that.

Q. Do you also not agree that you all concluded a legally binding agreement under which Mr Berezovsky and Mr Patarkatsishvili would receive 50 per cent of the benefit of acquiring Sibneft, both 50 per cent of the ownership interest and 50 per cent of any profits generated as a result of acquiring ownership and control of the company?

A. I -- forgive me, could you please split your question up into smaller parts? I'm not sure I understood everything.

MRS JUSTICE GLOSTER: There's a double negative: that may be the problem, Mr Rabinowitz.

MR RABINOWITZ: Do you agree that you concluded a legally binding agreement with Mr Berezovsky and Mr Patarkatsishvili under which Mr Berezovsky and Mr Patarkatsishvili would receive 50 per cent of the benefit of acquiring Sibneft?

A. No, I do not agree with that.

Q. And I'll explain that "50 per cent of the benefit of acquiring Sibneft" would include both 50 per cent of the ownership interest and 50 per cent of any profits generated as a result of acquiring ownership and control

of the company. Do you agree with that?

A. I disagree with that.

Q. Am I right that you also disagree that there was an agreement that you would offer Mr Berezovsky and Mr Patarkatsishvili, and they would offer you, the opportunity to participate in any future businesses on the same terms?

A. I disagree with that as well.

Q. We say there was such an agreement. But you say that the 1995 agreement, whatever it was, was entirely limited to Sibneft; is that right?

A. The '95 agreement was limited only to Sibneft and to the money that we had discussed. We did not take -- discuss any ownership interests or participatory interests, much less with Mr Patarkatsishvili because he did not attend, he was not around.

Q. Now, what I would like to do next, Mr Abramovich, is to try and understand how much of the two cases -- that's to say Mr Berezovsky's case and your case -- are common ground. I'm going to put a series of points to you and then ask you to comment. Okay?

Now, Mr Sumption in opening said this, these were his words:

"Mr Berezovsky says repeatedly in his witness statement that without particular influence over

President Yeltsin, Mr Abramovich would have got nowhere in the world of Russian business and would certainly not have acquired control of Sibneft. We accept [said Mr Sumption] that that was so."

Now, Mr Sumption was speaking as your advocate and so I imagine that you will agree that without Mr Berezovsky you would not have acquired control of Sibneft?

A. I agree with this statement.

Q. And is it also your case, as Mr Sumption suggested in opening, that without access to someone who is politically influential, like Mr Berezovsky, "nobody could acquire or build up a... business in Russia in the 1990s"? That is what he said. Do you agree with that?

A. Well, this is a slight exaggeration but I would agree with this in part only.

Q. What part do you agree with, first?

A. Let me say what I disagree with. You said that, "Only Mr Berezovsky" -- or at least the interpreter said that, "Only Mr Berezovsky could", and so on and so forth. So this is the part with which I disagree.

Q. In fact that may have been a slight mistranslation.

The point that Mr Sumption had made in opening was that without access to someone who was politically influential, like Mr Berezovsky, "nobody could acquire

or build up a... business in Russia in the 1990s"?

Do you agree with that?

- A. On the whole I would agree with that. But I did not need Mr Berezovsky to gain access to the business, in order to build up a large piece of business. Yes, he was very useful for that.
- Q. It's your case, isn't it, that Mr Berezovsky did help you with Sibneft? I think we've established that.
- A. I absolutely agree with that, yes.
- Q. But not, I think you say, with any other businesses?
- A. I do not agree with other businesses, so far as other businesses are concerned.
- Q. When you say -- well, the translation is that you "do not agree with other businesses". The point is that Mr Berezovsky, you say, wasn't helping you with other businesses; is that right?
- A. He only helped me with Sibneft.
- Q. Do you say you paid for access to someone like Mr Berezovsky to assist you with any other business that you were conducting in the 1990s?
- A. No, I'm not saying this.
- Q. So it follows then that it's your evidence also that you could not and did not build up any other substantial businesses in Russia in the 1990s; that's right, isn't it?

A. This is a very relative thing, serious, large business. Our business was a serious business. Compared with Sibneft it was not very significant, but it was a significant piece of business.

Q. Mr Sumption also described as common ground that you agreed in 1995 that Mr Berezovsky would lobby to enable you to gain control of Sibneft and that once you had control of Sibneft, you would be responsible for managing Sibneft.

A. Forgive me. Could you repeat your question, please?

Q. Well, Mr Sumption described it as common ground that you agreed in 1995 that Mr Berezovsky would lobby to enable you to gain control of Sibneft and that once you had control, you would be responsible for managing Sibneft. That's what Mr Sumption said was common ground and I take it you agree with what Mr Sumption says there?

A. Yes, I agree.

Q. Mr Sumption also told the court that -- and these are his words:

"As Sibneft prospered and Mr Abramovich was in a position to pay more, Mr Berezovsky demanded more."

Is that your evidence?

A. Yes, this is my evidence.

Q. Mr Sumption also referred in this regard -- that is to say in regard to your paying Mr Berezovsky as a result

of what you say were his increasing demands -- to ongoing discussions leading to periodic agreements as to how much you would pay.

Again, is that your evidence as well?

A. I'm sorry, could you split it up into smaller questions?

It's very difficult for me to follow your train of thought.

Q. Well, let's see if I can. This is what Mr Sumption said to the court, okay? I'm trying to understand whether you agree with what he told the court your case was.

What Mr Sumption said was that as a result of -- that the way in which one arrived at you paying Mr Berezovsky ever greater amounts, as you say, because of his ever greater demands, was following ongoing discussions leading to periodic payments. Is that what you say happened?

A. Yes, that is true.

Q. Mr Sumption also told the court that in 1995 Mr Berezovsky did give a personal assurance to Mr Smolensky that SBS would be repaid. Mr Sumption said that he accepted that that is what happened and I just want you to say whether you agree with what Mr Sumption said about that.

A. I agree with that.

Q. Mr Sumption also told the court -- and these were his

words -- that:

"... there are legitimate issues about the fairness of Russian criminal proceedings in cases involving high-profile political figures."

Do you accept that that is accurate?

- A. I honestly do not have any view on that, but that is possible.
- Q. Do you accept that Mr Berezovsky could not expect to get a fair trial in Russia and that that has been the position since, at the latest, 2000? Sorry, at the latest, late 2000.
- A. I disagree with that.
- Q. You say that Mr Berezovsky could have got a fair trial in Russia, do you?
- A. The way I see it, Mr Berezovsky could have got a fair trial in the Russian Federation, in the Russian court.
- Q. Very well.

Now, just moving on from those points, Mr Sumption also identified in his written opening three "compelling reasons", he said, why the 1995 agreement "[could] not have involved an interest in Sibneft or its profits". Do you recall Mr Sumption identifying three compelling reasons why he said the 1995 agreement could not have involved an interest in Sibneft or its profits?

MRS JUSTICE GLOSTER: Well, it's not a memory test,

Mr Rabinowitz. Put them to him, please.

MR RABINOWITZ: Well, let me identify the first of those reasons.

The first reason identified by Mr Sumption was that he said Mr Berezovsky's case was:

"... not consistent with the way in which, between 1995 and 1997, the shares in Sibneft were actually acquired."

Do you recall that?

A. Yes, I recall that.

Q. And in particular Mr Sumption suggested to the court that -- and this is what he said:

"... Mr Abramovich acquired Sibneft with his own funds..."

Is that your evidence?

A. Yes, it is.

Q. Mr Sumption also contended that:

"The critical point about the loans for shares auction [was] that the successful [bid]..."

And these were his words:

"... would not acquire any Sibneft shares at all either immediately or in the event of a default."

In fact, he went so far as to tell the court that success in the loans for shares auction was "completely irrelevant to the question of title of the company

shares". Do you remember that?

A. Once again, could you repeat your last question, please?

Q. I just want to know -- I'll tell you what Mr Sumption said. Mr Sumption said that success in the loan for shares auction was "completely irrelevant to the question of title to the company shares". Okay?

A. I agree with that.

Q. And Mr Sumption also said that your only interest -- your only interest -- in the creation of Sibneft and in winning the loan for shares auction was so that -- and these were his words:

"... any shares that [you] might buy in [Sibneft] at stages two and three would greatly increase in value."

Is that your evidence as well?

A. Unfortunately, what is it that is increasing in value? Please could you clarify?

MR SUMPTION: My Lady, it may be that stage two and stage three need to be explained to the witness, unless he has a complete recall of my every word. Let me see if I can help --

MR RABINOWITZ: Stage one was acquiring control of management in the December 1995 auction. Okay? Stage two was acquiring shares in Sibneft as the state sold off that part of the company which was not the subject of the December 1995 auction. And stage three

was acquiring the shares which were auctioned following the State's default in not paying back the loan.

MR SUMPTION: I'm sorry to intervene but describing shares as "the subject of the... 1995 auction" is begging a substantial question. It may be more intelligible if my learned friend spoke in terms of 49 per cent or 51 per cent, which would at least identify the shares he's asking about.

MRS JUSTICE GLOSTER: Well, what I'm going to do, Mr Rabinowitz, is I'm going to take the break for ten minutes and perhaps you could come back to the question after the break.

Mr Abramovich, please don't discuss your evidence with anybody. I won't say this every time now, but you mustn't discuss the evidence or the case with any of your team or anyone else.

Okay. Ten minutes.

(3.08 pm)

(A short break)

(3.22 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, I asked you a question which involved reference to various stages and I've been asked to clarify what I meant by those stages. What I'm going to do is identify by reference to what Mr Sumption said

in his written opening what stage one and stage two and stage three were and then I'll ask the question again.

Do you follow?

A. Yes. Yes, I do.

Q. Very good.

"The first stage was..."

And I'm using Mr Sumption's word. This is in the transcript, N1, tab 2, at page 16:

"The first stage was the loans for shares auction in December 1995."

Okay?

A. Yes, there was such a stage.

Q. "Stage two was the sale..."

And these again are Mr Sumption's words:

"... again by auction, of the remaining 49 per cent, the minority holding which the State sold off to private investors."

A. Yes, I would in fact split the second stage into three.

There were three auctions: one was a special cash auction and two investment auctions.

Q. Very well. "Stage three", said Mr Sumption:

"... was after the State defaulted at... the end of 1996, that event triggered the right of sale of the 51 per cent."

And, as Mr Sumption explained:

"The auction of those shares occurred in May 1997."

So that is stage three.

A. Yes.

Q. What Mr Sumption told the court in opening, what he said was this: that your only interest in the creation of Sibneft and in winning the loan for shares auction was, and these were his words, so that:

"... any shares that [you] might buy in [Sibneft] at stages two and three would greatly increase in value."

Is that your evidence as well?

MR SUMPTION: My Lady, that was not, with great respect, what I said and it may well be sensible for my learned friend to put his question without reference to quoting me.

MR RABINOWITZ: Day 2, page 28, line 8.

MR SUMPTION: What I said was that that was the result.

MRS JUSTICE GLOSTER: Well, I'm going to look at the transcript, Mr Sumption.

MR RABINOWITZ: "He wanted [to buy them] because he wanted to" --

MRS JUSTICE GLOSTER: No let me look at the transcript, please, Mr Rabinowitz. Day 2, page...?

MR RABINOWITZ: Page 28, lines 6 to 8.

MRS JUSTICE GLOSTER: Right. Well, put the question by reference is to what Mr Sumption said in the transcript.

MR SUMPTION: Mr Sumption said that you wanted to buy -- you wanted Sibneft to be created because:

"... [you] wanted to amalgamate the two businesses and build up the company, with the result that any shares that [you] might buy in it at stages two and three would greatly increase in value."

Is that your evidence or not?

A. No, if the question is whether on the first stage I knew that the shares would be much more valuable later, no, I didn't know that.

MRS JUSTICE GLOSTER: Right. Can I put the question, please. The question I think that you're being asked is: do you agree with the following statement of your case by Mr Sumption? Mr Sumption said:

"What Mr Abramovich wanted was management control. He wanted that because he wanted to amalgamate the two businesses and build up the company, with the result that any shares that he [Mr Abramovich] might buy in it at stages two and three would greatly increase in value."

Is that your case and your evidence?

A. This reflects my case. The point is that we have sort of compressed the time. If we talk about '95 and '96, then we didn't discuss the value and the price of shares at that time; it was pointless. We talked only about

management control.

If we are now discussing later years, the year 2000 et cetera, then one can talk about the value of shares or price of shares. Prior to that, Sibneft was not being traded, therefore the shares were valueless.

MRS JUSTICE GLOSTER: Okay. Answer my question, please: why did you want management control of Sibneft?

A. That gave me access to oil flows, crude oil flows and oil product flows that Sibneft produced. If I may, I'll explain. My business was trading and logistics of crude oil and oil products. The volumes that Sibneft provided for me once Sibneft was set up increased greatly. This was not the only business for me but was a very significant business for me and I needed management control over it.

MRS JUSTICE GLOSTER: Thank you. Yes, Mr Rabinowitz.

MR RABINOWITZ: Now, you accept -- I want to go back to when you first met with Mr Berezovsky, if I may.

You accept, I think, that you met Mr Berezovsky for the first time at the end of 1994; is that right?

A. We met at the end of '94; yes, you're right.

Q. And it's also correct, is it not, that at the time you met Mr Berezovsky you had had a number of businesses in various industries in various countries?

A. Yes, that is correct.

- Q. But you were not at that stage, were you, a well-established business figure in Russia?
- A. I was not a well-established, well-known business figure at that stage. That doesn't reflect whether I had a big business or a small business; it's just that I created little noise around myself.
- Q. And I think it's your evidence, is it not, that you founded your first petroleum trading companies between 1991 and 1996?
- A. Yes, that is so, but I think closer to '91 than to '96.
- Q. Can we just look at paragraph 6 of your third witness statement. E1, tab 3, page 36 E1/03/36. Sorry, in the Russian you should go to page 136 E1/03/136.
- At paragraph 6 of your witness statement, Mr Abramovich, you refer to a small business, it's a Russian MP, called AVK. Do you see that?
- A. Yes, I can see that.
- Q. What you don't mention about this business, AVK, is that you had some difficulties with the law in relation to AVK, didn't you?
- A. No, you are mistaken.
- Q. Right. Can I hand up, please, a document to you in Russian, together with an English translation of that document. (Handed)
- MRS JUSTICE GLOSTER: Is this on the website?

MR RABINOWITZ: No, it's not. It will be put on to the website. Your Ladyship will be given a hole-punched hard copy.

MRS JUSTICE GLOSTER: Could I have a hard copy, please. Excuse me. Could I have a hard copy of this document, please. (Handed)

MR RABINOWITZ: You should, I hope, have, Mr Abramovich, a document in Russian -- everyone else is seeing a translation -- headed "Order". You can see it's dated 9 June 1992. Do you see that it is an order for the instigation of criminal proceedings? Do you see that? "Order for the Instigation of Criminal Proceedings and Completion of Processing"; do you see that?

A. Yes, I can see that.

Q. And it is signed by, at the bottom, Senior Investigator Gorbik SV. That's a senior investigator for particularly serious offences. Do you see that at the bottom?

A. Yes, I can see that.

Q. Do read, please, if you would, what Senior Investigator Gorbik says, having considered the file. He has ruled as follows, that:

"Abramovich RA, working as director of the small company ABK... for the purpose of procuring a financial gain on a particularly large scale by means of fraud

through concerted agreements with unidentified officials of Ukhta Oil Refinery... and the external trading company AVEKS-Komi... under fake certificate 5 of 28 February 1992 and other deliberately forged documents of ABK, received at the station Podmoskovnaya Moscow Commercial Station... [3 million kilograms] of diesel fuel for a total value of 3,799,388... roubles in five railway cisterns, coming from Ukhta Oil Refinery, under fake agreement... of 14 February 1992, which he emptied and appropriated."

And he says:

"In light of the availing evidence indicating the perpetration of the offence and on the basis of [certain] articles... of the Criminal Code... [he orders the following]:

"1. To instigate criminal proceedings under Article 93-1 of the Russian Criminal Code."

And it appears against you, Mr Abramovich. Do you see that?

Now, can I now hand up a further document, again in Russian and English, this time dated 19 June 1992.

(Handed)

This time this is a remand order made against you, Mr Abramovich, an order for "detention and remand measures to be taken against the suspect", and you are

the suspect in question. Do you see that?

Mr Abramovich, you need to say "da" or "yes" because a nod doesn't come up on the transcript.

A. Yes.

Q. And this is issued not by an investigator but by Senior State Judicial Officer Second Class GS Ponomarev. Do you see that?

And at the bottom of the page you will see that this order for your detention, and I'm reading here, is:

"... in view of the seriousness of the offence of which he..."

That's you Mr Abramovich.

"... is suspected and also the fact that [you] may attempt to escape and prevent the instigation of the indictment of the proceedings."

Now, you said you didn't have any trouble with the law in relation to AVK. Would you like to comment on these two documents?

A. If you may, I will comment -- if I may, I will comment.

Yes, indeed. Indeed the investigator thought that something had disappeared. Indeed, at that time, in '92, there were problems with the banking system. The consignment was not mine; my company was dealing with logistics. At the time when the refinery discovered it, that they haven't got the money yet, and whilst I was

under arrest, they received the money. I was released and there were no problems. This was an incident -- a coincidence. The only person in Moscow who got caught in this was myself.

Q. Mr Abramovich --

A. There was no hearing. The criminal case was dropped because of no crime.

Q. Mr Abramovich, do you see that one of the things that it appears you have been accused of at this stage, certainly at the stage of these documents, was involvement with the creation of fake documents, fake certificates and other deliberately forged documents?

Can I ask you this: would you accept that the production of fake documents is a wrong thing to do?

A. I agree that it is a very bad thing to do. The thing is that I have not falsified any documents. By the time the money had arrived, the problem disappeared all by itself. And then there was an expert analysis undertaken and it turned out that the power of attorney was not false; it was true.

Q. I just want to be clear about that. Are you saying that neither you nor anyone within your close and trusted group working at Sibneft and Runicom has ever created a fake document?

A. None of my people close to me has ever faked a document.

- Q. Right. Can we just go back to your witness statement. You mentioned, going back to paragraph 6, a company called Unicom in Romania. It's actually in a footnote, footnote 3. Do you see that, Unicom in Romania?
- A. May I -- may I make a little correction? If backdating documents is something that's not very ethical, then perhaps we can be accused of that.
- Q. So you're now qualifying your previous answer: you now are saying it may be that backdating documents is something you do or have done; is that right?
- A. This practice existed in Russia and for sure we must have done it.
- Q. I just want to be even clearer about this, Mr Abramovich. Are you accepting that this is something you have done in the context of the documents that we're going to be looking at in this case?
- A. In the course of this case we say that certain documents have been signed two days earlier or not. So this answers your question and I confirm it.
- Q. And you were aware of this?
- A. Yes, I was.
- Q. We'll come on to those in due course, Mr Abramovich.

Now, we were looking at your witness statement and we were looking at paragraph 6 and footnote 3 to paragraph 6. You mention there a company called Unicom

(Romania). Do you see footnote 3?

A. Yes.

Q. Can you tell the court, please, the industry in which this company was active?

A. To be honest, I don't remember. Perhaps petrochemicals.

Q. You managed to remember it enough to put it in your witness statement, but you say you have no idea what it did?

A. I remember the name of the company but I don't remember what specifically it was involved in. I seem to remember it was dealing with petrochemical industry.

Q. Can you tell us whether this was the only company you were involved with in Romania?

A. I think there were two companies but I don't remember what the second one was called.

Q. Now, we've just been looking at a company called Unicom in Romania. What about a company called Unicom Transit Limited: where was that based? Do you remember?

A. I think Unicom Transit Limited did not belong to me. I don't recall this name.

Q. What about a company called Unicom Management Services in Cyprus: is that one of yours?

A. I don't think so.

Q. Is there a company called Unicem in Switzerland? Do you remember that? I should tell you that's in your witness

statement.

A. It was called Unicem and it was involved in cement.

Q. Thank you very much. A company called Unicon Consulting: was that one of yours? With a N rather than a M.

A. No.

Q. Can I just ask you, please, if you could go to bundle H(F)1 at page 27 H(F)1/27. Just so you know what this is, Mr Abramovich, it's part of a file that was disclosed by you of documents you had received from Mr Jacobson, previously of Curtis & Co, this weekend. So he disclosed it this weekend and it's part of the Curtis & Co file.

At H(F)1, page 27, we have a record that Mr Curtis made of a meeting which it appears that you and Mr Shvidler had with Mr Curtis in Moscow in May or June 1995.

Let me just stop there so that the translator can catch up.

A. What is the question, please?

Q. I haven't yet asked a question. I'm just trying to explain to you what the document is.

We can see that this is a meeting with you, Mr Abramovich: if you look at the top left-hand corner of the document, you will see "Roman" and "Eugene". Do

you see that?

A. Yes, I can see that.

Q. And if you go to, in the same file, page 14 H(F)1/14, at page 14 there is a letter to Mr Shvidler from Stephen Curtis dated 7 June, and these are all 1995 documents. He refers to a meeting he had with -- so this is Mr Curtis referring to a meeting that he'd had with Mr Shvidler and you in Moscow. Do you see that? That helps us date the document that we have at page 27.

Can you go back to the document at page 27, please H(F)1/27. Can I read, if you're there, so that you can have it translated, what this appears to say:

"Meeting -- Moscow Tuesday.

"Roman.

"Eugene.

"Matters for discussion/action.

"Lockheed -- discussion with Charles Lloyd [and] Larry Whitfield re owners of Channel 1 Russia."

There's a reference to Mr Berezovsky. And then it says:

"Mig spare parts/tanks -- discuss Sheikh Mohammed."

And then I can't make out the words immediately below that. There's a reference to someone called Khalid. "Spare parts" and then it says:

"Possible interest.

"UAE.

"Fujerah (?)"

Which, as I understand, is in the UAE:

"Angola."

And then on the left-hand side do you see:

"Tank prices -- \$4 [million] -- get [something] less."

Then below that:

"Weapons generally.

"Brazilians -- wanted to buy tanks."

Were you engaged in weapons trading in 1995,

Mr Abramovich?

A. I was never involved in arms trading. In the Russian Federation, arms trade is the prerogative of the State and the State alone. If I understand -- if I remember the meeting correctly, Mr Curtis said that he had clients that were interested in that, whereas we traded petrochemicals and other products.

Q. Well, why would he have raised this with you unless he thought that this would have been of interest to you, Mr Abramovich?

A. It's difficult for me to guess. The tank plant is in Omsk, close or nearby our refinery; perhaps we discussed it because of this vicinity. Perhaps there's also an aviation plant there, so perhaps we were discussing

engines as well.

- Q. Now, can I just check this: you were, at the time you met Mr Berezovsky, obviously not yet a politician, were you? That came later?
- A. Is this a question? You're asking me whether I was a politician? I was not a politician.
- Q. And it's also right -- I think it follows from answers you gave earlier -- you weren't an academic; you didn't have any higher education qualifications? That's right?
- A. When I met Mr Berezovsky it is true that I did not have a higher education diploma nor was I an academic.
- Q. It's also right, isn't it, that at the time you met Mr Berezovsky at the end of 1994, you didn't then have control of State assets, for example the Noyabrskneftegas plant or the Omsk Oil Refinery?
- A. The State was in control of Omsk Oil Refinery and Noyabrskneftegas plant. Of course I could not have been in control of that.
- Q. In fact, towards the end of 1994 you were predominantly an oil trader, albeit a moderately -- a successful one; is that right?
- A. Our principal business was not crude oil but oil products beside that: timber, sugar, foodstuffs, all kinds of products. But our main business was petrochemicals and oil products.

- Q. And what you had been successful in doing -- this is right, is it not -- is that you had bought these oil products in Russia and sold them on the world market, benefiting from the price differential between the Russian price of the oil product and the world market levels?
- A. This is a simplified reflection. In fact we were refining these products in other countries, we were generating power, we're selling power, getting other products and selling those. But if you simplify them, yes, you're right.
- Q. Do you say that you conducted this business in this way without any krysha, whatever that means?
- A. I insist that we conducted this business without any krysha, whatever that word may mean.
- Q. At this time, in 1994, you realised, of course, that if you could get more oil products, perhaps an exclusive contract with a company like Omsk Refinery or Noyabrskneftegas, then you could make even more money for yourself in this way?
- A. If you could, could you repeat the question, please? What do you mean by "exclusive contract"? I didn't quite get that.
- Q. An exclusive contract means that the only person to whom they would supply the oil products would be you; they

wouldn't supply them to anyone else.

Do you want me to repeat the question?

A. If I got an exclusive contract, would I earn more money?

Of course I would earn more money. There's no question about that.

Q. And even if you didn't get an exclusive contract, as long as you had more oil products from, for example, oil refinery or Noyabrskneftegas, you would make more money?

A. At that time the products we got from Omsk Refinery amounted to 15 per cent of our turnover. But if I got an exclusive contract, of course I'd earn more.

Q. Now, I want to ask you about the idea to create a vertically integrated oil company such as that which Sibneft became, involving both a production company and an oil refinery. Okay?

A. Okay.

Q. Mr Abramovich, you don't claim, do you, to have been the first person to have thought about this idea to have a vertically integrated oil company; that is to say a company where the entity that produces the oil is integrated with an entity that refines the oil produced by the oil production company?

A. No, I do not say that. I think Rockefeller was the first to come up with that idea.

Q. And again, correct me if I'm wrong, but you don't even

claim, do you, that the idea of combining Noyabrskneftegas and Omsk refinery into a vertically integrated company, really this Sibneft idea, was yours either?

A. I think it was my idea.

Q. You think it was your idea.

Mr Abramovich, the truth of this is, isn't it, that the idea of creating a vertically integrated oil company was not yours at all? Do you dispute that?

A. Yes, I dispute that.

Q. This was an idea that was brought to your attention after you'd attended a meeting in October 1994 with an assistant to the general director of Noyabrskneftegas, I think the director general there was Mr Viktor Gorodilov, and that person told you about a disagreement between the management of Noyabrskneftegas and the management of Omsk Oil Refinery concerning the creation of a new oil company. Do you dispute that?

A. To be honest, again, I didn't quite catch the question.

Q. The point is this. You say it was your idea to have a vertically integrated oil company, correct, between Omsk and Noyabrskneftegas?

A. It was my idea to integrate Noyabrskneftegas and Omsk, yes.

Q. And I'm suggesting it wasn't your idea at all; it was an

idea that was brought to you at a meeting that you attended in October 1994 with an assistant who had been sent by the general director of Noyabrskneftegas, who told you about a disagreement between the management of Noyabrskneftegas and the management of Omsk Oil Refinery concerning the creation of a new oil company. Do you dispute that?

A. Yes, I do dispute it. I don't think you quite understand what you're talking about. The idea -- the thing is that the idea to create vertically integrated oil companies of course was not mine. And I did know that Omsk and Noyabrskneftegas were at loggerheads; I'd been working with Omsk for a while and I had visited Noyabrsk. The idea to join these two companies was my idea because the initial idea of director general of Noyabrskneftegas, Viktor Gorodilov, was to create a vertically integrated company together with Surgut and we agreed to create it together with Omsk.

Q. Let's have a look at your witness statement together, if we can. Can you go to paragraph 48 of your third witness statement. It's at page E1, tab 3, page 47 in English E1/03/47 and page 147 E1/03/147 of the Russian. You say:

"By mid 1994, Petroltrans had already been the main oil products supplier to the Republic of Moldova,

therefore, I became very interested when in October 1994 Mr... Cherniy, a Minister of the Republic of Moldova and the head of the State Committee for Oil Products, contacted me, asking to meet with Mr... Poltorak, who was then an assistant to the General Director of Noyabrskneftegas. At the end of October 1994, we had a meeting in the Moscow office of Petroltrans which was also attended by Ms... Polyakova, head of the Representative Office of the Republic of Moldova and Mr E Ya Poltorak. I understood that there was disagreement between the management of Noyabrskneftegaz and the management of the Omks Oil Refinery as to the creation of a new company and that generally these companies were not managed in a sufficiently efficient [way]."

And what is clear from that, Mr Abramovich, is that what you're saying is that there had been discussion and disagreement between the management of Noyabrskneftegas and the management of Omsk Oil Refinery about the creation of a new oil company, and that is what you claim to be your own idea: the creation of a new company involving these two entities.

- A. With the participation of these two entities there has not been a discussion about creating a vertically integrated companies before we met there. Once again,

I repeat: Noyabrskneftegas wanted to join forces with Surgut and they did discuss it.

- Q. You see, the difficulty about that answer, Mr Abramovich, is what you say in the last sentence of paragraph 48. Because what you say, following reference to this discussion, is to say:

"... I agreed to deal with the issue of creating a new oil company formed from Omsk Oil Refinery and Noyabrskneftegaz."

Which is precisely the idea that is referred to at this meeting in October 1994. It's plain that you are talking about the same company being created from the same two entities.

- A. At this meeting I proposed this idea. This is what I'm trying to explain to you.

- Q. The problem about that, Mr Abramovich, is that's not what you say in your witness statement. It's clear from your witness statement that they had been discussing the creation of a new oil company, the management of these two companies, from Noyabrskneftegas and Omsk Oil Refinery, and what you are saying in your witness statement -- which is completely different from what you're telling the court now -- is that they asked you to help with this and that you agreed to do it. That is what you say at the end of the paragraph.

A. My feeling is that I'm saying exactly the same. Maybe I'm not -- I can't sense the problem because it's all being translated and interpreted, but I think I am actually stating exactly the same thing.

Q. With respect, Mr Abramovich, you're plainly not.

MRS JUSTICE GLOSTER: Well, that's a matter for comment.

MR RABINOWITZ: Can we look at another document. Can you please go to H(C)8, page 111T in translation, page 111 in the Russian H(C)8/111T.

Again, Mr Abramovich, just so that you know what this is, if you go back a page to 110, you'll see that this is the minute of an interview conducted by the Russian authorities with Mr Viktor Gorodilov.

Can you just tell us: Mr Viktor Gorodilov was in 1995 the general director of Noyabrskneftegas; is that right?

A. Yes, that is so.

Q. And if you go back to page 111, you can see that just before he is asked questions, there is -- you can see this in bold, two-thirds of the way down -- Mr Gorodilov had his rights and duties as a witness explained to him, including, as you see in this paragraph, the fact that it was a criminal offence to give knowingly false testimony. Do you see that?

A. Yes, I can see that.

Q. If you look at the bottom of page 111, Mr Viktor Gorodilov is asked this:

"Question by investigator: Would you describe how Siberian Oil Company..."

Which is Sibneft.

"... was created? How were you, Boris Berezovsky, Mr Patarkatsishvili, Roman Abramovich and your son, Andrei Gorodilov, involved in this? What contribution did SBS-Agro Bank (formerly known as Stolichny Bank Sberezheniy) make to the financing of the purchase of Sibneft shares?"

And this is his answer:

"Sibneft was formed on general terms. It took a long time to establish this company. I initiated the creation of this company. The goal pursued in creating Sibneft was the optimum organisation of a number of interconnected oil companies."

Do you see that? Can you say "da", please.

A. Yes.

Q. Only if the answer is "da", obviously.

And then if you go to page 112 H(C)8/112T, Mr Gorodilov gives the Russian authorities some information about your involvement, Mr Abramovich, in the creation of Sibneft. Just looking at page 112, about 13 lines from the end of the page on the English

version, you see he says:

"I am not aware of the role that Roman Abramovich and [Mr] Patarkatsishvili played in the formation of Sibneft. I think that Abramovich appeared at Sibneft later."

Do you see that?

A. Yes, I can see the words.

Q. And Mr Gorodilov, as you've told us, is the director general of Noyabrskneftegas. What he says here is hardly consistent with it being your initiative, is it?

A. What Mr Gorodilov says here does not correspond to my evidence. I can see that.

Q. Now, it's right, is it not, that the top management of Omsk Oil Refinery and Noyabrskneftegas were the so-called "red directors"; is that right?

A. Yes, that is so.

Q. And they had worked in their respective industries for decades and they climbed to the top of very significant State assets; that's right, isn't it?

A. You can say that is exactly what happened with Gorodilov Viktor. I mean, he was the one to put in the first nail into what was meant to be a...

THE INTERPRETER: Sorry, nail in a positive sense, that he was at the very beginning of creating the enterprise.

A. But I can't say that about Mr Litskevich.

MR RABINOWITZ: By 1995 Mr Gorodilov had been the director general of Noyabrskneftegas for around 14 years; that's what he told the Russian investigators and I don't suppose you'd disagree with that?

A. No, of course I won't disagree with that. Yes, he had been working there for 14 years and I'm not going to disagree what he said to Russian investigators. That's what he said.

Q. And the red directors, including Mr Gorodilov, were or would have been very influential and powerful men?

A. You're asking a very general question. What do you mean in terms of "powerful"? Was it political power you're meaning?

Q. Well, let's compare them if we can: his position, Mr Gorodilov's position, to your position. Compared to you, Mr Gorodilov was a man, by virtue of him being a red director, who had power and influence; would you accept that?

A. In Noyabrsk he had absolute power and absolute influence; I agree with that. In Noyabrsk.

Q. What I don't understand, Mr Abramovich, about your evidence at paragraph 48 is this. You say that you met, in effect, with a representative of Mr Viktor Gorodilov in October 1994 and the idea of this creation of a new oil company involving Omsk and Noyabrskneftegas was

discussed; but according to you -- I'm just looking at the last sentence here -- you say that:

"... [you] agreed to deal with the issue of creating a new oil company formed from Omsk... and Noyabrskneftegas."

Do you see that?

- A. I'm not looking at it yet. Just a second. Yes, I am looking at it and I can see it.
- Q. Can you explain why the management of Noyabrskneftegas, or indeed anybody else connected with either Noyabrskneftegas or Omsk, should have thought that you would be the one who could personally achieve something which they could not?
- A. I was recommended by the fuel and energy minister of Moldova.
- Q. Yes, but what was it about you, Mr Abramovich, that you say made you the person that people would turn to for putting these two companies together?
- A. Nobody turned to me to put these two companies together. It was my idea and it was born at this meeting. The thing is I worked with Omsk and I worked a lot with Noyabrsk. So at this meeting I had this idea, as I already said before, Viktor Gorodilov's initial idea was to create a company on the basis of just Noyabrsk or Noyabrsk together with Surgutneftegas. Omsk had

a separate idea, to create a financial industrial group on the basis of Omsk Refinery, and to join these two enterprises was my idea. This is precisely what I'm trying to explain.

Q. Is this right: following your, as you put it here, agreeing with the Noyabrskneftegas management to deal with the issue of creating a new company formed from Omsk and Noyabrskneftegas, you went looking for someone who could provide you with the political clout to create this combined company and you used your contacts with Mr Aven to meet Mr Berezovsky?

A. Well, we're distorting the story slightly. But on the whole I didn't use Aven's contact; I came with this idea to Mr Aven.

Q. You came with the idea to Mr Aven and he put you in contact with Mr Berezovsky; is that your evidence?

A. My evidence is that he suggested that I discuss this with Berezovsky.

Q. And would it be fair to describe what happened in this way: that when you discussed this with Mr Berezovsky, you proposed to him that there was the potential to make a lot of money by consolidating control over Noyabrskneftegas and Omsk and also by directing sales through your trading companies?

A. The word "control" I find a bit perplexing. Could you

repeat that sentence again?

- Q. You proposed to Mr Berezovsky that there was the potential to make a lot of money by consolidating control over Noyabrskneftegas and Omsk and also by directing sales through your trading companies?
- A. No, I would feel more comfortable -- I feel more comfortable about the second part, when you're saying that if the trade goes through my companies, then a lot of money can be earned. I feel more comfortable with that. But as for the control, if you allow me, I'll go back to my written evidence and have a look at that.
- Q. The trouble about that, Mr Abramovich, is that is exactly what your written evidence says.

Go back, if you would, to paragraph 53. It's at page 48 of E1 in the English E1/03/48 and I hope someone can find it for you in the Russian. You say here:

"I remember explaining to Mr Berezovsky that I wanted to combine the Omsk Oil Refinery and Noyabrskneftegas into a single company, whose management I would control. I explained that there was the potential to make a lot of money by consolidating control over these companies and directing their sales through my Trading Companies."

So those were your words, Mr Abramovich.

- A. Yes, I confirm it.
- Q. And by "a lot of money", is it fair to say that you were thinking at that time in the realms of increasing your annual income from \$40 million to \$100 million or so? Is that right?
- A. Indeed, I assumed that one could earn in the order of \$100 million.
- Q. And what you say -- is this right -- that you were thinking at the time in the realm of increasing your annual income from \$40 million to \$100 million?
- A. Once again, I'm trying to explain that I assumed that the income can grow up to 100 million.
- Q. So that you would increase your income from \$40 million to \$100 million a year?
- A. Indeed, I came up with this assumption. It wasn't an exact figure; it was just my feeling.
- MRS JUSTICE GLOSTER: Could I be clear: when you're talking, Mr Abramovich, about your income being increased from \$40 million to \$100 million, are you talking about the income of the companies combined or your company or your personal income?
- A. I meant the income from operations with Sibneft -- from oil business, I would say that. Income from oil business.
- MR RABINOWITZ: Is that your personal income or is it your

trading companies' income that you're talking about here?

- A. It's difficult for me to remember what I meant, but because all the companies belonged to me, both are true. Both statements would be true.

MRS JUSTICE GLOSTER: Again, if you're talking about income, do you mean revenue or net profit after expenses?

- A. At that time I wasn't thinking in those terms. I suppose I meant net income but I can't tell you 100 per cent for sure. It was a very approximate figure based on my intuition, on my feelings. At that time we did not think or operate in those terms.

MRS JUSTICE GLOSTER: So we're talking turnover?

- A. No, I was talking about profit. But I can't give you greater detail, I'm afraid.

MR RABINOWITZ: Now, you say this was your feeling about what you would do. Isn't this right that this is exactly what you told Mr Berezovsky: that you currently generated \$40 million a year through your trading companies and that you expected, if the scheme that you were proposing to him worked, to be able to generate -- to be able to increase that to around \$100 million a year?

- A. Yes, I said that. I passed on to him or shared with him my feelings.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: No, I'm going to sit until 4.30.

MR RABINOWITZ: Now, I've asked you some questions about your position as it was in late 1994, when you met Mr Berezovsky, and perhaps I could just ask some questions about Mr Berezovsky at the time you met him at the end of 1994.

He was, was he not, extremely well known in Russia at that time?

A. Looking at it with my eyes of that time, then yes, I would agree with you.

Q. And were you aware when you met him of his academic career; that he was a doctor of mathematics, for example?

A. No, I didn't know anything about his academic career.

Q. Would you have known that he was a member of the Russian Academy of Sciences or is your answer to that the same?

A. No, I didn't know that.

Q. Did you know of his work with Avtovaz, the Russian State car manufacturer?

A. I knew he was trading cars, both new cars and secondhand cars. I knew that.

Q. Did you know of Logovaz and its extensive car dealership?

A. I didn't know about extensive dealership but I knew that

Logovaz was trading Avtovaz vehicles.

Q. You knew of Mr Berezovsky's involvement in AVVA?

A. I think so. I think I did know. This was one of the pyramids that existed at the time.

Q. You knew too that Mr Berezovsky was associated with Consolidated Bank?

A. I beg your pardon, what time are we talking about exactly?

Q. The end of 1994.

A. I don't think I knew about the Consolidated Bank back in '94. Apropos, I think I learnt about AVVA in '95. If possible, please indicate very clearly what time you mean.

Q. I'm just trying to find out, at the end of 1994, what you knew about. So we're talking about the end of 1994.

Did you know that Mr Berezovsky had acquired ORT with the other wealthy and influential businessmen?

A. I think at that time, in '94, I probably did know that he acquired ORT. I think I learnt about that at the time of this cruise of ours.

Q. Mr Abramovich, do you suggest that despite Mr Berezovsky's involvement with, for example, Logovaz, Avtovaz, the other companies which you may or may not have known about, do you suggest that at the time you met him Mr Berezovsky was not a businessman in the sense

of being interested in actually establishing and managing a business?

A. If we're talking about '94 again, I knew nothing about it.

Q. Can I just ask you, please, to look at paragraph 34 of your third witness statement, page 43 in the English E1/03/43. I'm not sure where the Russian is -- 143 E1/03/143.

Now, you're talking here about Mr Berezovsky in paragraph 34 and you say:

"[He] was not a 'businessman' in the sense that I understand the term. I never knew him to be interested in actually establishing and managing a business."

Is that your evidence or not?

A. Yes, this is my evidence, but I'm not saying -- I'm not discussing 1994 here. This is my general view.

Q. Can you just look then at paragraph 33, just so that you can get the context of what you're saying. You say:

"As I explain further below, my relationship with Mr Berezovsky began in late 1994..."

So what you're saying in the paragraphs that follow relate to your relationship with Mr Berezovsky as it began in late 1994. Or do you disagree with that?

A. Please repeat the question.

Q. If you look at the context in which paragraph 34 appears, where you say that he was not actually interested in establishing and managing a business, it immediately follows from paragraph 33. Paragraph 33 appears to be talking about the position in late 1994.

Now, my question to you is: the comment you make in paragraph 34 about him not being interested in establishing a business, are you saying that doesn't relate to the period of time when you met him in late 1994? Do you say it relates to another time?

A. My comment reflects 1995, when he said he's only interested in politics and not in business. In '94 I had no knowledge about what Mr Berezovsky was interested in. We met practically prior to the New Year. The year has finished almost. It was the very end of '94 when we met.

Q. Would you say, though, that you were a businessman at this time, in late 1994?

A. I would say that I was, yes.

Q. Can you tell us this. You say that Mr Berezovsky was not a details person. Are you a details person?

A. I think to a greater extent than Mr Berezovsky, but not much either.

Q. And you also say in your evidence that Mr Berezovsky, when you met him, was no longer interested in actually

establishing and managing a business.

Can you tell me this: the pre-Sibneft businesses which we've heard about, Runicom and the like, did you establish and manage these?

- A. Yes, yes, all the businesses that happened pre-Sibneft I created and managed together with my friends, comrades, partners, but I was the only owner.
- Q. And when you obtained Sibneft, did you manage Sibneft or had you lost interest in management by this time?
- A. Can you repeat that again, please? We're talking now about '97; am I right?
- Q. When you obtained control of Sibneft, did you manage Sibneft or had you lost interest in management too by this time? Late 1995.
- A. In '95 I physically could not have obtained control over Sibneft. That was only through a relationship with the higher management of the company. I obtained control in '97. I had -- I could get access to product flows and oil flows, I could have, as you mentioned, an exclusive contract; but I could not get control until '97.
- Q. Did you ever manage Sibneft?
- A. If the question is whether I was ever president of Sibneft, no, I never have been.
- Q. Not whether you were president; whether you ever managed Sibneft?

A. I think so. After '97 I could have said that I was. But formally, no, but I was one of the managers of Sibneft. I must have managed it through the board of directors. If that is what you mean, then yes, I did.

MRS JUSTICE GLOSTER: Would you describe yourself as an executive director of Sibneft?

A. I would not describe myself in this way. I was not engaged in day-to-day running of Sibneft.

MRS JUSTICE GLOSTER: But strategy, were you involved in the strategy for the future development of the company?

A. Yes, indeed. That is exactly what I was engaged in for this company.

MRS JUSTICE GLOSTER: Is that a convenient moment?

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: Very well. Now --

MS DAVIES: My Lady --

MRS JUSTICE GLOSTER: Just a second, Ms Davies.

Before anybody leaves the building or leaves the courtroom, can I remind them to leave their headphones on the chairs, please.

Secondly, I'd like to know from counsel when I'm going to be dealing with the issue about the witnesses.

MS DAVIES: That's what I was just about to raise, my Lady. My learned friend, just as we came back in after lunch, indicated that they no longer oppose the revocation of

my Lady's order in relation to the six Chukotka witnesses. The application I effectively made on Friday, it's no longer opposed.

MRS JUSTICE GLOSTER: Right.

MS DAVIES: So what we will do is produce a consent order and perhaps we can put that before my Lady first thing tomorrow morning.

MRS JUSTICE GLOSTER: Well, I had better -- I have only had a quick read of a bit of this. Perhaps you could produce the draft, but before I indicate that I'm happy to make such an order, I just had better see precisely what you're asking me to do.

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: Very well.

That's agreed, is it Mr Gillis?

MR GILLIS: My Lady, yes it is.

MRS JUSTICE GLOSTER: Very well.

Right. I'll repeat the direction I gave earlier: don't talk about your evidence or the case with anybody overnight. Do you understand? Yes? You do understand?

THE WITNESS: (Not interpreted) Yes.

MRS JUSTICE GLOSTER: Very well. 10.15 tomorrow.

(4.32 pm)

(The hearing adjourned until

Tuesday, 1 November 2011 at 10.15 am)

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Tuesday, 1 November 2011

(10.15 am)

Discussion re housekeeping

MRS JUSTICE GLOSTER: I'm told that the smell of burning rubber is not a cause for concern but something to do with the resurfacing of the road outside. If the position changes, we'll all be informed.

Yes, Mr Sumption.

MR SUMPTION: My Lady, could I raise with your Ladyship a problem relating to the translation.

MRS JUSTICE GLOSTER: Yes, certainly.

MR SUMPTION: We have reviewed overnight, with Russian speakers on our team, the transcript and the Russian transcript against the English one. There obviously is a problem here which is not the fault of the translators at all; it's a problem really relating to the translation of the questions. And for that reason it's not possible to produce, so to speak, a revised transcript; the questions as recorded are the questions that were asked.

The difficulty is that Russian is a language which, like German for example, the principal verb comes at the end of the sentence. It is relatively difficult to cope with sentences in questions that contain complex sub-clauses, often more than one of them. When we

looked particularly at the passages where the witness said that he would like a question to be put again or that he didn't understand it, almost invariably this was because the translators had had great difficulty keeping up with a question which is not broken up into small units but has many sub-clauses and it did in fact come over as being, on a literal translation, very difficult to follow.

It would therefore assist very much if questions were to be broken down into single propositions, if complex sub-clauses were to be avoided. It would both be fairer to the witness and it would mean we would probably get on quicker.

MRS JUSTICE GLOSTER: Mr Rabinowitz.

MR RABINOWITZ: Well, my Lady, I hear what my learned friend says and I shall do my best. I'm sorry if my best was not good enough yesterday but I'll do better today.

MRS JUSTICE GLOSTER: No, well, it is a problem with translation.

MR RABINOWITZ: No, I follow.

MRS JUSTICE GLOSTER: The other remedy is to -- but I'm not sure it would cope with the problem -- stop having simultaneous translation.

MR RABINOWITZ: I, with respect, would entirely support that.

MRS JUSTICE GLOSTER: But what I'm going to do is I'm going to run today with simultaneous translation because I prefer it, it's much quicker, and I'm going to ask you, Mr Rabinowitz, to make the questions less structured and a bit more simple if you can.

MR RABINOWITZ: I will do my best.

MRS JUSTICE GLOSTER: Let's see how we go.

MR RABINOWITZ: Very good.

MR ROMAN ABRAMOVICH (continued)

MRS JUSTICE GLOSTER: Good morning, Mr Abramovich. You're still on your oath, you understand that.

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Mr Abramovich, yesterday you told the court that it was your idea to create a vertically integrated oil company incorporating the crude oil producer Noyabrskneftegas and the Omsk Refinery. Do you remember that?

A. Yes, I do remember that.

Q. And I showed you paragraph 48 of your third witness statement and put it to you that your own evidence showed that the idea to combine two companies came to you from the management of Noyabrskneftegas and the Omsk Refinery. Do you remember that?

A. I do remember that you try to interpret my words like that, but this is not the case.

Q. When I asked you about that evidence, you suggested for the first time, I suggest, that -- and these were your words -- "the initial idea of the director general of Noyabrskneftegas, Viktor Gorodilov, was to create a vertically integrated company together with Surgut" rather than with Omsk Refinery. Do you remember that?

A. Yes, I do remember that.

Q. Now, in 1994 the oil produced at Noyabrskneftegas was refined by the Omsk Refinery, not by Surgut; that's right, isn't it?

A. I believe that I will have to explain to you exactly what I meant.

A vertical integrated company might have been created on the basis of one or two or three companies. Surgutneftegas, just as Noyabrskneftegas, is a producing company; but Surgut, the company called Surgut, included a refinery, Kirishi, not far from St Petersburg, therefore that in itself was also a vertically integrated company.

Does that clarify?

Q. With respect to that, Mr Abramovich, it simply confuses. Can I ask you, if you would, to listen to my question and answer it. You can comment afterwards, but if you just do that we will get on quicker, with or without sub-clauses. Do you follow?

Let me ask the question again. In 1994 the oil produced at Noyabrskneftegas was refined by the Omsk Refinery, not by Surgut; is that right?

A. Your understanding is correct because Surgut does produce crude oil.

Q. I'm not sure that that was an answer to my question. My question was that the oil producer Noyabrskneftegas was refined by the Omsk Refinery, not by Surgut. You're agreeing with me?

A. I agree with this. The crude oil that was produced by Noyabrskneftegas was refined by several Russian refineries, including the Omsk Refinery. I agree with that.

Q. And oil produced by Noyabrskneftegas could not be refined by Surgutneftegas because Surgutneftegas was itself a crude oil producer like Noyabrskneftegas?

A. That is exactly what I have been trying to explain.

Q. And the oil produced at Surgutneftegas was, was it not, refined -- sorry, I'll start that question again.

I realised it had a sub-clause.

The oil produced at Surgutneftegas was refined by an oil refinery called the Kirishi Oil Refinery?

A. That is correct, and that is exactly what I have clarified a minute ago.

Q. So if Noyabrskneftegas and Surgutneftegas had been

combined into a single company, that would not have created a vertically integrated oil company, would it?

- A. No, this is not correct. This is absolutely incorrect. Of course it would have resulted in the establishment of a vertically integrated company. I think someone has misled you.
- Q. With respect to that, Mr Abramovich, the trouble with what you're saying is that if Noyabrskneftegas and Surgutneftegas had been combined into a single oil company, that is not a vertically integrated company; that is a very large oil production company.
- A. I agree with you. This would have been a large producing company that would have, amongst other things, included Kirishi, the refinery. In Russia, sometimes companies were established on the basis of two, three, five, six companies. I think you're just not up to speed on this. Sometimes -- take North Sea, for instance: North Sea was a company that was established on the basis of just one entity, one company.
- Q. Mr Abramovich, another reason why the initial idea of Mr Gorodilov in 1994 cannot have been to create a vertically integrated oil company by combining Noyabrskneftegas with Surgutneftegas -- and can I just explain what that is and then get you to comment.

In 1993 Surgutneftegas had already been

corporatised, that is to say turned into an open joint stock company, as a vertically integrated oil company by combining Surgutneftegas production facility with the Kirishi refinery. I think you agree with that?

A. I absolutely agree with that. That is absolutely correct. This is exactly what I've been trying to convey to you.

Q. Is it your suggestion that what you were intending was that Noyabrskneftegas production should be added to Surgutneftegas production for refining at Kirishi?

A. I did not say -- I think you are getting more and more confused. Never have I suggested --

MRS JUSTICE GLOSTER: Just a second, please. Mr Abramovich, it would speed things up if you don't make comments about the state of Mr Rabinowitz's knowledge or confusion. Do you understand me? Just answer the question.

THE WITNESS: Yes, I do. Forgive me.

MRS JUSTICE GLOSTER: Don't criticise his understanding or whatever. What's relevant to me is your answers, not whether he's got it right or wrong or whether he's confused.

Okay. Thank you.

MR RABINOWITZ: Shall I ask the question again, Mr Abramovich?

MRS JUSTICE GLOSTER: Yes, please.

MR RABINOWITZ: Do you suggest that what was intended was that Noyabrskneftegas's production should be added to Surgutneftegas's production for refining by Kirishi?

A. That was one of the ideas that had been floated but that was not one of my ideas.

Q. Because that wouldn't have worked, would it?

A. It would have worked.

Q. Is it not right, Mr Abramovich, that the combined production of Surgutneftegas and Omskneftegas would have massively exceeded the refining capacity of the Kirishi refinery?

A. You are right: the combined production would have been far in excess.

Q. So what you couldn't have been talking about then was the combining of the two production companies with Kirishi refining?

A. I could have not said that and I have been trying to explain that my idea was to bring together Omsk, the refinery, and Noyabrsk, the producing facility. That's it.

Q. That's what you say. What started all of this off, Mr Abramovich, was your suggestion that that is not what Mr Viktor Gorodilov was talking about. You said Mr Viktor Gorodilov was talking about combining

Noyabrskneftegas with Surgutneftegas, and what I've suggested to you is that that simply could not have been what he was suggesting at all.

A. Well, unfortunately, I beg to differ. This is not the case.

Q. I'll go on to a different subject then, if I may.

Can I ask you, please, to look at paragraph 34 of your third witness statement. It's at bundle E1, tab 3, page 43 in the English E1/03/43 and page 143 in the Russian E1/03/143. Can I ask you, please, to read paragraph 43 (sic) to yourself.

MRS JUSTICE GLOSTER: Paragraph 43 is not on page 43.

MR RABINOWITZ: Sorry, I meant to say paragraph 34. I'm very sorry.

MRS JUSTICE GLOSTER: Paragraph 34, please. (Pause)

A. I have read that paragraph.

MR RABINOWITZ: Now, you say here that when you met Mr Berezovsky you were "quite surprised [at] his extravagant lifestyle" and that you personally were "never interested in imitating this lifestyle". Do you see that?

A. Yes, I can see that.

Q. Can we just consider the truthfulness of this assertion, Mr Abramovich, that you, unlike Mr Berezovsky, have never had an interest in what you label an extravagant

lifestyle. Do you follow?

Perhaps we could start with the English properties which you've owned over the years. There was, of course, Fyning Hill, which is a 420-acre estate and house in West Sussex. You bought that in 1999, did you not? You have to say "da" if you're agreeing.

A. I think so, yes. I think it was in the year 2000.

Q. Also in England there was Lowndes Square, a large and expensive central London property near Knightsbridge, I think, which you owned in 2000 as well?

A. Yes, that is correct.

MRS JUSTICE GLOSTER: Was that a flat or a house, an apartment or a house?

A. This is a flat. In the future I bought some further flats there and so that can be remodelled and turned into one house, but for the time being it's a flat.

MR RABINOWITZ: But I don't think you would disagree that this is a large and very expensive central London property?

A. I think so. I would agree with you. This is not a hugely large piece of property but it is in central London, yes.

Q. As for French property, you also acquired the Chateau or Villa de la Croe in 2000, didn't you?

A. That is correct, yes.

- Q. And this is a multi-million-pound chateau which once belonged to the Duke and Duchess of Windsor. But you say that's not extravagant?
- A. For the time being it is extremely expensive but at that time it was a property that had burnt down. It definitely did not cost as much at that time and I spent about seven years remodelling and rebuilding it.
- Q. Presumably at very substantial expense?
- A. Yes. Yes, I agree. It did involve significant amounts of money.
- Q. Did you have any other properties in France? Do you have any other properties in France?
- A. What period of time are you referring to?
- Q. Well, I'm trying to look with you at your suggestion that you avoid an extravagant lifestyle, Mr Abramovich. So my question to you is: do you have any properties in France?
- A. If I understand it correctly, in 33/34 we refer to 1994 and this is just the summary of what we are discussing, and for the time being what we are talking about is something that happened in the year 2000 and in the years subsequent, after the year 2000.
- Q. What you say in paragraph 34 is not on its face limited to 1994/1995. You say you were "never interested in imitating this lifestyle". But you now want to qualify

that, do you, to say whilst you weren't interested in a lifestyle then, you may have an extravagant lifestyle now? Or do you dispute that?

A. Well, yes, possibly. I agree, yes, that one could put it that way. But at that time this was not part of my position.

Q. So when did this change, Mr Abramovich?

A. I think that when I bought Chelsea Football Club, that did impact my way of life significantly. It was a turning point really.

Q. Is Chelsea the only football club in which you have an interest or do you also have an interest in CSKA Moscow?

A. No.

Q. Now, what I want to do next is ask you about what you say was the content of the agreement made in 1995 with Mr Berezovsky. My first question, if I can, is this: what is it that you say it was agreed you would give to Mr Berezovsky in return for his assistance?

A. I will be giving money.

Q. Can you be a little more specific, Mr Abramovich?

A. We agreed that I will fund ORT and I will provide funding for some of his expenses. For the first year we agreed on the total amount of \$30 million.

Q. Can I ask you, please, to go to bundle A1, tab 03 at page 44, please A1/03/44. Now, if you can go to the

beginning of the tab, do you see that this is your defence in this action?

A. Yes. I think we discussed this document yesterday.

Q. We did refer to it yesterday. We're going to refer to it again today. Can you go to page 84, please A1/03/84. It's just before the red divider.

A. I'm on page 84 but because it's all in English, unfortunately I cannot say anything about this.

MR SUMPTION: My Lady, we have a Russian text of this document if that would assist my learned friend.

MRS JUSTICE GLOSTER: I'm sorry, Mr Sumption?

MR SUMPTION: We have a Russian text of this document. If my learned friend is going to ask about the details, it might be sensible to use it.

MRS JUSTICE GLOSTER: Well, that would be helpful.

MR SUMPTION: Can I hand it round. (Handed)

MR RABINOWITZ: I'm very happy for that to be used.

Can I just mention this while my learned friend is handing this up. When we have previously asked for this document, we have been told that it was privileged and that they refused to provide it to us.

MR SUMPTION: It was prepared overnight in the light of my learned friend's questions yesterday.

MRS JUSTICE GLOSTER: Well, Mr Rabinowitz, I hear what you say. It's a matter for submission at an appropriate

time.

MR RABINOWITZ: Can I ask my learned friend if he has more than one copy so that the Russian speakers behind us can follow as well, in case there's a dispute as to whether the interpretation is right.

MR SUMPTION: We have other copies; we will produce them.

THE INTERPRETER: My Lady, would it be possible to have a copy for the interpreter in the booth?

MRS JUSTICE GLOSTER: Yes, certainly. Could the interpreter be provided with a copy and could Mr Rabinowitz's team and any of the other teams who want a copy also be provided with them. Mr Rabinowitz's team may need two copies or more, I don't know. I don't need a copy because I don't have Russian.

MR RABINOWITZ: Don't get rid of the English-version copy yet, please.

Mr Abramovich, before you put away the English draft in file A1, can you go to page 84 of that bundle, please. It's A1, tab 3, page 84 A1/03/84.

MRS JUSTICE GLOSTER: Paragraph?

MR RABINOWITZ: At the moment I just want the witness to be able to look at the final page of the English version which he has signed. We seem to be struggling to get there.

A. Yes, I can see that.

- Q. Do you see you signed this English version, Mr Abramovich? Mr Abramovich, look at the English version.
- A. Yes, yes, I'm looking at the English version.
- Q. Now, you signed it saying that you believe the facts stated in the re-amended defence are true. Can you explain how you were able to sign that? Did you have a Russian translation? Did someone take you through every paragraph of this? How did it work?
- A. I think that's how it was. Someone must have translated this for me or -- I cannot tell you exactly. There must have been a translation.
- Q. But you don't remember how it was that you came to sign this, whether you were reading a translation or someone translated each individual paragraph and you said, "Yes, that's right"?
- A. I really do not remember. Most probably there has been a translation but I cannot be more certain than that.
- Q. Mr Abramovich, this is signed by you on 28 October 2011, the most recent version; I think that's about three days ago. How can you not remember?
- A. I'm not sure I understand which document you're speaking about. I was not aware that this happened three days ago.
- Q. If you see on the page that you have opened, it should

be page 84.007. Do you have that open in front of you in the English version?

A. Yes, it is open here.

Q. Can you confirm that that signature, that's your signature?

A. Yes, it is my signature.

Q. When do you say you signed that?

A. I signed it according to the date but I'm not sure I was clear as to the document that we were actually referring to and I thought that we were talking about the document that we were discussing yesterday.

Q. Mr Abramovich, this is the document that we were discussing yesterday.

A. That's what I meant. Because it's all in English, it was difficult for me to understand exactly what document it was.

Q. Can I ask you, please, to look at paragraph D32 in this document. It's at page 43 A1/03/43. Now, the part of this letter I would like you to focus on in particular is the part that begins:

"Prior to the August 1995 Decree, the Defendant informed Mr Berezovsky that he wished to acquire a controlling interest in Sibneft on its creation. In return for the Defendant agreeing to provide Mr Berezovsky with funds he required in connection with

the cashflow of ORT, Mr Berezovsky agreed he would use his personal and political influence to support the project and assist in the passage of the necessary legislative steps leading to the creation of Sibneft which, in the event, were the obtaining of the August 1995 Decree and the September 1995 Resolution."

First, in relation to when this agreement was made, and looking at the first sentence of this passage, you say that the agreement was reached prior to the August 1995 decree. Do you see that?

A. Yes, I can see that.

Q. That is, of course, consistent with Mr Berezovsky's case, which, as I said earlier, is that the agreement was reached shortly before the August 1995 decree. Do you follow?

A. Yes, I do follow, and with your permission I would like to clarify, if I may?

MRS JUSTICE GLOSTER: Yes, please do.

A. The decree said that 49 per cent needs to be privatised and 51 per cent will be owned by the government for the following three-year period of time.

MR RABINOWITZ: Mr Abramovich, that's not -- sorry, just let me be clear. Is that the clarification you wanted to provide?

A. Yes, it is.

Q. That's not what I was asking you about. What I was asking you about was the date at which you and Mr Berezovsky made the agreement that is the subject matter of this dispute.

What I suggested to you is that what you say in your defence here, that this was prior to the August 1995 decree, is consistent with the time when Mr Berezovsky says the agreement was made, which is shortly before the August 1995 decree.

MRS JUSTICE GLOSTER: So what's the question?

MR RABINOWITZ: Is it your case now that you say that in fact the agreement was in February 1995?

A. If I understand correctly, our agreement was reached in February and the decree was issued much later. And so what it says here is that it happened, the agreement was reached, before the decree was signed. And this is what I'm saying: it was reached before the decree was signed, prior to the signing of the decree.

Q. Mr Abramovich, if it really was your case that there had been an agreement made in February, you could have said so here, couldn't you?

A. When we started preparing, I did not remember exactly when that was, but I did remember exactly that it had happened prior to the first letter being signed; and after I saw the date of the first letter then

I refreshed my recollection. Therefore I could not tell you exactly when it happened. I remembered that it did happen prior to the signing of the presidential decree but I did not remember exactly when.

Q. So you're saying that even when you made this defence, for the first time I think in 2008, you had no clear recollection of when this agreement was made?

A. That is true. At that time I did not remember exactly when the agreement was reached but I did remember at that time that the agreement had been reached prior to the very first batch of documents being sent to the president for his signing. And this is what you call in English reconstruction; this is not my recollection. This is not something that lingers in my memory.

Q. Can I then ask you this. You describe here what you say it was that Mr Berezovsky would be getting out of the deal, namely funds he required in connection with the cashflow of ORT; do you see that?

A. Yes, I can see that.

Q. So it's clear from this then, is it not, that the deal you made with Mr Berezovsky was that all Mr Berezovsky would get in return for his services is what he required in connection with the cashflow of ORT?

A. Mainly, yes.

Q. You say "mainly" --

A. By and large, yes.

Q. -- but that is all you say here, Mr Abramovich. You don't say "by and large" or "primarily". This is what you say you agreed he would get.

A. I think that this document uses very dry legalese and there are many details that never made their way to this document. My evidence is much larger and it provides much greater amount of detail with respect to the situation that appertained at that time.

Q. We will come back to that, if we may.

Again just looking at paragraph 32, we see that what you say Mr Berezovsky was going to provide to you was to "use his personal and political influence to support the project and assist in the passage of the necessary legislative steps". Mr Abramovich, one observes that you do not here use the phrase "krysha". Can you explain why not, please?

A. The word "krysha" is a very aggressive term and usually it was used with respect to criminal protection racket, but we also have the term "krysha" in political terms. And at the very beginning I was not very clear as to how I should define this and I did not want to offend the claimant, but this is exactly what happened at the very beginning.

Q. Just going back to what you said in this paragraph, do

you see the sentence -- in fact it's the first sentence -- where you say:

"Prior to the August 1995 Decree, the Defendant informed Mr Berezovsky that he wished to acquire a controlling interest in Sibneft on its creation."

Do you see that?

A. Could you kindly repeat that? I'm afraid I missed out on that. At the time what?

Q. Well, I'm reading your pleading. It says:

"Prior to the August 1995 Decree, the Defendant informed Mr Berezovsky that he wished to acquire a controlling interest in Sibneft on its creation."

A. Yes, I did have a plan to acquire a controlling stake at the time of the establishment of the company. However, it was different from what we managed to actually implement.

Q. Just to be clear, what you're saying here -- and I think it is clear from your answer -- you are talking here about acquiring a controlling shareholding interest in Sibneft, are you not?

A. Originally we only discussed management control, control over the management of the company. After that, we proceeded to discuss a controlling stake in the company and we generally discussed the company, yes.

Q. I'm asking you -- and I'm going to ask you to be

precise, Mr Abramovich, in the way that I've been asked to do. You say here you told Mr Berezovsky you "wished to acquire a controlling interest in Sibneft on its creation". Does that mean that you told Mr Berezovsky that you wished to acquire a controlling shareholding interest?

A. Originally, during the initial meeting, I did not say that or I have no recollection of that. But in the process of our discussions I'm sure I did say that and I'm virtually certain of this. Originally we only discussed the control over the management, not a controlling stake. However, my idea has always been to acquire a controlling stake in a company, amongst other things, in order to exercise control over the management structures.

Q. Mr Abramovich, we're dealing here with a paragraph in your statement where you're talking about the agreement that you made with Mr Berezovsky. I'm trying to understand what it was that was the subject matter of the agreement.

Where you say, "Prior to... August 1995... [you] informed Mr Berezovsky that [you] wished to acquire a controlling interest in Sibneft", you then go on to say what Mr Berezovsky would do in order to enable you to do this and what you would give him.

So one is dealing here with the agreement, what it was that you agreed would be done, and it's in that context that you talk to Mr Berezovsky about acquiring a controlling interest; correct?

A. With your permission, I would like to clarify, if I may.

Q. Well, can you answer the question first.

MRS JUSTICE GLOSTER: I think the problem, Mr Rabinowitz, is that you haven't actually asked a question. Could you ask a specific question so that the witness can give an answer because, speaking for myself, it's rather difficult when you summarise the pleading for him to know precisely what the question is to answer.

MR RABINOWITZ: Well, I will ask a question but I am first going to summarise the pleading because the question arises from that.

This is a paragraph in which you plead what you agreed with Mr Berezovsky; is that correct?

A. Yes, it summarises the gist of our agreement but the agreement was not achieved overnight. First we agreed on something in February and then we agreed on the shares, and it took some time, it happened step by step. But at the initial stage we only agreed on the things that I describe here.

Q. Can we take it that when you say you agreed these things step by step, you had agreed on them prior to

August 1995?

A. With respect to the acquisition of a controlling stake, we agreed prior to August but not in February. What happened in February was just the initial agreement on the 30 million in consideration for assistance and help.

Q. Let's just get this clear then. Prior to August 1995, what you had agreed with Mr Berezovsky related to your acquiring a controlling shareholding stake in Sibneft; is that right?

A. We did not agree with Berezovsky that we will acquire a controlling stake. We agreed that he would give me help and assistance in making that acquisition.

Q. But what you were talking about acquiring was a controlling stake; correct?

A. Once again, let's be very clear. Are we talking about the agreement that was achieved in the course of the year or the very first agreement, the initial agreement?

Q. I'm talking about the final agreement which you had reached prior to August 1995.

MRS JUSTICE GLOSTER: I think that's ambiguous because I think the witness is saying that the agreement was concluded in stages.

MR RABINOWITZ: Well, I don't mind if that is what the witness is saying.

MRS JUSTICE GLOSTER: And that to begin with in February he

discussed certain things and that by the time August came, various other things had been agreed.

Is that right, Mr Abramovich?

- A. Yes, that is correct. After the shares for -- shares auctions, we agreed that Mr Berezovsky will help me take part and win the auctions. I mean shares for loans -- loans for shares auctions.

MR RABINOWITZ: The translation of that suggested that you said that:

"After the [loans for shares] auctions, we agreed... Mr Berezovsky [would] help [you] take part and win the auctions."

I think what you told my Lady is that by August 1995 you had agreed with Mr Berezovsky that he would assist you in obtaining a controlling stake of Sibneft?

- A. My feeling is that we lost a few words during the translation, something was lost in translation. Let me clarify.

MRS JUSTICE GLOSTER: Yes, Mr Abramovich, it would help me if you could clarify, in your own words, how the process went from February to just before August 1995 and how you saw what you say is the agreement progressed?

- A. Before we sent the first batch of documents to the president for his signature, we agreed that I will be paying \$30 million per year to fund ORT and to fund some

of Berezovsky's expenses and for that he will help me obtain the signature, obtain the presidential signature for this decree, and that will -- and he will also help issue the regulations. And the regulations said that 51 per cent will be owned by the government and the 49 per cent will be auctioned off.

MRS JUSTICE GLOSTER: Right. Just help me: at what stage did you send the first batch of documents to the president? What time roughly?

A. If my recollection is correct, it was on 10 February 1995.

MRS JUSTICE GLOSTER: Right. So by February, by mid-February, you'd come to this arrangement, you say, with Mr Berezovsky?

A. Yes, that is the case.

MRS JUSTICE GLOSTER: Taking it forward to the period before August, just before August 1995, what happened thereafter?

A. After that, what happened was that it was clear that 51 per cent will be held by the government while 49 per cent could be privatised. In order to privatise 49 per cent a certain number of auctions had to be held, and we agreed that Mr Berezovsky would help me in this.

MRS JUSTICE GLOSTER: Right. Go on, Mr Rabinowitz, please.

MR RABINOWITZ: I just want for myself to get this clear.

And all of that which involved you getting a controlling interest in Sibneft you had agreed with Mr Berezovsky prior to August 1995; is that correct?

A. That I would acquire the share interest, yes, we agreed on that prior to August 1995.

Q. Thank you. You can put this to one side for a moment.

Can I ask you next, please, to go to bundle J2.2 at tab 12 J2/2.12/224. Mr Abramovich, at tab 12 you should have an English version of your first witness statement in this action. I'm pretty sure there was a Russian version but I can't at the moment locate it. I'm not sure it's in the files. It may not matter because this is incredibly short and I can read it to you. Okay? Do you have...

Now, just to remind you, when you made this statement, do you recall that, following the strike-out application that you made to strike out Mr Berezovsky's claim, Mr Berezovsky served a good deal of evidence in support of his case?

A. Yes, I recall that.

Q. And that evidence included a statement of Mr Berezovsky's solicitors and a statement from Mr Berezovsky himself; do you remember that?

A. I remember Berezovsky's evidence much better but there must have been some solicitors' evidence. But obviously

I paid more attention to Berezovsky's evidence.

- Q. And after Mr Berezovsky served this evidence -- I think I might start again because it may not have...

After Mr Berezovsky served this evidence, you then served this, which was your first witness statement in this action, in response. Do you follow?

- A. When you say "first", you mean this one, the very brief one, or the third witness statement?

Q. I mean this one that we're looking at here. This one.

A. Yes.

- Q. And you say it is a very brief witness statement, but what you do here is to confirm -- and just looking at paragraph 2, I'll tell you what you do confirm. It can be translated for you. You confirm that:

"... in so far as..."

Let me start that again.

Paragraph 1 of the statement, you refer to a statement which had been made by your solicitor, Mr Mitchard. Okay?

A. Yes.

- Q. In paragraph 2 of the statement, what you do is that you confirm that insofar as Mr Mitchard's statement refers to matters that are within your knowledge, that to the best of your knowledge and belief, Mr Mitchard's statement contains an accurate account of events.

Do you understand?

A. Yes, I do understand that.

Q. And you would have known, obviously, when you made this statement that the court would be considering your evidence and Mr Mitchard's evidence and might rely upon it to prevent Mr Berezovsky pursuing his claim to trial; is that correct?

A. When you say "prevent", what exactly do you mean?

Q. The object of your application was to put an end to this action so that it would never get to a trial.

A. Yes.

Q. And the evidence that you and Mr Mitchard put before the court was intended to produce that objective, was it not?

A. Yes, that is correct.

Q. Did you consider Mr Mitchard's evidence carefully before approving it?

A. To the extent I could, yes, I studied it carefully.

Q. Can we then just look at Mr Mitchard's statement. It's in the same bundle, one tab before this at tab 11 J2/2.11/171. Again, I don't think there is a Russian version of this, but if there is, I'm sure someone will tell me.

Can I ask you, please, to go to page 173 of the bundle J2/2.11/173. It's page 3 of the statement.

Now, at page 173, do you see a footnote, footnote 1?

A. Yes, I can see it but I cannot read it.

Q. Well, if I read out the part that I'm interested in, it can be translated for you and then I can ask you about it. Okay?

What Mr Mitchard says is to explain that you, Mr Abramovich, dispute "Mr Berezovsky's account of the ORT share purchase". And in the last sentence of this footnote Mr Mitchard says this:

"... the meeting at which ORT was discussed was not the last meeting between Mr Berezovsky and Mr Abramovich as Mr Berezovsky claims. There have been at least two meetings in Israel since then."

Do you follow?

A. Maybe -- maybe -- I'm not sure you actually asked a question. Could you ask a question?

Q. All I want to ascertain at this stage is that this has been translated for you so I can ask my question. So when I say, "Do you follow?", if you could just acknowledge it and then I know you've had the translation and I can ask you a question.

Do you follow?

A. Yes, this text has been translated to me.

Q. The meeting at which ORT was discussed that Mr Berezovsky had claimed occurred was one which had

occurred after the arrest of Mr Glushkov on 7 December and before 25 December. Do you follow?

A. No, this is absolutely not the case.

Q. I haven't asked you a question yet, Mr Abramovich, other than to say, "Do you follow?"

A. Yes, but it did sound like you were asking a question; that's why I answered your question.

Q. Mr Abramovich, we have a difficulty in that I don't speak Russian and you don't speak English. As a result, we have to go through a process where I say something in English, wait for it to be translated and then seek to determine that you have had the translation before asking a question. And that's why I explained to you that when I say, "Do you follow?", it was simply to ascertain that you'd had the translation. Okay?

A. I understand.

Q. So, now, what Mr Mitchard is saying in this footnote is that when Mr Berezovsky said that the meeting at which ORT was discussed was the last meeting you had with him, Mr Mitchard was saying this was untrue because, says Mr Mitchard here:

"There have been at least two meetings in Israel since then."

Do you see that? Do you understand that?

A. Can I answer your question: yes, yes, I understand what

you're saying, but I can clarify.

Q. I haven't yet asked you a question. I'll ask you the question and then you can explain.

Now, this must have been something in Mr Mitchard's statement which would have been within your knowledge and belief and which you would have confirmed. Can you confirm that?

A. I'm not sure I understand. Confirm what?

Q. The truth. The truth of what was being said by Mr Mitchard at footnote 1.

A. Could you ask your question again? This was really very long because I first had to remember what the footnote says and then to confirm. Now, as to whether or not I did have the feeling that we did have meetings in Israel or not: yes, I did have that feeling and we did have meetings.

MR SUMPTION: My Lady, may I suggest that in fairness to the witness the whole of footnote 1 should be translated.

MRS JUSTICE GLOSTER: Just a second. Let the witness answer the question.

Mr Abramovich, did you confirm what is said in the last two sentences of this footnote 1 when you made your short statement?

A. If my understanding is correct, what it says here is that the meeting which Mr Berezovsky says was the last

meeting in Antibes was not the last meeting and this is what I confirmed, because we did have meetings in Israel. This is what I confirmed. Now, if this means --

MRS JUSTICE GLOSTER: Okay, just stop. Stop, stop.

Are you now saying that there were at least two meetings in Israel after the meeting at which ORT was discussed?

A. Yes, at that time I believed that there had been two meetings; in fact, there had been one.

MRS JUSTICE GLOSTER: Right. So your evidence today to me is that there was only one meeting in Israel after the meeting at which ORT was discussed?

A. Yes, I think there was only one meeting but we did not discuss anything; we just said "Hi" to each other and it was not a meeting per se. We literally exchanged a couple of words and that's it.

MRS JUSTICE GLOSTER: So Mr Mitchard is wrong to describe these "meetings" as meetings as such? They were just meetings between the two of you, not formal meetings at which you discussed business?

A. That is absolutely correct. Our paths just happened to cross. This was not a formal, full-blown meeting.

MR RABINOWITZ: In fact, Mr Abramovich, as I think is clear from your witness statement, you didn't have any

meetings with Mr Berezovsky at all in Israel following this, did you?

MR SUMPTION: My Lady, my learned friend must not put statements about the witness statement which are frankly not correct.

MR RABINOWITZ: With respect, I don't accept that.

Can you answer my question?

MRS JUSTICE GLOSTER: Mr Rabinowitz, just ask the question, please.

MR RABINOWITZ: In fact, Mr Abramovich, as I think is clear from your witness statements, you didn't have any meetings with Mr Berezovsky -- and I'll qualify that in the way that you've described meetings, that's to say a proper meeting -- with Mr Berezovsky at all in Israel following this, did you?

A. Yes, you are right. We did not have meetings with Berezovsky by way of formal meetings but our paths did cross and we exchanged a couple of words.

Q. In fact what you say in your witness statement at paragraph 312 E1/03/129 is that you did little more than briefly acknowledge each other and that you did not wish to speak to him. Is that correct?

A. Yes, that's true. We did not have a lengthy discussion. We did not just acknowledge each other; we exchanged a couple of words.

Q. And so when you said -- or when Mr Mitchard said, in a statement that you'd approved, in an attempt to respond to Mr Berezovsky's suggestion that the last time you met was to discuss ORT, that there had been at least two meetings in Israel, that was untrue, was it not?

A. It is true that there was only one meeting and it was exactly the way I've just described it.

MRS JUSTICE GLOSTER: It was the saying "Hi" meeting? That's all you said, just "Hi" and a couple of pleasantries?

A. Absolutely, yes. We said, "Hi, how are things?", and that was it.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Right. Just a second, please.

Right, I'll take the ten-minute break.

(11.23 am)

(A short break)

(11.35 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, you still have Mr Mitchard's statement in front of you and can I ask you, please, to go to page 177 in that bundle, please J2/2.11/177.

I want to read to you what Mr Mitchard says at paragraph 12(b). He says:

"In fact, what Mr Abramovich agreed with

Mr Berezovsky was that, in recognition of the political assistance Mr Berezovsky had provided in respect of the creation of Sibneft, Mr Abramovich would fund certain of the cash requirements of the television company, ORT, in which Mr Berezovsky came to hold a 49% stake."

Again, would this have been something within your knowledge?

A. Which year do you mean? The date is very important here.

Q. Mr Abramovich, I'm reading Mr Mitchard's statement and what I want to confirm is that Mr Mitchard would have received this information from you. Do you understand?

A. Mr Mitchard did talk with me; yes, this is true.

Q. And this would have been information within your knowledge that you would have confirmed to him was true; is that correct?

A. Could you please clarify? What information do you mean: that Mr Berezovsky held 49 per cent of ORT shares or did you mean something else? Sorry, I didn't understand the question.

Q. What I'm particularly interested in here, Mr Abramovich, is what it is said you were going to give Mr Berezovsky in this deal, and what Mr Mitchard says about this is that:

"... Mr Abramovich would fund certain of the cash

requirements of the television company, ORT..."

A. Yes, this is so. I confirm this.

Q. And when he says "certain of the cash requirements", what requirements did you mean? All the cash requirements? Half the cash requirements?

A. The requirements that Mr Berezovsky described to me: he said about \$30 million would be required for ORT. So these are the certain cash requirements. I didn't determine them; Mr Berezovsky determined them.

Q. And what is said at paragraph 12(b) is broadly the same description of what you had said you had agreed to provide Mr Berezovsky, as we saw in your pleadings. Do you agree?

A. Could you please read out (b)? I think you were discussing (a) before. I didn't understand the question.

Q. What Mr Mitchard describes as being what you had agreed you would give to Mr Berezovsky here matches what you in your defence had said you were going to be giving to Mr Berezovsky here, and that is that you would give him funds for ORT. Is that correct?

A. Yes, I confirm this, and I say about this and write this in all my statements.

Q. The trouble about that, Mr Abramovich, is that your case about what you say you had agreed to Mr Berezovsky has

changed, and it has changed because you no longer limit what you say you had to give him to the funding of ORT; you now say that that was one of the things that the funding would be directed towards, but that you were paying for other things as well.

Do you accept that your case has changed here?

A. No, I do not accept this and may I clarify, please?

Q. Please do, yes.

A. When we were writing the statements, remember I was telling about the history. The main sum that Berezovsky asked for was \$30 million and the majority of these funds went for the ORT. Also I've offset some of his loans but it was nothing compared to \$30 million. It was maybe 50,000 or 60,000, it was Alfa-Bank loan and some other loans, but it was a small sum compared to 30 million.

That's why, if you are reading in Russian, I didn't mean that. It's quite a broad interpretation. So it doesn't look like this.

Q. What I suggest has happened here, Mr Abramovich, is this: in response to Mr Berezovsky saying that you were partners and that this is why he offered -- he gave you assistance, you came up with an alternative false story, and that was that you were not partners and that in return for his assistance all you had agreed to do was

to give him funding for ORT.

The problem for you --

MRS JUSTICE GLOSTER: I think the question is getting too long, Mr Rabinowitz.

MR RABINOWITZ: Well, it's not yet a question. I'm going to say what my case is and then ask him to comment.

The problem for you, Mr Abramovich, was that as it emerged, as the proceedings went on, that there was a great deal of evidence to show that you had been making distributions to him that had nothing to do with ORT, you have had to change your case in order to fit the new facts which were arising.

Do you agree with that?

A. I absolutely disagree with that.

Q. Now, I want to move on to a different but related subject and it is this: when do you say that you first acquired management control of Sibneft? Was it before the December 1995 auction or was it after the December 1995 auction?

A. Real management control over Sibneft was acquired by us after getting 51 per cent of shares to hold, but before that we also had good relations with the management. But from legal viewpoint, we have acquired control over Sibneft after we've taken 51 per cent to hold.

Q. Can I ask you, please, to go to paragraph 85 of your

third witness statement, E1, tab 3, page 61 in English E1/03/61 and page 162 in Russian E1/03/162. You say in the first sentence of paragraph 85 that:

"[You] realised that [you] had to participate in the auction..."

This is the loans for shares auction.

"... no matter what or I would risk losing the everyday management control that I had already spent so much money on and fought so hard to acquire."

So here you seem to be suggesting that you already had management control prior to the December 1995 auction.

A. I think I've already explained that we've acquired management control after taking 51 per cent of the pledge, 51 per cent of the shares. And prior to that, the company was just created; there was nothing to control there. Well, we had a supply contract for some products but there was nothing to control there.

Q. But, with respect, Mr Abramovich, what your witness statement seems to be saying is that you had already acquired management control prior to the auction and that what you were worrying about was losing that management control.

A. No, I don't mean this at all. The company was created, was registered in October and the auction was held in

December. There were three people working in the company. There was nothing to speak about. It was simply the decree was issued and that was all. We had supply contracts for supply of petroleum products, but the control was only acquired by us after the loans for shares auction.

Q. Can you then just explain what you mean at paragraph 85, where you say:

"I realised that I had to participate in the auction no matter what or I would risk losing the everyday management control that I had already spent so much money on and fought so hard to acquire."

A. Initially my idea was, in according to privatisation plan, to quietly -- immediately privatise 49 per cent from the package that was in the federal ownership. 15 per cent was given to the regions, to Yamal and to Omsk oblast. My idea was to buy 49 per cent and then to buy the rest of the 15 per cent. That was my initial idea.

Q. Mr Abramovich, I don't think that's an answer to my question. My question relates to what you've said at paragraph 85 of your statement. Paragraph 85 of your statement seems to say that you had management control over these companies and that the reason you wanted to participate in the loans for shares auction was because

you were concerned that you were going to lose the management control that you had.

- A. That is exactly what I'm saying about. And if I didn't take part in the loans for shares auction, I would have lost management control; in other words, I would have not acquired it.
- Q. Mr Abramovich, I have no doubt that you know that there is a difference between not acquiring it at all and losing something that you already have, and what you say at paragraph 85 is consistent only with it being something you already had.
- A. Yes, indeed, I had good relations with the management of the company, with the president, and because of this we had access to supplies of oil and petroleum products. This is what I meant. The company was only created in October, so the real control and being on the board of directors, that wasn't possible.
- Q. Let me ask you this then, Mr Abramovich. Following the creation of the vertically integrated Sibneft in August 1995, do you say that you wanted Sibneft to be part of the loans for shares scheme and privatised or is it your case that you would have worked to prevent that if you could?
- A. Sorry, it's a strange way the question was put. I'll try to answer it. I didn't want to prevent it. First

I didn't want it to happen, but then we discussed it and thought that made sense.

Q. So is the answer to my question that you wanted it to happen?

A. Again, what point in time are you discussing? Before the decree about the loans for shares I didn't want it; and after the decree was issued, we made an effort for it to be included, for Sibneft to be included in the decree.

Q. And so let's talk about after the decree.

If Mr Shvidler were to say that when Sibneft was placed in the privatisation plan, this posed a problem for your team because the management control you had thought that you could obtain using your contacts with Omsk could now be lost unless it was paid for, you say that would be wrong?

A. Sorry, could you please repeat? I think the sense was lost in translation.

Q. Mr Shvidler's evidence is going to be that having Sibneft in the privatisation plan posed a problem for your team because the management control you had thought you could obtain could now be lost unless it was paid for. Do you say that is true or is what Mr Shvidler is saying there untrue?

A. What Shvidler is saying is true. If we didn't pay for

the control stake 100.3 million, we would have lost control; someone else would have had those shares and pledge and that will be the end of it.

Q. But again, Mr Abramovich, in the answer you have just given to that question, you say you "would have lost" management control. Do you say you had management control prior to the loans for shares auction taking place?

A. Again, I'll try to clarify. At the moment of creation of the decree -- sorry, at the moment of creation of the company, Viktor Andreyevich Gorodilov was appointed the president. Due to my relationship with him, we had some control. But, if I understand your question correctly, we've gained control only after taking the shares on pledge.

Q. Now, just putting to one side this issue that we have been discussing about management control, the reality of the position in 1995, when you and Mr Berezovsky made your agreement, is that you wanted to get shareholder control of Sibneft; can you confirm that?

A. We've been discussing this in great detail before the break and you have summarised it again. What point of time are we talking about: initial discussions or nearer the creation or when the decree was issued or the loans for shares auctions? What do you mean?

- Q. Prior to August 1995, Mr Abramovich.
- A. Could you please repeat the question that you put to me?
- Q. By August 1995, when you and Mr Berezovsky made your final agreement, if I can put it that way, you accept, do you not, that what you wanted was to get shareholder control of Sibneft?
- A. Yes.
- Q. And you knew that the only way to get and retain control of Sibneft would be to acquire majority ownership of the shares?
- A. Yes, this is right, but I just clarified my plans in this regard.
- Q. And you knew also that if at any stage you had only a minority stake in the new company to be created, then there would always be a risk of the majority shareholders removing the management you had in place; is that correct?
- A. At any point in time, the State was the majority shareholder. So if the State appointed the president of the company, it was very unlikely that the State would change him in a very short point -- period of time. Moreover, Mr Berezovsky could control this; this is why I needed him at that point in time.
- Q. Mr Abramovich, we're talking about a process in which the company was going to be privatised and my question

to you in that context was that you knew that the only way to get and retain control of Sibneft would be to acquire a majority shareholder interest, and you agreed with that.

I then asked you this: would you accept that if at any stage you had only a minority stake in the new company to be created and privatised, then there would always be a risk of the majority shareholders removing the management you had in place?

A. I will try to reply. I did not appoint the management; the president of the Russian Federation appointed the management.

Q. Okay. But the management with whom you had good relations?

A. That risk always existed. That's why Mr Berezovsky was taking that risk off, due to his relations with the coterie of Boris Yeltsin.

Q. Now, it wasn't only you who wanted to acquire an ownership interest in Sibneft, was it? Mr Berezovsky also recognised the enormous long-term benefits that could come from having ownership of Sibneft. Do you agree?

MRS JUSTICE GLOSTER: There are two questions there. The implication of the first question is that there was somebody else in particular who wanted to acquire an

ownership interest.

MR RABINOWITZ: Well, let me ask it this way.

Do you accept that, like you, Mr Berezovsky also recognised the enormous long-term benefits which could come from acquiring an ownership interest in Sibneft?

A. We have to -- both of us did not fully understand what the benefits could be. As I was trying to explain yesterday, when the company was created I had no idea it could cost that much, if you mean these benefits.

Q. Mr Abramovich, you come to Mr Berezovsky with a plan to acquire an ownership of Sibneft because you recognise the enormous potential, in terms of money, that such a plan would have; okay?

MRS JUSTICE GLOSTER: Do you agree with that?

A. Yes, I agree with that. And the infrastructure that belonged to me, the trading companies, allowed, together with Sibneft, ie on the basis of Sibneft, to extract large profit, yes.

MR RABINOWITZ: Do you accept that Mr Berezovsky also would have recognised that acquiring an ownership interest in Sibneft would have produced enormous potential in terms of money that it would generate?

A. I disagree with that. Just a controlling stake in Sibneft and Sibneft per se, that was long term a very non-profitable, loss-making enterprise. When I was with

Noyabrskneftegas, before Sibneft creation, the atmosphere there was dire. When the supply goes down -- sorry, the production goes down in the oil company and only 16...

THE INTERPRETER: Apologies, I just asked to repeat --

MRS JUSTICE GLOSTER: Just a second, Mr Abramovich. It might help if you spoke a bit more slowly.

A. Oil production is extremely capital-intensive.

Noyabrskneftegas was planned for 45 million tonnes production. At that point in time that we're describing, production was about 16 million tonnes; and the infrastructure, the whole infrastructure that was created in the oilfields, was only planned for 45 million tonnes. The infrastructure and maintaining the infrastructure was very expensive. The infrastructure was expensive.

MRS JUSTICE GLOSTER: So can I ask: is the point you're making that just acquiring Sibneft on its own, without the inclusion of your trading companies, wouldn't necessarily generate vast profits?

A. At initial stage it definitely would not generate them. Noyabrsk was a loss-making enterprise, unfortunately.

MRS JUSTICE GLOSTER: All right. Continue, Mr Rabinowitz.

MR RABINOWITZ: You were very careful in your answer, Mr Abramovich, to say that acquiring Sibneft per se on

its own would not be profitable, and you have been very careful in your case to explain that what would generate profits was to acquire, through ownership control of Sibneft, a control of what Sibneft did with its oil.

And is this right: where the money was to be made was by controlling Sibneft and therefore controlling the people with whom they dealt for the purposes of selling their product?

A. Could you please rephrase the question? Again, the question was quite long and I forgot the first part when you were asking the second part.

Q. Where you hoped to make profits from obtaining control of Sibneft was by ensuring, through that control, that Sibneft sold as much oil as possible to your trading companies, who would then make very substantial profits from that oil. Isn't that correct?

A. Yes, this is correct.

Q. And that is what you would have explained to Mr Berezovsky, is it not?

A. I didn't explain it to Mr Berezovsky in such a form and there was no need at that point in time. He was only interested whether I'll be able to perform my obligations that I've undertaken, and this is it, and I've performed these obligations. I have performed them.

Q. Mr Abramovich, we have already seen in your evidence that you explained to Mr Berezovsky that the scheme that you had would result in you more than doubling what you said was your own net income from \$40 million to \$100 million. I suggest to you you must have explained to him what it was that you were going to do with Sibneft in order to ensure that you were able to generate that sort of profit?

A. I didn't explain to him, not because I didn't want to explain it to him; because he was not interested in that. He was just interested whether I'll be able to issue 30 million or not and that was the end of discussion.

I was prepared, actually, I was ready to be explaining. At that point in time you have to understand I wasn't such a known man; I was glad that he was talking to me. But I didn't set the tone for these discussions.

Q. I suggest to you that what you are saying is not true, Mr Abramovich. Do you want to comment on that?

A. I disagree with this.

Q. You have said in your evidence --

MRS JUSTICE GLOSTER: What paragraph, please?

MR RABINOWITZ: Let me ask it slightly differently.

Do you say that Mr Berezovsky had no interest at all

in acquiring ownership of companies but was only ever interested in cashflow?

A. This is practically what I was saying. He was interested in the cashflows that I was able to provide. These are not the cashflows of Sibneft.

Q. Did you not know that at the end of 1994, when Mr Berezovsky became involved with ORT, he acquired a shareholding interest in it?

MRS JUSTICE GLOSTER: A shareholding in what, Mr Rabinowitz?

MR RABINOWITZ: ORT.

A. Are we speaking about the 94th or the 95th year? Which year are we talking about?

Q. Let's ask all these questions by reference to the state of your knowledge by August 1995.

By August 1995 were you aware that Mr Berezovsky had become involved in ORT and acquired a shareholding interest in it?

A. Yes, I did know that.

Q. And in 1995, Mr Berezovsky had also acquired -- also had a shareholding interest in Logovaz, and you knew that as well, did you not?

A. I suspected that; I didn't know it for sure. Yes, but it's a high degree of certainty.

Q. Mr Shvidler says he knew it for sure and you were certainly closer to Mr Berezovsky than Mr Shvidler. Are

you suggesting that Mr Shvidler might have known this and you might not have?

A. I think, again, it might have been error in translation.

You said I was closer to Mr Berezovsky than to Mr Shvidler. I think that is --

Q. Than Mr Shvidler -- you were closer to Mr Berezovsky than Mr Shvidler was to Mr Berezovsky?

A. Yes, this is true.

Q. And if Mr Shvidler would have known about it, would you accept that it is likely that you would have known about it as well?

A. Yes, I would accept, but I'm not the only source of knowledge for Mr Shvidler. But I think I would agree with you in this part.

Q. Also in 1995 Mr Berezovsky had a stake in Consolidated Bank and you were aware of that as well, were you not?

A. At some point in '95 I did find out about that, but I don't remember exactly.

Q. And in 1995 Mr Berezovsky had a large stake in a company called Anros SA, a Swiss company. Did you know about that?

A. One more time, what's the company name? Anros? No, I didn't know about that.

Q. Mr Berezovsky also had a majority stake in a company called Forus Holdings SA. Did you know about that?

- A. I don't think I knew that in '95.
- Q. Mr Berezovsky also had a shareholding in a company called Andava. Did you know about that?
- A. I think in 1995 I didn't know that -- about that either.
- Q. Did you know about Mr Berezovsky's stake in Aeroflot via Consolidated Bank?
- A. I doubt that Berezovsky's stake in Aeroflot via Consolidated Bank was held in '95.
- Q. You did know, I think, that Mr Berezovsky later acquired shares in Kommersant and TV6. Is that right?
- A. Yes, this is right, and I paid for this.
- Q. And you were also aware, I think, that Mr Berezovsky acquired interests in the Nezavisimaya Gazeta and Novye Izvestia?
- A. In Novye Izvestia this is not correct. This is not correct. He created it, the editor and the team left, and the new Novye Gazeta was created. But it wasn't in '95, that's for sure.
- Q. I'm not suggesting with that one it was 1995. But you are aware, are you, that he did in fact acquire interests in those companies?
- A. When you started asking this question, the whole series of these questions, you were talking about 1995, and then you slowly but surely started asking about my knowledge.

MRS JUSTICE GLOSTER: Well, again, Mr Abramovich, don't criticise Mr Rabinowitz. That's for me to do. Okay? If appropriate.

THE WITNESS: My apologies. I just simply don't understand the question.

MRS JUSTICE GLOSTER: But, Mr Rabinowitz, I think you should make it clear whether you are asking the question by reference to 1995 or some later date, to be fair to the witness.

MR RABINOWITZ: I will. I think I did, but I'll do it again.

Mr Berezovsky also acquired interests in Nezavisimaya Gazeta and Novye Izvestia, even if that wasn't by 1995; is that correct?

A. This is correct. But again I'd like to clarify once more that he didn't buy a stake in Novye Izvestia; he created that paper.

Q. So he created and managed that business, did he?

A. I wouldn't call that a business. It's business with a negative income, yes.

Q. You see, Mr Abramovich, what I suggest to you is that Mr Berezovsky acquired some shareholding in every business venture in which he was engaged and your claim that he agreed to receive not a single share in Sibneft is simply unbelievable.

Would you like to comment on that, please?

A. Yes. Yes, I would.

If all companies that you listed, you didn't have to pay for it anywhere. These were the companies that were registered, I had hundreds of companies like that, but you didn't have to pay for them. They were just companies which are registered, via which you start a new business. That was it.

Sibneft is a completely different situation: one had to pay for it. That slightly changes the practice.

Q. Mr Abramovich, do you accept that in 1995, when you won the loans for shares auction, you had it in mind that in the event of a State default you would be able to take ownership of the 51 per cent stake in Sibneft, whether directly or indirectly?

A. Yes.

Q. You did not think that you would be required to auction the 51 per cent to some unconnected third party, did you?

A. Sorry, I didn't understand the question to the end. How did you mean by "third party"?

Q. To some unconnected third party. Well, let me repeat the question and then you tell me exactly what it is about the question you don't understand.

The question to you is: you didn't think that you

would be required to auction the 51 per cent, in the event of a State default, to some third party with no connection at all to you?

A. If the State defaults, doesn't return the loan, yes, we had to put it up for auction. Whether the third party could take part in it? Yes, it could.

Q. I'm not suggesting a third party could not take part in it, Mr Abramovich; what I'm suggesting is that you would have had the right to auction the 51 per cent. Do you agree with that?

A. Yes, sure.

Q. And you could participate, directly or indirectly, in that auction and acquire that 51 per cent; that is correct as well, isn't it?

A. Yes.

Q. And your expectation was that if the State defaulted and there had to be such an auction, that you would win that auction?

A. I surely hoped that, but I couldn't say that I was absolutely sure of that. I can't say that.

Q. Neither did I ask you that. My question was: your expectation was that if the State defaulted and there had to be such an auction, that you would win that auction. That is correct, is it not?

A. Yes, I hoped for that. That was...

- Q. The whole purpose of engaging in the loans for shares auction was precisely so as to enable the person who won the loan auction -- that is to say who won the first stage -- to be able to acquire that 51 per cent in the event of default. You agree with that as well?
- A. The question is put in quite a complicated way. Was there a guarantee that if the default happens, that the pledger -- the person who holds the pledge would win? No, there wasn't such a guarantee.
- Q. But there was an expectation that this is what would happen, wasn't there?
- A. There was an expectation and there was a big desire for that; that's right.
- Q. Do you accept, Mr Abramovich, that in every case where there was a loan for share auction, the person who won the first stage of that auction was subsequently the person who acquired the State's shares that were auctioned?
- A. In the majority of cases, yes, but I think it wasn't 100 per cent. I think there was a strange story with Sidanko that some people won and other people got it as a result.
- Q. Do you accept this, Mr Abramovich: that there was, in relation to the loans for shares scheme, both an expectation and a very high probability that the

government would default on the loan for which the shares had been given as security?

A. Yes. Yes, this is so, there was such an expectation and such a feeling. But I cannot say -- one cannot say that that was guaranteed.

Q. Do you accept that that was in fact part of the plan?

A. Yes, that was part of my plan, I agree.

Q. No, not your plan, Mr Abramovich; the general plan in relation to these loans for shares auctions.

A. No, no, it was namely my plan with regard to these auctions.

Q. Can I just hand up to you an extract from a book which Mr Kokh, who was the chairman of the State Committee for the Management of State Property, has written about this issue. (Handed)

THE INTERPRETER: Mr Rabinowitz, I was just wondering whether you had that in Russian.

MR RABINOWITZ: We don't. I will have to read it and you will have to get it translated.

Now, you can see -- well, you can't, but I'll tell you -- maybe you can. The title of the book is called "The Selling of the Soviet Empire" and it's by -- "Revelations of the Principal Insider" -- Alfred Kokh.

MRS JUSTICE GLOSTER: Well, there is a Russian text, as one sees from the second page.

MR RABINOWITZ: There is, but we do not have it here, my Lady.

Can I ask you, please, to go to page 105. What Mr Koch says at page 105 is this. He's describing the pledge plan or the loans for shares plan and he says:

"The government's obligations were limited."

This is the second paragraph:

"The government's obligations were limited. Bear in mind that at the expiration of the term of the loan in a future year, not only the term of a loan but also the ban on the sale of oil shares that our friends in the Duma had..."

I'm going to start again and go more slowly for the translator. I'm sorry.

"The government's obligations were limited. Bear in mind that at the expiration of the term of the loan in a future year, not only the term of the loan but also the ban on the sale of oil shares that our friends in the Duma had hung around our necks would have expired. Taken for granted was the idea that if, by that time, the government had failed in its obligations -- let's just say this was something we more than half expected; after all, the point was to inject huge sums into the budget, not pay them out -- the holders of the shares would assume actual ownership of the shares and could

sell them."

Now, would you agree with Mr Koch when he notes that the point of the loans for shares scheme was to inject huge sums into the budget, not pay them out? Are you able to comment on that?

- A. I will try to comment, although it's a bit difficult just to hear such a long paragraph and understand it.

I think here Kokh is quoting that the probability was 50 per cent; this is what I was explaining. The probability of default was very high, probably even higher than 50 per cent, but we didn't know that it would be a guaranteed default.

In '96 there were elections and everything could have been changed and that would have been it; it would have been no default.

- Q. Mr Abramovich, there was an expectation of a default; would you agree with that?

- A. There certainly was an expectation, yes.

- Q. And a further strong indication that the state did not intend to repay the loans is the fact that no provision was even made in the budget to repay the loans; do you accept that?

- A. I would like to agree with you, but I can't, because Kokh himself was saying that the likelihood of that was 50 per cent. We're talking about the '95 budget and

everything that happened after that happened in '96, '98. So one cannot treat this seriously. And plus the book we are looking at is fiction.

Q. Can I ask you, please, to go to the document that you will find in Russian at bundle H(A)09, page 62 H(A)09/62, in English at H(A)09, page 28 H(A)09/28.

Mr Abramovich, you probably recognise -- I don't think you're looking at the right page. Maybe you are. This is a report which was produced by the audit chamber into the sale of Sibneft shares by way of the loans for shares scheme and if you go to paragraph 4.1, which you have at page 62 of the Russian. It's at page 37 of the English version H(A)09/37. Can I just ask you to look at paragraph 4.1. The audit chamber find this:

"The Federal Law on Privatisation of State and Municipal Enterprises in the [Russian Federation] doesn't provide for such a way of privatisation as alienation of pledged state property. At the time of execution of the Credit Agreement, in violation of clause 6... the right of the Borrower (the Ministry of Finance of Russia) to repay with the funds of the federal budget for year 1996 was impossible to exercise -- the budget for 1996 did not provide funds for repayment of loans."

Do you see that? So when you say, as you do, that

you can't accept what Mr Kokh says because his work is fiction and that therefore you can't accept that no provision was made in the budget to repay these loans, I suggest to you you're wrong.

A. Can I answer?

MRS JUSTICE GLOSTER: Yes, please do.

A. This document was put together in 1997, it's looking backwards, and it describes the auctions that happened in '95; and subsequently, '96, no funds for offsetting the loans were provided. So it very clearly can be seen in '96 but cannot be seen in 1995.

MR RABINOWITZ: Well, are you suggesting there was something in the budget in 1995 and that the audit committee in 1997 neglected to discover that?

A. No, I didn't say that. I'm just saying that in '95 it was not possible to understand whether -- in 1996 it was absolutely impossible to understand whether there would be any payments for loans to shares auctions in '96, any provisions in the budget. But the likelihood that there won't be any was very high and therefore Mr Kokh is saying that he estimates it as over 50 per cent.

Q. I want to turn next to ask you about the krysha allegation that you make in this case. This is, of course, at the core of the difference between what you and Mr Berezovsky say was agreed in '95 because while he

says that the agreement you made was that you, he and Mr Patarkatsishvili should be partners, you say that the relationship was not one of partnership at all but was rather one of krysha. That's correct, is it not?

A. Yes, this is correct.

Q. And can we begin by just trying to get some clarity by what you mean when you claim that your relationship with Mr Berezovsky was one based on krysha, because I have to suggest to you, Mr Abramovich, that what you say here is not clear.

Can I ask you, please, to look at paragraphs 32 to 35 of your third witness statement. In English it begins at page 42 E1/03/42 and in Russian at page 142 E1/03/142. Can I ask you to read that to yourself, please.

A. (Untranslated)

Q. If you read paragraphs 32 to 35. (Pause)

A. Yes, I've read that.

Q. Now, you note in these paragraphs that although krysha could be either political protection or physical protection, in your case you needed both; is that right?

A. In my case I needed political krysha more, but I would not refuse to have a physical one too.

Q. Mr Abramovich, that's not what you say here. What you say -- what is clear from what you say here is that

although krysha could be both either political or physical protection, in your case you needed both.

A. This is almost what you mean. I'm saying that in start of '90s, in 2000, I needed both kinds of protection to create the conditions which are stable enough; and in some sense, yes, both, one and the other. The business after creation of Sibneft didn't require krysha. After Sibneft was created, political krysha was required, yes.

Q. So what you appear to suggest in these paragraphs is that what you went looking for, because this is what you needed, was both physical and political protection. I think you've agreed that that is what you went looking for. Correct?

A. No. I don't say it here. I'm saying that would not mind physical protection but what I was looking for was political protection.

Q. You see, Mr Abramovich, what you actually say, paragraph 32, towards the end:

"Krysha could take the form of political protection or physical protection. During the 1990's and through the early 2000's, I needed both kinds of protection..."

I suggest to you that what you are saying here is that that is what you went looking for: a krysha that provided you with both kinds of protection. That's your evidence, isn't it?

A. This is not quite what I'm saying here. I needed political krysha but I would not refuse to have a physical one either.

Q. Well, that's not at all what you're saying here, Mr Abramovich.

MRS JUSTICE GLOSTER: Well, that's a matter for me, Mr Rabinowitz, to decide what the witness is saying and to analyse it against what he's said in cross-examination.

MR RABINOWITZ: Now, you don't say, I think, that you entered into a krysha understanding or relationship with anyone other than Mr Berezovsky. Is that right?

A. I've entered into an understanding only with Mr Berezovsky; that's right.

Q. You don't suggest that someone other than Mr Berezovsky provided you, directly or indirectly, with any aspect of krysha, do you?

A. I think I didn't understand the question. Could you please repeat it?

Q. You don't suggest that someone other than Mr Berezovsky provided you, either directly or indirectly, with the two aspects of krysha that we've mentioned, either political or physical protection?

A. Well, Mr Berezovsky was able to provide both types of krysha.

Q. What I'm still unclear about is whether you say you went to Mr Berezovsky because he was able to provide both types and that is what you wanted?

A. No, I want to reiterate: I went to him for political krysha because I needed political krysha.

Q. Can you look, Mr Abramovich, at paragraph 33 of your witness statement. You say:

"As I explain further below, my relationship with Mr Berezovsky began in late 1994 at the time when I wished to take my business interests to the next level by creating what later became Sibneft. It was not possible to achieve this in Russia at that time without the help of a person who had the appropriate political connections."

Then you say this:

"Additionally, it was also necessary at that time to have 'physical' protection as anyone having access to businesses capable of generating strong cash-flows was vulnerable to criminal interference, including political violence."

So you're actually saying here it was necessary to have physical protection.

A. Physical protection was necessary but I did not contact Mr Berezovsky because of that.

Q. Well, who did you contact because of that?

A. I didn't contact anyone for that. Just the mere presence of Mr Berezovsky and his team allowed to solve this problem.

Q. Does it follow that you then did go to Mr Berezovsky because you felt that he could give you the physical aspect of krysha?

A. It doesn't follow from that.

Q. You've told us, Mr Abramovich, first that you needed physical protection. You've also told us that you went -- you needed physical protection and political protection. You've also told us that, because of that, you went looking for krysha and that the only person you went to for krysha was Mr Berezovsky.

What I don't understand is how you say you were getting the physical protection in respect of krysha if you do not say that you went to Mr Berezovsky for it?

A. I didn't go to him for that, but the automobile business is built in such a way that one has to resist criminal attempts, as it says here. Because his business was an automobile business, selling cars, with a large amount of cash, that business was smoothly operated in this way: the physical protection was necessary. And after meeting Mr Berezovsky I thought I can count on that as well. But did I contact him for that? No, I definitely didn't contact him for that, that's for sure.

Q. Is it not your evidence that in fact what you needed was access to people with connections to criminal gangs who could, by use of this access to criminal gangs, where necessary, inflict violence and threats on people who were challenging you?

A. I was saying just to the contrary: that I did not have enemies, I didn't have people in my way. I needed protection; I didn't need a way of attacking people.

Q. Can I ask you, please, to go to paragraph 43 of your witness statement, page 46 of the English E1/03/46. You see you say here -- and you're talking about the period of time where you had your relationship with Mr Berezovsky, at the end of 1994 moving through that to 1996 -- you say:

"In this era, a number of powerful individuals appeared who could get the ear of those close to the government. At that time, Mr Berezovsky was one of such people. Additionally, from 1995 on, he had the additional advantage of exerting substantial influence over the media -- both television and the press. There were also people like Mr Patarkatsishvili (normally everyone called him Badri), whose influence derived from their connections to criminal groups. That was the nature of the political support and physical protection I have referred to above as krysha."

So let me ask you this again: is it your case that you went looking for someone who could provide services including access to criminal gangs, and it was in respect of such services that you were willing to pay substantial amounts of money?

- A. What I am explaining here, this is exactly to the contrary: I had to ensure that criminal gangs did not have access to me and not about me having access to criminal gangs. So for them not to have any access to me, I was prepared to pay for that. But I contacted Mr Berezovsky not for this, not for this reason.
- Q. What is the purpose then of referring to what you say are Mr Patarkatsishvili's links to criminal gangs? Why did you say that there?
- A. I'm saying about this exactly because of his authority. Badri could make sure that criminal gangs will have nothing against me, to keep the situation in such a way that they would have nothing against me, no one would attack me or my companies.
- Q. Mr Abramovich, what I suggest to you is that, despite the evidence that you have given, you are now trying to limit this krysha relationship to simply the role of lobbying on the part of Mr Berezovsky. Is that what you're trying to do?
- A. No, it wasn't just lobbying. Everything I've described

in Russian is called "krysha". If you translate this as "lobbying", okay, but in Russian this is called "krysha". When a person is ensuring protection, it doesn't matter what protection, and you are paying for that: this is the essence of the relationship.

Q. But again, are you saying you were paying for the physical protection which included connections to criminal gangs?

A. I didn't pay for that but I was paying for political krysha.

MRS JUSTICE GLOSTER: Mr Abramovich, a moment ago you said that after meeting Mr Berezovsky you thought that you could "count on that as well", that is to say physical protection. Could you explain what you meant by saying after you met Mr Berezovsky you thought you could count on physical protection as well? It's [draft] page 66 of the transcript.

Also at [draft] page 65, you said:

"I didn't contact anyone for [physical protection]. Just the mere presence of Mr Berezovsky and his team allowed to solve this problem."

Can you explain to me what, after you met him, you were counting on him for in the context of physical protection?

A. I counted that the presence of Mr Berezovsky and people

surrounding him, including Badri, would ensure physical protection for me as well, but I didn't pay for that.

That was, if you wish, a free attachment. I contacted him for one purpose, and that was going without saying.

MRS JUSTICE GLOSTER: Was the element of physical protection something you discussed with Mr Berezovsky?

A. No, I don't think we've discussed it. I don't remember that.

MRS JUSTICE GLOSTER: Right, thank you.

A. I only describe my feelings.

MRS JUSTICE GLOSTER: Right. And did you discuss it with Mr Patarkatsishvili, the question of physical protection?

A. No, I didn't discuss it with him.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: You see, Mr Abramovich, I suggest your evidence in here makes it perfectly clear that -- let me put this another way.

Let me make it clear that we accept that the only thing that Mr Berezovsky ever provided you with in terms of influence was political influence. But the reason that this evidence is interesting, Mr Abramovich, is because it makes clear that you will seek to smear Mr Berezovsky, if that is what you think is necessary, in order to try and meet his claim in this action. Do

you dispute that?

A. In translation it was said that I will do everything for him not to win this action?

Q. In order to try and avoid Mr Berezovsky winning this action, you will resort to smearing him by trying to associate him with criminal gangs and anything else you think will assist you by making him look bad in front of this court. Do you dispute that that is what you're trying to do here?

A. No, I do not agree. I'm just trying to describe the situation.

Q. Can we go, please, to paragraph 52 of your statement, page 48 in the English E1/03/48 and page 147 in the Russian E1/03/147. You say in paragraph 52, beginning five lines from the end of this:

"... I was aware that Mr Berezovsky was believed to have strong connections to the Chechen elements which exerted a powerful influence in Moscow at that time. Mr Berezovsky seemed to me capable of providing me with both political and physical support and protection."

Now, what you appear to be saying there, Mr Abramovich, is that you were aware that Mr Berezovsky was believed -- you don't say by whom -- to have connections to Chechen elements. Is that correct?

A. I'm just saying -- I'm saying that it was believed, and

that was a well-known fact, that Berezovsky had strong connections with Chechens because these people protected his car business.

Q. Can we look at paragraph 65 of your statement, page 154 in the Russian E1/03/154, page 54 in the English E1/03/54. You see the last sentence of paragraph 65 -- it's actually over the page in the English -- you talk about "Mr Patarkatsishvili's known connections with certain Chechen elements in Moscow".

MRS JUSTICE GLOSTER: You might like to read paragraph 65 to yourself to put it in context. (Pause)

THE WITNESS: Yes, I've read it.

MR RABINOWITZ: And it's clear, isn't it, that these "Chechen elements" that you are referring to here was intended by you to carry a connotation of gangsterism?

A. No. I am describing the situation as it was at that time, as I understood it at that time.

Q. When you referred at paragraph 43 to Mr Patarkatsishvili having connections to criminal groups, that was a reference to the same connections, was it not?

A. Yes.

Q. And what you were seeking to suggest was that Mr Patarkatsishvili and Mr Berezovsky were in some way connected to Chechen gangsters; that's right, isn't it?

A. No, this is not so. I don't think they were connected.

I am not trying to present any of them as a gangster.  
I'm just saying the car business was protected by these  
brigades.

Q. In fact, Mr Abramovich, it doesn't stop there because  
later on in your statement you say that Mr Berezovsky  
was believed to be supporting Chechen terrorists, don't  
you?

A. And here it's very important to note that we're talking  
again about another point in time. Here we are  
discussing 1995; there we're talking about year 2000,  
2000/1999.

Q. That's what you say at paragraph 222 of your statement,  
page 101 E1/03/101, where you refer to:

"Mr Berezovsky... spending money on PR campaigns  
against President Putin and the Russian government and  
was believed to be supporting Chechen terrorists."

Page 202 in the Russian E1/03/202.

Mr Abramovich, I am going to be submitting that the  
insinuations and allegations that you make in your  
statement about Mr Berezovsky having links or  
involvements with Chechen criminal gangs and being  
involved with Chechen terrorists is an utterly  
unjustified smear and I would like to give you the  
opportunity to comment on that.

A. If I may, everything to do with the start of creation of

Sibneft is described in previous paragraphs and I've clarified on that. Everything with regard to Chechen separatism or any connection with Chechen fighters, that was a known fact, everyone knew that. The minister of internal affairs was talking about that in his statement. And then the situation with Mr Putin, that happened a lot later. Mr Putin came to power a lot later and in '95 he was working in the mayory of St Petersburg.

Q. You see, Mr Abramovich, the truth is that in 1995, the time when you say you entered into a krysha relationship with Mr Berezovsky, Mr Berezovsky knew no more than five people of Chechen origin. That is what he says, in evidence that was unchallenged. One was a man called Maghamet Ismailov, who worked for Avtovaz.

Can I ask you, please, to go to H(B)1.056. Now, you have in front of you a picture of children playing and on the right in the picture is Ms Gorbunova and with her is Mr Berezovsky's young daughter, Arina. The woman on the left -- you can recognise her -- is Zara Shvidler; that's Mr Shvidler's wife, isn't it?

A. Yes, this is so.

Q. And she is with her son in this picture?

A. I think so, but it's hard to understand, looking at this picture.

Q. All right. Well, you can take it from me that she is.

If you go on to the next picture at page 57

H(B)1.057, can you see the host of this party -- you can see there's a caption there which explains this -- is Mr Maghamet Ismailov because this was his son's birthday party?

My question to you is this: this is not consistent with Mr Ismailov being a gangster, is it? Or do you say that Mr Shvidler routinely lets his children go to birthday parties at gangsters' homes?

A. Sorry, I think I misunderstood you. At some point -- did I say at any time that Mr Ismailov was a gangster?

Q. No, I want you to confirm that he isn't. Can you confirm that you do not say that Mr Ismailov was a gangster?

A. No, Mr Ismailov is not a gangster.

Q. You see, the other people that Mr Berezovsky knew at this time of Chechen origin are all identified in his evidence and we can just check them off as well.

Salman Hashimikov, he's a famous wrestler who later became a minister in Chechnya. You don't seriously suggest that he was a gangster, do you?

A. I think not, but I simply don't know him so I can't say anything about this. I'm not trying to say that all Chechens are gangsters, not at all.

Q. I'm sure you're not.

Vladislav Surkov, who is one of the other people that Mr Berezovsky knew, do you say he was a gangster?

A. No. No, I wouldn't call Surkov a gangster.

Q. No, because he became first deputy chief of staff to both President Putin and then President Medvedev; that's right, isn't it? Is that correct?

A. Yes, this is true.

Q. What about Aslambek Aslakhonov? He's a former senior policeman, adviser to President Putin and a member of the Duma. I don't suppose you suggest he's a gangster, do you?

A. I certainly would not call him a gangster.

Q. Ruslan Khasbulatov: he's an economics teacher and a former speaker of the Russian Parliament. Again, not a gangster, presumably?

A. I don't think he's a gangster. I don't know him, but I've heard a lot about him.

Q. You can close that.

Can I ask you next, please, to go to bundle B(B)2.04, page 149 B(B)2.04/149. Again, just to tell you what this document is -- we do not have it in Russian, I think -- this is a witness statement made by Sir Andrew Wood, who was British ambassador in Moscow in the latter half of the 1990s; he explains that in the

first paragraph. And at paragraph 1 of the statement he also explains that in that capacity he had:

"... significant contacts with Mr Berezovsky during the time [he] was in Moscow as British Ambassador in the latter half of the 1990s..."

Then at paragraph 2 of the statement, Sir Andrew explains that he worked for the Foreign and Commonwealth Office for 39 years, from 1961 to 2000, and that he had "three stints of service in Moscow". For those trying to follow the text, that's in the second sentence of paragraph 2. He also explains in the statement in paragraph 2 that he speaks fluent Russian.

At paragraph 4 of the statement Sir Andrew says this:

"As Ambassador to Russia during a period of great change in that country, and at a time when the British government was seeking to promote the development of democracy and a market economy in Russia, it was important that I, as well as my European Union colleagues, cultivated contacts with those in the Russian political and business world who were prominent in pursuing the same end."

Then at paragraph 5 he explains that he met Mr Berezovsky in September or October 1995.

And then in paragraph 6, if I can read to you what

he says in paragraph 6, he says this:

"Mr Berezovsky was quite plainly a very significant political figure. In October 1996, he was appointed Deputy Secretary of the Security Council of the Russian Federation with a portfolio to negotiate with the Chechens following the peace agreement reached with them by the late General Lebed in the summer of 1996. Mr Berezovsky remained in that position for a little over a year. In April 1998, he was appointed Executive Secretary to the CIS. Throughout the time I had contacts with him, he provided an extremely useful channel into the Kremlin and beyond it. The information which he provided was always extremely useful. He was always informative and insightful about what he believed to be happening, not least in the Kremlin, and his evidence always deserved careful attention. Anyone in the diplomatic establishment who could maintain contacts with him, did so."

Just pausing there, Mr Abramovich, I don't suppose you would disagree with any part of that, would you?

- A. Well, it's hard to understand just hearing it. I was trying to follow. As far as I understand, Mr Berezovsky was telling to Sir Andrew what was happening in the Kremlin and he was well informed. Yes, that's true.
- Q. Now I want to read to you what he says in paragraphs 8

to 13:

"I now wish to mention and confirm one specific incident in which Mr Berezovsky's assistance was extremely beneficial to British interests. I believe that this is a matter which he has already mentioned in the course of his own statements in the appeal.

"In July 1997, two masked gunmen abducted two British aid workers from the Chechen capital, Grozny, where they were working for a Russian charity which helped child victims of war. Their names were Camilla Carr and Jon James. We, and the British press and public, were extremely concerned for the safety of the two hostages. It later emerged that they had been mainly held in basements and had been subject to some violence. Later British hostages taken in Chechnya, I am sorry to say, did not escape with their lives.

"Given Mr Berezovsky's role in the Chechen negotiations generally, I was in direct contact with him over this matter from a very early stage. He was not, of course, the only person with whom I/we had contact in order to attempt to resolve the situation. Ivan Rybkin, for example, was another high profile figure with whom I had contact and who was helpful over the matter. I was also in contact with the Chechen and Russian authorities. As is standard procedure in such cases, we

pursued every available channel. In addition, I made a number of public appeals.

"Mr Berezovsky assisted us in working towards the release of the hostages throughout the year and more they remained in their captors' hands.

"Finally, in September 1998, it was Mr Berezovsky who managed to secure the release of the hostages and fly them out of Chechnya and to safety. They flew in Mr Berezovsky's own private jet both to Moscow and onward to London. There were 1,536 hostages released altogether as a result of Mr Berezovsky's direct intervention. The majority were Russian and East European nationals, but this number also included French, German and US nationals as well as Jon and Camilla.

"Although there were pictures in the newspapers of the hostages departing on Mr Berezovsky's jet, I recall that Mr Berezovsky himself was discrete about the matter. He did not seek undue publicity over the matter and nor did he seek any kind of quid pro quo from us."

And again just pausing there, Mr Abramovich, I don't imagine you are in a position to dispute any of this either, are you?

- A. There were some irregularities in the way the ambassador is presenting it. As far as I remember, Badri was

travelling to Chechnya to buy out the hostages; it wasn't Mr Berezovsky. After the hostages were bought out, Mr Berezovsky arrived with the journalists; everything was filmed and shown on TV. If this is thought to be without publicity, I disagree with that part.

Moreover, that story, I actually paid for that, paid for the story. That's how the story looked.

Q. Now, let's just have a look at paragraph 14, Mr Abramovich.

MRS JUSTICE GLOSTER: Just a second. When you say "paid for the story", what do you mean by that?

A. I gave the money to Badri: he flew there and bought out the hostages.

MR RABINOWITZ: Sir Andrew says this:

"My own view is that the United Kingdom does retain a degree of moral obligation to Boris Berezovsky in respect of the difficulties he now faces."

This was in the context of his applying for asylum.

"It seems to me that that obligation derives from, first, his co-operation with ourselves in the difficult and complex evolution of a market economy and civil society in Russia after the fall of the Soviet Union. It is of course primarily a Russian responsibility to promote those ends, but their success is also very much

in British interests. Second, I believe that Mr Berezovsky's specific (and successful) intervention in the matter of the Chechen hostages, gives rise to a certain moral reciprocal obligation where a person who was a demonstrative friend to British interests now finds himself in need."

Now, I take it, Mr Abramovich, that you would accept that Sir Andrew did not consider that Mr Berezovsky's connection to Chechens should be any cause for alarm?

MRS JUSTICE GLOSTER: Just a second. I'm not sure it's relevant for him to comment on what Sir Andrew may or may not have thought. I mean, put something on the underlying factual material if you like. But we can all read what Sir Andrew has said; I'm not sure I'm going to be assisted by Mr Abramovich's comments on Sir Andrew's views.

MR RABINOWITZ: Well, let me put this question then.

If Mr Berezovsky really was -- as you, I suggest, try to insinuate -- widely believed to be connected to Chechen gangsters, do you accept that this is something that Sir Andrew would have known about?

A. It's very hard for me to comment. It all depends on the degree of -- to what Sir Andrew was informed. If Sir Andrew at some point in time was reading Russian newspapers, he would have known about that. I don't

know at what point in time he left Russia.

MR RABINOWITZ: My Lady, is --

MRS JUSTICE GLOSTER: Mr Rabinowitz, shall we leave it there?

MR RABINOWITZ: We'll leave it there.

MRS JUSTICE GLOSTER: Right. 2.05.

(1.07 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, I want to next ask you about your friendship with Mr Berezovsky. Let me begin by asking you this, do you accept that between 1995 and 2000, you and Mr Berezovsky were friends?

MRS JUSTICE GLOSTER: Hang on. There's a lot of interruption going on. Could everybody sit down, please. (Pause)

Right. Go on.

A. I would say that between '96 and the end of '99, perhaps early 2000, yes. Because I spent 1995 in his anteroom, in Mr Berezovsky's anteroom, waiting for meetings to be arranged between me and him, so I would not really describe that as friendship.

Q. And of course the fact that you were friends in that period was, of course, your pleaded position as well;

but in your witness statement you make the comment that with the benefit of hindsight, you say, you would hesitate to call him a former close friend.

So what I would like to ask you is this: is it then the case that with the passage of time since May of this year, when you made that comment, you have realised again that he was in fact your close friend?

A. I am explaining in my witness statement that, with hindsight, I would not describe that as being my close friend, even though we did meet and it was very pleasant for me to have meetings with him.

Q. Then I'm a little bit unclear as to whether you say he was your friend or whether you say he was not in fact your friend.

A. In my witness statement what I'm saying is that looking from today, looking back from today, I would not describe what happened at that time as him being my close friend.

Q. But at the time you did regard him as your close friend; is that right?

A. I would just desist from using the term "close", the qualifier "close". He was just a friend. In Russian, when you describe someone as your "close friend", this has a very specific, focused meaning.

Q. Very well.

You also talk in your statement of the "strong emotional bond" you say you had with Mr Berezovsky.

Would you care to explain what you mean by that, please?

MRS JUSTICE GLOSTER: Could you just tell me what page you're on, please?

MR RABINOWITZ: In the witness statement?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: That is a comment that Mr Abramovich makes at paragraph 32, at page 42 in the English E1/03/42 and 142 E1/03/142 in the Russian.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: That is also where Mr Abramovich says that, with the benefit of hindsight, he would hesitate to call him a close friend.

MRS JUSTICE GLOSTER: Yes.

The question for you, Mr Abramovich, was what you meant by having a strong emotional bond with Mr Berezovsky.

A. What I meant was that we had a very good relationship, that we spent a lot of time together. We relaxed together, we spent time together, but I would not describe that as being a close friendship.

Q. Can I just be clear as to why this is relevant, Mr Abramovich. You see, I ask you about your friendship because Mr Berezovsky says that the two of you were

partners whereas you say that he was merely your protector and you were the protectee, and it's going to be my suggestion that the nature of your friendly -- very friendly -- relationship shows that you were not in a relationship of protector and protectee but that you were in fact partners. Do you understand?

A. I understand where you're coming from but I tend to differ. I disagree with that.

Q. Can I then just ask you this. Ms Gorbunova told the court that she often met with your wife Irina and they became close friends. You don't dispute that, do you?

A. I do not dispute that my former wife did meet with Elena very often. I wouldn't call them close friends but they were friends. My wife had closer friends. And our children used to meet quite often, they went to see each other at the respective houses, yes.

Q. And do you dispute that in August 1995 you and Irina went on holiday in Spain with Mr Aven and his wife and Andrey Bloch and his wife and Mr Berezovsky and his wife?

A. No, I'm not disputing that. I do remember that cruise.

Q. And that was to Spain in August 1995?

A. Yes, it was in Mallorca, Menorca and some other islands there.

Q. And it's true also that you went to Gstaad together at

the end of 1995 and into early 1996; do you agree with that?

- A. We did go to Gstaad, I cannot say that we went there together, but we did there and there were quite a few people there, maybe 25 people. Yes, yes, we did go there.
- Q. And in Gstaad Mr Berezovsky celebrated his birthday in that year and you were invited, were you not?
- A. If he was celebrating his birthday there then, yes, I was definitely there.
- Q. And you were invited to Mr Berezovsky's birthday party every year between then and 2000; is that correct?
- A. If your question was whether I attended all Mr Berezovsky's birthday parties between '96 and 2000, then that is wrong. Now, whether I was invited to all of them, I don't know. I think I visited two of them, maybe more, but I would not be certain.
- Q. But if Mr Berezovsky says that he invited you every year, you would not dispute that?
- A. Well, if he says that he invited me every year, I would not dispute that. What I'm trying to explain is that I was not there. But there is a possibility that he did invite me, yes.
- Q. And then in June 1996 you went on holiday to Spain once again with the Berezovsky family; that's right, isn't

it?

A. Possibly, but I do not have a specific recollection of that. Was that also a sea cruise -- oh, yes, yes, that is true. We lived not far from Mr Gusinsky, that's true, but we did not go there together. Once again, there were quite a few people, many people were renting houses there. So it was the Russian diaspora that was living in Spain at that time.

Q. But you certainly saw each other at that time, whilst there?

A. Yes, we very often saw each other. We visited each other. Our wives met. I met with Melnichenko, Berezovsky, Gusinsky, and I think Mr Shvidler even came there.

Q. That's June 1996. In August 1996 you again went with Mr Berezovsky and Ms Gorbunova and others for a yachting holiday around Sardinia and Corsica? Perhaps I can show you a picture to remind you. Do you remember it?

A. To be honest with you, I do not recall that cruise. But yes, yes, I think that may well have been the case, yes.

Q. And so far, in the two years since you had met Mr Berezovsky -- we're talking about 1995 and 1996 -- you appear to have been on vacation with him at least four times: Gstaad, Spain twice, and Sardinia and Corsica.

Now, you don't dispute -- for the New Year of 1996/1997, you and your wife were in the Caribbean with Mr Berezovsky and Ms Gorbunova, were you not?

A. I think in your previous sentence you said that I went to Gstaad twice; no, I think I went there only once.

Q. Gstaad once, Spain twice.

A. Oh, yes. Then yes.

Q. "Yes" to what? Let me just put the next question to you again, just so there's no confusion.

For New Year's of 1996/1997, you and your wife were in the Caribbean with Mr Berezovsky and Ms Gorbunova; was that correct?

A. I don't think that just the four of us were there.

Q. Well, I'm not saying that you were the only ones there but they were in a group of people with you on this cruise?

A. If I recall correctly, I think we rented two boats, two yachts, and I think there were about 12 families there; or maybe I'm wrong, maybe it was a different cruise. You know, we went on holidays quite often, maybe even twice a year sometimes.

Q. On this particular occasion there were six people in the Caribbean. Do you accept that that's likely to be correct?

A. If it was just one yacht, then there were probably six

people or maybe eight. Now, if there were two yachts there, then there were 12. But I think -- I'm not sure which cruise we are now speaking about, but I think there were two yachts in the Caribbean.

- Q. In the summers of 1997 and 1998 your family and Mr Berezovsky's family stayed in neighbouring chateaux in Cap d'Antibes; is that right?
- A. That is correct. As I now recall, I was renting Mr Berezovsky's house.
- Q. And then in August 1998 your families went holidaying together on a yacht, the Southern Cross; is that right?
- A. Which year was that once again, sorry?
- Q. August 1998.
- A. Yes, possibly.
- Q. So, again, just pausing here, between 1995 and 1998 it appears that you and your family had been on something like eight holidays together: eight holidays in four years with Mr Berezovsky and his family. That is right, is it not?
- A. From what I heard, yes, that must be correct, but I have no specific recollection of that myself.
- Q. And it's also right, I think, that in the late 1990s you would meet with Mr Berezovsky very frequently, at least a few times a week. Is that right?
- A. In the late 1990s? Are you speaking about '96, '97? At

that time I believe that we -- it may well have been that we have been meeting each other on a daily basis. That is quite possible.

Q. Can you say: did you go on holiday with anyone else more frequently than we see you had been going on holiday with Mr Berezovsky and his family?

A. Yes.

Q. Who?

A. Andrey Bloch, Mr Shvidler, Mr Gorodilov, we spent time together.

Q. On holidays?

A. Not only holidays; weekends, holidays. We basically all lived together in the same compound.

Q. Ms Gorbunova told the court that you called Mr Berezovsky a friend and appeared to behave like Mr Berezovsky's friend. Were you just pretending to be Mr Berezovsky's friend?

A. It's a very difficult concept, you know, pretending to be a friend. We have discussed "close friend", "friend", and Shvidler, Gorodilov and other people whom I have listed, including Eugene Tenenbaum, are my close friends. These are people with whom we work together and we relax together, we spend time together. Mr Berezovsky was my friend but I would not describe that as being a close friendship.

Q. All right. Let's move on to a slightly different theme.

Do you understand what I mean, Mr Abramovich, when I refer to the Russian law concept of a joint activity agreement?

A. Approximately, yes.

Q. Can you just explain to me what you understand it to mean?

A. People share interests, people share income and people share in their expenses. People participate both in the income, in the risks and in the losses: that's the way I understand it.

Q. And when you were preparing your witness evidence did you have in mind the question whether the agreement you reached in 1995 with Mr Berezovsky could properly be described as a joint activity agreement as that term was used in Russian law?

A. No, I did not mean that. If I understand your question correctly, whether I meant it at the time when I was writing my third witness statement?

Q. Yes.

A. No, I did not mean that it was a joint activity contract, an agreement to carry on joint activity.

Q. No, you may have misunderstood the question and it's my fault.

When you were preparing your witness evidence, did

you have in mind the question whether or not the agreement you reached in 1995 with Mr Berezovsky could properly be described as a joint activity agreement as that term is used in Russian law? Was that something you were thinking about?

A. Before I started writing my witness statement I did not -- I was not thinking about this. But I think the question was whether or not our relationship can be described as a joint activity contract and I think that was the amended claim form, amended particulars of claim, and so I responded to that.

Q. Mr Abramovich, would you accept that nothing in your limited legal training provided you with any knowledge or insight in relation to commercial business legal matters?

A. I agree with that.

Q. Can you then please explain why --

A.

THE INTERPRETER: I'm sorry, sir, the microphone went dead for a second.

A. I would agree with that, yes.

MR RABINOWITZ: Can you please then explain why you regarded it as appropriate for you to give an opinion on such matters given that, as you say, you had no training that would have provided you with the knowledge or insight in

relation to business legal matters?

MRS JUSTICE GLOSTER: Please will you take him to the relevant paragraph in his witness statement.

MR RABINOWITZ: Can you go to paragraph 33, please. It's at page 143 of the Russian version E1/03/143 and page 43 of the English version E1/03/43. Do you see the last sentence?

"Equally, our relationship could not be described as a joint business enterprise and nor did we ever enter into any arrangement that could properly be described as a joint activity agreement (as I understand that term in Russian law)."

- A. To be honest, I'm not sure I understand the question: where did I take this from, where did I get this from, or why do I believe this to be the case?
- Q. Why did you think it was appropriate for you, a person who says you have no knowledge or insight about legal matters, to be commenting about a Russian legal concept called a joint activity agreement?
- A. I think we discussed yesterday that I cannot say that I do not have any knowledge of law. Far be it from me to say that I'm a serious lawyer but I do have some knowledge. So, from what it says here, that I can draw the conclusion that this is not what a joint activity agreement is supposed to mean. And also you can read

this up in some legal textbooks; you can figure out for yourself what a joint activity agreement is supposed to mean.

Q. Is that what you say you did here, Mr Abramovich, read it up in some textbook?

A. No. No, I did not read this in any legal textbooks; I simply remembered what a joint activity agreement was or maybe some lawyers explained this to me. I just don't remember the way it all happened.

Q. Was this actually your evidence at all or did someone put this in your statement and get you to sign that?

A. This is my witness statement and no one asked me to sign off on this -- on this.

MRS JUSTICE GLOSTER: Can we not have laughter, please.

MR RABINOWITZ: Now, I'm going to turn to a different topic, still dealing with the 1995 agreement.

In your witness statement -- this is at paragraph 89, page 63 of the English E1/03/63 and 163 of the Russian E1/03/163 -- you're talking about funding for the 1995 auction and you say here about Mr Berezovsky that:

"... he did not see it as his responsibility at all to assist with any of the funding..."

That's the bit I want to focus on:

"... he did not see it as his responsibility at all

to assist with any of the funding... [in respect of] NFK."

Do you see that?

A. Yes.

Q. Can I ask you, please, to go to bundle H(A)02 at page 130 in the Russian H(A)02/130 and 130T in the English H(A)2/130. Now, again, just so you know what you're looking at, these are the rules that governed the Sibneft auction and I think there is no dispute about them.

If you look at paragraph 1, you can see from paragraph 1 that this was dealing with:

"... [the] auction for the right to enter into credit agreements, agreements on the pledge of shares in federal ownership and commission agreements..."

Do you see that, the auction?

A. Yes.

Q. I want to focus for the moment on paragraph 3.

According to the rules governing the auction, the starting price was to be \$100 million; do you recall that?

A. Yes, I do remember that.

Q. And there needed to be a good faith deposit of \$3 million; do you remember that?

A. Yes, I recall that.

- Q. And bidders had to be either a bank or needed to be able to provide a certified balance sheet showing free cash in excess of \$100 million; that's right, isn't it?
- A. Yes, I remember that.
- Q. And that, in reality, meant that bidders had to have the support of a bank because it was very unlikely that anyone would have \$100 million in free cash on the books; do you agree with that?
- A. I don't agree with you -- with the first part of what you said. I agree with 50 per cent of what you said. There were companies that did have \$100 million free cash available to them, but obviously a bank would have been a preferable bidder, a preferred bidder.
- Q. And even in relation to banks, there were restrictions on the banks that might participate because of Central Bank rules that limited a bank's commitments to a proportion of its capital; do you agree with that?
- A. Yes, that is true.
- Q. And this meant that not just any bank could act in the auction; it had to be a bank of sufficient size. Do you agree with that?
- A. Yes, I agree with that.
- Q. And so in relation to the bid that you made in the auction, ultimately SBS provided the guarantee but there was a back-to-back guarantee from Menatep precisely

because neither bank, of itself, had sufficient capital;  
do you agree with that?

A. I agree with that, yes.

Q. And that was the position even though these two banks  
were the second and third largest banks in the country  
at the relevant time; do you agree with that?

A. I agree with that, with just one small comment, if  
I may.

Q. Yes.

A. There was the Sbergatelniy Bank, Sberbank, which was  
a huge bank in the Russian Federation, and then there  
were some privately held banks. And so amongst the  
privately held banks, Onexim, Menatep, Stolichny Savings  
Bank, were -- there was a ranking, but vis-a-vis huge  
government-owned banks, compared with huge  
government-owned banks, they were not large banks.  
I mean, there was a huge, enormous gap between the  
biggest one and the second largest bank.

Q. It's common ground between yourself and Mr Berezovsky  
that NFK won the December 1995 auction with a bid of  
\$100.3 million; do you agree?

A. Yes.

Q. And the \$100.3 million loan in question was directly  
provided by SBS Bank; do you agree with that?

A. No.

Q. Well, let me just be clear about what you are agreeing and disagreeing with. We'll come later to the question of the source of the SBS Bank's funds but can we agree that it was SBS which actually paid the \$100.3 million to the state?

A. I agree with that, yes.

Q. And do you say that SBS's willingness to act for you in the 1995 auction in this way had nothing to do with Mr Berezovsky at all?

A. This is not what I'm saying. Mr Berezovsky, I think, introduced me to Mr Smolensky, if my recollection is correct, so I -- he did help him develop that wish and that desire. But apart from that, it was all pure business.

Q. Can I ask you, please, to look at paragraph 93 of your third witness statement, page 64 in the English E1/03/64 and 164 in the Russian E1/03/164. You are referring at paragraph 93 to the SBS loan and what you say is this:

"Mr Andrey Gorodilov and I spent a lot of time negotiating with Mr Alexander Smolensky, Mr Aleksey Rasskazov and other employees of SBS. The reason that SBS was willing to lend its name to our bid was first that we had sufficient funds to cover the entire loan amount, and secondly we agreed to let SBS

have all Sibneft's banking business. By late 1995, there were only a few companies in Russia with such a large cash flow as Sibneft (in the region of US\$1 billion per year), so to become the principal banker to Sibneft was a significant coup for SBS. It had nothing to do with Mr Berezovsky."

Would you like to explain, Mr Abramovich, why you chose to put this in your witness statement when you now say it is not true?

- A. No, sorry, I did not say that, or maybe it was lost in translation. I'm confirming that. I'm confirming that Mr Berezovsky introduced me to Mr Smolensky, to the best of my recollection; all the rest is something that we did ourselves. We put the money into the bank. The bank gave the money to the government. We paid the earnest money, the deposit.

So if we are describing Mr Berezovsky's participation, then what he did was introduce me to Mr Smolensky. But for SBS it was important to get a hold of SBS as a client because it was a huge chunk of business. We also issued credit cards for the Noyabrskneftegas employees; it was a large programme that we put in place, so that was of interest to them.

- Q. Mr Sumption, when he opened the case, explained that Mr Berezovsky, he said, did give a personal assurance to

SBS that they would be repaid. Do you say that what he said there was wrong?

A. Mr Sumption put it correctly: a personal promise is not the guarantee that Mr Berezovsky was speaking about. It was a personal assurance. Even today, if I go to a bank where I have an account and if I give them a personal assurance, just on the strength of my personal assurance they will not let me have any money.

Q. When you said that all Mr Berezovsky had done was to give you the introduction, even that was wrong, wasn't it? Because you now accept that he also gave a personal assurance that they would be repaid.

A. At that point in time I did not know this. I came to know this only when I started reading the documents. I'm not disputing this, but perhaps it would be a better idea to ask this of Mr Smolensky or whoever will be speaking for the bank.

Q. Can I ask you, Mr Abramovich, in your own words, to describe your own personal dealings -- that's you, not any assistant or one of your colleagues -- can you describe your own personal dealings in relation to obtaining funding in respect of the 1995 auction?

A. You mean what I did with my own hands?

Q. What you did with your own hands, your own mouth; whatever it was that you did.

- A. I put up my own money. I used my personal money.
- Q. Is that it? Is that what you say you did in relation to discussions with SBS, negotiations with SBS? All you did personally, you say, was to put up your own money?
- A. No, apart from that, I had meetings -- I mean, if you want me to go into the details, I had meetings with Smolensky, with Rasskazov, with Mr Grigoriev, Balagansky and others. I mean, there were protracted discussions, many discussions in fact. But the main thing that was required of me was to agree with Mr Gorodilov so that he goes there, meets Mr Smolensky, and then money had to be made available.
- Q. Very well. Do you accept that Mr Alexei Grigoriev was the chairman of the SBS management board at the relevant time for funding the 1995 auction, say from August 1995 onwards?
- A. Grigoriev, I think -- yes, I think he was chairman of the executive committee of SBS in August '95 and afterwards.
- Q. And do you accept that Mr Grigoriev was at that time working under the supervision of Mr Smolensky?
- A. I agree with that, yes.
- Q. And would you accept that although Mr Smolensky was not a member of the management board, in practice he was able to influence all major decisions because all

principal directors and members of the board of directors were members of his team?

A. I agree with that.

Q. And would you accept that the decision to invest \$100 million in a loans for shares bid would be a major decision for SBS?

A. For SBS it was not any kind of decision because they were not investing anything into the loans for shares auction.

Q. Mr Grigoriev will say that \$100 million was an enormous sum in the context of Russian business at this time. Would you accept that?

A. I would accept that. I agree with that.

Q. Do you accept that the relationship between Mr Smolensky and Mr Berezovsky in 1995 was such that they met each other from time to time, both socially and for business reasons, in the context of meetings of the oligarchs, as they have become called: Mr Khodorkovsky, Mr Fridman, Mr Gusinsky and Mr Potanin, among others?

A. Are we once again speaking about 1995? At that time there were no such meetings because there were no oligarchs. But they did have meetings, Berezovsky and Smolensky did meet each other; I can confirm that.

Q. Would you accept also that Mr Berezovsky and Mr Smolensky had developed a relationship which was both

mutually beneficial and developed on a friendly basis,  
as a relationship of equals?

- A. When you say "mutually beneficial", I'm not sure I understand what that means. Mr Berezovsky did raise debt from Smolensky that -- they had a good relationship. Now, calling this a mutually beneficial relationship does not really do justice to the situation. But if Smolensky continued meeting with him, well, that -- presumably that means that it was beneficial to him as well.

- Q. Would you accept that, by contrast with the position of Mr Berezovsky, you personally had no relationship at all with Mr Smolensky or SBS prior to SBS being asked to give consideration to funding the \$100 million bid?

- A. I have already mentioned that I was introduced to Mr Smolensky by Mr Berezovsky; I do not deny that. But I would beg to differ with respect to your characterisation of the funding for the bid.

- Q. We will get there eventually.

Can I ask you, please, to go to bundle H --

- MRS JUSTICE GLOSTER: Well, just before you leave that, Mr Abramovich, why didn't you mention in paragraph 93 or paragraph 89 the fact that Smolensky was introduced to you by Mr Berezovsky?

- A. Well, at that time I did not have a very clear

recollection as to when I met him. I thought that I had already known him prior to that. And so I was not -- and also I was not sure that this was relevant here.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: With respect to you, Mr Abramovich, that is a curious answer.

At paragraph 93 you were plainly focused on the question of any involvement that Mr Berezovsky might have had with the bid. You must have been thinking about that very carefully. Is that not right?

A. I was very seriously considering this text and I take a very serious position in general to these proceedings.

Q. How could it have slipped your mind at that point that the only way in which you came to SBS was by virtue of an introduction by Mr Berezovsky?

A. Well, maybe I did not think that it was really that important who introduced whom to whom. Well, please forgive me.

Q. Can I ask you, please, to go next to bundle H(C)8, page 119 in Russian H(C)8/119 and 119T in English H(C)8/119. Now, again, just to explain to you what this document is, it's the record of evidence which Mr Smolensky gave to an investigator of the Russian Prosecutor General's Office on 28 May 2009. One sees the date on the top right-hand corner.

If you look at page 120 H(C)8/120, 120T in the translation H(C)8/120T, do you see that Mr Smolensky signed a statement acknowledging that he had been warned of criminal liability if he were to knowingly give false testimony? You see the bold writing and then the signature in the Russian version below that?

A. Yes, I can see that.

Q. Can I ask you then, please, to turn to page 122

H(C)8/122, 122T in the translation H(C)8/122T.

Could you please read to yourself the questions and answers numbered 3 and 4. (Pause)

A. Yes, I have read this.

Q. So we see there that Mr Smolensky's evidence is that it was Mr Berezovsky and no one else who approached him in order to secure SBS's involvement in the loans for shares auction; that is the first sentence of his answer to question 3. Do you accept that?

A. I accept that. But if you read this whole sentence, this whole paragraph, there are too many disconnects here; it is totally dysfunctional, this whole paragraph. Maybe he was reluctant to give evidence or he got confused or he was too nervous when he was giving that evidence. But if you read all his evidence, you will see that he provides an assurance here that has nothing to do with that bank, which is bizarre, to put it

mildly.

- Q. Mr Smolensky had sworn an oath or made this evidence under caution that if he gave false evidence, it could be met with criminal prosecution. But you say he gave false evidence, do you?
- A. Questioning in the Prosecutor's Office is not done under oath. This is wrong to say that this was sworn. But anyone who goes to a Prosecutor's Office -- and far be it from me to criticise Mr Smolensky because I was not there -- this is a very unusual, a very unpleasant procedure, and obviously he was very nervous and he was confused and he may have confused things. Because if you read through this whole text, you see that there are too many things that just don't hold water.
- Q. Do you see at the end of question 3, Mr Abramovich, Mr Smolensky says:
- " SBS-Agro Bank financed the purchase of the Sibneft shares against Berezovsky's personal guarantees."
- Do you see that?
- A. I can see that, yes. But, once again, what I would like to say is that this evidence, this interview, is very strange and therefore I, for one, would not rely too much on the -- there are too many mutually exclusive statements here.
- Q. Given what Mr Smolensky says about Mr Berezovsky's

personal guarantee -- and I should make it clear we don't suggest there was a formal legal guarantee given -- but in light of what Mr Smolensky says about it, I imagine you would accept that Mr Smolensky would say that the assurance that he received from Mr Berezovsky was an important factor in SBS's decision to become involved?

A. I would agree with that, yes.

Q. And then again just going back to question 4, do you see that Mr Smolensky told the Russian prosecutor that he regarded you as playing a supporting role compared to Mr Berezovsky? Well, that is his view. Are you in a position to dispute that this is his view?

A. No, I cannot dispute that. This is what he believes and in Smolensky's eyes I may well have played a smaller role.

Q. Can I now ask you in the same bundle, please, to go to page 110 H(C)8/110. It's 110T in translation H(C)8/110T.

Now, we have looked at this before, I think yesterday. This is the evidence that Mr Viktor Gorodilov gave to the Russian Prosecutor General on 27 May 2009. Again, if you look at page 111, you will see that he too has signed to say that he had been warned of criminal liability for giving knowingly false

testimony. Do you see that?

A. Yes, I can see that.

Q. Now, if you look at the question and answer to question 1, I can then ask you a question about that. Can you read that to yourself, please. (Pause)

In fact I'm afraid question 1 -- answer 1 is the whole of the document -- sorry, the whole of the first two pages anyway.

MRS JUSTICE GLOSTER: That's page 111, is it?

MR RABINOWITZ: 111 on to 112.

THE INTERPRETER: I'm so sorry, Mr Rabinowitz, could the interpreter please be provided at least with the Russian text because I understand you will be making reference to it.

MR RABINOWITZ: Page 111.

THE INTERPRETER: I don't have it. I only have Magnum, sorry. Thank you very much.

MRS JUSTICE GLOSTER: I think we need it in English. Can the interpreter be provided with it in the hard copy and can we have it on the screen in the electronic version in the English, please.

MR RABINOWITZ: Will you let me know when you've read that, please, Mr Abramovich.

A. I have read question and answer number 1.

Q. Do you see that in this answer Mr Gorodilov has

explained that his view was that:

"... [Mr] Berezovsky played the key role in getting the decree passed, as he was able successfully to lobby for this decision at the highest level of power."

MRS JUSTICE GLOSTER: Can we have the next page, please.

A. Yes, I can confirm that this was actually the case.

MR RABINOWITZ: My Lady, it's towards the top of the second page.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: You would agree with what he says about this?

A. Yes, I agree with that.

Q. And you see also that Mr Viktor Gorodilov says that his son Andrey had nothing to do with the creation of Sibneft, and again I think you would agree with that?

A. Yes, that's true. Andrey Gorodilov had nothing to do with the incorporation or establishment of Sibneft. He appeared on the scene only later, I believe.

Q. Mr Andrey Gorodilov is now one of the -- I think you told us yesterday -- small team of trusted advisers; correct?

A. Yes, that is true.

Q. And he is the deputy general director of Millhouse LLC; correct?

A. Yes, that is true.

- Q. And he has been working for you since October 1995; is that correct?
- A. I do not recall exactly but that must be the case, yes.
- Q. Can you tell us this: was his employment at that time -- that's to say October 1995 -- in any way connected to his relationship with Viktor Gorodilov, the general director of Noyabrskneftegas, or was this a pure coincidence that he is Viktor's son?
- A. No, it is not a coincidence. Viktor Andreyevich Gorodilov, Mr Viktor Gorodilov introduced him to me.
- Q. The fact that he was employed by you, was that because the father asked you to employ the son?
- A. Well, if I recall correctly, he was interviewed, I liked him and so I hired him. But initially it may well have been a request that came from his father, yes.
- Q. I think if you go to page 116 H(C)8/116 or 116T H(C)8/116T, see answer 14. Mr Viktor Gorodilov, at the bottom, really towards the bottom of that page:
- "... I asked Roman Abramovich to get my son a job with Runicom SA..."
- And he says you honoured his request.
- A. Yes, I can see that.
- Q. Is it correct that Mr Andrey Gorodilov was deputy governor of Chukotka at much the same time as you became governor?

A. Yes, that is true.

Q. And now he's a deputy of the Duma in Chukotka?

A. Yes, that is correct.

Q. And so, while you are speaker of the Duma in Chukotka, he is one of your deputy speakers?

A. I'm still speaker of the Duma.

Q. And he is one of your deputy speakers?

A. I know he is an MP, a member of the Duma, but whether he is deputy speaker or not, I'm not sure. But he is a member of Parliament, yes, a member of the Duma.

Q. And Mr Andrey Gorodilov is to be one of your witnesses, is he not? That's the same Andrey Gorodilov?

A. Yes, it is the same Andrey Gorodilov.

Q. Thank you.

Just getting back to the interview with the father, Viktor Gorodilov, it's clear from this interview that he gave to the Russian authorities that he was unaware of the role that you played in the formation of Sibneft. Can you explain that, given how central you claim your involvement was?

A. This interview happened 15 years after the facts. So a person who was 70 years old at that time may well be forgiven for having forgotten certain things. And, once again, someone who comes to the Prosecutor's Office for the first time in his life is -- tends to become very

nervous.

Q. Can I just ask you to go to page 113 in this document H(C)8/113. Three paragraphs from the top, do you see the sentence:

"I considered Abramovich and Berezovsky to be the actual owners of Sibneft."

Do you see that sentence?

A. Yes, I can see that.

Q. Now, Mr Gorodilov, as we know, was the president of Noyabrskneftegas and the first president of Sibneft, not to mention the father of one of your closest and most trusted employees. Can you explain why he considered you to be, with Mr Berezovsky, the actual owner of Sibneft if, as you say, that is simply not the case?

A. The thing is that by the time Gorodilov -- or rather Gorodilov left the company after it was privatised, so he goes by press clippings, press reports. The company came under my control virtually in '97. So whatever he is giving evidence about is something that happened prior to that point in time.

Q. Can I ask you, please, to go to, in the same bundle, page 1 (H(C)8/1; 1T in translation [H(C)8/1T.

MRS JUSTICE GLOSTER: Mr Rabinowitz, what's the context of this interview? The investigation is into what offence allegedly committed by whom?

Wednesday, 2 November 2011

(10.15 am)

Discussion re housekeeping

MR RABINOWITZ: My Lady, before we start cross-examination, just to mention that we have had a communication from each of the translators identifying certain corrections which need to be made to the transcript. As I understand it, what happened on the last occasion that this was identified, the transcript itself was then amended to take these into account and we will ensure that the same thing happens on this occasion.

MRS JUSTICE GLOSTER: As long as it's all agreed, that's fine. I think it's easier if the transcript is amended because otherwise one's got to go back to correspondence or something.

MR RABINOWITZ: I don't know whether your Ladyship would like a copy of the email that we've had which identifies the corrections.

MRS JUSTICE GLOSTER: No, I'd rather have -- because I do actually use hard-copy transcripts as well as what's on the system. So if somebody could hand up the new transcripts --

MR RABINOWITZ: Once that is done, we will arrange for that.

MRS JUSTICE GLOSTER: -- once that is done. There's no point in my having the intervening position. But thank

you all the same.

MR ROMAN ABRAMOVICH (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Good morning, Mr Abramovich.

Mr Abramovich, you may recall that on Monday afternoon I asked you whether anyone other than lawyers from Skadden had assisted you in preparing to give evidence today. Do you recall that?

A. Yes. Yes, I do remember the question.

Q. And you explained that you had been assisted but only by Bond Solon. Do you remember that?

A. Yes, I remember that.

Q. It was reported yesterday in a magazine called Legal Week that Lord David Gold, a former partner at Herbert Smith solicitors, had been instructed to help you with running the case and preparing you and the witnesses for trial. Can you say whether that is an accurate report or not?

A. No, this is not accurate.

Q. Can you identify what Lord Gold is doing for you?

MR SUMPTION: My Lady, my learned friend needs to be careful. Lord Gold does have a role as a legal adviser and it's not right that he should investigate matters that may be privileged. I'm anxious that that should be made clear before the witness answers.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I think it's legitimate for you to ask in headline general terms what the function of Lord Gold is.

MR RABINOWITZ: And that's what I was preparing to do. I wasn't going to pursue it beyond that.

MRS JUSTICE GLOSTER: Fine. Proceed.

MR RABINOWITZ: Can you, if you know, Mr Abramovich, tell us what it is that Lord Gold has been engaged to do, in very general terms? I don't want you to get into legal advice that he is giving you.

A. At some point in time we did meet with him but I think it all went through Skadden Arps but I cannot be more specific. It all happened at the very early stage and last time we met somewhere around here.

MRS JUSTICE GLOSTER: Well, Lord Gold has been sitting in court so presumably he has some role, has on occasions been in court. So could you give just a description as to what his function is in these proceedings?

A. At some point in time he did advise me, but he is not performing any -- playing any role or performing any function within the framework of this trial.

MR RABINOWITZ: Thank you, Mr Abramovich.

Can we go back to a topic we were dealing with yesterday. We were looking at agreements that had been made by Mr Berezovsky together with Mr Gorodilov --

that's Mr Viktor Gorodilov -- and Mr Potapov in September and October 1995. Do you remember?

And just so that you have very clearly in mind what we're talking about, perhaps we can just go back to one of those agreements. You will find that at H(A)02, page 174 in the Russian H(A)02/174 and 174T for those in the translation H(A)2/174T.

A. Yes, I can see this.

Q. All right. And you explained in your evidence that this was, you said, not in fact related to NFK at all and it had to do with some other company and a plan that was never followed. Do you remember that evidence?

A. Yes, I do remember that evidence.

Q. And you also said that you were confident that this had nothing to do with a loans for shares bid because, you suggested, it was only in November that you decided that you would participate in the loans for shares auction. Do you remember that?

A. Yes, I do remember that and I can confirm that.

Q. Now, do you agree that you were actually also very involved in negotiating the agreements that we looked at yesterday?

A. Yes, you can put it that way, yes.

Q. Well, which way would you put it, if not that way, Mr Abramovich?

A. Yes, I can confirm I did take part in this. I simply am not sure I understand what you mean when you say "very involved in negotiating", when we're looking at a document which comprises three lines only. But yes, I did take part in that.

Q. Well, the fact that an agreement in the end can be summarised in three lines doesn't mean that it might not have taken a long time to negotiate, does it?

A. I apologise, I'm not sure I understood the question. The negotiation of the agreement did not take long?

Q. I'm trying to understand the extent of your involvement in the negotiation of these agreements.

A. I did take part in those negotiations and I maybe took part in preparing this.

Q. Can I ask you, Mr Abramovich, to go to your witness statement, E1, tab 3. It's paragraph 81. You'll find that in the English at page 59 E1/03/59 and in the Russian at page, I think, 160 E1/03/160. Can I ask you, please, just to read paragraph 81 to yourself.

(Pause)

A. Yes, I have read this.

Q. You seem to suggest in this paragraph that it was important to get Mr Potapov to sign up because his support was important in the same way that Mr Gorodilov's support was important.

- A. Yes, I can confirm that Gorodilov's and Potapov's support were always important.
- Q. And again, can I ask you to explain what it was that you say their support was important to?
- A. At the time, when this agreement -- you mean at the time when this agreement was reached or in general why their support was needed?
- Q. Well, if you can explain by reference to paragraph 81, where you say their support was important, what it is you are saying their support was important to, please?
- A. Those two people that we're talking about were the key people in the new company that had been incorporated and without them we would not have achieved anything and therefore their support was very important indeed.
- Q. But important to what, Mr Abramovich?
- A. That support was important for trading operations, for follow-on work, for everything. There is -- there was nothing in Sibneft that could have been done without the consent of the president and the vice president.
- Q. Now, at the end of this paragraph, paragraph 81, after explaining your case, which is that because the name of this bidding company was different these contracts in fact became irrelevant, you say:
- "However, it was in any event ensured that Mr Viktor Gorodilov and Mr Potapov would support me."

Do you see that?

A. Yes, I can see that.

Q. Other than in the context of referring to these agreements, I can find no earlier reference to Mr Potapov and him supporting you anywhere in your statement. And my question to you is this: if Mr Potapov's support was not ensured by way of these agreements or similar agreements, can you tell us on what basis you said at paragraph 81 that Mr Potapov's support was ensured?

A. I'm not sure I understood your question. Why -- are you asking me whether there was another agreement?

Q. I'm asking you about your evidence in paragraph 81, where, after referring to these agreements but explaining that the company involved in the loan for shares auction was not Neftyanyaya Finansovaya Korporatsiya, you nonetheless say it was ensured that Mr Potapov would support you. Where in your statement do we find anything else by reference to which you would say his support was ensured?

A. Is your question whether I know whether Potapov and his support is referenced elsewhere in my witness statement? I do not remember my witness statement by heart but there is -- I think there is something in my witness statement to that effect. I'm confirming that the

support of Potapov and Gorodilov had been ensured whether or not this had been signed and this had nothing to do with the loans for shares auctions because we only decided to take part in the loans for shares auctions much later. This is what I'm trying to say.

MRS JUSTICE GLOSTER: Can I ask a question. How did you ensure these two gentlemen's support without an agreement? How did you ensure it?

A. As soon as the company was incorporated, we became one team for all practical purposes. We shared the same objectives, we were working together. We had a different understanding as to what will be happening later on. Early on Viktor Gorodilov was against privatisation and then he left because of that. Potapov was younger and he understood this much better. He had never worked as a CEO before we imported him as the CEO and he was with us, he was a comrade. So I would not describe him as a close friend, like others, but he had worked together and he was the person who was my vis-a-vis and someone who, when I was working with Omsk before that, therefore I did play a role in his appointment.

MRS JUSTICE GLOSTER: So there was no other agreement or other financial inducement that ensured Mr Potapov's support?

A. So far as I can recall, there were no other inducements, financial inducements. He received a salary in Sibneft and at Omsk; but whether we paid him anything on top of that, so far as I can recall, we did not.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Mr Abramovich, what I suggest to you is that these agreements whereby you got Mr Gorodilov and Mr Potapov to sign up their support were much more significant than you are now suggesting. Do you agree?

A. I agree that they were important. What I'm saying is that they were not as important as we were trying to discuss now. They were not that important. And that company had never been incorporated, to the best of my recollection.

Q. What I also suggest to you is that the reason you are trying to downplay the significance of these agreements is because it is clear that Mr Berezovsky was involved in obtaining these agreements and you are seeking to downplay his involvement in ensuring the success of your loans for shares auction bid.

A. No, this is not the case, and with your permission I would like to clarify, if I may.

MRS JUSTICE GLOSTER: Yes, you may.

A. I'm not trying to downplay the role that Mr Berezovsky played in terms of the participation in the loans for

shares auction. Had it not been for Berezovsky, we would have never taken part in this auction and we would have never been able to ensure a signature, presidential signature under the decree. Therefore the role that Berezovsky played in the auctions was an exceptionally important role. We would not have achieved anything without him and I fully confirm that.

Having said that, this agreement has nothing to do with the auctions. We decided to take part in the shares -- loans for shares auctions --

MRS JUSTICE GLOSTER: Can you slow down a bit.

Okay, go on.

A. We only decided to take part in the auctions one or two days before the government resolution was signed and that's why Berezovsky went to see Kokh during the night, as his writing: we had been vacillating for a long time, we did not have money, we did not know what to do, Viktor Gorodilov was against us. There were many problems, very many issues why we were vacillating, why we had doubts and why we did not want to do this.

MR RABINOWITZ: Can I just pick that up with you,

Mr Abramovich, and the suggestion that these agreements really could have been of no relevance at all because it was only in November that you decided to commit to making a bid.

Can I ask you to look at paragraphs 82 and 83 of your statement, which should be in front of you E1/03/60.

A. Yes, I have read this.

Q. And what you appear to be saying at paragraph 2 is that at the end of August 1995 one had the presidential decree and that there was only a ten-day period following this in which the committee was to determine which shares would be in the auction and that Sibneft was not at that time on the list. That's right, isn't it?

A. Yes, your understanding is correct.

Q. And you then explain that you and Mr Berezovsky met with members of the committee to persuade them to include Sibneft in the list and that, at this stage, you even had to go back and get Mr Gorodilov's support for this because Mr Kokh made clear to you that this would be important. Is that correct?

A. Yes, that is correct as well, except that it was staggered in time. Everything is compacted into one paragraph and it may appear that we discussed that in September; however, Sibneft was only registered, was only incorporated as a legal entity in... in October.

THE INTERPRETER: Sorry.

MR RABINOWITZ: Mr Abramovich, it's not one paragraph, it's

two paragraphs, and you are very clear in these paragraphs about the time. You explain that in September 1995 or thereabouts you met with the committee in your attempt to lobby them to include Sibneft in the loans for shares auction. That's right, isn't it?

A. No, this is not right.

Q. Well, that's what you seem to be saying at paragraph 83.

MRS JUSTICE GLOSTER: Well, what's the point here? Is the point that he's got the date wrong?

MR RABINOWITZ: With respect, no. He's got the date right.  
What --

MR SUMPTION: My Lady, my learned friend has not referred to the words "Later on", which start the second sentence. He's actually putting this statement on a rather unfair basis to the witness.

MRS JUSTICE GLOSTER: Well, what's the point you're putting to the witness, Mr Rabinowitz? Because I'm not following.

MR RABINOWITZ: Can I respond to Mr Sumption because what I'm putting to the witness is the first sentence:

"In September 1995 or thereabouts, Mr Berezovsky and I also met with members of the Committee... including... Kokh who... was then the acting Chairman of that Committee."

The point is this, Mr Abramovich: you were lobbying

hard in September, at around this time, knowing that there was a limited period of time for Sibneft to be included in the list of companies which would be subject to the loans for shares auction, and it is therefore simply wrong to suggest that contracts that you made with Potapov and Gorodilov at this time could have had nothing to do with the loans for shares auction.

- A. I would like to confirm again that those contracts have nothing to do with the auctions. We had many meetings, multiple meetings with Kokh -- we actually started meeting with him in September, maybe earlier -- but the question of whether or not we would take part only appeared in November.

The company was incorporated in October; therefore it made absolutely no sense to start talking about this in September, before the company had been incorporated.

- Q. Well, again, Mr Abramovich, it's perfectly obvious that it would have made sense to start talking about it before October in circumstances where this is what you were seeking to do. You wanted to ensure that you had the support you needed --

MRS JUSTICE GLOSTER: Well, there are two questions there. Start with the first one, please. You're putting to him that it's obvious that something would have happened. Get his answer on that.

MR RABINOWITZ: Let me ask the question again,

Mr Abramovich. It's perfectly obvious that it would have made sense to start talking about it with people like Potapov and Gorodilov before October in circumstances where you wanted to ensure that Sibneft was included in the loans for shares auction?

A. This is not the case. My initial plan with respect to the privatisation was to privatise 49 per cent and then, stage by stage, buy up a further 5 per cent. I was not thinking about taking part in auctions until the end of October. It took us maybe two days finally to decide on taking part. It was a difficult process.

Q. Mr Abramovich, can you look at the first sentence of paragraph 84 of your witness statement, please E1/03/61.

A. Yes, I can see that.

Q. Paragraph 84 of your witness statement, you refer to the fact that on 11 October the first step in the process had been achieved, in that the State Property Committee had issued directive number 1462.

A. Yes, that was the case.

Q. And that was at least in part as a result of your lobbying activity, wasn't it?

A. No. It was a standard procedure that applied to all government-owned companies that were about to be

privatised. I could have taken part only in speeding up the sell-off; I could have only influenced the speed with which the various equity stakes were being sold off.

MRS JUSTICE GLOSTER: Just a second. But you accept that Mr Berezovsky was involved in the negotiations or the discussions with Kokh; is that right?

A. Berezovsky did take part in the negotiations with Alfred Kokh at an earlier stage and I'm not sure, I think he even introduced me to him. I cannot affirm that, but I think that was the case. Compared with Berezovsky, for Kokh I was a nobody. I was someone who could agree on small things. The main figure was Gorodilov. Without Gorodilov's signature, we would have gotten nowhere in terms of privatisation.

MRS JUSTICE GLOSTER: Do you accept that Mr Berezovsky was involved in convincing Mr Gorodilov to give his support?

A. I agree that without Mr Berezovsky's influence or clout -- I don't think he actually spoke with him directly, but just the fact that he was around --

MRS JUSTICE GLOSTER: And behind the proposal?

A. Am I clear? So he was such a figure, with such cachet and clout. I mean, he liked me, but for him Berezovsky was much more important; he was a person who was part of Yeltsin's entourage, at least that's what he thought, he

was close to the president. So that's why it all sort of balanced out.

MRS JUSTICE GLOSTER: So you would agree that Mr Berezovsky was, as it were, being the big figure instrumental in obtaining Gorodilov's support?

A. Yes.

MR RABINOWITZ: Thank you very much.

Now, can we then just move on to other aspects of the loans for shares auction in relation to which Mr Berezovsky and his team made a contribution.

You may recall, Mr Abramovich, that Mr Sumption told the court in his opening submissions that a rival bidder called Inkombank was disqualified from bidding in the 1995 auction on technical grounds. Do you remember that?

A. Yes.

Q. And Mr Sumption noted that Dr Nosova said that this was the work of her team and I imagine that you will accept that this was the work of Dr Nosova's team?

A. No, I would not accept that. I cannot deny this, but I wouldn't say that Dr Nosova had a team that could work with documents or could have an opinion as to whether or not Inkombank's bid could or could not be disqualified. I would doubt that very much, with all due respect to Dr Nosova.

- Q. I'm not clear what you are saying. Are you disputing that Dr Nosova might have been the person who spotted the problem with Inkombank's bid?
- A. No, I'm not disputing that. What I'm saying is that it might well have been the case, but whether or not Nosova had a team who could review the documents and influence the commission's decision -- it was the commission's decision at the end of the day whether or not their bid was a legitimate bid or not, and that happened at the end of the auction, very close.
- Q. Well, it's obviously the commission's decision at the end of the day whether the point which is taken is a good point, just as it's a referee's decision as to whether a penalty is a penalty, but someone has to spot the point first in order for it to be brought to the attention of the commission. Do you dispute that the person who spotted this point was Dr Nosova and her team?
- A. I'm sorry, which question would you like me to answer: whether I dispute that it was Nosova who found the mistake? I have no opinion on that, but that might have been the case. What I'm disputing is that Nosova had a team that was able to do all those important and fundamental things that you seem to be setting out.
- Q. I'm not sure I'm setting out anything more than that she

spotted this point, but we can move on.

We can agree, I think, that there was a genuine rival bid from Inkombank but that it was rejected on legitimate, albeit technical, grounds; is that right?

A. Yes, the bid was rejected on technical grounds by the commission; that is correct.

Q. And it was legitimate to have identified this as a ground and brought it to the attention of the commission; correct?

A. I'm not sure I understood your question.

Q. There was nothing wrong or illegitimate in seeking to identify problems with an opposing bid and bringing that to the attention of the commission, was there?

A. This was not done. A bid is published, it's in the public domain, and then you can find an error in it and then you can wait until the commission makes a decision. If the commission had not found a mistake then you may well have brought this to the attention to the commission.

But, you know, bringing an error to the attention to the commission from your office is not something that can be done. There are many members on the commission and they spend a lot of time going through all the documents, all these seals and stamps and the guarantees, whether or not all the documents were

processed properly and written properly.

Now, whether or not Dr Nosova could convey to the commission the fact that she had found an error, a mistake in Inkombank's bid; I don't think so, no.

Q. You see, Mr Abramovich, even with this minor matter you are doing whatever you can to deny that Mr Berezovsky and his team had any other involvement in ensuring the success of the bid than the involvement which you are prepared to acknowledge, which was previously just the lobbying of Kokh and this morning also involvement in getting the support of Gorodilov.

Do you want to comment on that?

A. This is being done only in order to convey to the attention of the court the picture that appertained, the position that appertained at that time. This is the only objective.

Q. Now, there was a second bidder in the auction, Sameko, who also withdrew its bid; that's right, isn't it?

A. Yes, that is true.

Q. And at paragraph 97 of your witness statement, you give evidence about this. It's at page 64 of the English E1/03/64 and I think 97 of the Russian, although that doesn't sound right.

THE INTERPRETER: It's page 65 (sic), says Mr Abramovich.

MR RABINOWITZ: Page 165 of the Russian E1/03/165. Do

please read paragraph 97 to yourself. (Pause)

A. Yes, I have read this.

Q. So you explain that:

"Mr Patarkatsishvili said that he would seek to persuade the General Director of... Sameko to withdraw the bid, which he succeeded in doing and obtained a signed letter confirming the withdrawal. Without Mr Patarkatsishvili's involvement, we would not have received the letter confirming the withdrawal of... Sameko's bid."

I understand your evidence to be that, although you do not mention it here, you too went to Sameko, along with a team of people, just before the auction. Is that right?

A. Yes. Yes, that was literally one day before the auction. We came back from Sameko on the day of the auction.

Q. And you arrived in Sameko after the agreement in principle had been achieved by Mr Patarkatsishvili?

A. If my memory serves me right, I think he spent half a day there and we arrived during the night. He arrived together with Viktor Gorodilov earlier and we arrived later, either in the dead of the night or in the early hours of the morning, if I'm not mistaken.

Q. Mr Abramovich, my question to you was that you arrived

in Sameko after the agreement in principle had been achieved by Mr Patarkatsishvili?

- A. The agreement was, I think, reached either in our presence or in -- during the day when we arrived. But all the discussions and the subject matter of the discussion, yes, yes, I think you can look at this the way you're looking at it. The bulk of the negotiations had already been conducted but we needed to finalise the documents; and once again I want to confirm that without Mr Patarkatsishvili's involvement we would not have achieved that.

- Q. Thank you very much.

Now, can we just be clear as to what the consequences would have been if Sameko had not withdrawn. It's, I think, not in dispute that if Sameko had not withdrawn and there had therefore been a bid from Sameko, Mr Berezovsky would have had to bid \$217 million in the auction. Do you agree?

- A. Yes, I agree with that.

- Q. But you didn't have \$217 million, did you, Mr Abramovich?

- A. Yes, that is true.

- Q. And if you had bid \$217 million, NFK and SBS Bank would have been liable for the \$3 million deposit and \$21.7 million more, being 10 per cent of the bid total;

isn't that right?

A. Yes, that is correct: they would have lost the 3, whereas the \$21.7 million could have been potentially in dispute, yes.

Q. So I think you accept that Mr Patarkatsishvili's role in his negotiations with Sameko had real value in preparing for the 1995 auction and your success, do you not?

A. Sorry, could you repeat your question again? I'm not sure I understood everything about the role of Mr Patarkatsishvili.

Q. Mr Patarkatsishvili's role in negotiating with Sameko had real value in assisting you in the 1995 auction, did it not?

A. The role that Badri played was invaluable only so far as the agreement with Sameko is concerned. Now, if, based on that, you want to draw all the other conclusions, well then with that I would agree.

Q. Still dealing with the 1995 auction, Mr Sumption in his opening submissions told the court that Mr Berezovsky made an agreement with Bank Menatep that they would bid fractionally less than NFK. Do you remember that?

A. Yes.

Q. And is that your evidence as well?

A. I can confirm that the agreement with Bank Menatep may well have been agreed between Berezovsky and

Khodorkovsky; I cannot deny that. But all the documents and all the documents with respect to the bid were prepared by Mr Kagalovsky -- I think he was the vice president in charge of privatisation -- and myself. So it was Kagalovsky and myself: we together prepared the second part of the bid.

Q. So again, just dealing with the agreement that Mr Berezovsky managed to make with Menatep, this was again a contribution that Mr Berezovsky's side made to the success of the auction bid, wasn't it?

A. Yes. You can look at it that way, yes.

Q. Now, I want to move on to a slightly different topic, which is the subsequent auctions.

Mr Abramovich, is it your evidence that you participated in the remaining auctions of Sibneft shares, the three cash auctions under which a 49 per cent stake was auctioned, without direct participation from Mr Berezovsky?

A. If my memory serves me right, that was the case.

Q. But you did discuss these auctions with Mr Berezovsky, did you not?

A. I don't think so.

Q. And you did use the control of Sibneft, which you had acquired with his assistance, in order to obtain funding; that's right, isn't it?

A. There were three auctions: they all had different terms and conditions. Would you like us to go through each of them successively in order to understand what happened in each auction? Because otherwise we would be speaking only in general terms.

Q. All right. Let's take the first auction, in which you acquired or Runicom SA acquired 12.22 per cent of the shares. Let me put my question to you in relation to that.

You obtained funding from -- sorry. Did you use your control of Sibneft, which you had acquired with Mr Berezovsky's assistance, in order to obtain funding for that?

A. We organised finance in SBS, then a part of our own money went into the play as well, but I don't think that I would describe it the way you described it.

I wouldn't interpret it that way.

Q. All right. But you -- let's just take this in stages. You say you organised funding from SBS, and SBS, of course, were the bank to whom Mr Berezovsky had introduced you; that's correct, isn't it?

A. Yes, that is correct.

Q. And the funding that you got from SBS was guaranteed, among others, by Noyabrskneftegas and Omsk Oil Refinery?

A. Yes, that is true, if my recollection is right. But

Andrey Gorodilov could tell you the details of this and he would -- he is much better informed about this than myself.

Q. Okay. Can we then --

A. Could I just add something?

Q. Please.

A. I think we raised debt at SBS, we got the shares -- we won the shares and then I think we pledged shares as collateral; something like that. I cannot be very sure, I'm sorry.

Q. Are we still talking about the first bid? I think if you look at paragraph 102 of your statement, maybe that will remind you. Page 66 of the English E1/03/66; I'm afraid I don't have the Russian. About 166 E1/03/166. You say there:

"Funding sources for participating in these auctions included our own funds and loans from SBS guaranteed by Noyabrskneftegas, Omsk... and Runicom..."

Okay?

Now, I want then to move on to the topic of the profits that you made as a result of having obtained ownership and control of Sibneft. Okay?

A. Are we now speaking about the year 1997?

Q. I will tell you which year we're speaking about when we come to the particular question. I just wanted to make

clear to you that we're moving on to a slightly different topic.

Would you accept, Mr Abramovich, that you fully expected to make very large profits from acquiring control of Sibneft from early 1995?

MRS JUSTICE GLOSTER: Mr Rabinowitz, I think you need, for clarity, to date the time of his expectation.

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: And also date the time from which you are asking him to deal with the profits of Sibneft because the question you've put is ambivalent or ambiguous.

MR RABINOWITZ: Let me rephrase it like this: would you accept, Mr Abramovich, that in early 1995 you had an expectation that you would make large profits from acquiring control of Sibneft over whatever period you had that control?

A. When you say "control", do you mean control over the management structures or control over the shares?

Q. Well, we discussed yesterday that when you talked about control over these companies, you were talking about shareholder control, which you were hoping to get first by getting management control and then later by getting ownership. For present purposes, I'm not sure it matters.

The question really is this: do you accept that it was your expectation in 1995 that if you could get control of Sibneft, this would produce large profits for you?

- A. I did expect that sooner or later I would make some money; yes, that's true.
- Q. Your own evidence is that in March 1995 you were generating about \$40 million per year through your trading companies and that at this time you told Mr Berezovsky that you expected to be able to increase that to \$100 million per year if you got control of Noyabrskneftegas and Omsk Refinery; that's correct, isn't it?
- A. That is true, but we were talking about management control at that time and that's why I asked you what exactly you had in mind.
- Q. And so your case is that it was your expectation that if you got control of Noyabrskneftegas and Omsk, you would increase your profit each and every year by around 150 per cent a year?
- A. I'm not sure I understood your question. You said "every year": you mean every year on a compounded basis, 150 per cent on a compounded basis?
- Q. Well, your evidence has been that you would increase what you were making from \$40 million per year to

\$100 million per year and it's on the basis of those figures, which is an increase of 150 per cent, that I've suggested to you that that was your expectation.

A. I was expecting that if Sibneft was incorporated and I did have management control then my profit would increase and achieve approximately the ballpark figures that I was speaking about.

Q. Okay.

Now, the Runicom companies played a substantial role in the way you made profits from your control of Sibneft and I would like to ask you some questions about Runicom. Okay?

A. Yes.

Q. Runicom SA was one of your companies and that was incorporated in Geneva, Switzerland, in 1994. You probably don't remember the exact date but otherwise do you agree with that?

A. Yes, I agree with that.

Q. And at least in the early years, Runicom SA was administered by Valmet; that's right, isn't it?

A. Sorry, when you say "administered", do you mean whether they took management decisions or whether you mean they were in charge of the books, the accounting? What do you mean?

Q. I'm not saying they took management decisions; I'm

saying that they were involved in the administration of Runicom SA.

A. Yes, that is true.

Q. And in fact you personally negotiated the arrangement with Valmet over a period of several months, your negotiations being with a man called Christian Michel of Valmet; is that right?

A. I think I met with him on two occasions but it may well have been the way you have just described it: there may have been a gap of several months. But I think I met with him two or three times.

Q. Would you describe Valmet as being a specialist in the creation of complex and opaque offshore structures for holding assets?

A. At that time I was not aware of that. You have just painted a scary picture; at that time I did not know anything about that. At that time our main companies were in Germany and Romania, with a very high tax regime. So we met Valmet and they said that there are certain tax areas where the tax rates are way lower and so we moved to the location which they had recommended and I did not know anything about those complex holding structures.

Q. Now, when Runicom SA was set up in 1994, 98 per cent of the shares were put in Mr Shvidler's name rather than

your own; that's right, isn't it?

A. 98 per cent I think were put in my name and one share was registered in Shvidler's name. I'm not sure, I would not give you 100 per cent certainty, but that's my recollection, yes.

Q. Sorry, your recollection is that the shares were put in your name and not Mr Shvidler's name?

A. I do not recall very well the way the shareholding was structured in Runicom but I think this was the way I described now.

Q. Well, perhaps we can have a look at a document which might help with that. Can you go to bundle H(C)1, page 141T H(C)1/141T. This is a translation from the French and I don't understand that there is a Russian version of this, so I'll just have to read it to you, Mr Abramovich, and it will have to get translated for you.

It appears to be a notarised document and on the first page it identifies certain people who appeared before the notary, one of whom was Mr Eugene Shvidler from the United States. And then on the second page of this document, so that's page 142T H(C)1/142T, under the heading "Subscription", the document notes that:

"The appearing founders declare that they themselves are subscribing for ONE HUNDRED... ordinary BEARER

shares of ONE THOUSAND FRANCS... each, forming the entire share capital, without there being a public subscription, in the following manner..."

And then Mr Shvidler is identified as the person to whom 98 of the 100 shares are subscribed. Do you see that?

A. I cannot see this, I can hear this. But if I understood you correctly, these are bearer shares.

Q. They are bearer shares: they were issued to Mr Shvidler. I don't dispute that at some point they were transferred to you. But my question to you was: can you explain why, in the first instance, they were issued to Mr Shvidler?

A. I think that that was the procedure and he just went there to open this company.

Q. Okay.

A. Mr Shvidler went there to open this company.

Q. Now --

A. But, once again, the 98 per cent of Runicom belonged to me.

Q. And it's right, isn't it, that you were head of the Moscow office of Runicom SA between 1994 until 1996?

I can help you with this: I can show you a document which says that, if that will help. If you go to H(A) volume 7, page 41 H(A)07/41. Just so you know what

we're looking at, Mr Abramovich, this is the offering circular for Sibneft's Eurobond issue in 1997. You can see that if you go back -- in fact you are on page 41, so you can see it from the page that you're on.

If you go to page 83 of this document H(A)07/83, there is again the short biography about you that we saw when you first started giving evidence. You see there that it says:

"From 1994 until 1996, [you were] head of the Moscow office of RUNICOM SA."

Do you see that or do you hear it?

- A. Yes, I can only hear that. The text is in English, so I can only hear what you're saying. Yes, but I heard that.
- Q. And late in 1996 you caused Runicom Limited to be incorporated in Gibraltar; is that right? You can take it from me that that's about right.
- A. I'm sorry, when you said "you caused", what do you mean "caused", caused Ltd to be incorporated?
- Q. Don't get hung up on the "caused". Let's say Runicom Limited was incorporated in Gibraltar?
- A. Yes, that is correct.
- Q. And from around that time Runicom essentially took over Runicom SA's business?
- A. I think there was a transitional period of one to two

years, but I would not be sure. I think we -- for some point in time we worked with the two companies together, but I cannot tell you exactly.

Q. Now, from 1996 the sole business of Runicom -- by that I mean Runicom SA or Runicom Limited, depending on the period -- their sole business was trading in oil and petroleum products; is that right?

A. I cannot confirm that. I have no recollection.

Q. Is this right: that from 1996 Runicom SA and then Runicom Limited was the sole purchaser of Sibneft oil destined for abroad?

A. Could you confirm which year you mean when you said it was the sole exporter?

Q. From 1996 Runicom SA, and then Runicom Limited when it took over Runicom SA's business, was the sole purchaser of Sibneft oil destined for abroad?

A. If my memory serves me right, one of the Runicoms was the sole exporter of oil, starting in, I think, mid-1996.

Q. So I think you're agreeing with me?

A. It's just that I cannot confirm whether it was SA or Limited. But one of the Runicoms did sign in '96 an exclusive contract; but which one of the two it was, I just don't remember.

Q. All right. That doesn't matter for present purposes.

And from that time -- that's to say from 1996 -- the sole business of Runicom -- and it could be one or the other, it doesn't matter -- but the sole business of those companies was trading in oil and petroleum products; is that right?

A. I cannot confirm that. I just don't have any recollection of that.

Q. Can you confirm this: that Runicom Limited, like Runicom SA, do you say that was solely owned by you?

THE INTERPRETER: I'm so sorry, Mr Rabinowitz, could you kindly repeat? I think I missed out on one word of what you said.

MR RABINOWITZ: I'm asking: was Runicom Limited solely owned by you, Mr Abramovich?

A. I think so, yes.

MRS JUSTICE GLOSTER: Choose your moment for the break.

MR RABINOWITZ: Now is as good a time as any.

MRS JUSTICE GLOSTER: Very well. Ten minutes, please.

(11.27 am)

(A short break)

(11.39 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, it's right, is it not, that from 1996 Runicom acquired almost all of its oil from a single source, namely Sibneft?

- A. In '96 I think Sibneft was constituting 60 per cent, if we're only discussing oil. I think it was 60 per cent.
- Q. You say if we're only talking oil then Runicom got, what, 40 per cent of oil from someone else, do you say?
- A. Yes, yes. We traded oil, we bought it in the market, we sold it; there were different operations, but 60 per cent of resources came from Sibneft. I don't remember exactly, just giving you approximate numbers.
- Q. And what about in 1997?
- A. In 1997 we got full contract from Rosneft and I think we got a part of Slavneft, but Rosneft had exclusive contract with us.
- Q. Can I ask you, please, to go to bundle H(A)09 at page 155 H(A)09/155. Now, these are Runicom's accounts, as you see, for -- sorry, financial statements for the year as of 31 December 1997. Can I ask you in this document, please, to turn to page 168 H(A)09/168 and look at note 14. I'll read that to you and it can be translated for you. It says:
- "The Company..."
- And they're talking about Runicom Limited.
- "... receives nearly all of its supplies of crude oil or oil products directly from a related party..."
- And one is then referred to note 17. Under note 17 it says:

"The Company engaged in various transactions with related parties. During the year the Company purchased oil products from Runicom SA in the amount of \$24,222,957... all of which had not been paid as of the report date.

"The Company purchased crude oil and oil products directly from Sibneft in the amount of [\$402 million]..."

So the related party that is referred to at note 14 was Sibneft, was it not?

A. If I have heard you correctly, it is so, but I cannot assert that. Possibly, yes.

Q. Can we look next at the ways in which you did in fact extract very substantial profits from your control of Sibneft.

Do you accept that one of the ways in which you were able to profit from your control of Sibneft was by exploiting the difference between Russian oil prices and prices on the international market?

A. Could I ask you, please, to repeat the question once more?

Q. Sure. Do you accept that one of the ways in which you were able to profit from your control of Sibneft was by exploiting the difference between Russian oil prices and prices on the international market?

A. Runicom was engaging in standard trading operations and certainly the difference, but this is not the difference between Russian prices and international oil prices; this is a difference, for example, in transport, in insurance. There were many percentages, many various components. We were buying it in one place, selling in another. For example, there is FOB supply, CIP supply. But we -- I think we discussed that moment.

Q. Can I ask you to look at paragraph 47.

A. I think it was 2 per cent.

Q. Sorry, what do you say was 2 per cent?

A. Sorry, I think we lost the train of thought because I was replying to the interpreter and that was misunderstood; it was a separate discussion.

THE INTERPRETER: I do apologise.

MR RABINOWITZ: You were talking to the interpreter about 2 per cent?

A. I just repeated. I have repeated that, if I understand correctly, the margin was about 2 per cent.

Q. Can we begin by looking at what you say at paragraph 47 of your third witness statement, page 47 in the English E1/03/47 and page 147 of the Russian E1/03/147. You say at paragraph 47 that:

"At that time..."

And you're referring here even to 1994.

"... domestic Russian refined products... and crude oil prices were both fixed considerably below world market levels. Trading companies such as mine could benefit from this price differential, buying oil and products at local prices and then selling them on the world market."

And that is in effect what I put to you, Mr Abramovich: that that is one of the ways in which you could profit from your control of Sibneft.

A. You are completely incorrect. I am describing the situation of 1994 and now I think you are discussing 1996 with me. By 1996 everything was very strictly regimented and oil could not leave the territory of Russian Federation at free prices. Prices were very clearly linked to the world market.

Q. Well, we will have a look at exactly what those prices are in a few moments.

In your seventh witness statement, which you served just a few days ago -- you'll find that at E8, tab 18, if you go there; I'm going to go to paragraph 7, which is at page 226 in the Russian E8/18/226 and page 216 in the English E8/18/216 -- you say in paragraph 7:

"One of the ways I expected to, and did, generate cash from which to pay Mr Berezovsky was by seizing the opportunity to increase the volume and range of oil and

oil products from Sibneft which were traded through my existing Trading Companies. Contrary to what Mr Berezovsky suggests, this was not achieved by 'transfer pricing' -- it was achieved by skilful management of the flows of oil and oil products, improvements in logistics developed by my team of specialists and by my persuading management of Sibneft to direct new business opportunities exclusively to my Trading Companies. The practices adopted by my Trading Companies did not change after Sibneft was created."

And you then go on to make the point at paragraph 8 of your witness statement that you already had a turnover in 1993 of \$350 million and it's clear from paragraph 8 that you don't take that from any accounts; you refer here to a letter from Mr Alexei Golubnichy, who wrote to Mr Curtis in September 1994.

Can we just have a look at that letter, please. You'll find that at H(F) volume 1, page 60 H(F)1/60. If you look at H(F) volume 1, page 60, do you see point 5? It appears to be where you have this figure of \$350 million from. I can tell you point -- are you on page 60?

Now, you've referred to this letter in order to get the figure of \$350 million and that is indeed the figure that one sees at point 5 in respect of turnover. But do

you see the figure immediately below that?

"Net profits in 1993 -- [\$]10 [million]."

That identifies what your net profit was, does it not, on the turnover of \$350 million?

A. Yes, this is true.

Q. Can you explain why you didn't, in paragraph 8, mention also the fact that the profit that you were making was only \$10 million?

A. Sorry, I don't understand the question. I didn't mention that it was \$10 million?

Q. That's correct, and I'm asking you why you thought it wasn't necessary to mention that it was \$10 million profits in your witness statement?

A. I don't think so. I think we just referred to the document. I think a part -- perhaps I didn't understand the question, I think. Why we didn't mention this document in my statements, why we didn't copy it?

Q. You did mention this document and what you picked out of this document was the high turnover figure of \$350 million. What you didn't mention was the comparatively low profits that that was generating for you.

A. I definitely didn't want to conceal anything. This document is appended to the case, so I didn't have a thought to hide anything. I don't feel -- what are

you trying to ask me, sorry: why I didn't state all the figures that are described in this document?

Q. I'm going to move on to the next paragraph of this witness statement E8/18/217. Paragraph 9, you say this:

"My trading companies..."

Sorry, I'm going to refer to your witness statement again, paragraph 9.

"My Trading Companies were not engaging in transfer pricing when trading with Omsk or any other enterprise. As third parties, we had no ability to influence the price at which the products were supplied to us. Even after my team assumed management control... we were limited in our ability to fix the prices of products because oil and oil products were highly regulated. We were not making huge money on the trades themselves but made money principally on the logistics, as well as the increased range and volume of trades. Only a market commission was charged to Sibneft. Runicom, for example, charged only a 2% margin to Sibneft in 1996 (as explained in the 1997 Offering Circular). In the early years, the markets were inefficient and so we also made margins on bartering."

So is your evidence that you were not making huge money on each trade but you were making money,

substantial quantities of money, on logistics, on the volume of trades that you were diverting or could divert to own companies and on bartering?

A. Yes, this is my evidence.

Q. Now, you made the point I think at paragraph 7 of your witness statement, the one that we're looking at, that this was much as you expected. So you had succeeded then in converting your profits from the tens of millions of dollars to the hundreds of millions of dollars; is that right?

A. What year are we discussing again?

Q. Well, again, we'll look at particular years. I'm really picking up what you say in your witness statement, where you say at paragraph 9 that the way in which you made the money was effectively by taking the margin on an increased range of sales, so you increased your profits enormously. And my question to you is that: this effectively then meant that your expectation, which is what you referred to in paragraph 6, was met?

MRS JUSTICE GLOSTER: I'm not sure that question is terribly clear, Mr Rabinowitz.

MR RABINOWITZ: No, it isn't. I think I will deal with particular years, if we can.

But can you just give us a ballpark figure, Mr Abramovich, for what you say you managed to achieve

by way of profitability by increasing the volume of oil products that Runicom was able to deal with in the period from -- let's take it from 1996 to the year 2000?

A. I don't remember how much Runicom made from '96 to year 2000. To be honest, I don't remember.

MRS JUSTICE GLOSTER: Aren't there accounts?

MR RABINOWITZ: We're going to look at them.

I would like a ballpark guess from you. Would you accept that it would be in the hundreds of millions of dollars?

A. I cannot say anything on this account. Rumours -- well, I completely cannot recollect. Perhaps there were hundreds.

Q. Okay. Can we just go next to the document that we just looked at at H(A)07, the offering circular, page 41. Again, if you can go to page 79 of that document H(A)07/79, I'm going to read you the third paragraph and it will be translated for you:

"In 1996, Sibneft exported 23.1% of its crude oil production, or 4.3 million tonnes. In 1996, all exports were to countries outside the FSU."

Which is the Former Soviet Union.

"Starting in May 1996, the Company used RUNICOM Ltd and its affiliate RUNICOM SA, a Swiss trader of crude oil and refined oil products, as its exclusive export

agents, paying them a commission; since March 1997 these two entities have purchased outright all of Sibneft's exports. In 1996, sales commissions for the RUNICOM entities averages \$0.35 per barrel, or approximately 2% of the total sales price. Since March 1997, no commission has been paid and the RUNICOM entities have paid market prices for their purchases. For sales of crude oil, Sibneft receives prepayment for at least 50% of the export value of the crude oil with the rest being settled within 60 days of delivery."

And then there's a reference to Runicom's interest.

Now, just pausing there, Mr Abramovich, you see there a reference to 2 per cent commission being paid to Runicom. Was that all profit?

A. If I understand correctly, yes; what I understood from hearing the paragraph.

Q. And if 2 per cent of the sales price is Runicom's commission in the early days and that is 35 cents, which is what the circular says, then we can derive from this that the total sales price, the price the oil was sold by Runicom, was about \$17.50 per barrel, and I get that by taking 35 cents and multiplying by 50 and that gives you \$17.50. Correct?

A. (Untranslated)

Q. All right. We also know that the domestic price for

this oil was about 60 per cent of that price, the \$17.50 per barrel price. You see this if you look in the passage that we were looking at. About four lines from the end it says:

"In 1996, domestic crude oil prices increased as a percentage of world prices reaching 58.9% of world market prices in December 1996."

Are you following?

A. Yes.

Q. So if the domestic price was about 60 per cent of \$17.50, it follows that the domestic price was about \$10.50 per barrel? You can take that from me, that mathematical --

A. (Untranslated)

Q. You agree, thank you.

So from March 1997, with Runicom getting the oil at \$10.50 per barrel and selling it on at \$17.50 per barrel, this gives Runicom a price differential of \$7 per barrel; that's right, isn't it?

A. I think you are mistaken. I think you forgot about the tax, about the transport, about the freight; all these insignificant but very important details of oil export. Oil from the territory of Russian Federation was leaving the territory of Russian Federation only at market prices.

- Q. When you say oil was leaving the territory of Russian Federation at market prices, which market prices are we talking about there?
- A. I mean the global, the world market prices.
- Q. And that is --
- A. The quotes of the global oil market prices.
- Q. That is precisely the calculation we've been doing. You were buying it, you were getting it at Russian domestic prices, which were about \$10.50 a barrel, and that oil was being sold by you on the world market at \$17.50 per barrel; and that is right, is it not?
- A. We were selling it at 17.50 I think -- I don't quite recall that moment -- but Runicom was never buying oil at 10.50. Once again, you have forgot the transport from the oilfield to the sea port, you have to buy -- all these logistical things were not taken into account in your calculation, I think. Yes, shipping, freight, then the ice duty; there are many details before we get to the world market price.
- Q. You're not suggesting, are you, that tax, freight, et cetera, made up the full \$7 differential, are you?
- A. This is exactly -- I'm saying that all the expenses between \$17 and \$10 include all these components. I don't remember exactly how much each component costs but everything was expensive, transport, shipping,

logistics, and we were only taking 2 per cent margin.

I think it was an average rate for all the trading companies.

Q. Mr Abramovich, are you saying that the full amount of the \$7 was taken up by expenses such as tax and freight?

A. I'm saying that Runicom only took 2 per cent for itself; that's what I'm insisting on. Where the \$7 were going, where each of the \$7 were going, I do not recall, but transporting, shipping and freight is very expensive. I'm just trying to explain this to you.

Q. Okay. Well, let's just see how much oil you were getting 2 per cent on.

Can you look again at the Eurobond circular that we have open because it identifies the quantity of oil which is exported. This is for the year 1996 and it identifies that at 4.3 million tonnes. If you're looking at page 79 H(A)07/79, the first line. Do you see that?

A. Yes, I can see that. But this document was checked, was audited I think by Salomon Brothers and by a law firm that was issuing the document. Everything was explained there in great detail.

Q. I'm not questioning the numbers, Mr Abramovich; I'm just trying to get a sense of the figures we're talking about here. So one is dealing with 4.3 million tonnes and to

convert that into barrels we need to multiply this by 7.21. You can see that if you go to page 46 of this document H(A)07/46.

A. I do apologise, what figure will I see there?

Q. How you convert -- when you have a figure which is expressing crude oil by reference to tonnes or million tonnes, if you want to ascertain how many barrels that is, you multiply that by 7.21.

A. Yes, I recall that.

Q. And one has that actually set out in this document in the third paragraph of page 46.

MRS JUSTICE GLOSTER: On page?

MR RABINOWITZ: Page 46.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: And that means that 4.3 million tonnes of oil is equal to about 31 million barrels; that's right, isn't it? Well, you can take it from me that's right; we're not a mathematical class.

Mr Abramovich, you say that all you were getting was the 2 per cent. If you look at page 79 H(A)07/79, that explains that the 2 per cent commission arrangement ended in March 1997. Do you see that?

A. I only can hear it, I cannot see it. I think I already lost what we are discussing.

Q. You have said in your evidence that the only money you

were making on this oil was 2 per cent commission and you were getting nothing of the differential between the domestic oil price and the international market price.

Do you remember saying that?

A. If the question is about whether I -- whether Runicom was receiving the difference between the Russian domestic prices or the oilfield prices and the world prices, no, it was not receiving that differential.

Q. Your evidence has been that the only money that Runicom was making on this was the 2 per cent commission.

A. Yes. From what I can recall, this is correct.

Q. According to the circular on page 79, it explains that the 2 per cent commission ceased entirely from March 1997. And my question to you then --

MRS JUSTICE GLOSTER: Where is that on the page, please?

MR RABINOWITZ: If your Ladyship is on page 79, about four lines from the end:

"Since March 1997, no commission has been paid..."

MRS JUSTICE GLOSTER: End of the page?

MR RABINOWITZ: Sorry, third paragraph down the page, the paragraph beginning, "In 1996, Sibneft exported 23.1%..."

MRS JUSTICE GLOSTER: Yes, I've got it, thank you.

MR RABINOWITZ: And then four lines from the end.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR SUMPTION: Could the whole of that sentence be read out for the witness because he hasn't, of course, got it in front of him in a legible form.

MR RABINOWITZ: Let me read it out to you. It says -- and I will read you the sentence before as well, in case that helps -- perhaps I won't, it's a very long sentence.

"Since March 1997" --

MRS JUSTICE GLOSTER: No, read the sentence before, please:

"In 1996..."

MR RABINOWITZ: "In 1996, Sibneft exported 23.1% of its crude oil production, or 4.3 million tonnes. In 1996, all exports were to countries outside the FSU. Starting in May 1996, the Company used RUNICOM... and its affiliate RUNICOM SA, a Swiss trader of crude oil and refined oil products, as its exclusive export agents, paying them a commission; since March 1997 these two entities have purchased outright all of Sibneft's exports. In 1996, sales commissions for the RUNICOM entities averages \$0.35 per barrel, or approximately 2% of the total sales price. Since March 1997, no commission has been paid and the RUNICOM entities have paid market prices for their purchases. For sales of crude oil..."

Let me stop there. So:

"Since March 1997, no commission has been paid and the RUNICOM entities have paid market prices for their purchases."

Now, are you saying that from 1997, when the commission disappeared, Runicom was making no profits on this oil?

A. I am not saying that. I'm saying Runicom started buying at market prices I think in 1997 and I think the export duty I think in '97 was passed on to the Customs and from that moment on we -- that is Sibneft -- had to pay to the Customs. So at the point of crossing the border everything had to be paid up.

Q. Are you saying that in -- when you talk about market prices in 1997, are you talking about domestic market prices or international market prices?

A. I always mean only the global market prices, if we're talking about export. If I would start selling oil or petroleum products not at market prices, then I would not be sitting here with you today.

Q. Do you say that from 1997 Sibneft paid taxes and freights and those costs, so that Runicom didn't have these expenses?

A. I'm not saying this. I simply do not recall that. But Runicom was purchasing oil only at market prices, at global prices. That was the practice we had.

- Q. Can I then ask you this, Mr Abramovich: do you dispute that from 1998 one method that was adopted by you to make money from Sibneft was by making use of tax-efficient companies in Russia?
- A. No, I do not dispute that, but it has nothing to do with export.
- Q. And is this right: from 1998 Noyabrskneftegas in fact stopped selling crude oil directly to Omsk Refinery and instead, under your control, it began to sell its crude oil to third-party legal entities as intermediaries?
- A. This is true.
- Q. And those intermediaries then sold the oil on to Omsk Refinery; is that right?
- A. This is true. That's right.
- Q. So whereas the arrangement previously had been that Noyabrskneftegas would sell the oil or would pass the oil to Omsk for refining and that oil would then be sold, what you did was to insert a third-party intermediary in the middle of that arrangement, that intermediary would then acquire the oil from Noyabrskneftegas and then sell it on to Omsk; correct?
- A. This is correct.
- Q. Now, so far as the nature of these third-party legal entities is concerned, you're very familiar with the concept of ZATOs, the closed administrative-territorial

formations, I take it?

THE INTERPRETER: I'm sorry, could you please repeat the concept, Mr Rabinowitz?

MR RABINOWITZ: ZATOs, Z-A-T-Os.

A. It is familiar -- I am familiar with this concept.

Q. And these are territories in which the local authority were able to grant tax breaks from federal and regional taxation to entities registered on its territory?

A. Yes. Yes, this is so. That was allowed by federal legislation via the closed administrative entities and that was -- they did have tax benefits.

Q. And you're also very familiar with the concept of internal offshore zones, regions such as the Republic of Kalmykia and so on, where again tax breaks were granted from federal and local taxation?

A. I do not recall exactly what the difference between Kalmykia and other areas, but Kalmykia was one of them, yes, that had a law in this regard.

Q. And the third-party intermediaries that, under your control of Sibneft, were inserted into the chain between Noyabrskneftegas and Omsk Refinery were established by you and your team in these ZATOs or internal offshore zones; that's right, isn't it?

A. They were not established by me and my team. I think these were companies that already were there. They were

registered by the local authorities, if I understand correctly. I don't remember this scheme very clearly because at that point I didn't deal with that, but I'm prepared to explain if that could be of help.

Q. Well, we'll go through this slowly so that we see exactly how this develops and if I haven't covered something then I will ask you to explain further.

MRS JUSTICE GLOSTER: Is this issue all related to transfer pricing?

MR RABINOWITZ: It's related to how the money was obtained by virtue of Mr Abramovich's control of Sibneft.

Now, the function of these tax-efficient companies was to buy the crude oil from Noyabrskneftegas, then pay the Omsk Refinery to process this oil under a tolling agreement, and once the oil had been refined in this way, these inserted parties would then sell the product on to Sibneft; is that right?

A. From what I understood, it sounds like this is right.

Q. And do you recall the names of any of these tax-efficient companies that were used?

A. No, I do not.

Q. The names -- do the names Olivesta, Vesta and Kalmykia mean anything to you?

A. No, they do not.

MRS JUSTICE GLOSTER: Mr Rabinowitz, can you just explain to

me why the issue as to how the money was obtained by virtue of Mr Abramovich's control of Sibneft is relevant to what I have to decide?

MR RABINOWITZ: Because, my Ladyship, my learned friend's submission was that if you just -- the way my learned friend puts his case is to say: look at Sibneft, it wasn't declaring a dividend until 2001, therefore the suggestion that the money that Mr Berezovsky was receiving was as a result of the profits which were generated from obtaining ownership and control of Sibneft just cannot be right because, he says, Sibneft was not making a profit that one could declare a dividend on until 2001.

Our case is that that is a fallacy because what was actually happening here is that Mr Abramovich, by virtue of having obtained control of Sibneft, was able to extract, by one means or another, very substantial sums of money which in many other -- as a result of that control. In other words, he gets control of Sibneft and he makes a great deal of money by virtue of that control.

MRS JUSTICE GLOSTER: Well, there's no dispute that vast sums of money were paid to Mr Berezovsky.

MR RABINOWITZ: No, the question is whether vast sums of money were being made by Mr Abramovich out of which he

was paying Mr Berezovsky. Mr Sumption has a point which says: if Sibneft wasn't making money, then --

MRS JUSTICE GLOSTER: Well, Runicom was clearly making money.

MR RABINOWITZ: Well, indeed. Well, Runicom was making money and indeed Mr Abramovich, by virtue of these arrangements, was making huge sums of money.

If one then asks oneself whether what Mr Berezovsky was receiving was simply a pay-out or a pay-out by reference to profits which were being generated as a result of --

MRS JUSTICE GLOSTER: No, I see all that. But is it disputed that Runicom, by virtue of its association or relationship with Sibneft, was making profits?

MR RABINOWITZ: I don't know what's being said. But in order for your Ladyship to understand how much money was being generated, so that what Mr Berezovsky was receiving was indeed a receipt of profits which were being made as a result of control being taken over Sibneft, then this is evidence that your Ladyship will need to hear.

MRS JUSTICE GLOSTER: Well, I'll ask Mr Sumption.

Mr Sumption, is it disputed that Runicom was making substantial profits as a result of its relationship with Sibneft?

MR SUMPTION: It is not disputed that the trading companies, of which the two Runicom companies were the most significant, were making substantial profits.

MRS JUSTICE GLOSTER: By virtue of their connection or relationship with Sibneft?

MR SUMPTION: To a substantial extent, although they did have other businesses also.

MRS JUSTICE GLOSTER: Well, Mr Rabinowitz, I mean, obviously I must leave it to you. If you consider that the detail --

MR RABINOWITZ: Well, I do need to go through this.

MRS JUSTICE GLOSTER: -- of how the profits were being made by the trading companies by virtue of their relationship, as set out in this circular or the accounts, with Sibneft is relevant, I'll get to grips with it.

MR RABINOWITZ: I will need to take your Ladyship through this.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: Now, I asked you whether you recalled the name Olivesta, Vesta and Kalmykia and can I ask you, please, to go to bundle H(A)44, page 41 H(A)44/41. This is an offering circular issued by Sibneft in 2002. You can see the date -- well, I can tell you that's the date; it says so at the bottom of this page.

If you can go to page 76 in the bundle H(A)44/76, there is a heading there just below the middle of the page saying "Acquisition of Trading Companies". In the text which follows that heading -- well, let me read it and it can be translated:

"On 17 August 2001 Sibneft received approval from its shareholders for the merger of two Kalmykiya-registered domestic oil trading companies Olivesta and Vesta. On 1 December 2001 Sibneft also received approval from its shareholders for the acquisition of Terra, another domestic oil trading company. These acquisitions were carried out by means of a stock swap, whereby the entire share capital of each company was exchanged for a specified number of Sibneft shares. Neither of Olivesta or Vesta constitute more than 1 per cent, and Terra not more than 7 per cent, of the total consolidated assets of the Group."

So these companies were brought within the Sibneft corporation itself. Does this assist you in remembering the names of these companies?

A. It doesn't assist me because in 2002 I was governor of Chukotka autonomous region.

Q. Can I -- sorry.

A. I can continue if you like; perhaps I will bring some

clarity so that you understand what are transfer prices, what are market prices, then we set out the terminology and then it would be easier for everyone to understand what we're talking about.

Q. Let me take you to one or two more documents and if they don't make it clear and you feel you need to explain, then please do so.

Can I please ask you to go next to G(B)2, volume 3, at tab 106 G(B)2/3.106/297. Now, at tab 106, you should see there an article in Russian from Vedomosti dated 18 December 2002. There is an English translation which begins at page 299 G(B)2/3.106/299. It refers here to a report by the Audit Chamber. Can I ask you, please, to read this article to yourself.

A. Do I need to read through the whole article?

Q. If you could, please. (Pause)

A. Yes, I have read it.

Q. Now, it cites research by the Audit Chamber. Do you recall the publication of the Audit Chamber report in December 2002?

A. I don't recall it, but I don't think that's important. I don't recall it.

Q. When you say you don't recall it, do you remember it at the time? I'm not asking you if you remember it now, everything it says, but were you aware of it at the

time?

A. The Audit Chamber was checking Chukotka and Sibneft nearly every year, so that was an ongoing work.

Q. Perhaps I can show this to you. Before I do, just reading what the Vedomosti article says, do you dispute the accuracy of what the article says about what you were doing?

A. What is said in the article, it is true to some extent: indeed we, on legal grounds, were reducing the tax amount. But it didn't affect the Sibneft profit in any way.

Q. Well, let's go through this slowly. Do you dispute that you established oil trading companies with primarily disabled staff in order to take advantage of certain tax exemptions?

A. We've done it. I don't recall why it was done. But these were real people, we've paid them salaries.

Q. Do you dispute that Sibneft, under your control, sold in the region of 98 per cent of its oil to these companies also under your control and ownership, which, as the article notes, immediately resold the crude oil to Sibneft at two to three times the price?

A. It is difficult for me to say. This is a journalist's investigation and if he thoroughly investigated that, then maybe. But I do not recall this.

Q. That's quite a healthy profit that you were making from your control of Sibneft, was it not? You were buying the oil through these companies, at this stage not within the Sibneft corporation, and selling the oil back to Sibneft at two to three times the price that you had bought it from Sibneft at?

A. I think you are confusing oil because that was -- I think was done for tax purposes. It wasn't done to send any profit to these companies. It was done to reduce the tax amount and there was a law to that effect at that point in time.

Q. Mr Abramovich, it was only in, I think, 2001 that these companies, these companies which were located in tax-efficient places, were integrated into Sibneft. Prior to that, they were outside of Sibneft. That's right, isn't it?

A. Unfortunately I do not recall that. I don't think we used them before, but I simply do not recall.

Q. Sorry, when you say you don't think you used them before, are you saying that they only came into Sibneft in 2001 and that prior to that, although they were owned and controlled by you, they were not within the Sibneft ownership structure?

A. Sorry, I think I've lost your thought. Could you please repeat? Did I own or did Sibneft own these companies

prior to 2001?

Q. Correct, and I'm distinguishing between Sibneft and you and your trading companies.

A. What year are we talking about?

Q. Prior to 2001, Mr Abramovich.

A. From what I can recall, all the profit of the trading companies was almost -- always accumulated in Sibneft. I think it was done by merging these companies in, but I do not recall.

Q. I suggest to you, Mr Abramovich, that that is wrong and that you know it is wrong. After these companies were brought within Sibneft, their profits were merged with Sibneft's; but before that, that profit was not a profit which accrued to the shareholders of Sibneft.

A. Do I need to comment on this or is that your assertion?

Q. Well, I'd like you to comment on whether you dispute what I'm saying.

A. I cannot say with the whole clarity. From what I can recall, the companies, the profits of these companies were almost (sic) accumulated, accrued in Sibneft, but I cannot say for sure. Mainly these companies were created in order to reduce the tax burden, the tax basis, and at that point in time that was lawful and it didn't affect the profits in any way.

Q. You'll see that this article refers to the audit report

and we've managed to find that audit report, both in Russian and we have an English translation. Can I just hand up to you that audit report, please. (Handed)

A. May I say a couple of words, please?

MRS JUSTICE GLOSTER: Yes, please do.

A. The source from you, where you've got it from, I understand this: this is the compromat.ru website. I cannot claim that everything that gets on that website is the truth, but I am prepared to discuss this document.

MR RABINOWITZ: Thank you.

In order to see what this audit report was a report into, can I invite you, please, to look at, on the first page of this, the heading "Subject of the Audit".

MRS JUSTICE GLOSTER: This will go on the system, will it?

MR RABINOWITZ: It will go on the system.

It says at point 1:

"Assessment of the effectiveness of measures taken by the company to ensure full and timely payment of tax and other required payments to the federal budget."

Then can I ask you next to go to page 21 in the Russian, page 19 of the English version, where we can see the conclusions of this report.

A. Sorry, once more, what the page was in Russian?

Q. 21.

"The Company carried on its business through a network of legal entities (hereinafter Companies or Intermediaries) registered in tax havens and acting as mediators. The Companies purchased the whole bulk of crude oil extracted by [Noyabrskneftegas] (the Company's subsidiary) and sold it at the same fiscal metering unit for a 2 to 3 times higher purchase price. The crude oil was not removed from the fiscal metering station and retained its physical qualities. Later, some oil was exported and some was used to produce petroleum products subsequently purchased by the Company. Legally, the oil was owned by the intermediaries; however, the Company arranged for export shipments, paid customs duties, arranged and paid for oil transportation and refining in the Russian Federation. Thus, the company arranged for and paid costs of the whole workflow, whereas the intermediaries accumulated profit, without performing any functional operations. Preferential tax treatment allowed the intermediaries to decrease the profit tax rate by over 6 times... Subsequently, intermediaries merged with the Company with net profit."

Do you see that?

- A. Yes, I can see that. This is what I was trying to say: that with regard to companies, we had no problems. The tax authorities could have had questions in this regard

but the company couldn't have any questions. Never mind that we're discussing 2001, year 2001, and Mr Berezovsky is not saying anything in that regard.

Q. Except that what this says is that, "Subsequently, [the] intermediaries merged with the Company with net profit", not that they were always merged with the company. Do you follow?

A. Yes, I follow. But here only 2001 is discussed, if I understand correctly. And absolutely the auditors of the Audit Chamber, they are not as clearly putting themselves as you are, Mr Rabinowitz, so it's not quite clear what they could have meant.

MRS JUSTICE GLOSTER: Mr Abramovich, when did the tax-profitable companies merge with Sibneft, what year?

A. If I recall correctly, that happened every year. I think unfortunately at that year I already did not work at the company; I cannot comment. I'm trying to help, but I do not have the knowledge in this regard.

MRS JUSTICE GLOSTER: I see. The tax vehicles would merge every year with Sibneft; was that the idea?

A. If I recall correctly, it happened every year, but I cannot assert that for sure. The idea of these companies was to reduce the tax burden and did not affect Sibneft.

MR RABINOWITZ: Isn't in fact what happened that you took

the profit by virtue of lower taxes being paid in these intermediary companies which you had established in these tax havens, and then you sold the oil back to Sibneft at a price which was the same price -- which ensured that it made the same profit it would have made had it had to pay full tax?

- A. If I got correctly what you said, I think that was right. If you could, could you please repeat what you just said?
- Q. What was happening here was that you had set up these companies outside of Sibneft. These companies bought the oil and sold it to Sibneft at two to three times the price that they bought it at. The arrangement that you've set up, in effect, meant that Sibneft landed up making exactly the same net profit -- that's to say after-tax profit -- as it would have made had this arrangement not existed. Is that correct?
- A. It's very difficult for me to confirm from just being able to hear it. I think you're quite close to what was happening, but I cannot say for sure.
- Q. What I'm saying is that Sibneft's position landed up exactly as it would have been had you not had this tax-efficient arrangement because it was buying the gas back from someone to whom it sold it for two to three times the price. Is that correct?

A. It is very difficult to comprehend it from just hearing it, but it looks like this is the case. I wanted to say one small thing: that Sibneft, the company, was receiving all the profit that it was supposed to receive. We paid less tax; this is true.

Q. But the money was being made somewhere, Mr Abramovich: it was being made in these vehicles who were selling the oil for two to three times the price that they were buying the oil and they were paying tax at a rate of only 5.5 per cent. Is that right?

A. Yes, this is right. These companies were making money on the tax differential; this is right.

Q. And the benefit of that was being taken not by Sibneft but by you?

A. I cannot assert for sure, but it's very likely to be the case.

Q. Thank you.

Now, whilst we're in this --

A. Oh, I beg your pardon, can I correct myself, please? All the profit that was accumulated in these companies returned back to Sibneft.

MRS JUSTICE GLOSTER: As a result of what you say is an annual acquisition by Sibneft of the tax vehicles?

A. If I recall correctly, yes, that annual acquisition. But, to be honest, I am not an expert on this and

I think I will get myself confused and will confuse you.  
And this is the part of which I don't have great  
knowledge, deep, in-depth knowledge.

MR RABINOWITZ: And what about the tax savings on those  
profits, Mr Abramovich? You were paying 5.5 per cent  
rather than 35 per cent tax on those profits. Do you  
say that the benefit of that went back to Sibneft as  
well?

A. With regard to Kalmykia, I do not recall. With regard  
to Chukotka, all the amount was either going to  
Chukotka's budget or to charitable foundations.

Q. But not to Sibneft?

A. The tax savings did not return back to Sibneft; this is  
true.

Q. So you kept them and you used them as you wished?

A. You can assert this, but this is not quite the way I see  
this. And again, it depends which year we're  
discussing. If we're talking about year 2001, then most  
of the savings -- basically all of the savings were to  
Chukotka's budget and to the charitable foundations.

Q. What about the years before 2001?

A. In year 2000 I think the situation was the same; and  
then I do not recall.

Q. Can I just ask you, please, to go to a different part of  
this report: it's at page 14 of the Russian version and

page 13 of the English version. Now, what the audit report is dealing with here, again, when you see about three paragraphs down certainly from the top of the English version, it says:

"The audit revealed that the Companies that later merged with the Company..."

And it's dealing there with Olivesta, Vesta and Novella.

"... purchased promissory notes of credit institutions and transferred currency assets outside of the Russian Federation under import contracts.

"Thus, Olivesta LLC transferred 50 [million] US [dollars] in two instalments, on May 30 and June 1, 2001 as a payment to Palmtex limited, SA (Panama) for supply of dump trucks, bulldozers, excavators, etc under Contract No 210501 of May 21, 2001. Said amount was transferred to Latvian Trading Bank (Riga). On July 25, 2001, the amount of 50.00 [million] US dollars was returned by Palmtex limited, SA (Panama) to Olivesta LLC due to the supplier default under the import contract.

"Vester LLC transferred 50 [million] US dollars as a payment under Supply Contract with Palmtex limited, SA (Panama) (with the range of goods identical to that of Olivesta LLC). Said amounts were transferred to Latvian Trading Bank (Riga) on June 4, 2001. On July 26, 2001,

the amount of 50 [million] US dollars was returned by Palmtex limited, SA... to Vester LLC due to the supplier default under the import contract.

"Novella transferred 35.0 [million] US dollars as a payment under Supply Contract with Palmtex limited, SA... (with the range of goods identical to that in case of Olivesta LLC and Vester LLC). On August 10, 2001, the amount of 35.0 [million] US dollars was returned by Palmtex limited, SA... to Novella LLC due to the supplier default under the import contract.

"Thus, funds totalling 135 [million] US dollars received by the Companies from the Company prior to the merger were transferred to the same foreign entity under import equipment supply contracts. Subsequently, within two months, the funds were returned to the Companies due to the supplier default; the Companies, in their turn, transferred said amounts to the Company's settlement account."

What is being described here, Mr Abramovich, is a scheme to transfer currency out of Russia. Can I just describe to you what I suggest is being said here and then get you to comment on it.

First, the Russian companies -- this is Vesta, Olivesta and Novella -- purport to enter into contracts with a foreign third party for the acquisition of goods,

and the goods here are dump trucks, bulldozers and excavators. Secondly what happens is these Russian companies transfer money out of Russia in order to pay for these goods, in this case to accounts in Latvia. Third, the Russian companies use these bank accounts to pay the third-party suppliers of goods. And fourth, the contract is then cancelled and the money returned to the Latvian Trading Bank, where, presumably, it remains, Mr Abramovich.

Do you agree that that is what was happening here?

A. No, I do not agree. How did you conclude that the money remains there? I'm not sure. It's indeed quite difficult to follow. It's very different (sic) to comment because I didn't work in any of these companies and at that point I didn't work at the company, although I'm prepared to continue with this discussion.

MRS JUSTICE GLOSTER: Just a second. Mr Rabinowitz, if you look at the third paragraph from the bottom:

"Subsequently, within two months, the funds were returned to the Companies due to the supplier default; the companies, in their turn, transferred said amount to the Company's settlement account."

MR RABINOWITZ: Settlement account.

MRS JUSTICE GLOSTER: So are you --

MR RABINOWITZ: That would be, we suggest, in Latvia.

MRS JUSTICE GLOSTER: But that's Sibneft, isn't it? "The company" is defined as Sibneft.

MR RABINOWITZ: No. This report is not terribly clear. It talks about "the companies" when it refers to Olivesta, Vesta and Novella as well. You see that if you look --

MRS JUSTICE GLOSTER: Yes, I see that. But who is "the company" then? Well, if you look at page 2, it's Sibneft, isn't it? If you look at the definition just below the first hole-punch.

MR RABINOWITZ: That does appear to be Sibneft, when "the company" is referred to in the singular.

MRS JUSTICE GLOSTER: So whether or not it's in a Latvian account, the proposition you put that the monies stayed with Novella, Vesta, et cetera doesn't seem to be right, does it? I mean, you tell me, but I just don't want the question to be asked on the basis of a false premise.

MR RABINOWITZ: No, I will come back to that in a minute. I will just check that.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: Can I just ask you this, Mr Abramovich: these contracts between Olivesta, Vesta and Novella with Palmtex Limited, purportedly for dump trucks, bulldozers and excavators, Palmtex Panama is one of your companies, isn't it?

A. I honestly do not recall.

- Q. Well, I can tell you that Palmtex SA Panama is one of your companies; indeed, it is one of the companies that was used to hold the Rusal shares. Do you now remember it?
- A. Possibly. I just simply do not recall the company name. I don't want to deny it. If it's my company, so it is.
- Q. You see, if Palmtex SA in Panama was your company and if Palmtex SA in Panama was in fact a holding company used for holding your shares in Rusal, then it's very unlikely that that is a company which is going to be supplying dump trucks and bulldozers to Novella, et cetera.
- A. Why is it highly unlikely? I don't understand. If it's a company that holds Rusal's shares, maybe Rusal needs trucks. This is just my supposition. To be honest, I have no idea.
- Q. Was it not a shelf company which was being used to hold the aluminium assets?
- A. Possibly. I cannot confirm this.
- Q. Do you say that these were, so far as you're aware, genuine contracts whereby Palmtex SA was supplying dump trucks and bulldozers to Novella -- these tax vehicles?
- A. I'm not asserting this. I just simply have no idea. That's what I'm trying to say here.
- MR RABINOWITZ: I'm going to move on to another document,

which I'm happy to do, my Lady. We may not finish it by 1.00.

MRS JUSTICE GLOSTER: Why don't we take the break now? I'll sit again at 2 o'clock.

(12.55 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm going to rise at 4.15 this afternoon.

MR RABINOWITZ: Mr Abramovich, can you go, please, to bundle H(A)87, page 250 H(A)87/250, a document which is only in English.

Mr Abramovich, this is a research note produced by ING Financial Markets in September 2004. Can I ask you, please, to go to the second page of this: that's page 251 H(A)87/251. At the bottom of page 251 there is something which is called "Sibneft's SWOT analysis" and that means strengths, weaknesses, opportunities and threats. One can tell that that's what that means because, in the box immediately below, one sees the headings "Strengths", "Weaknesses", "Opportunities" and "Threats".

Now, in the "Threats" box, the document says this:

"The company is run for core shareholders rather than minority shareholders. We estimate [the year] 2000

revenue was lower by US\$700 million due to sales to an unconsolidated trading company. This company has since been consolidated."

Can you assist us as to what was the unconsolidated trading company which is here being referred to?

A. Unfortunately I cannot assist you in this. I've not been working at the company for the past two years, so it's difficult to comment. And if you're talking about this particular document, I've not been working there for five years, so I would be really hard put to say anything at all about that.

Q. Perhaps I can help you by referring you to another document. Can you go, please, to H(A) volume 38, page 1 H(A)38/1. This is another research note, this time produced by an organisation called Renaissance Capital, this time dated 4 September 2001. You can see -- well, I will tell you that it is headed "Sibneft -- Consolidating the Profits".

If we go over the page, page 2 H(A)38/1 -- perhaps I can just read to you the first three paragraphs of this:

"The major change in our view of the company has been caused by the impact of the consolidation of two trading companies named Vester and Olivestra (Kalmykia-registered structures that trade Sibneft's oil

and products). We believe that both companies made around US\$300 million in net profit during 2000 from arbitraging the transfer price between Sibneft's upstream subsidiaries and its refinery at Omsk (and perhaps also through involvement in its export sales). While it is important to note that the activity of both companies was not illegal under Russian law, it clearly transferred huge value away from Sibneft.

"As a result of the consolidation of these companies into the Sibneft holding structure, which has been almost entirely motivated by the new tax legislation that makes transfer pricing much more difficult, the profitability of the holding company will increase dramatically. We estimate that in 2000 the trading companies had revenues of around US\$7 per barrel, which will effectively be added straight back into the net revenues of Sibneft as a result of the consolidation at minimal cost (Sibneft is paying around US\$2,000 for both companies).

"Clearly the suspicion is that the trading companies were formerly owned by the majority shareholders of Sibneft, who are now transferring profitability back to the holding company rather than keeping it for themselves in the trading companies. This is clearly good news for Sibneft's minority shareholders going

forward, despite the annoyance of realising how much they have missed out on in the past."

I suggest to you, Mr Abramovich, that this is an accurate description of the consolidation of your so-called tax-efficient companies in 2001. Do you want to comment on that?

- A. I can only speculate once again. In '99 I was elected member of the Duma and at that time I was no longer working in the company.

MRS JUSTICE GLOSTER: So what's your speculation?

- A. It's really difficult for me to comment. If I understood the translation correctly, the profits were consolidated in Sibneft; that's what I understood. But it was a very long text, several paragraphs, so I was not able to remember it all.

MR RABINOWITZ: What it seems to be saying, Mr Abramovich, is that as a result of the consolidation of Vesta and Olivesta into Sibneft, which was only taking place in I think late 2000, the profits of Sibneft would go up substantially because those companies had previously been making profits outside of Sibneft.

- A. If I understand you correctly, once again, they're speaking about taxes here, if I understand you correctly. But once again, I may be mistaken. It's very difficult to judge because I -- number one, I did

not work there; and number two, I'm listening to a translation orally.

- Q. Can I ask you, please, to go to another research note. You'll find this at bundle H(A)46, page 244 H(A)46/244. Again, I apologise, but this is only in English so I'm going to have to read to you what it says under the heading "Blow Out 2001" and then ask you a question after that.

What it says is this. It's a research note from 3 July 2002 and it says:

"Last week, Sibneft reported way above consensus numbers for 2001, to US GAAP. Total revenues rose by 49% to [\$3.576 billion] while EBITDA climbed 67% to [\$1.719 billion]. This was palpably above last year's guidance which had indicated that [\$1.6 billion] in EBITDA would be achievable. Moreover, it is amply in excess (10%) of our own expectation ([\$1.564 billion]), as we had cautiously expected the demise of domestic pricing in the final weeks of 2001 to hurt Sibneft. The EBITDA outcome was also hugely higher than the consensus EBITDA expectation carried by IBES of [\$1.311 billion], although admittedly this consensus estimate was sparsely populated. The very significant growth reflects both the sizeable production gain delivered by Sibneft (19.7%) and the marked positive effects of bringing

trading activities in-house. Unpalatable as it is to think of Sibneft diverting hundreds of millions of dollars out of the company before the merger with these trading units, we confine ourselves here to comment on the positive economic effects of having ceased to operate on this basis."

Again, stopping there, one has commentators suggesting that there have been substantial profits, I think running into the hundreds of millions of dollars, which have been made outside of Sibneft, which are now being brought into Sibneft as a result of the consolidation of, I think, Olivesta and those tax-efficient companies.

Do you wish to comment on that suggestion, that that is what was happening here?

- A. Once again, if I understood you correctly, I have no knowledge about this; I can only speculate. Would it be okay if I continue speculating?

MRS JUSTICE GLOSTER: Yes. What's being put to you is, is this true: that so far as you knew at the time, profits were being diverted out of Sibneft to these trading companies and that came to an end when the trading companies were consolidated with Sibneft?

- A. I cannot say anything clearly about those companies and I do not remember those company names. The practice was

that we were saving money on taxes; that was the practice. Now, diverting income or profit from Sibneft, no, I'm not aware of that kind of practice. And also the increase in the income, if I understood the translation correctly, was mainly due to the appreciation of crude oil or due to the increase in physical volume of the crude oil produced.

- Q. Mr Abramovich, at the relevant time you say that you owned somewhere between 88 and 91 per cent of Sibneft and all of the trading companies. Surely you have more knowledge than you suggest and surely you're not -- you must know. It can't simply be all you can -- sorry. You must be able to actually tell us from your knowledge rather than have to speculate about the position here?
- A. Well, this is the case. This is what it is. I can only speculate and I'm happy to do that.
- Q. Would you at least accept this: that what was being kept out of Sibneft was the difference between what Sibneft would have had to pay on a tax of profits and what these tax-efficient companies were having to pay on profits?
- A. The tax savings was probably kept outside of Sibneft or maybe it was consolidated; I cannot tell you now. The question is: what year are we talking about? This is very important. When I became governor, that difference came either to the coffers of Chukotka or to charitable

foundations and organisations.

Q. The years I'm suggesting are from 1998 to 2001.

A. But again this is going to be speculation. I have no knowledge about this. And in '98 I don't think there could have been any profit there at all because it was a time of crisis and one could not even speak about any profit at all.

Q. Well, the companies outside of Sibneft were certainly making a profit because they were taking the oil from Sibneft at one price and selling it back to Sibneft at two to three times that price. So they were making a profit.

A. I would like to understand: do you mean within Russia domestically or through export operations? We need to agree on the terminology. What exactly do you mean when you say "transfer pricing"? Then I will understand what you're talking about.

Q. I haven't used the expression "transfer pricing", Mr Abramovich. I'm talking about the scheme that had been set up by inserting an intermediary between Noyabrskneftegas and Omsk, that intermediary being positioned in a tax-efficient territory, the arrangement being that the oil would be sold to the tax-efficient intermediary and sold back to the company at two to three times the price at which the tax-efficient company

bought that gas.

A. I cannot comment this. I have no knowledge about this.

Q. Very well.

A. Can I just add something? Runicom had never received any crude oil or petroleum products from Sibneft at privileged prices.

Q. Now, I want to ask you next about your evidence in respect of the payments that you say were made to Mr Berezovsky.

Can you tell the court, Mr Abramovich, what you say was the first payment which you made to Mr Berezovsky as a result of the arrangements that you made in 1995?

A. The very first payment, I think it was \$16,000. I mean, if you want to drill down to that kind of detail, amongst the large payments, the first one I think was \$8 million.

Q. And when do you say you made the first payment to Mr Berezovsky of that size?

MRS JUSTICE GLOSTER: Of \$8 million?

MR RABINOWITZ: Of \$8 million.

A. 8 million, I think it was in March.

Q. You see, Mr Abramovich, you make no reference whatsoever to this payment in your defence. You're aware of that?

A. What is defence?

Q. That's your pleaded defence. Do you remember the

document we looked at in bundle A1, where you set out your defence to Mr Berezovsky's claim? You were given a translation of it, but at A1, I think tab 3, you'll see an English version of this A1/03/35. I don't know if there's a Russian version behind it.

My point is: you make no mention at all of this payment in that document, do you? Well, I can tell you you don't. I can also tell you that you make no mention at all of this payment in the evidence that Mr Mitchard gave to the court in the context of the strike-out application. Are you aware of that?

A. Yes, I know, and I could even offer a comment on this.

MRS JUSTICE GLOSTER: Right. Give me your comment.

A. When I was answering Mr Paul Mitchard's questions, I was only giving him my first impression. I was mainly answering his questions, of course, I was sharing with him my story, but it's not like I was sitting there and, you know, put aside all my affairs and doing nothing but that. This is not the way it happened.

MR RABINOWITZ: Mr Abramovich, Mr Mitchard tells us in his evidence for the strike-out application that the evidence he compiled was compiled after discussions with you, with Mr Tenenbaum, with Mr Shvidler, with Ms Panchenko, with all of your close and trusted advisers, and not one of you suggested at that time that

you had made a payment to Mr Berezovsky of \$8 million in March 1995. That is correct, isn't it?

A. If Paul Mitchard did not reflect that in his documentation then that must be the case. I don't think he would have concealed that.

Q. You see, not only is this not mentioned in your defence or in Mr Mitchard's evidence, but you have also produced no documentation at all to evidence this payment, have you?

A. I don't have any documentation. What I'm saying there is that this is what I remember. And I paid much attention to this, I spent a lot of serious time thinking about this. The part of it that was reconstruction, I spent a lot of time and effort in order to put together my more detailed third witness statement.

Q. You see, Mr Abramovich, I'm going to suggest that you have made this up. Do you understand? You're making this up. No such payment was made.

Do you want to comment?

A. Yes, I would like to comment and to say that there was such a payment and the payment like that was made.

MRS JUSTICE GLOSTER: What paragraph of the witness statement is it, please?

MR RABINOWITZ: Paragraph 9. Sorry, that's a wrong

reference. Paragraph 57 at page 51 of the English and then going on to paragraph 62 E1/03/51.

You see, you have no documentation and your evidence appears to be that sitting in 2011, writing your witness statement, you suddenly remembered that in March 1995 you made a payment of \$8 million when you have no documentation at all to support that suggestion.

Do you really have any clear recollection of this, Mr Abramovich?

A. I do have recollection and this is what I describe in my witness statement. In an as detailed manner as I could do this, I did this in my witness statement.

Q. How could you possibly remember, without any documentation at all, both the month in which you say you made this payment and the precise amount that you say was paid?

A. Sorry, could you repeat your question? How could one recall the month? I'm not saying I recall the month. It was definitely before Sibneft was incorporated, this is what I remember exactly, but I'm not sure it was March. I think it was March, but I'm not sure.

Q. You don't really have any clear recollection of this at all, do you?

A. I do have a clear recollection of the fact and this is a recollection, it's just that.

Q. What do you mean when you say, "this is a recollection, it's just that"? A recollection as distinct from what?

A. If I had any documents which I could base myself on, then it would have been a reconstruction. But because this is my recollection, I'm saying this is my recollection.

Q. Do you also say that you personally remember a demand made by Mr Berezovsky in the autumn of 1995 for \$10 million and that \$4 million of this was paid directly by Runicom SA to Logovaz?

A. I'm sorry, I'm not sure I understand. Do I recall the request and the 4 million? Could you repeat your question, please?

MRS JUSTICE GLOSTER: Where is the \$4 million in the witness statement, please?

MR RABINOWITZ: Paragraph 77 E1/03/58.

MRS JUSTICE GLOSTER: Right. Can you repeat the question, please?

MR RABINOWITZ: Do you say that you personally remember a demand being made by Mr Berezovsky in the autumn of 1995 for \$10 million, which you paid, including \$4 million being paid directly from Runicom SA to Logovaz?

A. So the question is -- do you want me to offer some comment? I'm not sure I heard a question. Do I recall?

Part of this is reconstruction on the basis of documentation and the rest is my recollection. I do remember that 5 million in hard cash was actually brought to the club.

Q. Do you say \$5 million or \$4 million?

A. If my memory serves me right, it was \$5 million hard cash and 4 million was transferred to Logovaz, to the Logovaz account.

Q. And is it the case that you had no recollection of this either at the time you produced your defence document or at the time that Mr Mitchard put in his evidence for you in the strike-out application?

A. No, that question did not arise at that time, so I did not spend much time on this.

Q. Are you saying that you didn't have a recollection or that you did have a recollection at that time?

A. \$5 million hard cash I do remember. The \$8 million I did not remember right away but then I recalled it later. But so far as the \$4 million was concerned, I remembered that it was not far from that time, but I did remember it exactly. But then, based on the documents that were shown to me, I was able to reconstruct this whole thing.

Q. This payment also, Mr Abramovich, is not mentioned anywhere, either in your defence or in Mr Mitchard's

statement; and again I have to suggest to you that you are making this up.

A. I do recall this.

Q. Now, at paragraph 77 you refer to a document which you seem to suggest is of assistance to you in remembering this payment of \$10 million, of which \$4 million was paid directly from Runicom SA to Logovaz, and I wonder if we can just look at that document: it's at H(A) volume 2, page 124.

A. Yes, I can see this.

Q. This document does indeed show a payment from Runicom SA to Logovaz in September 1995 but it refers, Mr Abramovich, to payment under a settlement agreement.

Are you suggesting that Runicom SA was issuing false invoices that misrepresented what the payments were being made for?

A. Sorry, I'm sorry, before you spoke about the false invoice, could you once again remind me about that other document, which you characterised as -- I don't remember what.

Q. This document, which identifies a payment of \$4 million being made by Runicom SA to Logovaz, explains that that payment was being made under a settlement agreement. That's what this document says.

And my question to you, if you're suggesting that

this was not a payment being made under a settlement agreement, is whether your suggestion is that Runicom SA were issuing false invoices that misrepresented what the payments were being made for?

A. Now, if I understand you correctly, this settlement agreement -- or that name, it's a very broad term, and I'm sure that that document was executed at that time because otherwise the bank, the paying bank, would not have accepted this payment and would not have made the payment. So there is nothing false about it.

Q. So is your evidence now that this payment was made as a result of some agreement called the settlement agreement between Runicom SA and Logovaz?

A. I can only speculate. It's been a long time and it's very hard for me to recall. But if it says what it is, then this is what it is. But I can comment why that money was needed.

Q. What I'm interested in is why it was paid, Mr Abramovich, because if you say there was a settlement agreement and it was paid as a result of a settlement agreement, then I suggest to you that is not consistent with this being paid as krysha.

A. If I recall correctly, Mr Berezovsky demanded that that payment be made and he needed this in order to pass it on to Mr Khorzakhov later on. Part of it was paid in

hard cash and part of it was in non-hard cash, ie bank transfer.

Q. Can I go to another document which records a payment that you say was a --

MRS JUSTICE GLOSTER: Just a second. I've got a question on this invoice.

Mr Berezovsky said that maybe it was one of your oil companies bought cars for employers, or maybe employees, and that it was payment under such an agreement. Have you anything to say about that suggestion?

A. If these are Russian cars, then for this amount you could have bought 1,000 cars. If these are foreign-made cars, then this is still a lot of money.

At that time I think I already had cars and we did not need to buy cars through Logovaz. We either bought it directly from dealers, dealerships. But, if I recall correctly, at that time I had a Bentley and Logovaz was not a Bentley dealer at that time.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Mr Abramovich, you referred, when I first asked you what was the first payment you had made to Mr Berezovsky, to a payment, I think you said, of \$16,000. Do you remember that?

A. Yes, I do remember that.

Q. Can I ask you, please, to go to page 109 of the bundle

that you're in H(A)02/109. This again is a record of the payment made by Runicom SA to Logovaz on 19 September 1995 for an amount of \$15,591.

Is this the payment that you say was the first of the payments you made to Mr Berezovsky?

A. I do not mean this payment. Mr Berezovsky owed money to Mr Denisov, and so when I got caught between Denisov and Berezovsky in a club he asked me to pay off his debt, and this is what I did. First off it was 16,000 and then one or two months after that there was a further 50,000. But this was in hard cash; it was not a bank transfer.

Q. Are you able to assist as to what you say this payment of \$15,000 made by Runicom to Logovaz was for?

A. I do not recall what the objective of that payment was.

Q. You see, Mr Abramovich, I have to suggest to you that there were no payments that you made to Mr Berezovsky other than in respect of genuine commercial transactions for cars and suchlike prior to 1996. But you disagree with that, do you?

A. I can comment that. I disagree with that. We never bought any cars from Mr Berezovsky.

Q. Now, I want to ask you next about how much you say you paid Mr Berezovsky and Mr Patarkatsishvili between 1996 and 1999.

First, how much do you recall paying them in 1996?

A. About \$80 million.

Q. And how much do you say you recall paying them in 1997?

A. Can I do this before I have a look at my witness statement or after that? I think it was 50 million.

Q. Do you not have a recollection of it sitting here?

A. I've just mentioned this. I've just said this.

Q. How much do you recall paying them in 1998?

A. I think it was also 50, about 50, 50 or thereabouts.

Q. And in 1999?

A. In '99 it was a larger figure but I do not recall now.

I think we paid for TV6, for Kommersant, and altogether I don't remember what the grand total was.

Q. Now, your evidence as to the amounts paid each year is based exclusively on your recollection; is that right?

A. No, not only my recollection. I spoke with people, different people. For ORT and Kommersant, I looked it up, when it was done. A lot is based on my recollections. I do recall the ballpark figures but I cannot give the details. Was it 82 or 76 or 84? I remember that the ballpark figure was about 80 million.

Q. Mr Abramovich, you said you looked it up in order to come up with these figures; certainly that was the translation. Where did you look it up?

- A. With respect to Kommersant and TV6 I looked it up because I did not remember exactly when the payments went through. So I spoke with people, I spoke with colleagues. Now, whether I did have documents or not, I don't remember, but if I did have -- to the extent that I did have any documents, all the documents are part of the case file now.
- Q. So are you saying that these figures that you have come up with are a result of you having discussions with a variety of people and then coming up with these figures?
- A. Including that, yes, but not only that. I did have my own ideas but I needed to have them confirmed. I did not want to mislead the court or say anything to the court that I was not totally sure of.
- Q. Who do you say you discussed this with before putting these figures in your witness statement, please?
- A. Are you talking about all the figures or about the figures broken down by years? 30 million I remembered; 80 million I remembered; 50 million I remembered. But then when those payments started for TV6 and for Kommersant, I spoke with Lev Cherney, to whom the payment had gone.
- Q. I just want to be clear about this, Mr Abramovich. Are you saying that the payments that you've identified in

answer to my questions -- \$80 million, you say, for 1996; \$80 million for 1997; \$50 million for 1998 -- are amounts that you yourself personally remembered?

MR SUMPTION: My Lady, it was actually \$50 million for 1997 that the witness had said. My learned friend I think suggested it was \$80 million for both '96 and '97.

MR RABINOWITZ: I apologise. That's right. My memory is worse than his.

Are those figures that you --

MRS JUSTICE GLOSTER: Put the question again, please.

MR RABINOWITZ: The numbers that you have identified for the years 1996, 1997 and 1998, which were \$80 million for '96, \$50 million for '97 and \$50 million for '98, do you say that these were figures that you personally remember paying to Mr Berezovsky and Mr Patarkatsishvili?

A. Sorry, I -- could you take me through the figures again? Because I thought I misheard 18 instead of 80, so that raised a red flag, and so I focused on that and I missed out on the rest of it, sorry.

MR RABINOWITZ: I'll give you the figures first and then ask the question.

You have said in your evidence that you recall that in 1996 you paid them \$80 million; you said in 1997 you paid \$50 million; and you say you remember that in 1998, again you paid \$50 million.

And my question is: do you say that you personally remembered that these were the amounts you paid in those years?

A. Because I have been taking part in this for such a long time, now, whether I did recall then as clearly as I remember it clearly now, when the proceedings started, that it was 80 plus 50 plus 50, I cannot say that now. I do recall that we had about -- first about 30, then about 80, and then 50 and 50 were also ballpark figures, approximate figures. But in order to be clear about this, I needed to speak with Marina Goncharova, who at that time was in charge of this relationship.

Q. You're suggesting, are you, that your memory got better as time passed?

A. Do you expect me to answer your question about whether my memory got better?

Q. Well, you seem to be saying that your memory now is better than it was earlier on about the amounts that you paid in these years.

A. I'm not sure I understand the question. I now do remember this well. Part of it was reconstruction; part of it was recollection.

MRS JUSTICE GLOSTER: I think we've gone round this hoop.

MR RABINOWITZ: Well, the trouble about saying part of it is reconstruction, Mr Abramovich, is there are no documents

that exist, other than the bolshoi balance, which would support any of the figures that you're giving for these years. Which part of this do you say is reconstruction then, and from what?

- A. I've already said that some of the figures with respect to Kommersant and TV6 I got on the basis of the talks that I had with the colleagues with whom we were working then, Lev Cherney and his people who were in charge of that transaction.

The rest of it was my general recollection. I did remember those figures approximately but I could not confirm them with precision. Even though 30 million I do remember; that figure I do remember very clearly indeed.

- Q. Do you accept that the position is that apart from a document called the bolshoi balance, which we will come to shortly, you have disclosed no documents whatsoever evidencing or recording the payments which you say you made?

- A. There is a document on the screen now which confirms those -- some of the payments. So it would be wrong to say that I did not disclose any documents. It is true that we do not have many documents; that is true.

- Q. Well, the document on the screen at the moment that you're referring to, Mr Abramovich, shows \$15,000 being

paid from Runicom SA in respect of a payment that you say has nothing to do with what you claim were payments of krysha to Mr Berezovsky.

A. No, I did not affirm that it was related to this. It was part of the krysha and, prior to that, 4 million was also documented. What I'm saying is that it would be wrong to say that there are no documents at all.

Q. But what would be correct to say is there is, with the exception of the bolshoi balance, not a single document from you which would support what you're saying you paid; that's right, isn't it?

A. Didn't we disclose those documents?

Q. No, you didn't, Mr Abramovich.

A. Then we did not. Then if this is the only document, then we did not disclose any documents.

Q. You see, although you say you paid -- although you did pay hundreds of millions of dollars over the years, and these payments were made through the banking system, you claim to have no documents at all relating to any of these payments.

A. Many payments were made by hard cash and there's been a lot of time; it was no need, made no sense to store or keep those documents. The banks could have maintained -- retained those documents; I just don't know what the policy of the banks is in terms of storing

documentation. We're talking about something that happened 15 years ago. If they store documents in banks for 15 years, then there is a possibility that they are still in the bank's archives, but unfortunately I cannot assist you with that.

Q. Do you say that there once were documents which carefully totted up how much Mr Berezovsky and Mr Patarkatsishvili were being paid?

A. If by "document" you mean a bank payment, like this, of course documents like this did exist because I paid for ORT, I would pay some of Berezovsky's expenses -- we paid his credit card bills, we paid for his chateau in southern France -- and they are all documented. There is a lot of correspondence.

So it would be wrong to say that there are no documents at all but many documents are missing; they're no longer available. But we can draw a certain picture on the basis of this -- we can get a certain impression on the basis of this.

THE INTERPRETER: Sorry.

MR RABINOWITZ: My question was really whether you had produced a document which totted up how much you had paying Mr Berezovsky and Mr Patarkatsishvili. Did such a document, in which you totalled up the amounts for any particular year or for every year, ever exist?

- A. It was not to those two people; it was to just one person mainly. I don't have one general document.
- Q. The question was whether you ever had a document which totted up, which added up what you say you were paying, I say, to Mr Berezovsky and Mr Patarkatsishvili. Did such a document ever exist for any of -- for these years?
- A. I don't think there ever existed one general compounded document. Apart from small ledgers that were being kept, I don't think that there was one certified document that would tot everything up, or a banking document; no, I don't think so. But at the end of every year we put our figures together to try to figure out how much exactly had been paid, what the grand totals had been. If that may be of any assistance, that's what was the case.
- Q. Are you saying then that there was a document that you produced every year which showed these figures?
- A. Well, of course we did take note of the old expenses for our internal purposes. It couldn't have been otherwise.
- Q. But all of these documents have been destroyed now?
- A. When you say "destroyed", do you mean deliberately destroyed or do you mean that they are no longer there? They're no longer there because it's been a long time, so there was no need to keep them in the archives. And

also many payments were made using hard cash, so that's just an entry in some notebook, in a small ledger.

- Q. And do you accept that the requests for payments that you say were made were made both by Mr Patarkatsishvili and Mr Berezovsky?
- A. Yes, that's -- that was the case.
- Q. Mr Patarkatsishvili controlled the payments and generally handled the commercial side of Mr Berezovsky's affairs; do you agree with that?
- A. I cannot tell you that -- I cannot say that he was in charge of all the commercial activities of Berezovsky but probably he controlled the bulk of it. The overwhelming majority of his commercial operations he controlled; yes, that's true.
- Q. And Mr Fomichev, who was a close associate of both Mr Berezovsky and Mr Patarkatsishvili, liaised with your staff in relation to the making of payments on behalf of both Mr Patarkatsishvili and Mr Berezovsky; do you agree with that?
- A. Sir, could you be more specific when you ask your questions? Did I think that those payments went to Patarkatsishvili? The answer is: no, never, if this is what you're asking me about.
- Q. My question was more directed to whether it was Mr Fomichev who was liaising with your staff in relation

to the making of those payments.

A. Yes, with respect to many of the payments, yes.

Q. And it follows that it would therefore not be surprising if Mr Berezovsky personally were not aware of all the details of those payments?

A. It's just in his character. Usually people know how much money they get, but I also sometimes forget how much exactly I have received. So it was part of Berezovsky's character. But I think that Fomichev and Patarkatsishvili knew what the grand totals were better than Berezovsky did.

Q. And so far as you are concerned, were you aware of the extent to which Mr Berezovsky and Mr Patarkatsishvili had joint commercial interests?

A. Which year are you referring to?

Q. Well, do you say you were aware of their joint commercial interests in any of the years from 1995 to 2001?

A. No.

Q. Thank you. And it follows that, for the many payments --

A. I'm sorry. In the year 2001, chances are that I already got some hint, but I wouldn't have said that this was the case, between 1994 and 2001. Between those years I did not know that they were -- to use a term that

you're using -- partners. But by the year 2001 I was probably partly aware of this because I discussed certain things with Badri.

Q. And if you didn't know about their joint commercial interests, you would not have known whether any payment that you were making was for Mr Berezovsky's benefit or for Mr Patarkatsishvili's benefit or for their joint benefits?

A. Only how we made the payments. We used our infrastructure: I knew who the payee was, I knew who the final recipient was.

Q. What if the payee was just some company the name of which you'd never heard before? You couldn't know then whether the payment was for Mr Berezovsky or Mr Patarkatsishvili or for both of them, could you?

A. Now, if the payment went to ORT bank account, then I could see that. If the payment went to a company who was recipient at Berezovsky's request, then I could see that. Sometimes hard cash also went to Badri, sometimes it went to Berezovsky, but it was also at Berezovsky's request.

Mainly Berezovsky or Badri explained to me what the purpose of this was. I had never made a payment at the beginning of the year and then they started using this. For every payment they had to call me or call one of my

people and after that I issued an instruction for the payment to be made. We then started calling this a programme and then...

MR RABINOWITZ: I'm not sure if the translator is...

THE INTERPRETER: I'm so sorry, I cannot keep up with the speed. I'm asking Mr Abramovich to repeat.

A. It never so happened that we let them have the whole amount at the beginning of the year; we always made payments on the basis of their requests. We either repaid their debts or we received a request from Badri or Boris or they asked us to let them have hard cash. And therefore I'm absolutely certain that I never made any payments to Badri.

And they usually explained to me what the objective of the payment -- what the purpose of the payment was. Many payments went to ORT and in that case I did see who the payee was. Now, if we assume that the money went to ORT and then the shareholders split it 50/50, then perhaps you can draw that conclusion. But I usually saw who the payee was, who the recipient was, and on the basis of that I can draw those conclusions.

Q. Mr Abramovich, at the beginning of that answer, you explained that:

"It never... happened that [you] let them have the whole amount at the beginning of the year..."

Can you explain what you meant by that, please?

What was the "whole amount" that you were talking about there?

- A. What I mean is that we never had an arrangement whereby, for instance, we would let them -- all the \$50 million -- let them have the 50 million together. The arrangement was that they issued requests and then in response to their requests we made the payments.

MRS JUSTICE GLOSTER: Did the requests come in writing or were they made orally to you personally?

- A. Mainly, on the whole, these were oral requests. Badri used to call me and then he sent an invoice and asked me to make a payment somewhere, or sometimes an invoice came and then Badri called, or sometimes they called me and asked me to send \$50,000 worth of hard cash to the club; this is also something that did happen.

MRS JUSTICE GLOSTER: Did Mr Berezovsky ever call you?

- A. Yes, he did call me, and quite often. Of course, when he needed money, he did call me.

MR RABINOWITZ: You said in that answer that:

"... [you] never had an arrangement whereby... [you] would let them... have [all] the 50 million together."

Are you suggesting that what happened was that you had agreed that a particular amount would be payable, for example \$50 million, and that you would not pay that

out in one go?

A. No, never. Never in a bullet payment.

Q. I'm not sure that's an answer to my question. I follow that you say you didn't make the payment in one go, but were there agreements that there was a particular amount that would be payable?

A. It's almost always we had agreed in advance how much would be paid on an annual basis. Sometimes we were not able to pay the whole amount and then there was a spill-over for the next year.

Q. So this wasn't a case of you simply meeting a request for payment on any particular month; you accept that there were discussions and an agreement as to how much should be paid for each year?

A. Well, the way it worked was Badri came to me or I went to the club and we had a meeting and we discussed how much he needs and he said -- he used to say, "Okay, I think I will need this", and then he would let me know how much, depending on their needs, how much and in what instalments money needed to be paid. Sometimes Berezovsky used to call me directly or sometimes Badri called me. He used to ring me up. And so this is what I'm trying to convey to you: we never -- it never so happened that we let them have the whole amount right away.

So apart from making payments, we were also an infrastructure. We were an infrastructure that was used in order to make those payments, or rather we were the infrastructure in order to make those payments.

MRS JUSTICE GLOSTER: Mr Rabinowitz, before the break, I would be assisted if you could tell me where I find your client's stated position as to the amounts which he was paid, because I'm not clear of the area of the dispute on this.

MR RABINOWITZ: I'm not sure that we give a particular amount for how much was paid each year. What I'm trying to ascertain from this witness is whether, as he suggests he has, he has a very clear amount as to how much was paid each year.

MRS JUSTICE GLOSTER: Well, I'm not clear in my own mind as to where the dispute lies between the parties as to the amounts of the payments.

Anyway, will you have a think about it.

MR RABINOWITZ: I will have a think about it. I can tell your Ladyship that we do not anywhere set out particular amounts, totals of particular amounts that we say we received.

MR SUMPTION: My Lady, that's not quite correct, if I may say so, because such amounts were supplied to the French investigating magistrate and they appear to have been

derived from the evidence put in in writing in our evidence, that's to say from Ms Goncharova or from Mr Abramovich, which were put forward by Mr Berezovsky to the French magistrates as correct figures, as we understand it. Moreover, in cross-examination he did not suggest, in spite of being asked to do so, that the true figures were either greater or less than that amount.

So it is correct that, while not in documents or in pleadings or in witness statements, Mr Berezovsky has in fact accepted that those figures were broadly accurate. It has been our impression to date that there is in fact no dispute about these matters --

MRS JUSTICE GLOSTER: Well, that's why I'm raising the point, because I don't understand --

MR SUMPTION: -- other than 1995. There's clearly a dispute about 1995 --

MRS JUSTICE GLOSTER: Yes, absolutely.

MR SUMPTION: -- but not in relation to any subsequent period.

MRS JUSTICE GLOSTER: Mr Rabinowitz, that's why I think I would like to know what you say is the area of dispute, if there is one, other than in relation to the -- was it 30 million in '95 where there is a dispute?

MR RABINOWITZ: Indeed. Can I just comment on what my learned friend said --

MRS JUSTICE GLOSTER: Maybe it's less; I can't remember. What's the figure for '95: is it 30 or 16?

MR RABINOWITZ: The question is whether there were any payments made at all at the times that Mr Abramovich says they were made, that is to say before the arrangement took effect. I'm not sure of the exact figure for that.

MRS JUSTICE GLOSTER: I would be grateful to have somewhere on a bit of paper, if it's not already in the submissions, what the position is in relation to the area of disagreement.

MR RABINOWITZ: We will get those for you.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(3.12 pm)

(A short break)

(3.30 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, in answer to your question, the position is this: Mr Berezovsky does not in fact assert a case as to what precisely he was paid in these years. The purpose of the cross-examination was to determine whether Mr Abramovich himself has a clear recollection as to how much was paid in those years and the reason

for that is not because we have a particular point that we want to make by reference to the precise figures, but just in case my learned friends have a particular point that they seek to assert by reference to the precise amounts of those payments.

Because of that, in our respectful submission, we thought your Ladyship might be assisted by an understanding of the extent to which Mr Abramovich really could be as certain as he claims about the extent of those payments for those years.

MRS JUSTICE GLOSTER: But is this right: Mr Berezovsky does not dispute the defendant's case that the sums were paid? I know there's a dispute about '95, but in the other years, is it right there is no --

MR RABINOWITZ: There is no dispute at all that the sums were paid.

MRS JUSTICE GLOSTER: No dispute that the sums were paid.

Thank you.

MR RABINOWITZ: Sorry, I need to be clear. Mr Gillis points out that when your Ladyship says -- I was answering your Ladyship on the basis that there's no dispute that sums were paid. We don't accept, contrary to what my learned friend suggested, that those particular sums that Mr Abramovich asserts were paid were in fact the sums that were paid.

MRS JUSTICE GLOSTER: You're not putting forward a positive case as to what sums, even in ballpark figures, were paid?

MR RABINOWITZ: We accept that there were substantial sums, but not the precise figures that Mr Abramovich seeks to put forward.

MRS JUSTICE GLOSTER: What, they might have been bigger, they might have been smaller?

MR RABINOWITZ: They might have been bigger, they might have been smaller.

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: Mr Abramovich, can we now please turn to the 1996 agreement. As you know, Mr Berezovsky's case is that between March and June 1996 you made clear to him that you felt very strongly that Mr Berezovsky should distance himself from Sibneft because Mr Berezovsky was so involved in politics and Mr Berezovsky says that he agreed to do this.

Now, let me ask you this question: do you agree that Mr Berezovsky was very involved in politics in 1996?

A. Yes, I do agree.

Q. And he was indeed a prominent politician at that time, was he not?

A. Yes, this is so.

Q. Would you agree that businesses in Russia were subject

to substantial levels of political risk before the 1996 presidential elections, including attacks by local and national government agencies on businesses controlled by political rivals?

A. Sorry, I think I did not understand. I didn't understand the question. What was the question, the political rivals and the tax? What was the question?

Q. The question was this: businesses in Russia were subject to substantial levels of political risk before the 1996 presidential elections, including attacks by local and national government agencies on businesses controlled by political rivals; do you agree with that?

A. No, sorry, this is federal --

MR SUMPTION: My Lady, I think the problem is it's being translated "a tax", eg income tax or...

MRS JUSTICE GLOSTER: Sorry, can you not talk at the same time as the interpreter, Mr Sumption. There was a problem. Say what you had to say again.

MR RABINOWITZ: I think Mr Sumption is pointing out that in the transcript it's come out as "tax" rather than "attacks", but that may not have been what Mr Abramovich was told.

MRS JUSTICE GLOSTER: Right. Put the question again.

MR RABINOWITZ: Businesses in Russia were subject to substantial levels of political risk before the 1996

presidential elections, including attacks by local and national government agencies on businesses controlled by political rivals; do you agree with that?

I'm told it's been translated as "tax" as in T-A-X.

THE INTERPRETER: Sorry, it might be my mistake. Was it "attacks", as attacking someone?

MR RABINOWITZ: Yes.

THE INTERPRETER: I do apologise. I shall make an amendment.

MRS JUSTICE GLOSTER: Madam interpreter, if you could please translate the question again. If you would like Mr Rabinowitz to repeat it, I'll ask him to.

MR RABINOWITZ: The problem is translation from South African into Russian is even more difficult than translation from English into Russian.

Businesses in Russia were subject to substantial levels of political risk before the 1996 presidential elections, including attacks by local and national government agencies on businesses controlled by political rivals; do you agree with that?

A. I need to understand what you mean. Would you possibly break this question down into at least a couple of questions? I'm not quite sure what you mean by political opponents and companies being attacked.

MRS JUSTICE GLOSTER: Okay. Let me put the question.

Do you agree that businesses in Russia were subject to substantial levels of political risk before the 1996 presidential elections?

- A. I partially agree with this, but the main risk was that there were elections in 1996 and the Communists could have returned to power. Such a risk did indeed exist.

MRS JUSTICE GLOSTER: Do you agree that the risk included attacks, or aggressive attacks, by local and national government agencies on businesses controlled by political rivals of the people in power?

- A. To be completely honest, I am not quite sure what "political opponent" means. Yeltsin was in power; all people who were appointed in federal agencies were people appointed by Yeltsin. Thus, speaking about any political attacks prior to the elections, it's difficult for me to say so. Perhaps theoretically such possibility did exist, but it's very unlikely.

Some governors were, of course, from the other camp because then governors were elected and it could be supposed that they could have done something at the local level, but I would not take that into account.

MR RABINOWITZ: Mr Abramovich, this is a matter on which all the historical experts are agreed. Let me show this to you, if I can. Can you go, please, to bundle G(B), volume 6/1 G(B)6/1.01/1.

The document you have in front of you is a joint memorandum produced by three experts who have been instructed by the parties to comment on matters of contemporary Russian history, including an expert who has been instructed on your behalf, Professor Robert Service, and what this document represents is a statement of areas of common ground, where it exists, and also to identify where there are differences.

Can I ask you, please, to go to page 19 in this document G(B)6/1.01/19.

A. Could I please read it because this document, again, it's only in English; it will be hard to understand how you mean.

Q. Well, I don't know if anyone has produced a Russian translation of this. If they haven't, I shall have to read it to you and you will have it translated.

Perhaps, my Lady, if Mr Prokofiev, who is sitting next to Mr Abramovich, can translate it for Mr Abramovich while he is sitting there, rather me reading it and getting it translated through the simultaneous translator, it might be quicker.

MRS JUSTICE GLOSTER: That would be easier.

THE INTERPRETER: Certainly, madam.

Mr Rabinowitz, which part of the text are you referring to?

MR RABINOWITZ: Could you please read --

MRS JUSTICE GLOSTER: Do you want to have a chair?

THE INTERPRETER: No, I'm fine. Thank you very much, my  
Lady. I'm fine.

MR RABINOWITZ: Mr Prokofiev, you'll see a heading D,  
"Political Risk", halfway down the page. Then you will  
see a statement 19. And then after statement 19 you  
will see at paragraph 41 the position that the experts  
have taken on this. Could you read that to the witness,  
please?

THE INTERPRETER: For that I would need to translate the  
statement as well because it says:

"Professors... agree with this statement..."

MR RABINOWITZ: Yes, please. (Pause)

So you see, Mr Abramovich, all the history  
professors agree that that is the position. Would you  
accept that the Russian business community, of which you  
yourself would have been a part, considered that these  
risks of attack were greater for individuals who were  
politically prominent?

A. If I may, could I please clarify what I think about  
this --

MRS JUSTICE GLOSTER: Yes, please do.

A. -- this text? It says here that after the elections --  
if I've understood correctly, after (sic) the elections

of 1996 renationalisation was the main risk, and after the elections that risk has changed. Did I understand this correctly? If we are looking at the first line, prior to the 1996 elections there was a risk of renationalisation, that renationalisation might happen after the election. Of course, it would have been bizarre for Yeltsin to renationalise when he just privatised.

MR RABINOWITZ: Mr Abramovich, you're focusing on the first subparagraph of 19. 19(2) doesn't mention renationalisation at all. And again, what these professors agree about is that prior to the 1996 presidential election the risk of this sort of threat was -- well, it existed; put it that way.

Do you follow?

MRS JUSTICE GLOSTER: I'm not sure he will understand the question from the way in which you've put it.

MR RABINOWITZ: In your comment, Mr Abramovich, you have focused on that part of the statement which refers to renationalisation and you are right to say that it says there was a risk of renationalisation both before and after the 1996 presidential election, but it diminished after the 1996 presidential election. That is what this says, but it is not all it says.

It also says that:

"Russian businesses were subject to substantial levels of political risk both before and after the 1996 Presidential election."

And that the risk included:

"Attacks..."

That's aggressive attacks.

"... by local and national government agencies on businesses controlled by political or economic rivals."

And that is what the experts agree about. Do you want to comment on that?

- A. I can comment with regard to renationalisation. That could have not happened at all at Yeltsin's because he was only speaking about privatisation. And there might have been some risk at local level, yes; possibly I could agree with that.

Overall, yes, there were some political risks. The main political risk was with the elections that could have been lost and then there could have been renationalisation, that could have been said for sure, and the leader of the Communists did not hide that at all.

- Q. It's not just renationalisation that these professors are talking about and indeed agree about; it is other attacks on businesses which were owned or controlled by their political rivals. Do you accept that or not? If

you don't accept it, then say so and we can move on.

- A. I rather -- it's not that I accept this or don't accept this; I just can't understand this. What risks are we describing? If it's a risk of renationalisation, then there wasn't such a risk, and I cannot comprehend the other risks.

There wasn't a risk to do with taxes because these were set by the federal legislation. Was there a risk that the president will be dismissed and a new president appointment? Yes, but that risk was taken off by Mr Berezovsky. And with regard to any other risks, I am not quite clear what we are talking about.

MRS JUSTICE GLOSTER: It's paragraph 19, subparagraph 2 that Mr Rabinowitz is asking you to look at and he's asking you to say whether you agree that the risk identified in subparagraph 19(2) was present before the 1996 election and/or after the 1996 election.

- A. With regard with risk prior to 1996, I said there could have been a risk of renationalisation and I perhaps didn't feel the other risks. Maybe, if all the professors agreed, maybe they felt or knew the situation better. I didn't feel that, so I cannot confirm.

And after the 1996 elections, well, I think surely some risks might have existed but they would have been considerably lesser. It's hard for me to judge. I can

neither prove nor disprove it because this is quite a nebulous wording, "the risks".

I can't understand how a federal government could attack the business. Perhaps such an opportunity exists but I couldn't feel that because only in the end of '95 we have won the auction, we just paid the government. Who could have possibly attacked us? I am not quite clear about that. All the governors that existed, they did support us, those that worked in the regions where we worked, so I didn't feel that risk in particular.

And perhaps I could agree, but I am not quite clear what the matter is, what we're talking about.

Q. Mr Abramovich, I suggest you know exactly what we're talking about and we'll see that in a few minutes, but let's move on to the next question, shall we?

Would you accept that the Russian business community, of which you yourself would have been part, accepted that the risks of being attacked by political rivals using the government agencies was greater for individuals who were politically prominent?

Again, if you don't agree, just say so.

A. For people who are politically prominent, the risk is always higher, I agree.

Q. And in terms of your not knowing what sort of risks we are talking about here, perhaps I can show you precisely

the sort of risks that there were. Can you please be given bundle B(B)1/02, page 166 B(B)1.02/166.

A. Sorry, what is this document?

Q. This is an extract from the memoirs of President Boris Yeltsin. If you go back to page 164 B(B)1.02/164, you can see the title of this book.

At page 166 President Yeltsin sets out the extraordinary events which occurred between the first and second rounds of voting in the presidential election in 1996. I will just tell you what President Yeltsin describes in the second paragraph.

He explains that he was in a run-off against Zyuganov. Do you remember that?

A. Yes. Yes, I do.

Q. And in that context he tells of how he met with his "analytical group", as he calls them, and this is a group funded by, among others, Mr Berezovsky; that's right, isn't it?

A. I don't know whether Mr Berezovsky financed the analytical group; I think not. I think Berezovsky supported Yeltsin via ORT. I don't think he was giving money to an analysis group.

Q. Well, I think he is, but I'll show you that in a few moments.

Now, there was a dispute which President Yeltsin

then mentions in the third paragraph between Khorzhakov, who was the head of the presidential security service, on the one hand, and the analytical group on the other hand, and that dispute resulted in the arrest of two aides from the analytical group. Okay?

A. Yes, but it wasn't a dispute that led to it because these two aides, if I remember correctly, they tried to bring some hard cash into the White House and that's why they were arrested and detained, when money was passing through the metal detector, through the detector. This is from what I can recall. Perhaps there were some political motives behind this but I cannot appreciate that. I think there was some breach, some crime, and so they were detained.

Q. Let me read you what President Yeltsin says at the top of page 167 B(B)1.02/167 and I'll read it and perhaps Mr Prokofiev can translate it. He says this:

"But Tanya left home..."

And he's talking about his daughter here,  
Tatyana Dyachenko.

THE INTERPRETER: I'm sorry, sir, which...?

MR RABINOWITZ: At the top of page 167.

THE INTERPRETER: Oh, 167. Yes, thank you very much,

Mr Rabinowitz.

MR RABINOWITZ: "But Tanya left home at about 1.00 am to go

to the offices of Logovaz (Berezovsky's company), where most of the analytical group members had gathered" --

THE INTERPRETER: Sorry, where on page 167 is that?

A. May I ask a question, please?

MRS JUSTICE GLOSTER: Yes.

A. Do I understand correctly that this is Yeltsin's book or a book by Yeltsin, or did I misunderstand?

MR RABINOWITZ: It's a book by Yeltsin, correct.

A. To be honest, it's hard for me to imagine that Yeltsin did indeed write, "But Tanya left home", et cetera, et cetera. I didn't know Mr Yeltsin at that point in time, but I met him a few times; I don't think he knew about these details. I don't think this book was written by Mr Yeltsin.

MR RABINOWITZ: All I can tell you, Mr Abramovich, is that if you go to the title page, it does claim to be written by Boris Yeltsin. The book is called "Midnight Diaries" and that's all, I'm afraid, I have to go on; but if you know better, then you should say so.

Can we just have this read to you.

MRS JUSTICE GLOSTER: Mr Prokofiev is going to translate, is he? It's probably easier.

MR RABINOWITZ: That may be the quickest way.

MRS JUSTICE GLOSTER: Start at the top.

THE INTERPRETER: If you just tell me where we're starting.

MRS JUSTICE GLOSTER: "But Tanya left home". But down to where, please, Mr Rabinowitz?

MR RABINOWITZ: Down to the reference to the building being "surrounded by security service agents".

THE INTERPRETER: Until that sentence?

MR RABINOWITZ: Until those words.

THE INTERPRETER: Until the words "service agents"?

MR RABINOWITZ: You can read to the end of that paragraph if you like, the next sentence as well. (Pause)

The event that President Yeltsin describes here is one that took place slightly after the time when Mr Berezovsky says that the 1996 agreement was made, but I suggest that it well reflects the political exposure of Mr Berezovsky at this time. Do you disagree with that?

A. I disagree with you. Mr Berezovsky was one of the friends of Mr Khorzhakov and they fell out at the point when Khorzhakov suggested not to hold elections but to delay them for a later date. At that point they fell out and, if I understand correctly, this very moment is being described. And before that, they had very good relationship.

Moreover, at the asking -- at the request of Mr Berezovsky, as Mr Berezovsky explained to me, we actually passed the money on to him for his assistance

in creating Sibneft. So he, as a political opponent, if we're talking about Mr Khorzhakov, I didn't view him as a political opponent at all.

Q. You see, I suggest to you that there would be very good reason why a businessman might prefer to be distanced from someone like Mr Berezovsky, who was involved in politics and was controversial. Do you dispute that?

A. Did I understand the question correctly: did Mr Berezovsky have to distance himself from business because he was a controversial figure?

Q. The question is put the other way. Was there good reason why a businessman might prefer to be distanced from Mr Berezovsky because he was a controversial business figure?

A. There wasn't such a reason, I don't know such a reason, I cannot find such a reason. Moreover, we paid for Mr Berezovsky to be close to us and not to distance himself from us. What was the point of those payments otherwise? He was protecting us from not having problems and we were not distancing ourselves from him.

Q. Mr Abramovich, I suggest you know that that is simply not the case. The reason that you were making the payments is because there was a partnership between yourself and Mr Berezovsky in relation to Sibneft.

Now, do you dispute that the question of political

exposure was a factor which you took into account in your dealings with Mr Berezovsky?

A. To some extent there was a political risk but it was linked to elections.

Q. Can you explain what you mean by that? You accept there was a political risk or a risk, presumably, of being exposed as being close to Berezovsky. Can you explain how you want to qualify that?

A. I want to qualify that if Communists would have won, then whether you're close to Mr Berezovsky or not would have no difference whatsoever because all industry would have been nationalised and that was openly stated, proclaimed. So I disagree with the statement that the business that was close to Berezovsky for that sole reason would have been nationalised.

Q. Isn't it obvious that a business which is associated with Mr Berezovsky would be more subject to risk than a business which was not associated with Mr Berezovsky?

A. If we are discussing an oil company and its privatisation, then any oil company would have been nationalised; and if we were discussing a small business, for example a restaurant, a cafe, then perhaps it were not nationalised. It's not important whether it belongs to Berezovsky or any other person.

The Communists always were proclaiming that industry

that was created at Soviet times belongs to the people, to the whole people, and therefore privatisation was unlawful and therefore everything privatised in serious industry, any serious items, will be renationalised. That was the main risk.

Q. It may have been the main risk, Mr Abramovich, but it was not the only risk. There were a lot of political factions and being associated with one of those political factions, in particular Mr Berezovsky, exposed you more than you would otherwise have been; that's right, isn't it?

A. I disagree. There were two factions: that was Yeltsin and the Communists. If you were for Yeltsin then your risk did indeed exist because Communists could have taken power back; and if you were for the Communists then perhaps you had risk as well, but because I was never on that side I cannot appreciate that risk.

Q. It wasn't just the risk of renationalisation; there was always a risk of being refused necessary licences, there was a risk of tax investigations and there was a risk of raids as well, wasn't there?

A. That could have happened, that we would have been denied licences, but that could have happened only after 1996 because I don't feel that that could have happened before 1996. Maybe with regard to tax, I'm not so sure.

But yes, indeed we could have been denied licences; but we were not thinking about new licences at the moment of creating the company.

Q. Now, by March 1996, you had acquired control of Sibneft; that's right, isn't it?

A. Are we talking about management control or control from the point of ownership?

Q. Well, let's break this down.

NFK had won the loans for shares auction in December 1995; is that right?

A. Yes, that's right.

Q. And that meant that in practical terms you were almost guaranteed -- not guaranteed, but almost guaranteed -- to end up with 50 per cent of Sibneft once the state defaulted; is that correct?

A. I've heard the word "guaranteed": did I understand the translation correctly?

Q. You did, but what I was saying was that there wasn't a guarantee; there was almost a guarantee. It was very likely, let me put it that way.

A. That was likely and very much desired.

Q. And Runicom had acquired a further 12.2 per cent of Sibneft in January 1996; is that correct?

A. Yes, that's right.

Q. And there would therefore have been no real interest for

others in seeking to obtain large stakes in Sibneft in the remaining auctions since they would be doomed to remain as minority shareholders; do you accept that?

- A. Sorry, I didn't understand the question. Could you please ask that again?
- Q. You were in a situation in which you were very likely to get 51 per cent of Sibneft once the state defaulted and you had already acquired a further 12.2 per cent of Sibneft in January 1996; okay? We've agreed about that.
- A. I agree that if we knew about the defaults then that would have been a high likelihood. Sorry, sir, maybe I'm quite tired, I don't understand what you're saying. I don't understand the question. Yes, we did desire the default.
- Q. No, it's more than desire the default. The default was very likely to happen and in those circumstances you were almost certainly going to land up with 51 per cent of Sibneft? We discussed this yesterday. That is right, isn't it?
- A. The likelihood was high but there were some unknowns: whether the default would have happened and whether we would have been able to win the auction. So if to discount these two things, that -- yes, then indeed the likelihood was high.
- Q. And you had also acquired a further 12.2 per cent of

Sibneft in January 1996; that's correct as well,  
isn't it?

A. Yes, this is so.

Q. And what I suggest is that in those circumstances, where you were very likely to acquire 51 per cent of Sibneft on the default and you had acquired a further 12.2 per cent of Sibneft in January 1996, there would have been no real interest for anyone else in seeking to obtain large stakes in Sibneft in the remaining auctions, since they would be doomed to remain as minority shareholders.

A. Do you mean the auctions for 19 and for 15 per cent shares?

Q. Yes, indeed.

A. May I see when these auctions were held? Then I would give you an exact answer to your question. I can't recall at the moment.

Q. We're talking about the position in March 1996 and I'm describing the position as it was in March 1996. It's not a difficult question, Mr Abramovich.

A. It seems to me that for every stake, even a small stake, there was some fights, especially for 51 per cent when the auction happened. There were many participants, many people wanting to win.

I don't understand your question, sorry. It's hard

for me. It's late in the day.

MRS JUSTICE GLOSTER: Put it again. Put it again,  
Mr Rabinowitz, please.

MR RABINOWITZ: By March 1996 you were very likely --  
indeed, almost guaranteed -- to end up with 51 per cent  
of Sibneft when the state defaulted and you had already  
acquired a further 12.2 per cent of Sibneft in  
January 1996, and in those circumstances there would  
have been no real interest for anyone else in seeking to  
obtain large stakes in Sibneft in the remaining auctions  
because they would be doomed to remain as minority  
shareholders.

A. If to suggest that we belong -- we own 12 and  
51 per cent, if to take away the likelihood, then at the  
following auction there would have been fewer people who  
wanted to purchase or maybe none at all. But I think it  
was all back-to-front. I'll be able to give you a more  
exact answer when I will understand when did the  
19 per cent and 15 per cent auctions happened; then I'll  
tell you whether such a risk existed or not.

At the moment I can't get your question. I can't  
see how am I supposed to answer this if I have no data.  
And why are you referring to March? What happened in  
March?

Q. That is the date when Mr Berezovsky says you began to --

you reached an agreement with him in 1996 that because of his political exposure, he should be distanced from Sibneft.

- A. I assert that we never had any agreement in '96. This is pure fantasy and there is no logic in it. Unfortunately I cannot confirm this.

MRS JUSTICE GLOSTER: Okay. Well, put the dates of the auctions to him so that he can...

MR RABINOWITZ: The auctions were in September and October 1996. In September 1996, 19 per cent was bought by Firma Sins and in October 1996, 15 per cent was bought by Refine Oil.

- A. May I ask one more question, please?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: I'd rather you answered questions than asked them.

MRS JUSTICE GLOSTER: No, let him ask a question about the dates because it's difficult.

What's your question, Mr Abramovich?

- A. I don't remember when the first round of elections happened, therefore I don't understand the question. It's very hard --

MRS JUSTICE GLOSTER: Right. Just a second. It's the end of a long day. Formulate the question and put it in the morning, Mr Rabinowitz, all right?

Now, how are we doing on the timetable? Perhaps you would have a think about that and let me know where we are on that too.

MR RABINOWITZ: We'll do that.

MRS JUSTICE GLOSTER: Very well. Anything else anybody wants to raise?

MR SUMPTION: No.

MRS JUSTICE GLOSTER: 10.15 tomorrow.

(4.15 pm)

(The hearing adjourned until  
Thursday, 3 November 2011 at 10.15 am)

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Thursday, 3 November 2011

(10.15 am)

MR ROMAN ABRAMOVICH (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Good morning, Mr Abramovich.

By March 1996 you did not need any political lobbying from Mr Berezovsky anymore; do you agree?

A. By March '96 I did need political lobbying services.

Q. From Mr Berezovsky?

A. Yes.

Q. Do you want to explain why you needed political lobbying services from Mr Berezovsky in March 1996?

A. Without Mr Berezovsky, alone I couldn't have maintained my grip on the company, until the company was fully privatised. For sure, without Mr Berezovsky, I would not have managed to keep hold of it and manage it. My authority was not sufficient to work with, say, Mr Gorodilov; he was an important figure. Without Berezovsky, I would not have been able to keep it going.

Q. By March 1996 NFK had won the loans for shares scheme; that was in December 1995. Do you agree?

A. Yes, in December '95 indeed NFK obtained the right to manage Sibneft shares.

Q. And Runicom had acquired a further 12.2 per cent of Sibneft in January 1996; do you agree with that?

- A. Yes, indeed.
- Q. I suggest to you, Mr Abramovich, that there was no risk at all to you of anyone else being able to obtain control of Sibneft given the position you had become placed in by March 1996.
- A. I don't agree with this.
- Q. And I suggest to you also that in fact a close association with Mr Berezovsky at that time, because of the political risk it would entail, would have been of more harm than any good that you would derive from having his public support.
- A. I disagree with this as well, totally disagree with it.
- Q. And I suggest to you that that is why you approached Mr Berezovsky at that time and asked him to agree to distance himself from Sibneft.
- A. I never asked for that. Moreover, it was impossible to have done that. If I understood you correctly, you said that it would have been harmful for me or for Sibneft company? Our association would have been harmful for me personally or for Sibneft? Could you specify?
- Q. What you suggested to Mr Berezovsky was that it was harmful for Sibneft for him to be associated with Sibneft at that time.
- A. So, for me to understand exactly what you mean, prior to '96 elections I allegedly told Berezovsky that his link

or his association with Sibneft was harmful to Sibneft;  
is that what you mean?

Q. That is what my question involves saying, yes.

A. This did not happen. In the files of the case there is a document, I think it's called letter number 13; may we look at that, if that's possible?

Q. I'm sure that, if it's relevant, Mr Sumption will take you to that. We will have a look for it later on.

Can we move on, though. I want to go forward from 1996. Your case on krysha is that you paid Mr Berezovsky primarily for his political assistance, even after 1996; is that right?

A. Yes, that is so.

Q. And if these krysha payments were for political assistance, it follows that you would have considered yourself under no obligation at all to continue paying Mr Berezovsky if he ceased providing or being able to provide political assistance; is that right?

A. I think on the contrary: we made him a member of the board of directors so that he can be associated with the company to a maximum possible degree. So I don't quite understand what you mean when you say "cease to provide assistance".

Q. My question is this: if your krysha payments were for political assistance, lobbying assistance that

Mr Berezovsky was providing, then it would follow that if Mr Berezovsky was no longer providing lobbying assistance, you would have considered yourself under no further obligation to keep making payments to him; is that right?

A. No, that is not right. He continued providing the services we agreed upon and I continued paying. Moreover, the traditional krysha concept did not envisage breaking up such an agreement unilaterally; two parties had to agree and then somehow exit from this arrangement.

Q. But if the services were no longer being provided, you would have no longer been under any obligation of whatever sort to keep paying. Do you agree with that?

A. No, I do not agree. I don't agree with the fact that the services were not provided and I do not agree with the statement that I could have broken up that agreement or arrangement unilaterally. I could not have done it just off my own -- on my own.

Q. Do you accept that Mr Berezovsky's relations with the Yeltsin regime became weaker in the period from 1998 to 2000?

A. Well, this is a long period of time; many things happened. If we look at these two years as a whole, then no, I do not agree.

Q. Would you accept that by this time -- and I mean the period 1998 to 2000 -- Mr Berezovsky's access to the presidential administration had been reduced to the point where he was only given the opportunity to discuss political matters and to meet with senior members of the presidential administration when he had a particular view that he wished to communicate to President Yeltsin?

A. Mr Berezovsky had never had frequent meetings with President Yeltsin. From what I know, he had three or four personal meetings overall, which doesn't mean at all that he was unable to exercise political influence. The main work that he did was with people around the president's people and the president's circle who could influence the president's opinion.

After '96 Yeltsin did not feel well physically, he was not a well man. If I remember correctly, he had two heart attacks. So the role of his circle was ever more important; and Mr Berezovsky was not only part of that circle, he had personal contacts with every member of that circle. So his influence in fact at that time was very, very significant, very high.

Q. Mr Voloshin, who you are calling as a witness, says about the period 1998 to 2000 that he can agree with Mr Berezovsky and confirm that his influence was not so great at that time. Do you say Mr Voloshin, who was

part of the presidential administration, is wrong about that?

A. I cannot comment on what Mr Voloshin says. I can only tell you what I know myself and I know what I was paying for.

Q. Well, you in your evidence, Mr Abramovich, have not been able to identify a single action on Mr Berezovsky's part which you say he provided between 1998 and 2000; that's right, isn't it?

A. The concept of krysha doesn't envisage specific services or actions. This is not an exchange of services; it's just an arrangement that covers a period.

Q. With respect, Mr Abramovich, you've described krysha as being, when we got down to it, Mr Berezovsky lobbying on your behalf, and what I'm putting to you is that you have not been able to identify a single action in your evidence taken by Mr Berezovsky which you say he provided between 1998 and 2000.

A. Well, perhaps I cannot remember a specific action but for sure there have been many, but I can't just give you immediately an example. The concept of krysha is a long-term relationship, a continuous relationship with more or less regular payments; that's what the concept is.

And as to Berezovsky losing political influence,

I think in '97 or '98 he was appointed deputy secretary of the Security Council. So that only shows that his political influence was growing, if President Yeltsin appointed him to this high office.

Q. Mr Abramovich, you have served seven witness statements in this action, some of them very long, and you are suggesting that, notwithstanding those seven witness statements, there was something else that you might have said about what Mr Berezovsky was doing which you just forgot to put into those witness statements; is that your evidence?

A. No. Why do you think I've forgotten to write something down? It's just this matter was not discussed. I set down everything I knew about it in my evidence.

Q. Mr Abramovich, what I suggest to you is that it is simply inconceivable that you would have continued to pay tens of millions of dollars in fees for krysha in circumstances where no krysha was in fact being provided. Do you want to comment on that?

A. Yes, I can comment. I continued paying tens of millions of dollars for krysha. Moreover, following '96 elections Mr Berezovsky became a very significant political figure whom we supported; not just myself, other businessmen supported him, but I was the main one who was paying. He had turned into a political

corporation. He sort of appointed himself -- and we all supported that -- but he self-appointed himself as a political leader of large business and all of us supported that, we all helped him, we all promoted that.

Q. We are now chronologically around the year 2000 and I want therefore to ask you some questions about the aluminium acquisitions that were made at about this time.

You entered into an agreement for the acquisition of aluminium assets in February 2000; that's right, isn't it?

A. Yes, that is so.

Q. Can we just then see what is common ground about the events leading up to this.

The aluminium assets that were acquired in February 2000 were primarily in the Krasnoyarsk, Bratsk and Achinsk aluminium assets; is that right?

A. Yes, indeed, only I missed the month. I missed the month that you mentioned.

Q. February 2000.

A. Right.

Q. And in the case of the Krasnoyarsk assets, this included both the Krasnoyarsk aluminium plant and the hydroelectric power station; that's correct, isn't it?

A. Yes, indeed.

- Q. And you accept that prior to the agreement being made in February 2000, as you were aware, Mr Berezovsky had visited the Krasnoyarsk region in early 1999?
- A. Mr Berezovsky did visit Krasnoyarsk region, I don't know -- I don't remember exactly when; and I also think he made several visits. But I know he visited, that's for sure.
- Q. I think you accept in your evidence that in fact Mr Berezovsky made that trip with Mr Lev Chernoi. That's right, isn't it?
- A. Yes, I agree with that.
- Q. And you also accept in your evidence that it is possible that Mr Berezovsky was also accompanied on that trip by Mr Anisimov?
- A. It is possible, but I just don't remember now.
- Q. Perhaps I can show you your witness statement. If you go to your fourth witness statement, that's E5, tab 11, page 53 in the English E5/11/53 and page 129 in the Russian E5/11/129, paragraph 130. Do you see the second sentence there, you refer to this?
- A. I am saying that possibly Mr Anisimov was there and I continue maintaining that possibly he was there. I don't know for sure.
- Q. And Mr Lev Chernoi was an associate of the Reuben brothers and part of the Trans-World Group; that's

right, isn't it?

A. Lev Chernoi, yes, he was part of Trans-World Group. He had his own company and it was named something else, but I think they were close.

Q. And between them in 1999 Lev Chernoi and the Reuben brothers controlled a substantial part of the aluminium business at Krasnoyarsk and a substantial part of the business at Bratsk as well; that's right, isn't it?

A. Yes, indeed.

Q. And at that time -- again we're talking about 1999 -- Mr Anisimov also owned a substantial part of the business at Kras (sic)?

THE INTERPRETER: I beg your pardon, at where?

MR RABINOWITZ: Sorry, Krasnoyarsk.

A. Yes, that is true.

Q. And Mr Lev Chernoi and Mr -- sorry, I'll start again because that may not have clicked in.

Mr Lev Chernoi and Mr Anisimov also held interests in Achinsk Glinozemnyi Kombinat, AGK; that's right, isn't it?

A. That is so; they had shares in Achinsk Alumina Plant, or Glinozemnyi Kombinat. It's just that at that time Achinsk was undergoing bankruptcy procedure, so whether one had shares or not was already irrelevant.

Q. And so when Mr Berezovsky, in 1999, made the trip to the

Krasnoyarsk region, he was accompanied by some of the key players in the Russian aluminium industry in that region, namely Mr Chernoi and possibly, as you accept, Mr Anisimov?

- A. I agree with that Chernoi was there. I simply don't know about Anisimov.
- Q. Now, Mr Berezovsky in 1999 also enjoyed good political relations with the governor of the Krasnoyarsk region, General Alexander Lebed; that's correct, isn't it?
- A. From time to time -- so at some time Mr Berezovsky was on good terms with General Lebed; at other times General Lebed hated him. So I don't really know on what kind of footing they were at that particular time.
- Q. His evidence about this wasn't challenged by your lawyers, Mr Abramovich.

But can I ask you this: Mr Berezovsky had supported and lobbied for General Lebed in the election for the position of governor of the Krasnoyarsk region in 1998 and that was an election that General Lebed had won; you're aware of that, aren't you?

- A. I know that Mr Berezovsky provided services to General Lebed in terms of elections to the post of governor and I know that Mr Lebed indeed won in those elections.
- Q. You accept, I think, that General Lebed was one of the

most powerful and influential figures in the region where the aluminium enterprises were located?

A. General Lebed was indeed the most influential person in Krasnoyarsk region because he became the governor of that region. I just don't remember when the elections were held exactly, so it's difficult for me to say whether he was already very influential in '99 or not.

Q. They were in 1998.

So it was important when you came to acquire the aluminium assets in 2000 that General Lebed was on your side because if General Lebed had opposed your acquisition of the Krasnoyarsk assets, it would have been extremely difficult to establish and maintain control of the Krasnoyarsk assets; that's right, isn't it?

A. Well, that is not quite so. General Lebed could not influence on who -- on the question of who purchased the assets. That's not his remit. The idea is that the plant were at the point of being shut down; the workers were striking; the railroad was not operating. That obviously influenced General Lebed because he was the governor and of course if that continued, the situation would have worsened and Lebed would have had problems. Now, taking all that into account, yes, the rest becomes correct.

Q. So I think you're agreeing with me that it was important when you came to acquire the aluminium assets that General Lebed was on your side because if he opposed your acquisition of those assets, it would have been extremely difficult to establish and maintain control of the Krasnoyarsk assets?

A. Once again, I'd like to explain. General Lebed had nothing to do with the acquisition of assets and who acquired them and he actually did not say whether he was for or against that; that's not part of his authority. It's difficult for you to -- for me to explain, but local authorities had nothing to do with share acquisition process.

However, the situation prevailing, prevailing with the workforce, with the trade unions, when everybody came out into the streets and started protesting, that really was very relevant to the local authority and he was very keen for this matter to be resolved.

Q. Now, it wasn't just Mr Berezovsky who had good contacts in the Krasnoyarsk region; you accept, I think, that Mr Patarkatsishvili also enjoyed very good relations with Mr Lev Chernoi and Mr Anisimov?

A. Yes, I agree that Mr Patarkatsishvili was on good terms with Anisimov, Chernoi, and he was on very good terms with General Lebed.

- Q. I think you also accept that Mr Patarkatsishvili had visited the Krasnoyarsk region in relation to matters relating to the aluminium plants in late 1999. That's right, isn't it?
- A. Yes, that is so.
- Q. So it's in this context that, at the end of 1999, Mr Berezovsky and Mr Patarkatsishvili approached you and asked you whether you would be interested in acquiring the Krasnoyarsk, Bratsk and Achinsk assets; that's right, isn't it?
- A. No, that is not right.
- Q. Do you want to say why you disagree with what I've said?
- A. Mr Patarkatsishvili asked -- turned to me and he said, "Listen, the situation in Krasnoyarsk", as I had described, "and most likely Lev Chernoi would like to sell". We were not interested in acquiring these enterprises and in '99 I didn't want to acquire these enterprises.

It sounds something very serious, this huge Krasnoyarsk aluminium smelter, the largest in the world. It sounds great, but by that time it was nothing but a heap of metal as raw material was not being supplied, power was intermittently supplied and the workforce was in the street striking. So having looked at that situation, I said, "I'm not that keen actually". And

until the point when Bratsk was included in the deal -- Bratsk was in an ideal state -- until Bratsk was included in the deal, I was not interested.

At that time Krasnoyarsk smelter was not giving any profit; in fact the financial situation, as far as I remember, was very dire.

- Q. Mr Berezovsky's recollection is that he and Mr Patarkatsishvili approached you about whether you would be interested in acquiring these assets and I suggest to you that, in light of the evidence we've been through about Mr Berezovsky's connections with the aluminium sellers and in light of the way that we suggest Mr Berezovsky and Mr Patarkatsishvili generally operated as partners, that it is entirely probable that Mr Berezovsky was also involved. Do you disagree?
- A. I can affirm only one thing: that Mr Berezovsky did not put this question to me. Yes, Mr Patarkatsishvili did indeed come to me and said, "Look, there is a possibility to acquire these assets; what do you think about it?" I had a look, I studied it and said initially, "No, I don't want to buy them". When Bratsk was included in the deal, that sort of balanced off the problems of Krasnoyarsk assets; then I agreed to the deal, but that was later.
- Q. You agree, I think, that Mr Patarkatsishvili was the one

who in particular promoted the idea to you with considerable force. Is that right?

- A. Yes, I agree. He was very vigorous in pushing me towards these assets, yes.
- Q. Mr Berezovsky says that before you decided that you wanted to enter into a transaction to acquire these assets, you said that you would want to discuss it with Mr Shvidler. Is it right that you wanted to discuss this with Mr Shvidler before you decided that you were going to enter into this transaction to acquire these aluminium assets?
- A. Yes, that is so. I would not have acquired these assets without Mr Shvidler's position.
- Q. And why was it that Mr Shvidler in particular was someone who you needed to talk to about whether or not to acquire these assets?
- A. Well, first of all, Mr Shvidler is a close friend of mine and he is much better at finances than myself and when I need someone's support, I always seek his support in these decisions. I have never made a big acquisition, apart from real estate, I have never made a large acquisition without his advice and his opinion.
- Q. And of course by this stage you had been working together with Mr Shvidler for around 13 years; that's right, isn't it?

- A. Well, I mean, I have to count. I can't be exact about 13 years. We worked together for a long time. If we deduct the years when he was studying in the US and working in a company, perhaps Deloitte or something, perhaps if we then join together all the other bits, it will be 13 years. But I really don't remember exactly how many years.
- Q. And I think you've said, I think your evidence is that you wouldn't have done this deal but for Mr Shvidler persuading you that it was a deal you should do?
- A. No, I'm not saying that. Badri persuaded me, not Mr Shvidler. I don't think I said Mr Shvidler was the one who persuaded me.
- Q. Well, if Mr Shvidler wasn't there, even with Mr Patarkatsishvili telling you to do it, you wouldn't have done the deal?
- A. It's difficult for me to say today what might have happened 15 or whatever, 10 years ago, had Mr Shvidler not existed or not been there.
- Q. Would you at least accept that you were in fact initially reluctant to become involved in the aluminium industry but you were persuaded that it was a good deal to do by Mr Shvidler?
- A. I don't remember. The main person who was persuading me and who was the engine of this process was Badri. Badri

was very, very keen for this deal to go through.

Q. Mr Abramovich, we accept that Badri was very keen for the deal to go through. What I'm trying to understand is the role of Mr Shvidler in this because I suggest to you that Mr Shvidler's role was also important in persuading you that this is a deal that you should do. Do you agree with that?

A. Well, I can't confirm that he made a contribution in persuading me in going for this deal and investing into these assets. I cannot agree with that. At some point he was for it; at some point he -- and in fact he was negotiating mainly with Lev Chernoi. But I can't remember him -- I can't agree that he was actually talking me into it or persuading me.

Q. Now, the master agreement was -- sorry, let me take this slightly differently.

Within one or two months of Mr Patarkatsishvili and, we say, Mr Berezovsky proposing this idea to you, a contract had been concluded with Mr Lev Chernoi, the Reuben brothers, Mr Bosov and Mr Anisimov, by which the aluminium assets were bought up for several hundred million dollars; that's right, isn't it?

A. I don't agree that it was 700.

Q. No, I didn't -- that's a mistranslation. Several hundred?

- A. Are we talking about the initial deal? The price was 550 million, if I remember correctly.
- Q. That is broadly correct. Can we have a look at the agreements. There were two sets of agreements: first, Mr Abramovich, there was a short master agreement in Russian; and then there were a number of further sale and purchase agreements which were drawn up in dual-language contract form. Do you remember that?
- A. Prior to these proceedings I didn't remember this very well, but when I was preparing myself to give evidence I looked at the contracts and recalled it all.
- Q. Okay. Can we look at the master agreement first, please: it's in bundle H(A)17. The Russian version is at page 38 H(A)17/38 and the English version begins at page 33 H(A)17/33.
- Now, we can see from the top of the page that this says this was an agreement drawn up in Moscow on 10 February 2000, but you would accept, I think, that this in fact was actually drawn up a few days later, on 15 February 2000, and backdated to 10 February 2000?
- A. It is possible.
- Q. That's in fact your own evidence, Mr Abramovich.
- A. Yes, yes. I don't remember 15th or 14th, but it is possible.
- Q. And if we look at the opening words of the agreement, we

can see that there are said to be five parties to this agreement. Parties 2 to 5 are the sellers: that's Mr Chernoi, Mr Reuben, Mr Bosov and Mr Anisimov; do you see that?

A. Yes, I can see that.

Q. And party 1 is the purchaser; again, do you agree with that?

A. Yes.

Q. And party 1 is described as:

"Roman Abramovich, [Eugene] Shvidler, Badri Patarkatsishvili and companies represented by them..."

Do you see that, Mr Abramovich?

A. Yes, I can see that.

Q. And can we just -- one doesn't have this on the English version. On the Russian version at page 43 H(A)17/43 you can see the signatures for each of the parties; that's right, isn't it?

A. Yes, I can see.

Q. And under "Party 1" you have signed, Mr Shvidler has signed and Mr Patarkatsishvili has signed; correct?

A. Yes, I can see that.

Q. And then under parties 2 to 5 someone appears to have signed for each of Mr Chernoi, Mr Reuben, Mr Bosov and Mr Anisimov; correct?

- A. If I remember correctly, Lev Chernoi signed on behalf of Reuben. But I cannot insist on this; it may be not so.
- Q. So this agreement suggests that each of you and Mr Shvidler and Mr Patarkatsishvili, as well as the companies you represented, were parties to the transaction; do you accept that? That's what the agreement seems to say.
- A. In part I agree with this. If I may, later I'll explain this reservation.
- Q. We'll come to your reservations in a moment. At the moment I'm just trying to establish with you that you agree that this is what the agreement seems to suggest: that you, Mr Shvidler, and Mr Patarkatsishvili, as well as the companies you represented, were parties to the transaction. That's clear, is it not?
- A. If that's how you read this agreement, then this is what it looks like. If you don't know what happened in reality, this can be read in this way.
- Q. Let me ask you about this. You accept that Mr Patarkatsishvili was central to this transaction and that it could not have happened without his involvement? You've accepted that already this morning.
- A. I absolutely agree with that.
- Q. And you accept, I think, also that Mr Shvidler was important for you being involved in the transaction?

You discussed it with him, he was involved in the decision as to whether to proceed, and in fact you tell us that he did all the negotiations on your behalf.

That's right, is it not?

A. Yes.

Q. But your case is, is it, that neither Mr Patarkatsishvili nor Mr Shvidler were really parties to this agreement at all; that they were not even to have a 1 per cent interest in the assets being acquired? Is that right?

A. As to Mr Shvidler, he was paid a salary. As to Badri, he received commission. So they were not due to receive any percentage in shares. Percentage in shares could only be acquired by those people who were prepared to pay for them.

Q. Well, we'll come to the payment for this in a moment, Mr Abramovich. I just want to concentrate on who were the parties to it and the case as to whether Mr Shvidler and Mr Patarkatsishvili were, as you suggest, not actually parties to this contract at all, in terms of being party 1 and an acquiring party. Do you follow?

A. Well, I'm not insisting on that. They were part of party 1; they were not just people who acquired the assets. But they were part of party 1 and each played our own specific role. As a group we were party

number 1, but that doesn't mean that as a group we're all acquiring the assets.

I understand that in the eyes of the English law it's difficult to comprehend, and I sympathise; but a Russian lawyer and I myself, we understand it very well. It's difficult for me to explain it to you, but it is a normal Russian practice. On the one hand; on the other hand. One party; the other party. And the roles within a party are established and assigned outside this agreement, this contract.

Q. Mr Abramovich, would you look at clause 4 of this contract. Clause 4 says that -- sorry, it's the first page of the contract H(A)17/33. Clause 4 says that:

"Party 1 shall acquire from Parties 2 and 3 all [of] their shares and interests in [the businesses identified]."

And clause 5 then identifies certain other assets which party 1 shall acquire.

Now, you accept that party 1 was you, Mr Shvidler and Mr Patarkatsishvili, as well as the companies that they represent?

A. Yes, I agree with that.

Q. But you're saying that we shouldn't treat the contract as saying what it in fact says; is that what you're suggesting?

A. Well, this is not really even a contract; it's a note, a letter, a paper that notionally -- that describes the situation.

Q. Can you look at clause 17 of this contract, Mr Abramovich, at page 35 of the English H(A)17/35. It's probably three pages on.

"The Parties agree that the conditions of this Agreement shall be incorporated in the share purchase agreements which shall be agreed on and executed [on] 10 February 2000."

It looks like this was intended to be a legal contract from that, does it not?

MRS JUSTICE GLOSTER: Well, isn't that a matter for me?

MR RABINOWITZ: That's a matter for your Ladyship.

Why do you say that you got Mr Patarkatsishvili to sign this contract if, as you say, he wasn't really a party in the sense of being one who was acquiring the assets?

A. Well, he was a party. He wasn't the acquirer, the purchaser, but he was a party. He represented us, he perhaps represented Mr Anisimov, he organised a meeting for us all around a table. And I can explain it's a Russian tradition: all those who take part in negotiations have to sign an agreement to certify that all of them understand and interpret the document in the

same way.

Q. That's not precisely what you say in your written evidence, in your witness statement, Mr Abramovich.

Can I ask you, please, to go to paragraph 154. It's at page 81 of E1, tab 3 in the English E1/03/81 and page 160 in the Russian E1/03/160. Paragraph 154.

A. I beg your pardon, which witness statement, number 3 or number 4?

Q. Number 3. E1, tab 3. It should be on page 160.

What you suggest there, Mr Abramovich --

A. I beg your pardon, I beg your pardon, something else is being described here. I think we're probably in confusion here. I think we've got -- we're looking at the wrong paragraph.

Q. Can you find paragraph 154.

MRS JUSTICE GLOSTER: Bundle E1, tab 3.

THE WITNESS: I think we've got it.

MR RABINOWITZ: You've got it. Please do read it to yourself. (Pause)

A. I've read it and I think it's exactly what I've just been explaining.

Q. What you suggest in paragraph 154 is that the reason you wanted Mr Patarkatsishvili to sign in particular is because you wanted people to know that you were on the same team; is that right?

- A. Yes, indeed, and this is exactly what I've been explaining just now: that without Patarkatsishvili I would not have been doing that, for sure.
- Q. But, Mr Abramovich, everyone in the room at that time, every one of these sellers would have known very well that Mr Patarkatsishvili was, as you put it, your man and on the same team. He was the one, after all, who they'd approached who had introduced you to the deal. That's right, isn't it?
- A. Initially, they turned to him so that he would sort out the relationship between Mr Bykov and General Lebed because the situation in Krasnoyarsk region with these enterprises was out of control, and the catalyst for all of this was Oleg Deripaska. So the situation was such that they needed somebody from outside to negotiate because the relationship between the parties was so far gone that there was no chance of them to agree. So Badri was this kind of negotiator and when it was obvious that the parties cannot agree, he brought the deal to me.
- Q. Mr Abramovich, none of the sellers could have missed the fact that you had only come into the transaction as a result of Mr Patarkatsishvili's involvement; that's right, is it not?
- A. Yes indeed, and I am not refuting that. Without Badri,

I would not have poked my nose in there. Every three days somebody was murdered in that business. I didn't want to have anything to do with a business like that.

- Q. The point is this, Mr Abramovich: Mr Patarkatsishvili did not need to be made a party to the contract for you to impress on the other parties to the contract that he was on your team?
- A. I don't quite understand and where is the question? The contract was not signed to demonstrate something to someone; it's just a contract. Or perhaps I'm answering the wrong question?
- Q. Why do you say Mr Shvidler was made to appear as a party to this contract?
- A. Because Mr Shvidler was engaged in negotiations, he represented my side, just like Mr Patarkatsishvili in this case.
- Q. Mr Abramovich, I have to suggest to you that your explanation as to why both Mr Shvidler and Mr Patarkatsishvili signed as a party is simply untrue. Do you understand?
- A. I understand that you suggest that this is not true but it in fact is the truth. Once again I'd like to explain: to a Russian person's eyes, everything is clear here, if you look at it through Russian eyes, especially if you know the context.

Q. Just going back to the terms of the master agreement, if you look at clause 6 of the master agreement. It's page 34 of the English H(A)17/34. I just want to get you to see the price because we were talking earlier about what price was being paid here.

So do you see at clause 6 there is -- under clause 6 there is a box, a table?

A. And it shows 550 million; exactly what I said.

Q. That's correct. But we know, don't we, that as a result of a separate protocol which was supposedly signed on 14 February, the acquisition price was at some point increased to \$575 million?

A. Yes indeed, and I can explain why it happened.

Q. Well, let's look at the document and then if any explanation is necessary, we can have that.

If you go to bundle H(A)18, you'll find the Russian version at H(A)18, page 18 -- don't put that contract away yet, Mr Abramovich, keep that -- H(A)18, page 18 in the Russian H(A)18/18 and 18T in the English H(A)18/18T.

Again, Mr Abramovich, we observe, do we not, that it is again a contract where you, Mr Shvidler and Mr Patarkatsishvili and the companies represented by you are identified as party 1 to the contract? Do you see that?

A. Yes, I can see that.

Q. Then if you look at clause 3, this says:

"... the total amount payable by Party 1 for the shares specified in article 1 of the Main Agreement is increased to USD 575 million..."

And it says that the amounts which are to be paid by parties 3, 4 and 5 are unchanged.

Now, do you want to give an explanation as to why the price increased in this way?

A. Yes, I would like to explain.

Q. Please go ahead.

A. When all the documents were already prepared and we agreed and we shook hands, the following situation arose: Mr Reuben said that notwithstanding the fact, if I remember correctly, that he had an equal share in business together with Lev Chernoi, he wants to get not just half but some amount of money that he quoted. And it turned out then that Lev Chernoi, who signed, who had signed, and in fact had the right to sign the deal, would stand to get less than he would get under this agreement.

So Badri came to me and said, "Listen, it turns out -- this is shameful, this is embarrassing, we need to do something", because Lev said that he's happy to grin and bear it and he's not going to raise this matter

because he had promised, but Badri felt that we should really pay more.

And so we signed this -- another agreement whereby the cost increased by 25 million and the money was due to Lev Chernoi. Some of those who dealt with this on my side felt that there was something fishy there; others felt that Badri was trying to earn money from both sides. Nevertheless I didn't think that and we nevertheless signed this contract.

Q. You can put away H(A)18 but do go back to the master agreement, which I hope you still have open, H(A)17, page 34 H(A)17/34 and page 39 in the Russian H(A)17/39.

Again, just looking at clause 6, it's clear from the table that the purchase price was to be paid by way of instalments; that's right, isn't it?

A. Yes.

Q. And as is clear from the table, the final instalment was to be paid on 10 June 2001; again, that's clear, isn't it?

A. Yes, indeed.

Q. Now, I want to ask you about how the acquisition of these aluminium assets were funded. According to --

MRS JUSTICE GLOSTER: Right. Well, I'm going to take the break now. Ten minutes.

(11.11 am)

(A short break)

(11.27 am)

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Mr Abramovich, before we do talk about the financing of the aluminium acquisition, can I go back to an answer you gave earlier today.

I was asking you this morning about whether you accepted that it was important to ensure that General Lebed supported your acquisition, or at least did not oppose your acquisition, because it would have been extremely difficult to establish and maintain control of the assets without his support, and you were finding it difficult to agree with that. Do you remember?

A. I believe that Mr Lebed's influence in that question that you raised was exaggerated, but on the whole his positive attitude would have been important. If he had been aggressive or negative or opposed to this, if he had been categorically opposed to this, it would have been very difficult to work in the region. However, the way you worded the question, some of the accents, some of the emphases were slightly shifted.

Q. Can I ask you to look at paragraph 152 of your witness statement, your third witness statement: E1, tab 3.

It's at page 81 in the English E1/03/81 and page 181/182 in the Russian E1/03/181. You may want to have a look at the last sentence and perhaps a couple of lines before that.

A. Yes, I can see this, yes.

Q. It was your own evidence I was putting to you, Mr Abramovich.

A. Yes, yes.

Q. All right.

A. If I recall correctly -- if I recall correctly -- it's not easy to understand because Magnum (sic) only shows the English text -- the question was whether or not Lebed could have opposed the acquisition. The acquisition itself had nothing to do with General Lebed but the work at the local level without Lebed would not have been possible.

Q. Let's just talk about the financing of the aluminium acquisition in February 2000.

According to Ms Panchenko, the aluminium acquisitions were initially financed by a \$100 million loan granted by MDM Bank and then from March 2000 the monies paid under the merger transaction with Mr Deripaska were used to fund the purchase price. Is that your recollection as well, Mr Abramovich?

A. I apologise, could you speak slower or maybe split it up

into smaller sentences?

Q. All right. Ms Panchenko tells us in her witness statement that the aluminium acquisitions were initially financed by a \$100 million loan granted by MDM Bank.

A. Yes, that is true.

Q. And then from March 2000 the monies paid under the merger transaction with Mr Deripaska were used to fund the purchase price.

A. Because Mrs Panchenko was in charge of finance and the cashflows then presumably she understands that well.

I mean, do you expect me to give you a comment on this?

Q. Well, I was trying to break it up and in the end hadn't got around to asking you the question.

Do you agree that that is the way it was financed?

A. If my recollection is correct, then the funding for the transaction was 100 million came from MDM Bank, part came from the oil trading companies and part was something that we got from Mr Deripaska after we reached an agreement with him. But apart from that, there was a payments schedule and therefore there was no need to have one major bullet payment.

Did I understand your question correctly?

Q. I think you did understand the question correctly. The sums paid by Mr Deripaska under the merger transaction which you concluded in the spring of 2000, and which

Ms Panchenko at least says were used to finance the original aluminium acquisitions, also came to a total of \$575 million, did they not?

A. No.

Q. Okay. Perhaps we can have a look at that briefly. Can you go to bundle H(A)19 and turn to page 22 H(A)19/22. There isn't a Russian version of this so...

A. Could I just offer one clarification and then maybe there will be no need for a follow-on question.

The initial transaction with Deripaska included only \$300 million. I believe that it would be wrong to believe that the 575 figure had been agreed upon originally and right away.

Have I answered your question?

Q. Well, I don't know. Do you accept that what you ultimately received from Mr Deripaska, the payment that you were going to receive from Mr Deripaska ultimately was \$575 million?

A. I agree with that, but this is something that was agreed upon in May.

Q. I agree with that, if I may say so.

The net result therefore, Mr Abramovich, is that other than bridging financing costs, you in fact parted with little or no money at all in acquiring these extremely valuable aluminium assets and thereafter the

subsequent interest in Rusal; that's right, isn't it? You agreed to pay \$575 million and that is what you received back from Mr Deripaska as the balancing payment in the context of the merger to make Rusal?

- A. Well, if you mean that between the first transaction and the point in time where Deripaska was able to pay up, nothing happened, then perhaps then you're right. But what do you do with the 100 million that we got from the bank? If you're talking about bridge finance, you are responsible for this.

So I beg to differ: this is not something that we got for free. At the end of the day this is a transaction that Mr Shvidler did and it was a stroke of genius; but saying that no resources have been used, have been involved there, would be a wrong characterisation of what actually happened. I would disagree with that.

- Q. Mr Abramovich, in fact you agree with it and there's nothing that you are differing about and no need to beg to differ. What I said to you was: other than bridging financing costs, in the end the money that you received from Deripaska was sufficient to pay off any amount that you had to pay under the February 2000 agreements?

- A. The problem is I don't remember exactly what the schedule of payments was. Did we receive the money

concurrently or in parallel or not? I remember that at the end of the day we made some profit.

So if you put it all aside and just answer your question whether the Deripaska transaction covered everything that we had to pay for the original assets, then the answer is: yes, it did cover that.

Q. And I think you would agree it was a pretty remarkable deal all in all, was it not?

A. Well, at the end of the day it was a very good transaction, yes.

Q. And would you accept that you could never have made any such deal but for the contacts and connection that Mr Patarkatsishvili and we say that Mr Berezovsky had both with the selling parties in February 2000 and with those with influence and power in Krasnoyarsk, including of course General Lebed?

MRS JUSTICE GLOSTER: Well, there are a number of questions tied up there, Mr Rabinowitz. Perhaps you had better just deal with it on the basis of looking at Patarkatsishvili on his own first and then add in Mr Berezovsky.

MR RABINOWITZ: Perhaps I can do it this way.

Would you agree, would you accept that you could never have made any such deal but for the contacts and connections that you were given both with the selling

parties in February 2000 and those with influence and power in Krasnoyarsk, including General Lebed?

- A. The role that Mr Patarkatsishvili played was a very serious role but the selling party did want -- it was keen to sell. So if you factor all this in, then I agree with you. The role that General Lebed played was a minor role; he did not really take part in this, even though he could have put a monkey wrench into the works theoretically, but he was interested in this. He was interested in this, yes.
- Q. In fact, as we saw in your witness statement, you accept that it was important that General Lebed did not oppose your purchase because if he did, you couldn't do the deal?
- A. It was important to make sure that he did not oppose, but he could not have opposed. But people went out on the streets: when people are striking, the local authorities have a vested interest in making sure that everything comes down, that a good, real ownership comes in and can start the whole thing running, could pay salaries, could pay the taxes and so that the unions would create problems (sic) among the people. Every governor would have agreed with this. I used to be governor myself and I know how it works.
- Q. So I suggest to you that the contacts and connections of

Mr Patarkatsishvili and Mr Berezovsky were absolutely critical to your being able to do this deal. Do you agree or not?

A. I absolutely disagree with this.

Q. Can we go back and look then at the master agreement, which I hope you still have, in bundle H(A)17. It should be page 38 of the Russian H(A)17/38 and page 33 of the English H(A)17/33.

Now, I want to go back to clause 17 of the master agreement: page 42 in the Russian H(A)17/42 and page 35 in the English version H(A)17/35. Do you see clause 17 says:

"The Parties agreed that the conditions of this Agreement shall be incorporated in the share purchase agreements which shall be agreed on and executed by 10 February 2000."

There were ten such dual-language share purchase agreements which were agreed as contemplated by this; that's right, isn't it?

A. Yes.

Q. Now, could I ask you next to go to page 46 in the bundle that you're in H(A)17/46. It's dual language so it has both Russian and English. I'm just going to look at a sample of these agreements.

You should be, I hope, looking at an agreement dated

10/02/2000 between Greasbyn Commercial and Galinton Associated Limited. Do you have that at page 46?

A. Yes, I can see that.

Q. Now, Galinton was a bearer share BVI company; that's right, isn't it?

A. I think so.

Q. And we can see from clause 1.1, if you look towards the bottom of that page, that the subject matter of the purchase contract is a block of shares in the Krasnoyarsk aluminium plant. Do you see that?

A. Yes.

Q. And these shares are being sold by Mr Anisimov's company and purchased by Galinton?

A. Yes.

Q. Can I ask you to turn to page 49 in the same bundle H(A)17/49. Can you just note clause 2.4, which says that the shares were to be transferred to the buyer by no later than 29 February 2000. I don't suppose you particularly recollect that provision, do you?

A. I believe that I did not take part in the drafting of this agreement but I agree to continue discussing.

Q. Can I ask you, please, to go to page 58 of this bundle H(A)17/58, where you will find clause 8.1. Do you see it's headed "Governing Law and Dispute Resolution"?

"This Contract shall be construed and enforced in

accordance with and governed by the laws of England without regard to the conflict of laws provisions thereof."

Do you see that?

A. It's hard for me to comment this. I mean, I can read this but I cannot comment on this. What is "conflict of laws provisions"?

Q. There are many people in court who have asked the same question. Don't worry about that for the moment. We'll come back to the relevance of that in due course.

Can I ask you next, please, to go in the same bundle to page 63 H(A)17/63, just to look at another one of these agreements. This is in very similar terms. On this occasion it's a company called Becassine, which is one of the Trans-World companies, who is entering into an agreement with Runicom Fort Limited.

Now, Runicom Fort Limited was a company incorporated in Gibraltar, was it not?

A. Yes.

Q. And if you look at clause 1.1, you see that Runicom Fort Limited was acquiring a block of shares in the Bratsk plant. Do you see that?

A. Yes.

Q. Again, just so you note this, can I ask you, please, to go to page 64 H(A)17/64 and just glance at clause 2.4,

where again one has the provision that there should be a share transfer delivered to the buyer by no later than 29 February 2000.

You may not be on the right page. Clause 2.4, right at the bottom of the page.

A. Yes.

Q. Okay. And, again, if you go to page 73 H(A)17/73, again you will see clause 8.1 saying that the contract should be governed by English law.

A. Yes, I can see that.

Q. We're not going to go through, happily, all ten of these. There were ten and you will, I think, recall that the acquiring companies under these contracts were Runicom Fort Limited, which we've seen; Galinton; a company called Palmtex Limited of Panama -- you'll remember that, I think, from yesterday: it came up in the audit committee report --

A. Yes, I recall that.

Q. -- and Dilcor? And the fourth company was a company called Dilcor; do you remember that?

A. Yes.

Q. Now, I'd like to just ask you a little bit more about the ownership of these four offshore companies, Mr Abramovich.

These four offshore companies were not in fact

subsidiaries of Sibneft, were they?

A. I don't think they were, but again I cannot assert that with certainty. I don't think they were. It would have been strange if an oil company were buying aluminium assets.

Q. So if it were not Sibneft itself, which I entirely accept, that owned these companies, again perhaps we can just consider together who it was who did own these companies.

Can I ask you, please, to go to bundle H(A)18 at page 12 H(A)18/12. Now, I'm afraid this is only in English and I wonder if the translator can then come up next to you and help you with this.

MRS JUSTICE GLOSTER: Do you want to have a chair to sit down so you can do it? It might be easier.

THE INTERPRETER: The whole thing?

MR RABINOWITZ: No, just the first two paragraphs, if we can start with those. (Pause)

So what we see here, Mr Abramovich, is that the Financial Times, quoting industry sources, understood that leading Sibneft shareholders were involved in the aluminium acquisitions. Do you see that?

A. Yes, I can see this. This is hearsay, this is rumours. The Financial Times -- the FT is publishing something based on rumours. But I'm not denying that the

shareholders of Sibneft had acquired some assets.

Q. Well, let's just see what this says. If you go further down into the article, if you look at the sixth and seventh paragraphs:

"The major shareholder in Sibneft is believed to be Roman Abramovich, the former oil trader who last year emerged as one of Russia's most powerful oligarchs..."

Then the next paragraph:

"Another of Russia's influential oligarchs, Boris Berezovsky, is also believed to be a significant shareholder in Sibneft, although the company has made strenuous efforts over the past few months to distance itself from the media tycoon."

You say, do you, that this is completely wrong and that Mr Berezovsky was not one of the Sibneft shareholders and that he was not one of the people who acquired the aluminium assets alongside of you?

THE INTERPRETER: Sorry, we've lost you in the...

MR RABINOWITZ: Oh, right.

THE INTERPRETER: I'm so sorry, my Lady, I think

Mr Abramovich lost part of the question because he was not wearing his headset and he's apologising.

THE WITNESS: My apologies, I was not wearing my headset so I did not hear the question.

MRS JUSTICE GLOSTER: Don't worry. You've read the relevant

paragraph now?

THE WITNESS: Yes, I have.

MRS JUSTICE GLOSTER: Ask the question again, Mr Rabinowitz.

MR RABINOWITZ: You say, do you, Mr Abramovich, that this is completely wrong and that Mr Berezovsky was not one of the Sibneft shareholders and that he was not one of the people who acquired the aluminium assets alongside of you?

A. This is exactly what I want to say. This is not true.

Q. Can you go to page 14, please, in the same bundle H(A)18/14. You have there the Moscow Times from 12 February 2000 and you can see that it's headed "Berezovsky & Co Buy Up 3 Smelters". I can tell you that it is clear from the article that the journalist has been talking both to a spokesman for Sibneft and a spokesman for Lev Chernoi; in other words, the journalist has been talking both to your people as buyers and to a spokesman for one of the principal sellers.

Again, perhaps I can just tell you what the relevant passages are and the translator can translate them for you. Can you look, please, at the first two paragraphs -- in fact the first three. (Pause)

A. Yes, I have understood what it says.

Q. So we have both a spokesman of Sibneft itself saying

that the acquirers of the aluminium assets were a group of shareholders in Sibneft and we also have Mr Chernoi talking about the acquisition being by Sibneft shareholders.

But you say, do you, Mr Abramovich, that it was you and you alone who acquired these assets?

- A. Yes, this is exactly what I want to say and with your permission I would like to clarify, if I may.
- Q. Okay, please do.
- A. Before this article was published -- I need to read the whole of the article -- there was a rumour on the market that Sibneft had purchased aluminium assets and analysts were breathing down our neck. So we had to hold a press conference and tell the reporters, the journalists that it wasn't Sibneft that was buying this; it was Sibneft shareholders were buying this. So this is what it's all about.
- Q. Mr Abramovich, no one is saying that it is a Sibneft shareholder who is buying it; what they are saying here is that there is a collection of Sibneft shareholders -- that is to say more than one of the Sibneft shareholders -- who are buying these shares. And your case is that it was you and you alone who was buying these shares; that's right, isn't it?
- A. Yes, your understanding is correct, it was just me

alone, and I can clarify why it says "A group of shareholders".

Q. If you can clarify that, please try and do so.

A. I have never said that I was the only shareholder.

MRS JUSTICE GLOSTER: In Sibneft or in these aluminium assets?

A. I mean in Sibneft. For a variety of reasons, mainly for reasons of security, I did not want to be the only shareholder of Sibneft and so that everyone knows that I was the only shareholder in Sibneft.

Q. But, Mr Abramovich --

A. And that's why we often spoke about management, management control, as long as we did not mention just my name.

Q. But this didn't require anyone to mention your name, Mr Abramovich. It didn't require anyone to say, "Mr Abramovich is the shareholder". They could have just said a Sibneft shareholder had acquired these shares. But what it instead says -- and this is a consistent theme throughout this -- is that a group of Sibneft shareholders, more than one Sibneft shareholder, bought these shares in the aluminium assets.

A. Yes, that's true. That's what it says, "A group of shareholders", and we have always been upholding this: a group of shareholders.

Now, so far as Berezovsky is concerned and the mention of Berezovsky, the market has always believed that Sibneft belongs to Mr Berezovsky and we have never tried to fight against those rumours inside Russia. The concept of krysha presupposed that it looked like the whole thing belonged to Berezovsky one way or another, in different shapes or forms. That was the whole point of this arrangement. He was the ice-breaker who removed all problems, resolved all problems, and that's what he was being paid for.

- Q. So, so far we have you saying that we have a contract which doesn't mean what it says when it refers to who the parties are to this contract and we have you saying that the press were deliberately misled about who were the acquirers of the aluminium assets. Is that right?
- A. No, this is not right. I'm not saying that this was being done deliberately. We used very clear, very thought-out formulations, without mentioning any names. We have never misled the press, from what I remember. But the press conferences were organised with a specific purpose in mind, not just like that.
- Q. Mr Abramovich, your press spokesman said, talking about who acquired the assets -- and this is in the Moscow Times article:

"A group of Sibneft shareholders bought controlling

stakes in the plants... It is not Sibneft itself, but some of its shareholders."

How do you say that that is not misleading the press, if what you say is true?

- A. This newspaper -- and I'm speaking from memory only -- it's all in English and to be more precise and more clear in my discussions, I would need to read this until the very end.

From what I recall, there was a press conference and it was said at the press conference that it was not Sibneft -- it was very important not to cause a collapse on the market -- that it was not Sibneft, it was a group of shareholders in Sibneft who purchased shares in some aluminium assets, and it specifically, explicitly mentioned that Mr Berezovsky is not a shareholder in Sibneft.

MRS JUSTICE GLOSTER: Mr Rabinowitz, at the time of the acquisition of the aluminium shares, the actual registered holder of the shares were a number of Mr Abramovich's companies; is that right?

MR RABINOWITZ: We'll come to look at that in due course. There was a holding structure which was put in place just before this but none of those were involved in the acquisition of the aluminium assets, if I could put it that way. None of the companies involved in holding the

Sibneft shares were involved in the aluminium assets.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Now, Mr Abramovich, I can take you to another press article by a Russian journalist who was plainly also told that it was an acquisition by Sibneft, which was owned by you and your business partners. But rather than taking you through all of these articles, can I instead just take you to one at page 51 of the same bundle H(A)18/51. It is another article but it's just another source.

Now, this is an article which appeared in the American Metal Market publication on 18 February 2000, so almost immediately after you'd made the agreement. It's entitled "Russian aluminium ownership shifts". And perhaps I can just read the opening paragraph -- perhaps I can get it translated to you; I'm sure that's a more efficient way of doing it.

THE INTERPRETER: The first paragraph?

MR RABINOWITZ: The first and third paragraphs in particular. (Pause)

So the article starts off by saying that:

"Three Russian aluminium producers have been bought up in less than a week by [it says] oil giant Sibneft..."

And it talks about this looking like:

"... another power play involving two of the [country's] most powerful businessmen... [Mr Berezovsky and yourself]."

The third paragraph, which is the one I'm particularly interested in, you see there a reference to what Mr Bosov had been saying:

"Dmitry Bosov, spokesman for Lev and Mikhail Chyorny... and until recently [one of the] leading figures at Trans World Group, confirmed that [Trans-World Group] had transferred its controlling stakes in the Krasnoyarsk and Bratsk aluminium plants to Sibneft shareholders."

Okay?

Now, Mr Bosov was one of the parties to the 10 February 2000 master agreement that we've looked at; that's right, isn't it?

A. Yes, I remember that. Could I offer a comment with regard to those two paragraphs?

MRS JUSTICE GLOSTER: Yes, please do.

A. There is a mistake in the first paragraph because Sibneft was not taking part in the purchase. In the second paragraph there is a second mistake because Chernoi was not selling anything. So it's a comment of rumours that were making the rounds on the market at that time.

MR RABINOWITZ: But what it also is, Mr Abramovich, is a journalist who has been speaking to Mr Bosov, who was, as you accept, one of the parties to the agreement that you made in February 2000; yes?

A. I have major doubts that this journalist spoke with Mr Bosov, I mean the journalist who wrote this article in this newspaper. He is making reference to rumours. There is a very low probability that Mr Bosov actually spoke with the journalist who works for this highly regarded media outlet, the more so since Bosov knew who was the seller: he did not work with Mikhail Chernoi, he spoke with Lev Chernoi. Why on earth would he have been making reference to someone who was on the other side of the barricades, as it were?

Q. So you're suggesting this journalist has just made this up, are you, made up this conversation?

A. What I want to say is that the journalist did not look into all the details of this particular matter.

Q. Mr Bosov was closely involved in the negotiations which led to the sale in February 2000 and, as such, you would presumably accept that you might expect him to have a good idea of the buyers were, that's to say who he was selling to; correct?

A. Well, if I were in his shoes, I wouldn't really -- it wouldn't really matter to me who was buying. Whoever is

paying the money is the buyer; it doesn't make any difference. But if you are saying that Bosov was well aware of this, then I can agree with this. He did attend the negotiations and I even think that there is a handwritten document here and this is his handwriting, if I'm not mistaken.

Q. You say that it wouldn't matter who the buyer was. Why do you say it wouldn't matter who the buyer was?

A. What I'm saying is that if I were to put myself in the seller's shoes, I wouldn't mind who the buyer is as long as they pay up and as long as they pay the money on time. That's it.

I'm just trying to offer you a comment regarding what Mr Berezovsky was saying: that it was important to sell the assets here to a good buyer. I mean, you are not selling a kitten, whereby it's important that he gets into good hands; it's aluminium assets and you don't really care who gets the assets.

Q. Are you sure that's your evidence, that you don't really care who you are selling assets to or dealing with, in a situation where you're dealing with aluminium as opposed to kittens? That's your evidence, is it?

A. I wouldn't really care. I mean, if I had to buy -- sorry, sell oil assets or aluminium assets and then I would have nothing to do with this any longer, then

I wouldn't care. There are two parties: one sells, the other buys. You got your money and that's the end of it.

Q. Now, Mr Bosov is in fact a person who you were planning to call to give evidence in these proceedings, is he not?

A. Yes, you are right.

Q. And do you say that he's a person who is likely to tell the truth about matters that he's talking about?

A. Well, I do hope that he would have told all the truth but it's not really up to me to determine. I would have expected that and I would have counted on that.

Q. Can I ask you, please, to go to bundle H(A)96, page 226.001 in Russian H(A)96/226.001 and page 226.001T in the English H(A)96/226.001T.

Now, you I hope have in front of you, Mr Abramovich, another interview given by Mr Bosov to Vedomosti journalist Maria Rozhkova. Do you have that?

A. Yes, I've read this.

Q. And this interview was given in January 2008; do you see that?

A. Yes, I can see that.

Q. Can I ask you to go over two pages to page 226.003 in the Russian H(A)97/226.003 and 003T in the English H(A)97/226.003T. Do you see a heading halfway down

that page, "- In 2000" -- it's not a heading, it's in bold:

"- In 2000, Lev Cherny and the Rubens decided to sell their shares in alluvium factories. For how much? And why to Abramovich? Berezovsky claims that he was also among the buyers."

Do you see that?

- A. Unfortunately I did not. I did not find this particular paragraph. Could you direct me to that paragraph?
- Q. It should be in the translation.

What Mr Bosov says, in answer to the question from Rozhkova, is this:

"At some point, Lev Cherny and David said, 'We're selling up and getting out of the business.' Alfa and Renova conducted negotiations with us. But eventually the shares were sold to Abramovich and Berezovsky (signed on their behalf by Patarkatsishvili). They signed the deal as one entity. A week later, in early February, they met for the first time in Abramovich's Sibneft office and signed the primary document. It was a \$550 million transaction."

It's pretty clear from this, isn't it, Mr Abramovich, that Mr Bosov is yet a further person who appeared to think that there was more than one purchaser of the aluminium assets and that the purchasers included

Mr Abramovich and Mr Berezovsky? But you say he's wrong about this, do you?

A. What I want to say is that he's wrong about this and I would like to clarify, if I may.

MRS JUSTICE GLOSTER: You may.

A. This article discusses Bosov's vision of what had happened in 2000. Number one: it makes a reference to some internet assets that Berezovsky and Bosov were partners in, and I was not aware of this, by the way, with regard to the information that we had been partners everywhere, which is wrong.

Now, also Bosov's concept, something that he told me about, is that Badri, he owed him a commission for this and every reference to Berezovsky will mean that the -- I don't remember what the legal term is -- the term during which you can bring the action was that if he each time makes reference that he's sold it to Berezovsky, that sooner or later he will be able to bring an action based on that cause of action, even though Mr Bosov knew very well that his agreement had been with Patarkatsishvili, not with Berezovsky, so far as I know.

MR RABINOWITZ: Mr Abramovich, I just want to be sure

I understand your evidence. You're saying that Mr Bosov deliberately lied in order to create a basis for a claim

against Mr Berezovsky, are you?

- A. Mr Bosov believed, the way he explained it to me -- so his concept was, and I believed him, I trusted him, his concept was that Badri owed him some money for the original aluminium transaction and any reference to Berezovsky in the press will mean an automatic -- will automatically mean that it will cover Berezovsky as well.

MRS JUSTICE GLOSTER: Can you slow down.

Go on.

- A. Put it differently: he was trying to extend the period of limitation. Basically he tried to extend the period during which he would still be in a position to bring an action.

MR RABINOWITZ: But what you are saying is, in effect, that Mr Bosov was deliberately lying about Mr Berezovsky's involvement in order to enable him to bring an action against Mr Berezovsky. Is that your evidence?

- A. What I want to say is that there is a possibility that Mr Bosov was deliberately misleading a journalist, which does not mean that I believe that he's a liar. I did hope that he would tell the court all the truth.

MRS JUSTICE GLOSTER: Can I just be clear I understand what you're saying.

Bosov's concept was that Badri owed Bosov money for

the aluminium transaction by way of some percentage of Badri's commission or by way of some payment for the shares or what? What was the nature of the money that Badri owed Bosov?

- A. Judging from what Bosov said, Badri had owed him money for the original aluminium assets. Bosov talked Lev Chernoi into selling Bratsk and that's why this smelter transaction happened. So originally he did want to work in that company but after we rejected that possibility, he agreed with Badri that he would make some money out of this transaction. There are different rumours to the effect that it was somewhere in the region of 20 to 30 per cent but I cannot affirm that, I cannot assert that.

MRS JUSTICE GLOSTER: Right. So what was the point of Bosov telling this story to the press? Explain to me what you say Bosov told you about that.

- A. He believed that by making reference to this in the press, he extended his period of limitation.

MRS JUSTICE GLOSTER: Who extended his period of limitation? Bosov did?

- A. Yes.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Mr Abramovich, in the answer that you just gave to my Lady, you said that Bosov's concept was --

sorry -- that Badri owed him money for the original aluminium assets. You said:

"Bosov talked Lev Chernoi into selling Bratsk and that's why the smelter transaction happened. So..."

And then you've carried on:

"... he agreed with Badri that he would make some money out of this transaction."

Why should Badri have to pay Mr Bosov if, as you say, Mr Patarkatsishvili had no interest whatsoever in the aluminium assets?

A. I already made reference to this. We agreed with Badri that I would pay him a commission and he promised part of his commission to Bosov. I don't know what portion of this was discussed, but there was definitely some discussion and some arrangement between them.

Q. You see, I suggest to you that that's completely untrue but we will come and deal with that in due course.

The reason that this payment was being made, if there was an arrangement under which Mr Bosov would be entitled to claim it from Mr Patarkatsishvili, was because Mr Patarkatsishvili was one of the people who had acquired those assets, Mr Abramovich, and Mr Bosov apparently felt that he was instrumental in bringing about that transaction. That's right, isn't it?

A. Could I ask you to split this up into two questions, if

I may.

MRS JUSTICE GLOSTER: Mr Rabinowitz --

THE WITNESS: I don't recall which question I'm expected to answer, which of the two.

MRS JUSTICE GLOSTER: -- I think it's rather a long question. Aren't you just making a comment, Mr Rabinowitz? If you've got a specific further question beyond what you've already put to the witness --

MR RABINOWITZ: I'll ask a different question.

It's right, isn't it, that Mr Bosov was suing Mr Berezovsky for commission arising out of the sale of the aluminium assets in February 2000, or at least he's planning to? Is that right?

A. To be honest with you, I'm not aware of that.

Q. Mr Abramovich, what I don't understand is this: why do you say that Mr Bosov could have thought that he could extend time for a claim against Mr Patarkatsishvili by mentioning Mr Berezovsky's name as one of the acquirers?

A. I am not sure I can answer that question. I just don't know.

Q. Can I ask you to go next to bundle H(A)39, page 38, please H(A)39/38. Again, we don't have this in Russian.

Now, this is a document, as you see, it is headed

"Declaration" and it was signed by Mr Anisimov on 25 October 2001; you can see that at the bottom. And just so you know what this is, it's a copy of Mr Anisimov's declaration made in support of an application he was making for a visa to visit the United States.

I take it you won't suggest that Mr Anisimov was likely to have put forward false information to the US immigration authorities in applying for a visa; or would you?

MRS JUSTICE GLOSTER: Well, how can he tell until he's seen what information you're taking him to?

MR RABINOWITZ: Well, as a general concept.

Is Mr Anisimov the sort of person who would lie to immigration officials?

A. Why are you asking me?

Q. Well, what's your view? Do you have a view about Mr Anisimov's honesty? Is he the sort of person who would lie to US immigration authorities or seek to mislead them?

A. I hope he's not.

Q. Good answer.

Now, if I read the first part of this declaration to you, Mr Abramovich, it can be translated for you. He says:

"I..."

Or perhaps it can just be translated for you straightaway. What I want to focus on is in particular where he lists out the assets. You see at point 4 he says:

"I state categorically that last year I have sold all of my shares in:

"Krasnoyarsk Aluminium Plant [and]

"Krasnoyarsk Power Station"

And do you see that he says that -- well, he identifies who he's sold them to:

"Sold to [the] shareholders of Sibneft in February 2000."

Now, are you saying that Mr Anisimov also didn't know who he was selling his assets to, or was he also simply trying to mislead someone as to who he sold these assets to?

- A. It's hard for me to comment. He would be better off explaining this. There are several versions, several possible theories here, and if it would assist the court, I could try and set those out.
- Q. Please do so.
- A. Well, is there a possibility that Anisimov was thinking that there were more than one shareholders in Sibneft? The answer is: yes, he could have thought so. That does

not necessarily mean that he believes that Berezovsky was a shareholder. Now, could he believe that Patarkatsishvili was a shareholder in Sibneft? Yes, he could have thought so. This would have been his speculation, his supposition. But I assure you that no one knew for sure who the shareholder in Sibneft was and I was trying to keep that information as closed as possible.

So we disclosed only what we had to disclose, we did not provide any information over and above that, and we did that for a reason -- I'm sorry, I did that for a reason.

Q. Okay. Mr Abramovich, I think -- were you in court when Mr Reuben gave his evidence last week, on Friday 28 October? I think perhaps you weren't.

A. No, no, I was not there.

Q. Mr Reuben's evidence was that he understood the purchasers of the aluminium assets to be the Sibneft people and in particular that the purchasers included Mr Patarkatsishvili and his partners, whom Mr Reuben assumed to be Mr Berezovsky and yourself.

That, my Lady, for the transcript, was on Day 15, page 17, line 114, to Day 15, page 21, line 11.

Do you say also that Mr Reuben's understanding that Mr Patarkatsishvili was one of the purchasers, and so

was Mr Berezovsky as his partner, is also wrong?

A. Could I impose on you to make it either shorter or slower, please.

Q. I'll make it slower.

Do you say that Mr Reuben's understanding, which was that Mr Patarkatsishvili was one of the purchasers and that so was Mr Berezovsky as his partner, is also wrong?

A. With respect to my understanding, I don't think I ever met with Mr Reuben; however, I cannot affirm that with certainty. Therefore his understanding is not something that I could provide any comment on.

The impression on the market was that Berezovsky owes everything: Avtovaz, Logovaz, Aeroflot, ORT, Transaero, and Sibneft and aluminium and everything; everything was owned by Berezovsky. Therefore, whether or not Reuben could have formed the impression in his own mind that Berezovsky was the numero uno; yes, he could. But, if I understand correctly, he never asked for any confirmation of that or any clarifications with that regard.

Q. Okay. Can I ask you, please, to go to bundle H(A)92 at page 46.001 H(A)92/46.001. Again, let me tell you what we are looking at. These are the typed-up notes made by James Lankshear, an English solicitor, of a meeting that he attended with Mr Patarkatsishvili

which took place on 8 December 2005.

What I am particularly interested in showing you, Mr Abramovich, is -- if I can identify them for the translator, she can read this to you -- under the heading "Meeting", if you read those two paragraphs, please. (Pause)

So, Mr Abramovich, what Mr Patarkatsishvili is recorded as saying in December 2005 is that the aluminium assets were acquired by the "core shareholders of Sibneft". Do you see that?

A. I'd rather say that I can hear: it was translated to me.

Q. I'm sorry, you hear that. That's very precise.

We can also see that Mr Patarkatsishvili has explained to the English solicitors what he meant by that phrase: that the "core shareholders of Sibneft" who acquired these assets, the aluminium assets, in February 2000 was a reference to himself, yourself and Mr Berezovsky. That's what he's recorded as telling the solicitor. Do you see that?

MRS JUSTICE GLOSTER: Well, what's the question?

MR RABINOWITZ: I just want to make sure he's got...

I haven't asked the question yet; I just want to make sure you've got that.

Do you say that Mr Patarkatsishvili was lying about this to his solicitors, Mr Abramovich?

A. I do not want to say that Badri was lying to his solicitors. He was setting out the situation as it was set out in the documents. The payment to Badri for his services was made by us through shares and that was the only way to be able to explain that.

On the other hand, it would have been very difficult to try and contradict what has already been recorded on paper, in documents; the more so since the payment for krysha -- I mean, it's very difficult to -- at that time it was very difficult to explain to an English solicitor what the concept of krysha was, or rather it would have been very difficult to explain what that concept means to an English lawyer.

Have I answered your question? I -- it looks to me like you did not understand my answer.

Q. It doesn't matter what I think about it.

MRS JUSTICE GLOSTER: Well, I understand your answer.

MR RABINOWITZ: In effect what Mr Patarkatsishvili was saying to the solicitors was that he and Mr Berezovsky were core shareholders in Sibneft. Are you saying that he was misleading them about that or not?

A. There is nothing I can say on this. I remember that Dr Nosova, I think, said that she had the impression that that was the case, that there are certain things that he withheld. But I cannot assert that, I cannot

affirm this with certainty, because I did not attend the meeting.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I think there's a limit to the utility of cross-examination on somebody else's notes.

MR RABINOWITZ: If my Lady is not assisted by that --

MRS JUSTICE GLOSTER: No, well, you've made the point, you've put the question.

MR RABINOWITZ: You've got the point. That was the last of these looks at what other people involved in the transaction thought.

Mr Abramovich, your case, as I understand it -- but tell me if I'm wrong -- is that very shortly after the acquisition of the aluminium assets you started to discuss with Mr Deripaska the possibility of merging your aluminium assets with his. Is that correct?

A. Yes.

Q. And you also say that following a chance meeting in the White House in Moscow, that it took yourself and Mr Deripaska just one day in early March 2000 to agree the terms of the merger. Is that correct?

A. Well, that is my recollection, yes.

Q. And is it your case that on this occasion -- Mr Shvidler puts this around 4 or 5 March 2000 -- you and Mr Shvidler met with Mr Deripaska and Mr Bulygin first

at the Baltschug Kempinski Hotel in Moscow and then at your house in Sareevo Village near Moscow?

A. Yes.

Q. And do you recall that meeting?

A. In general, yes, I do recall that.

Q. Well, how clear do you say your memory is of this, Mr Abramovich?

A. Well, it depends on the extent of detail. I remember what we were talking about but I don't think that I would be able to go into the details. Remember, I told you that I'm not a person of detail. I'm more of a person of detail than Mr Berezovsky, but I'm not much of a person of detail in the grander scheme of things.

Q. And do you say that you reached agreement with Mr Deripaska on all the key terms of your merger at this meeting?

A. No.

Q. Can you look at paragraph 164 of your third witness statement. It's E1, tab 3, page 84 E1/03/84 and in the Russian at page 185 E1/03/185. You see, Mr Abramovich, it's your own evidence. You say here:

"Having reached an agreement with Mr Deripaska on all key terms of our merger..."

Why did you deny, when I asked whether you reached agreement with Mr Deripaska on all key terms, why did

you deny that that is what had happened at that meeting?

- A. I wanted to continue but then I was cut off, the microphone was cut off, and so I did not have an opportunity to develop my thought.

We had not agreed on all the details. We did agree, but not on all the details. And if I have leave of the court, I can explain what we agreed upon and what we agreed upon later.

- Q. We'll get to what you did and didn't agree upon in due course. I'm trying to understand why, when I suggested to you that you'd agreed on all key terms, you were not prepared to accept that. Let's move on.

Now, given the significance of the merger transaction, Mr Deripaska was anxious to get the key terms memorialised straightaway; do you agree with that?

I can tell you, if this assists, that this is Mr Bulygin's evidence. I take it you wouldn't disagree with what Mr Bulygin says about this?

- A. Well, I do hope that Mr Bulygin will give evidence and so he can tell you about this himself. But I think that the main parameters were agreed upon, the main, the principal parameters. The question is what "principal" means.

Am I expected to answer your first question because I think you asked me two questions and I'm not exactly

sure which of the two we are now discussing.

Q. Well, let me repeat what I think you call the first question.

Given the significance of the merger transaction, Mr Deripaska was anxious to get those key terms memorialised straightaway; do you agree?

A. Well, we need to agree on the terminology. What is "this transaction"? If "this transaction" is understood to mean all the Siberian assets, then yes. We -- there were problematic assets and we had to describe those problematic assets in order for us to be able to immediately start our work.

Q. According to Mr Bulygin, he had a laptop with him and once you had all returned to your home, you all went back over all the terms of the agreement again and, as you did so, he memorialised your agreement as a preliminary agreement on his laptop in Russian.

Do you agree with that?

A. I'm sorry. When you said "returned to your home", when was that? I think that part of it he typed up on his computer when we were at Kempinski, but I'm not sure that I can affirm that.

Q. But you wouldn't disagree with his evidence, if that is his evidence; is that right?

A. I will not disagree, but I don't think that I can

comment on this.

Q. Mr Bulygin also says that after memorialising your agreement on his laptop, it was then printed out and executed then and there. Again, can we take it that you don't dispute that, Mr Abramovich?

A. The fact that it was printed off and executed, I would not disagree with that, I'm not disputing that, no.

Q. Now, the impression that Mr Bulygin gives is that this making of the preliminary agreement was an exercise carried out by him with some care to ensure that it was an accurate record of what was agreed, given Mr Deripaska's view about the significance of the agreement.

Can I perhaps just show you what he says about this and then give you an opportunity to comment. We'll find Mr Bulygin's evidence at E4, tab 1 -- again it's only in English -- paragraph 5. I wonder if I can get the translator to read paragraph -- sorry, paragraph 11 on page 5 E4/01/5. It's paragraph 11 on page 5, please.

(Pause)

A. Yes, I have been translated the relevant section.

Q. Mr Bulygin is someone who you are calling as your witness, Mr Abramovich. Can we take it that you do not dispute the evidence that I've just shown you that he gives or will give?

- A. I do call him as a witness. Now, this evidence is his evidence. I'm not disputing this, but I tend to agree somewhat more with my own witness statement. He really is a very honest person. Unfortunately he's very frail and he may not be able to make it to London, but I do hope that he will come and he will give evidence.
- Q. How does your recollection of what happened in March 2000 differ from Mr Bulygin's recollection of what happened in March 2000 as we see recorded here?
- A. If I understood the translation correctly, what he's saying is that he was typing on his computer and then he had that text printed off. I believe that he had printed it off in my house.
- Q. I'm not sure he's saying anything different to that. I think he's saying he typed it at your house, printed it off at your house and it was signed then and there.
- A. Yes, but I -- again, it's very difficult to recall the oral translation, but I think it also says that we parted at some point in time, we went each our own way.
- Q. He doesn't say that. I think where perhaps the misunderstanding comes is he explains that you left the hotel and you went to your house, but I don't think he is saying you went your own way.

But subject to that point, you wouldn't disagree with what he says?

- A. I'm not disputing this. Unless we go into all the details, I'm not disputing this.
- Q. Mr Bulygin also says that the preliminary agreement was signed by "both principals", by which I take him to mean yourself and Mr Deripaska, and that it was witnessed by him. Do you recall that?
- A. I think Mr Shvidler signed the contract or, sorry, the agreement from my side.
- Q. Why would Mr Shvidler sign as principal, Mr Abramovich, if, as you say, you and you alone were the only shareholder, the only person with an interest in these assets?
- A. Mr Shvidler was in charge of this transaction, he was negotiating this transaction, and so I played a very passive role there. My task was to make sure that the transaction did happen and that was about it.
- Mr Shvidler usually is a very tough negotiator, Mr Deripaska is also a rather tough person so far as negotiations are concerned, and I did not want to see this transaction unravel before it was signed, even though sometimes we were on the verge of seeing it collapse.
- Q. Can we look at this agreement that you made then. It's at H(A)16, page 47 H(A)16/47, English version at 47T H(A)16/47T.

Now, one sees, Mr Abramovich, that the first part of the preliminary agreement says:

"Mr RA Abramovich, hereinafter referred to as 'Party 1', and Mr OV Deripaska, hereinafter referred to as 'Party 2' (together, the 'Parties'), have concluded this Preliminary Agreement on the following..."

Then there are a series of clauses set out.

Can I ask you, please, to look, if you would, at clause 4.1 at page 48 H(A)16/48, 48T in the translation H(A)16/48T. So:

"Parties 1 and 2 warrant that, together with their partners, (not including TWG or any companies and or individuals related thereto or affiliated therewith)" --

THE INTERPRETER: I'm so sorry, my Lady, could I ask to be provided with the Russian text because otherwise I may be distorting the actual Russian original.

MRS JUSTICE GLOSTER: Yes, he should be provided with the Russian text.

MR RABINOWITZ: Mr Abramovich actually has the Russian text in front of him.

MRS JUSTICE GLOSTER: Right. Could he be taken to the page, please?

MR RABINOWITZ: Clause 4.1.

You've read 4.1, Mr Abramovich?

MRS JUSTICE GLOSTER: Are you there now, Mr --

MR SUMPTION: I think it's the translator who is asking for it.

MR RABINOWITZ: Do you have the Russian text, translator, at page 48?

THE INTERPRETER: Mr Rabinowitz, what I have is only what you have on Magnum. I do not have any hard copies.

MRS JUSTICE GLOSTER: Right. Could he be provided, please, with the Russian version of the agreement.

MR SUMPTION: We are doing that.

MRS JUSTICE GLOSTER: Thank you very much.

It's page 48 in tab 16; is that right?

MR RABINOWITZ: Correct. Bundle 16, page 48.

THE INTERPRETER: I'm sorry, I cannot find it.

MRS JUSTICE GLOSTER: Could somebody please help him find the correct page.

MR RABINOWITZ: It comes before the translation, so if you've got to 47T, you've gone too far. It's the fourth page of the bundle, I think is the start of the --

MRS JUSTICE GLOSTER: Fourth page of the bundle, I think.

MR RABINOWITZ: All right. Mr Abramovich has the document in front of him in Russian.

MRS JUSTICE GLOSTER: Right, the translator has it now.

MR RABINOWITZ: So clause 4.1 contains a warranty by each of you and Mr Deripaska that, together with your partners -- each of you, together with your partners,

own the assets -- do you see that? -- which are the subject matter of this contract.

So can you tell me this: who did you understand to be Mr Deripaska's partners who he was warranting owned the assets together with himself?

A. First, if I may, I'd like to give you some background on the creation of this document and the extent to which I was involved in this and then I would like to provide a comment, if I may.

Q. I would prefer you to answer the question first and then make comments about it afterwards, if that's okay.

Could you tell us: who, together with Mr Deripaska, do you say was giving you a warranty as to the ownership of the assets which were the subject matter of this contract?

A. This contract was written precisely to make sure that we did not need other people's warranties and if you look at the substance of it, I think he was contributing 36 per cent of the Nikolaevsky Alumina Plant and Mr Yaroslavsky I think was Deripaska's partner there.

Now, I think I've answered your question. Could I provide a comment with regard to the background --

MRS JUSTICE GLOSTER: Yes, provide a comment.

A. -- behind this document?

MRS JUSTICE GLOSTER: Yes, provide a comment.

A. We spent time negotiating this document between 5.00 pm and I think 5.00 in the morning. After that, we moved, we moved to my place, to my house in the village of Sareevo. Before that, there was a full work day. By the time we executed the contract, I was not able to understand what was really going on; I was really a vegetable, I could have signed off on anything at that time.

But Mr Deripaska was very insistent, he was very keen to finalise this, and so there was no way we could have given this to the lawyers for their review. He was very keen to finalise this. For some reason, Mr Deripaska did not trust us at the early stage.

So that's the way it happened. Once again, I must say that I did not read this document but I'm more than happy to answer questions.

MR RABINOWITZ: Presumably Mr Shvidler, who was there, did read this document?

A. Mr Shvidler definitely read this document and so he can provide more clarity on his comments. I can only speculate and I can set out my own understanding, whereas he will be able to tell you exactly how it happened.

Q. Just let's be clear about this, Mr Abramovich. You are saying that Mr Shvidler, who would have read carefully

this contract and signed it, signed this contract which plainly suggests that you had partners in this transaction, as did Mr Deripaska.

Are you saying that the contract is wrong to suggest that you have partners? Is that your evidence?

- A. No, this is not what I want to say. What I want to say is I did not read this document so it's very difficult for me to comment on this because I would only be speculating. I can speculate if need be, but I cannot give you a firm answer even though I do have some knowledge about this.

Now, if I have to answer your question as to whether I did see Mr Shvidler reading this: yes, I did.

- Q. Right. So what I want to ask you is whether it is your evidence that the contract is wrong to suggest that you had partners. It's not asking you to speculate. You can either say, "It is wrong", or, "It isn't wrong, because I had partners".

- A. I did not have partners. That's not the point.

The point is what -- the assets are being listed here. I cannot answer your question which you are now asking me. I did not have questions -- I'm sorry, I did not have partners. But the assets which are listed here do not belong to me; they're for the -- they're people for whom I was responsible. I was responsible for

making sure that they contribute this and in the eyes of Deripaska I was responsible for this and in his eyes therefore those people were my partners. Does that explain the position?

Mr Deripaska was against TWG taking part on this; all the rest was not of interest to him. He was not interested in anything apart from that.

MRS JUSTICE GLOSTER: Will you choose your moment?

MR RABINOWITZ: My Lady, now is as good as any. We will come back to this.

MRS JUSTICE GLOSTER: Very well. I'll sit again at 2.05.

(1.00 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Mr Rabinowitz, I've caused the heating to be turned down, so if it gets chilly, that's why.

MR RABINOWITZ: Mr Abramovich, just before we took the break and at [draft] page 76 of the transcript, you said in answer to a question, and these were your words:

"But the assets which are listed here do not belong to me; they're for the -- they're people for whom I was responsible. I was responsible for making sure that they contribute this and in the eyes of Deripaska I was responsible for this and in his eyes therefore these people were my partners."

To whom were you referring, Mr Abramovich?

- A. I already mentioned that it's difficult for me to comment because I hadn't read it. I'm trying to explain to you Deripaska's view today as to what happened then. So my opinion, I'm just trying to explain, but I will continue to try and explain.

So here there is -- NkAZ is featured, Novokuznetsk Aluminium Smelter. At that time we hadn't acquired it yet. Further on, later, we acquired it together. And we had some documents with Mr Zhivilo, to whom this plant belonged, but the deal hadn't happened yet, but it was our responsibility to add this plant to this deal.

Also it talks about Achinsk Alumina Plant. In the way it's described here, 49 per cent of shares, it could not have worked because the second part of this alumina plant plus the -- it was under bankruptcy procedures as I've already said. The rest belonged to Mr Fridman and Mr Fridman controlled the liquidator and the tender manager. Without Mr Fridman, this enterprise could not have operated and Krasnoyarsk could not have operated. But this is my guess. At that time I had not read this document.

Once again I'm saying that the most important thing for Deripaska was for TWG not to feature there and if I remember correctly the documents that were signed

between us and Mr Chernoi, the documents had a line which said: in case, in the event of, or there was a reference that they could change certain provisions or rejoin the deal if we don't pay out by a certain time. I'm not convinced, but this is the kind of impression I have.

And, if I may, I'll add: Mr Fridman --

MRS JUSTICE GLOSTER: No, just -- I think that's enough, Mr Abramovich. Okay?

MR RABINOWITZ: Mr Abramovich, that's the first time that you have anywhere made any suggestion of that sort of arrangement being in the background to this contract, isn't it?

A. This is the first time that I'm giving evidence on this point. I'm just giving you my vision today as to what was happening then. At that time I didn't read the contract -- I didn't read the contract and I didn't think about it.

Q. I suggest to you, Mr Abramovich, that the answer is very much more straightforward in terms of who your partners were: they were in fact Mr Berezovsky and Mr Patarkatsishvili, were they not?

A. It's not so.

Q. Perhaps I can ask you to go to bundle E6, tab 1, where we have the Le Bourget transcript, to see if that

assists on this question. I will give you box number references because I know you want to follow in more than one bundle: you want to be in E7 as well.

Can you go, please, to box 497 on page 172 of bundle E6 E6/01/172.

MR SUMPTION: The witness should have E7, I presume.

MR RABINOWITZ: He has E7.

Now, Mr Abramovich, we can see at box 497 the beginning of a short exchange between yourself and Mr Berezovsky about registering shares in the aluminium assets into Mr Berezovsky's name and we know that that's what this was about because you, in your commentary to box 497, say that that is what Mr Berezovsky was talking about. Do you see that?

A. Yes.

Q. And then, if we just follow the conversation, Mr Berezovsky says, because there has been a discussion about Sibneft:

"The same will have to be done with Aluminium."

That is to say, register the shares in his name.

You say:

"What do you mean by 'the same'?"

Mr Berezovsky says:

"With Aluminium, need (to do the same)."

And you say:

"You cannot do anything with Aluminium, that's for sure."

Mr Berezovsky says:

"Why not?"

And you say:

"We only hold 50 per cent there, so the other party has to agree."

Just pausing there, Mr Abramovich, the reference to "Aluminium" here is, of course, a reference to Rusal, is it not?

A. I have to answer "yes" or "no" or can I comment?

Q. If you could for the moment just answer "yes" or "no", please.

A. This is a reference to Rusal. May I comment now?

Q. I'd rather just sort of get to the main part of the question. At the moment I'm just trying to --

MRS JUSTICE GLOSTER: You'll have an opportunity in a moment to comment, Mr Abramovich.

MR RABINOWITZ: So the reference to "Aluminium" is to Rusal and the reference to "the other party" that you mention when you say, "We only hold 50 per cent there, so the other party has to agree", that is a reference, is it, to Mr Deripaska?

A. Yes, the reference to "the other party" is a reference to Mr Deripaska.

Q. And then if we just follow the conversation through,  
Mr Berezovsky seems to say:

"So what?"

You then say:

"And they will demand the same, will demand the same. Tax affairs haven't been regulated yet for Aluminium, so there is no point in applying this [scheme] there. It would significantly reduce income. Besides, you will have to wait in line to receive dividends."

Mr Berezovsky says:

"Fine, what I'm saying is... in any case, the time will come, finally..."

And you say:

"... with Aluminium it is very simple. If we go legal, they would have to do the same. They can't have one half legalised, and the other half -- not."

Again, just pausing there, in your commentary to box 506 you point out that you were explaining here that:

"... [a] problem with this scheme would be that all those providing protection... to Mr Deripaska would also insist on becoming shareholders..."

That's what your commentary says, does it not?

THE INTERPRETER: I'm ready.

A. It's difficult for me to comment. Which question is it that I need to answer? Or maybe there hasn't been an answer yet -- a question yet.

MR RABINOWITZ: We're just going through the course of the conversation and I want to make sure that when I say that this is what the conversation was, I'm not putting it to you incorrectly, and then we'll come to some questions.

Now, the conversation then continues. Mr Berezovsky says:

"I agree, so..."

And you then say:

"(Then they) will all appear: Bykov, Misha, Anton, and Aksyon, and Oleg Deripaska and his... companies, nobody would even talk..."

And then it's not clear whether it's "to them", "to it", "to us":

"... about it. You don't agree with this, do you?"

[That] is what it says there.

And then we see that Mr Berezovsky has tried to identify the names that are referred to here and you've agreed with him. And what you've agreed -- is this right -- Mr Bykov is a reference to Mr Anatoly Bykov; that's correct, isn't it?

A. What is the question? I didn't have the opportunity to

answer the previous question, so I've sort of lost you. I've lost you. I wanted to comment but I felt that the mic was switched off.

Q. You will get plenty of chance to comment. At the moment we are just trying to confirm who these people are that are being referred to.

"Bykov" is a reference to Mr Anatoly Bykov; correct or not correct?

A. Yes, "Bykov" is Anatoly Bykov, yes.

Q. And "Misha" is a reference to Mr Michael Chernoi; is that correct?

A. Yes, "Misha" is Mikhail Chernoi.

Q. "Anton" is a reference to -- is that Anton Malevsky?

A. I can't confirm because at that time I didn't know his surname. But once these proceedings started, I read the press, the papers, and everybody thinks that's the person and so I have to agree. But I've never met him before, so I didn't know his surname.

And the fourth protagonist is unknown to me; I've only ever heard his nickname.

Q. That's right.

Can we agree at least about this: namely that at the time of your preliminary agreement in March 2000 you would have been aware that Mr Deripaska had an association of some kind with these individuals?

A. What is the question I need to answer? Just the last question or should I comment everything?

Q. No, just --

MRS JUSTICE GLOSTER: No, just answer the last question, please.

A. I had a feeling that Mr Deripaska had to pay out to various people but I didn't know for sure to whom.

MR RABINOWITZ: Mr Abramovich, that wasn't in fact the question. The question was: at the time of your preliminary agreement in March 2000 you would have been aware that Mr Deripaska had an association of some kind with these individuals; is that correct?

A. Association? I had a suspicion that not everything was smooth and clear in the aluminium industry but I can't say that I was convinced that he had association with these people. I had a feeling that he was forced to pay to someone, given the events that were taking place in the aluminium industry. It was impossible to operate in the aluminium industry without krysha, without physical protection, very real physical protection.

Q. By the time you got to December 2000 it is clear, I suggest, from this transcript that you were very clear Mr Deripaska had an association with these people. That's right, isn't it?

A. I just gave here my assumptions.

- Q. You're suggesting, are you, that these names were just assumptions rather than matters within your own knowledge?
- A. Apart from Mr Chernoi, I've never met any one of them. I don't know who they are. I've just heard that these are some kind of people who were in the trade unions who were keeping peace in the streets, but I've never met with them and I can't even tell you whether Mr Deripaska had relationships with them or not. This was my assumption.
- Q. Mr Abramovich, the course of this conversation has Mr Berezovsky saying that he wants the Rusal assets to appear in his name. Your response to this is to say, "Well, we're only 50 per cent of this. If we do this, the other side, Mr Deripaska, will want to do this and that will mean that these people also will want to appear to be shown as shareholders".

This is more than you making assumptions about their existence. This is you --

MRS JUSTICE GLOSTER: Too many questions, Mr Rabinowitz.

Mr Abramovich, you've heard what Mr Rabinowitz has just put to you. Comment now, please, if you would like to. Do you agree that this is Mr Berezovsky saying he wants to have the Rusal assets to appear in his name and you saying in reply, "We can't do that because we're

only 50 per cent of this and the other side, Mr Deripaska, will want to have his colleagues as shareholders as well"?

A. I don't agree with this statement. May I comment?

MRS JUSTICE GLOSTER: Yes, you may comment now.

A. The conversation transcribed there, the discussion in Le Bourget, was devoted to legalising income, payments. Mr Berezovsky found himself abroad, he didn't have money to live on. Prior to that, 300 million or 305 million were paid, but the most important problem was that he could not have this cash transferred to the bank so he could spend it.

The whole conversation, this whole conversation deals with legalising income. Income had to be transferred. We kept discussing what should be done for Mr Berezovsky to receive the cash. As to this reference to 50 per cent and why we couldn't do it through Russian Aluminium, through Rusal, is that I could not bring my part of the income to the head company, to the holding company; I needed Oleg Deripaska's agreement to that. That's number one. And then the reference to Chernoi, to Bykov, to Anton, to Aksyon, yes, there is a reference to them.

The problem with legalising income was the problem plaguing many people. If we started to pay money

through Rusal to people like that, if we would transfer income to the holding company or to the lead company and start legalising this income, I thought that most probably those other people would also want to have their income paid to them legally. Then Rusal would turn into nothing, it would have no future. But again, at that point that was my assumption.

If I may, if I may --

MRS JUSTICE GLOSTER: No, no, thank you.

Yes, Mr Rabinowitz, put your next question please.

MR RABINOWITZ: You see, Mr Abramovich, what I would suggest to you is in fact a fairly straightforward explanation both for the clause in the preliminary agreement and this exchange that you had with Mr Berezovsky at Le Bourget and it is this: both you and Mr Deripaska warranted to each other that you had partners when you signed the preliminary agreement. That is what clause 4.1 says. Okay?

A. I already commented clause 4. I don't remember it very well, but prior to the break I commented on it. For Mr Deripaska, the most important thing was not to have TWG representatives in this new company. He wasn't all that bothered about everything else, as far as I understood.

Q. Mr Deripaska's partners -- and I don't know what it was

they were doing for him -- were the ones that we see you describing here, in the Le Bourget meeting, to

Mr Berezovsky: Mr Bykov, Mr Chernoi and Mr Malevsky.

I think you've commented on that already.

- A. I never asserted and I continue to maintain that I can only guess. I never thought that they were his partners. I guessed that he might have some payment obligations vis-a-vis these people.

As for preliminary agreement, it only indicates Nikolaevsky Alumina Plant, which is in the territory of Ukraine. It's difficult for me to understand how these people could have any influence in the territory of the Ukraine. This is a neighbouring state, it's a sovereign state, it's another part of our former country.

MRS JUSTICE GLOSTER: Thank you.

Next question, Mr Rabinowitz, please.

MR RABINOWITZ: And while they were Mr Deripaska's partners, your partners were the people you were talking to at Le Bourget, namely Mr Berezovsky and Mr Patarkatsishvili; that's correct, isn't it?

- A. It's not correct.
- Q. And if we go back to the Le Bourget transcript and we look at box 502 E6/01/173, it is because you're talking to your partners that when Mr Berezovsky raises the point about putting these shares into his name, you

say:

"We only hold 50 per cent there, so the other party has to agree."

You used the word "we" because you were talking to your partners. Mr Berezovsky, Mr Patarkatsishvili and you together hold that 50 per cent, and that is what you are saying.

- A. No, I'm sorry, I am saying -- whenever I talk about companies, I always mean those people who talk with me and myself. I don't mean Mr Berezovsky and, as you insist, Mr Patarkatsishvili. I always say "we", I always say "we", mainly I say "we"; I very seldom use "I". I always mean myself and people who work with me.
- Q. Well, is that right? There are a number of other places in this transcript where you use the word "I" when you mean "I". If you look at boxes 509 and 510 E6/01/175, you're talking about you having a different view and you use the word "I" there, do you not?
- A. I commented this in as much detail I could. This was rather a long time ago and there are many breaks in the tape, I can't hear very well; I can't give you a deeper explanation than the comments I've already given.

But once again I would like to reiterate: I mainly use the word "we". Of course I use the word "I" as well, but mainly I tend to say "we".

Q. It is not just you who is using the word "we" when you talk about the Rusal shares; that is what Mr Patarkatsishvili says as well.

If you look, for example, at boxes 526 to 532 E6/01/179, I think the conversation here switched to Sibneft but Mr Patarkatsishvili, who of course we've seen considered himself your partner, is talking here about "we" in respect of this company, suggesting that he, with you, was an owner of this company. That's right, isn't it?

A. May I read these boxes --

MRS JUSTICE GLOSTER: Yes, please do.

A. -- because we are just snatching bits out of the context.

MRS JUSTICE GLOSTER: What box, Mr Rabinowitz, would you like to start at?

MR RABINOWITZ: I would like the witness to read from 526 to 532, please, just to focus on Mr Patarkatsishvili, when he's referring to Sibneft, talking about "we".

MR SUMPTION: My Lady, may I suggest he should start at 524, which is where this passage begins.

MRS JUSTICE GLOSTER: Yes, very well.

Mr Abramovich, start at box 524, please. (Pause)

A. Here Mr Patarkatsishvili, as far as I understand, means Sibneft company and trading companies; that's why it's

"we", "you", et cetera. And there are comments which I'm giving on the right-hand side; I can't comment any further. And if you start reading earlier on, you see once again that we're dealing with legalising money flows. The very -- the problem that we were dealing with was how to transfer money abroad and this is what the whole discussion is about.

Q. Now, I will come back to that in the context of Sibneft when we get to Le Bourget later on. But can we for the moment just go back to the preliminary agreement, please: H --

MRS JUSTICE GLOSTER: Can we put away this bundle?

MR RABINOWITZ: You can.

Can you go back to bundle H(A)16, page 49 in the Russian H(A)16/49 and 49T in English H(A)16/49T.

Can you look, please, at clause 14 of this agreement. Do you see that it says:

"The Parties agree that the Agreement shall be governed by English law."

Yes?

A. Yes, I can see that.

Q. And do you say that choice of law clauses such as this were something that you were not interested in and that you usually left it to your lawyers?

A. Yes, I say that.

- Q. And on the basis that we don't count you as a lawyer, Mr Abramovich -- and I think that's the basis upon which you say we should proceed -- it's right that there were no lawyers present at this meeting at the Kempinski Hotel and at your house at Sareevo Village; that's correct, isn't it?
- A. You're right. I agree.
- Q. That was a meeting just between yourself, Mr Shvidler, Mr Bulygin and Mr Deripaska?
- A. Yes, and Mr Bulygin used this document or used a draft.
- Q. Let me ask you this: it's clear that in the context of this meeting this provision couldn't have been something that was left to the lawyers since they were not involved in drawing up this preliminary agreement.
- A. That's not so. This reference or this provision that we're discussing now does not refer to the agreement we signed but to the future agreement. If I remember correctly, it was signed much later: I think on 15 March perhaps.
- Q. Whether or not that is so, Mr Abramovich, whoever inserted clause 14 into this contract was someone at the meeting at the Kempinski Hotel and your house who was not a lawyer; it was one of the four of you. That's correct, isn't it?
- A. Yes, that is so: it was Mr Bulygin. That's what I'm

trying to explain: he must have been using some kind of form, a draft contract. A person who is not a lawyer could not have drafted this. I don't understand half of it. If you read it in Russian, you realise that you need to have legal training to understand what is meant. So I think that he got some kind of preliminary draft or a form of words from the computer and just added our agreements to a standard form of words.

- Q. So it's your suggestion, is it, that although all of these key terms in the contract were discussed and Mr Bulygin then put them on the computer, this particular provision was one that wasn't raised for any discussion at all?
- A. I didn't hear any discussion of this item and it was absolutely irrelevant to me which law would apply. I never took part in choosing applicable law. I don't really feel the difference between English law or any other law; it's all the same to me.
- Q. Mr Abramovich, I wish that were so. But, Mr Abramovich, we're dealing here with a contract which is made in an arrangement between exclusively Russian businessmen; do you agree with that?
- A. No, I don't.
- Q. You say that the parties to this contract were not all Russian businessmen?

- A. I've already explained that this was a preliminary agreement, yes, indeed, between Russian businessmen. However, the agreement would have been signed between companies, as far as I understand it, and the companies could indeed use English law. On the other hand, it would have been bizarre if a company which is registered in BVI would be applying Russian law.
- Q. So you have -- certainly the people discussing this are Russian businessmen and you say that the agreement was made in Russia; yes?
- A. Preliminary agreement was executed in Russia.
- Q. Mr Abramovich, a preliminary agreement is still an agreement. Do you understand that?
- A. Well, of course, it's compulsory.
- Q. Yes. So an agreement between Russian businessmen which was made in Russia, and do you agree that it involved assets which were all in Russia?
- A. Yes, I agree; but, as already discussed, they were registered in BVI and in Gibraltar, or somewhere else perhaps. Anyway, they were -- they had not been registered in Russia. Yes, they were physically located in Russia; whereas they were registered outside Russia. I agree with that.
- Q. But you are suggesting that, despite all of these connections to Russia, Mr Bulygin would just have

inserted a provision saying the whole arrangement has to be governed by English law without even raising it for discussion; is that your evidence?

A. It seems to me that there was no discussion, I can't give you 100 per cent guarantee but I personally did not hear this conversation and honestly it is all the same to me which law would have applied. I cannot distinguish them. All the same to me.

Q. Would you accept that it is at least very likely that this question of what law should govern the arrangement was one that was raised for discussion, whether or not you say you heard the discussion?

A. In my view it is not very likely. There were no experts there that could have discussed it. I doubt very much that Mr Shvidler understands legal matters deeply, or that Mr Bulygin or Deripaska either. I think it's the job of the lawyers to choose applicable law.

Q. Yes, but there were no lawyers there, Mr Abramovich, so it was the people there who chose the applicable law.

But it is still your evidence that it was not very likely that this was discussed; is that right?

A. I would say it is improbable that this question would have been discussed, to be exact.

Q. I suggest to you --

A. There was no one there who could have discussed it

competently. I'm sorry.

Q. Do you at least accept this, Mr Abramovich: that by March 2000, which was the time when you came to make this preliminary agreement with Mr Deripaska, you had started to structure your business interests offshore and had already come to make it a fairly regular practice to include English choice of law provisions in the contracts to which you or your companies were parties?

A. First of all, I don't agree that I signed this. Mr Shvidler signed this. I was present in the room where negotiations took place, I took part in the negotiations. But the fact that we used companies which were governed by English law, that is quite possible, but I tell you the truth when I say that I really didn't care.

MRS JUSTICE GLOSTER: I'm not sure you're answering the question. Will you put it again, Mr Rabinowitz, please.

MR RABINOWITZ: Do you accept, Mr Abramovich, that by March 2000, which was the time when you came to make this preliminary agreement with Mr Deripaska, you had started to structure your business interests offshore and had already come to make it a fairly regular practice to include English choice of law provisions in the contracts to which you or your companies were

parties?

- A. I can assume that but I didn't know about it. I didn't know anything about it at all. Offshore companies were being used and I'm sure these provisions will have featured.
- Q. In the autumn of 1999 you travelled to Cyprus for meetings to discuss the creation of trust structures to hold some of your ownership interests; do you agree?
- A. It was translated to me that I went to Cyprus. I didn't personally go. Is that a translator's mistake? I don't think so.
- Q. Are you saying that you did not personally go to Cyprus?
- A. No, I personally did not go to Cyprus. I mean, I have been to Cyprus but not on this business. I spent some holidays several times in Cyprus but I never went there to agree on anything, on any business.
- Q. Now --
- A. If I remember correctly, Mr Tenenbaum and Mrs Panchenko went to Cyprus.
- Q. Do you accept that in the course of 1999 you had set up or were in the process of setting up trust structures relating to your ownership interests?
- A. Yes.
- Q. And these were based in offshore western jurisdictions like Cyprus; that's right, isn't it?

A. I don't remember exactly whether in '99 they were based in Cyprus. Perhaps, but I seem to remember it was Liechtenstein, but I cannot be precise. I think perhaps it was Liechtenstein.

Q. Can I ask you, please, to go to H(A)15 and turn to page 42 H(A)15/42. You should have there a dual language contract, Mr Abramovich, between Finansovaya Neftinaya Corporatzia on the one hand and Kravin Investments on the other, dated 10 December 1999. Do you have that?

A. Yes.

Q. Kravin Investments was one of a number of offshore companies based in Cyprus through which you held your shares in Sibneft; that's right, isn't it?

A. Possibly. Possibly. I just didn't know that at that time.

Q. Well, I can tell you we were told that by your lawyers so let's proceed on the basis that that is right.

Do you accept that other offshore companies based in Cyprus through which you held your shares in Sibneft companies included White Pearl Investments Limited?

A. Do I understand correctly that this company was holding shares in Sibneft?

Q. It was part of the structure that you had set up to hold your interest in Sibneft.

A. I think so. I think the answer is yes, but I don't remember. It doesn't ring any bells, this name. If it's in the dossier, if it's in the documents, then yes.

Q. Let me mention -- this isn't a memory test. I will mention four other names of companies that we have been told were being used by you in Cyprus to hold your Sibneft corporation and if you, in relation to any of these companies, think that that is wrong, then please say so.

In addition to White Pearl Investments Limited, there was a company called Marthacello Company Limited, another company called NP Gemini, another company called Heflinham Holdings Limited and another company called Kindselia Holdings Limited.

Do you think that that is likely to be -- you don't think that any of -- sorry, let me put this this way. You don't dispute that these were companies that were being used to hold your Sibneft interests based in Cyprus?

Can I assist you with this: this is what Skaddens have told us. But if this is wrong, you should say so.

A. I cannot say "yes" or "no" because I have no knowledge of it. If Skadden have given you this information, I agree with it.

Q. Can I then ask you to look back at H(A)15, page 42

H(A)15/42 and you can see at clause 1.1 that it is dealing with the sale of a block of Sibneft shares or transfer of the shares. Do you see that?

A. Yes.

Q. If you look down at clause 4.4, do you see that it says:

"This Contract shall be governed by the laws of England."

A. Yes, I can see that.

Q. If you skip a few pages forward to page 44 H(A)15/44, we see there another dual language contract, this time between ZAO Branko and NP Gemini, which was one of yours, also dated 10 December 1999, again relating to a block of Sibneft shares. And again, Mr Abramovich, do you see clause 4.1?

A. Yes, I can see it.

Q. That again has another choice of English law to apply; do you see that?

A. Yes, I can see that.

MR RABINOWITZ: I'm not going to take up the whole of the afternoon going through these contracts but there are at least another five further contracts to similar effect, each containing an English governing law provision in this file. For the transcript I can tell your Ladyship that these contracts are to be found at page 46 H(A)15/46, page 48 H(A)15/48, page 50 H(A)15/50,

page 52 H(A)15/52 and page 54 H(A)15/54.

In addition to these contracts, Mr Abramovich, there are also another five agreements between your offshore Cypriot companies and various western banks with depositary accounts under which your Cypriot companies purchased further shares in Sibneft. Again, I'm not going to turn them up with you, but for her Ladyship's reference they are to be found at H(A)14, page 128 H(A)14/128, H(A)14, page 156 H(A)14/156, H(A)14, page 200 H(A)14/200, H(A)15, page 20 H(A)15/20 and H(A)15, page 31 H(A)15/31.

MRS JUSTICE GLOSTER: All these contracts relate to the purchase of shares in Sibneft, do they?

MR RABINOWITZ: Correct, or the transfer of shares in Sibneft. They were part of structuring transactions dealing with what Mr Abramovich says was his shareholding.

MRS JUSTICE GLOSTER: How many contracts in all?

MR RABINOWITZ: 12 in total, my Lady: the two that I showed you and the ten further ones that I've given your Ladyship the reference for.

I can tell you, Mr Abramovich, that each of those contracts was also expressly governed by English law. Do you say you don't remember that?

A. I'm saying I didn't know it at the time. But here, yes,

I can see that English law applies in all these contracts and I agree with it. I'm not contesting that this has all been done in accordance with English law and that it's applicable for the contracts. I'm not contesting that.

- Q. No, but what I'm suggesting to you, Mr Abramovich, is that it had become a practice of yours to ensure that your arrangements were governed by English law. Do you dispute that?
- A. I'm contesting it because I didn't know that and I don't know it. Our lawyers were dealing with that. Yes, for some reason they were choosing English law to apply, that is what was going on. But I have no skill, no knowledge in this respect, therefore I don't know how I can comment.
- Q. You see, Mr Abramovich, in addition to the 12 contracts, some of which I've shown you, which were made in the period of the autumn of 1999 going all the way to December 1999, it is also the case -- and you'll tell me if you disagree -- that a few months later, in February 2000, only three weeks prior to your merger discussions with Mr Deripaska, you had acquired an extensive portfolio of aluminium assets under a suite of ten dual-language contracts, all of which also contained English choice of law provisions. And that is right, is

it not?

A. Quite possibly. I think so, yes.

Q. So you'd entered into no less than 22 contracts in this period dealing with the structuring and the holding of your oil and aluminium assets, each of which contained an English choice of law provision?

A. I agree, but I think that is obvious. If a company is registered in BVI or in Cyprus then British -- English law, sorry, should apply. Or am I wrong? I think that's exactly what took place.

Q. And that is why I suggest to you it is very likely that at the meeting that you held with Mr Deripaska and Mr Shvidler and Mr Bulygin, you, or Mr Shvidler on your behalf, were again very keen to ensure that the arrangements were governed by English law. That's right, isn't it?

A. That is not right.

Q. Not only governed by English law but structured offshore? You dispute that?

A. At that time we did not discuss it.

Q. Now, between 7 and 12 March 2000 do you accept that you were likely to have been in London for some reason or another?

A. From 7 March until...?

Q. 12 March.

A. Yes, I agree.

Q. And this period coincided with a trip by a number of your team to London as well, did it not?

A. Yes, that is so.

Q. Mr --

A. They all came at different times, but we were all in London, yes.

Q. And that included Mr Shvidler, who says he was in London in this period; is that right? Do you remember that?

A. Yes, Mr Shvidler was in London at the time, yes.

Q. And Mr Tenenbaum also says that he was in London at that time. Is that right?

A. Yes, that is right.

Q. And Ms Panchenko was also in London, although she may have arrived slightly later than the three of you; is that right?

A. Yes, that is so.

Q. And Mr Shvidler, Mr Tenenbaum and Ms Panchenko all remember a series of meetings with Mr Deripaska's team, including Mr Hauser and Mr Bulygin, in London at that time. Do you recollect that?

A. Sorry, what is it that I need to confirm: whether they remember or whether I remember?

Q. Whether you remember.

A. I think I was at one of these meetings, yes.

Q. Mr Bulygin suggests that you were certainly at one meeting; I think he might suggest you were at more than one. But your recollection is that you were just at one meeting; is that right?

A. I think I was at one of them.

Q. And so it appears that you travelled to London together with Mr Shvidler and Mr Tenenbaum, with Ms Panchenko there as well, in order, among other things, to oversee the preparation of the Rusal share purchase and sale agreement. Is that right?

A. I didn't get it. Can you repeat that? "To oversee the preparation"? That sounds a bit strange.

Q. Maybe to you.

You had gone to London with these members of your team in order to ensure that the Rusal share purchase and sale agreement was successfully concluded, put it that way?

A. No, that is not so for two reasons and, if I may, I'll explain.

Q. Please.

A. At that time I was choosing a house for myself in the outskirts of London and I think at that time I entered into a transaction on a property. I'm not completely sure, but I think that's what I was doing.

As far as the Rusal shares, they didn't exist at

that time. Rusal as a company was incorporated later. Perhaps we're dealing with assets and maybe there was some kind of agreement, but shares of Rusal as such did not exist at that time.

Q. And all of these people had flown to London to finalise the terms of the agreement; that's right, isn't it? By "all of these people" I mean, from your side, Shvidler, Tenenbaum and Panchenko.

A. Well, I suppose so, they dealt with that as well, but I think there were other things that had to be tackled. I can explain, if I may.

Q. If you think it will assist, then please do.

A. Mr Deripaska explained to us that it is important in the aluminium industry to have long-term contracts for alumina, for raw material. I thought that alumina could be sourced at any time, like in the oil industry: you can buy a crude oil tanker at any point in time, any day. But Mr Deripaska explained that in the aluminium industry the practice is totally different: that alumina has to be sourced in advance.

So we went there, amongst other reasons, in order to sign contracts for alumina supplies and for finished aluminium sales. The main traders both for alumina and for finished aluminium were based in London; I think it was the London Metal Exchange, I think it's here. And

anyway, that's why London was a place.

- Q. Are you sure that the London Metal Exchange trades alumina?
- A. If I understand it correctly, London Metals Exchange trades primary aluminium. Alumina is not traded on the exchange. These are long-term contracts with the suppliers. I'm not sure if this problem was solved during this visit but I remember Oleg explaining it to us. For us, this is all new and unusual.
- Q. I take it you accept that, having gone to London with your team on 7 March, you only got back to Moscow on Sunday 12 March? I'm talking about 12 March 2000.
- A. Yes, I agree with that.
- Q. And you said almost immediately after coming back from this trip on 12 March you called Mr Patarkatsishvili to bring him up to date on what you and Mr Deripaska had been discussing in relation to the aluminium assets; is that right?
- A. Yes, that is right.
- Q. And then would this be a fair way of describing what happens next: that without any delay at all following the conversation with Mr Patarkatsishvili, on your return to Moscow you immediately arranged to fly all the way back to London, having just returned the night before? Is that right?

A. Yes, that is right.

Q. And you rushed back to London in this way because Mr Patarkatsishvili, you say, has passed on word from Mr Berezovsky that he was in London and could not get back to Moscow the following day, so that any meeting that there was to discuss the merger would have to be in London. Is that right?

A. Could you repeat that again, please? I'm finding it a bit difficult to concentrate.

MRS JUSTICE GLOSTER: Well, I'll take the break then. Ten minutes' break.

(3.02 pm)

(A short break)

(3.20 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, we were discussing the fact that you had been in London from 7 to 12 March, then you return on 12 March and almost immediately, after coming back from this trip, you call Mr Patarkatsishvili and bring him up to date on what you and Mr Deripaska have been discussing in relation to the aluminium evidence and you've agreed that's what happened. Then the question I had asked and will repeat is this.

Would this be a fair way of describing what happens next: that without any delay at all following the

conversation with Mr Patarkatsishvili on your return from Moscow, you immediately arrange to fly all the way back to London, having just returned from there?

A. It was the next day. If everything that you've just described was the way you described it, I called Badri on the 12th and then on the 13th we went back to London.

Q. That's right. And you rushed back to London in this way the next day because Mr Patarkatsishvili has passed on word from Mr Berezovsky that he was in London and he could not get back to Moscow the following day for a meeting, so that any meeting with him to discuss the merger would have to be in London; is that right?

A. No, this is not correct. He said that Boris wants to see me immediately or wants to speak to me about this. This is all.

Q. Well, you say "about this" -- I'm not sure what you're disagreeing with me about. But when you say "about this", you mean about the merger; is that right?

A. I told Badri that we were thinking with Oleg to do a transaction, I mean, we were almost ready to do it, and it was important for me to tell this to Badri before we signed everything. So I told him about this, he conveyed this to Boris; and then Mr Berezovsky conveyed to me, through Mr Patarkatsishvili, that it was necessary for me to go to London to meet him, to explain

what was going on.

- Q. In other words, to discuss with him the merger; is that right?
- A. No, this is not right. I did not have to go to London to discuss the merger. What was necessary was to explain what was going on. We had already discussed the merger.
- Q. All right. Let me put it this way. You get to Moscow on the 12th, you speak to Mr Patarkatsishvili; as a result of your conversation with Mr Patarkatsishvili, the very next day you fly back to London to speak to Mr Berezovsky about the merger?
- A. Yes.
- Q. Now, it would have been clear to you from that that Mr Patarkatsishvili had obviously told Mr Berezovsky whatever it was you had said to Mr Patarkatsishvili about the merger; do you agree with that?
- A. Well, I don't know, but one could presume that that was the case.
- Q. And you hadn't said to Mr Patarkatsishvili when you spoke to him on your return to Moscow that he could not inform Mr Berezovsky about what you had said to Mr Patarkatsishvili about the merger; is that correct?
- A. No, I did not tell Badri that he could not inform Berezovsky about that.

Q. Can I just ask you a little bit more about the conversation you had with Mr Patarkatsishvili on the afternoon or the evening of 12 March, as soon as you got back to Moscow.

Your own evidence is that almost as soon as you returned to Moscow on the 12th you informed Mr Patarkatsishvili about the arrangement with Mr Deripaska; is that right?

A. Well, speaking from memory, yes, but I do not recall whether it was immediately after my return or maybe sometime later. But on the 12th I did inform him about that, yes.

Q. Well, it had to be sometime on the 12th because by the 13th you had already made plans to fly back to London as a result of what Mr Patarkatsishvili said to you; correct?

A. Yes, it is correct.

Q. And presumably you would have told Mr Patarkatsishvili that you and your team had just got back from negotiating the deal with Mr Deripaska and his team in London; correct?

A. Can I ask you to repeat the question, please? I think I missed out on part of it, something about what I said to Deripaska. Could you kindly repeat?

Q. You would have told Mr Patarkatsishvili that you and

your team had just returned from negotiating a deal with Mr Deripaska and his team in London?

A. No, I did not say that.

Q. Well, tell us exactly what you say you did tell Mr Patarkatsishvili about the merger, Mr Abramovich.

A. I told him that we were doing a deal with Oleg and I don't remember anything over and above that.

Q. Presumably you would have told him about which assets were the subject of the merger?

A. I don't think so, but I cannot affirm that with certainty. I don't think I did.

Q. So the only thing you say you can remember about this is that you called him and you said you're doing a deal with Mr Deripaska and that you mentioned nothing else; is that really your evidence?

A. My evidence is that I rang him up, called him on the phone and, as you have just set out, there's this kind of conversation, a lengthy conversation about all the assets and everything. This is a very unorthodox thing for Russian businessmen.

But from what I remember it's that I told him that we were doing a deal with Oleg. He told me about his concerns about this. He said that nothing good can come out of working with Oleg because he's a loner, he likes to work on his own and he will squeeze one out sooner or

later at some point in time. But I cannot tell you exactly, I cannot recall exactly now what was said down to a word, but he was obviously apparently not satisfied with that; he was not glad.

Q. But you say you told him about a proposed merger but you didn't tell Mr Patarkatsishvili which of the assets that you say he was protecting for you that were to be included in the merger; is that your evidence?

A. No, I did not tell him that.

Q. Did you tell him about the price differential that Mr Deripaska was going to have to pay in the context of the merger, in addition to contributing his aluminium assets?

A. No.

Q. Did you tell Mr Deripaska that you were going to tell Mr Patarkatsishvili about the merger?

A. I think I did, although I have no specific recollection. But it was my obligation to tell --

MRS JUSTICE GLOSTER: Just a second, please. There's somebody drinking out of a bottle at the back of the court. Can you please not do that. There's to be no eating or drinking in court. Thank you.

Yes, go on, Mr Rabinowitz.

MR RABINOWITZ: I asked you, Mr Abramovich:

"Did you tell Mr Deripaska that you were going to

tell Mr Patarkatsishvili about the merger?"

And you said:

"I think I did, although I have no specific recollection. But it was my obligation..."

Is that the end of your answer?

- A. I don't think so. I don't think I did. To be honest, I think I've lost the train of thought. Could I kindly ask you to repeat your question, please?
- Q. The question was: did you tell Mr Deripaska that you were going to tell Mr Patarkatsishvili about the merger?
- A. I don't think I did. No. No.
- Q. And presumably you didn't speak to Mr Deripaska on the question of whether Mr Berezovsky should be allowed to be told about the merger?
- A. It's a rather convoluted question. Could you make it a shorter question?
- Q. Did you ask Mr Deripaska at any stage whether he minded Mr Berezovsky being told about the merger?
- A. I think that I certainly told him about this, yes, definitely.
- Q. When do you say you told -- when do you say you asked Mr Deripaska whether he minded Mr Berezovsky being told about the merger?
- A. Sorry, I think it was -- I think it was the other way round.

MRS JUSTICE GLOSTER: I think something has been lost in the translation or may have been lost in the translation here.

Mr Abramovich, did you discuss with Deripaska telling Mr Berezovsky about the proposed merger?

A. No, it was the other way round. While we had not done the deal, while we had not received the contracts, Oleg asked us not to tell anyone, be it Berezovsky, be it Patarkatsishvili or anyone else. We just wanted to make sure that before the deal is actually executed, we wanted to keep it in secret.

MR RABINOWITZ: But the difficulty about that,

Mr Abramovich, is that it's your own evidence that as soon as you returned to Moscow on 12 March you almost immediately phoned Mr Patarkatsishvili to tell him about the merger. So how is that consistent with you keeping the deal secret until it is actually executed?

A. I meant before it is done. The thing is that Mr Patarkatsishvili asked -- gave some help in terms of purchasing the original aluminium assets and so I had some financial obligations vis-a-vis Patarkatsishvili.

So the way I understood it, and the way he understood it, by the way, as well, I had to -- it was my obligation to let him know before it was done. It would have been inappropriate if he had learnt about

that from newspapers. And therefore I thought it was necessary and appropriate to tell him that we were doing the deal before it was signed.

Q. But I think a few minutes ago you told us that you hadn't cleared with Mr Deripaska your being able to speak to Mr Patarkatsishvili about it. Is that right?

A. I'm not sure I understood your question. It sounded more like a statement on your part. What am I supposed to do with this?

MRS JUSTICE GLOSTER: I think we've been round this buoy, haven't we, Mr Rabinowitz? I mean, we've got your answers. We all know that the meeting happened. So unless this issue is of tremendous importance, I thought we might move on.

MR RABINOWITZ: It's of relevance because if you spoke to Mr Patarkatsishvili in circumstances where Mr Deripaska had told you that you couldn't tell anyone about the merger, I would like to know what it is you said to Mr Deripaska in order to be allowed to tell Mr Patarkatsishvili about the merger.

What did you say to Mr Deripaska about your relationship with Mr Patarkatsishvili?

A. I did not tell him anything about my relationship with Badri Patarkatsishvili nor did I ask him for any permission. I think by that time I was a grown-up

person and I was a party to this and so I did not need any additional permission for that.

Q. Well, you say you didn't need any additional permission for that but you have earlier said to us that you agreed with Mr Deripaska that neither of you would say anything to anyone until the agreement was executed. So despite what you say --

MRS JUSTICE GLOSTER: Mr Rabinowitz, we really have been over this now. The questions are getting longer and longer. It's getting quite late in the afternoon. I suggest that if you want to come back to it because there's a real point here, you do so tomorrow, and you move on to something different.

MR RABINOWITZ: Can you go to bundle H(A)18, page 113, please H(A)18/113. What you have here, Mr Abramovich, is a fax from Global Jet Concept to someone called Marina at Runicom dated 12 March 2000 and this sets out your travel arrangements for the following day, for 13 March. Okay?

You obviously had to ask your assistants to move very quickly to make the necessary travel arrangements for you for the following day, once you'd got back to Moscow; is that right?

A. Yes.

Q. Just looking at your travel itinerary, you see that in

order to get back to London following the summons from Mr Berezovsky, because he wanted to talk about the merger, you had to board a plane in Moscow at 11.00 am and fly for three and a half hours to Luton Airport; do you see that?

A. Yes.

Q. You were travelling with the benefit of time difference so your plan would land in Luton at 11.30 am at Greenwich Mean Time; do you see that?

A. Yes, I can see that.

Q. And then you had to transfer at Luton Airport into a helicopter and fly by helicopter from Luton down to Battersea Heliport, that was going to take you about 20 minutes, and that would mean that you would arrive at around midday Greenwich Mean Time at Battersea. Do you see that?

A. To be honest, I cannot see the word "Battersea" here, but it must have been the case.

Q. Okay. And --

A. Oh, yes, yes. I can see Battersea, yes.

Q. And then the plan was that you would be picked up by a Mercedes and driven, according to the invoice, to the Lanesborough Hotel; that's over the page. Is that correct?

A. Yes.

- Q. And again over the page, you can see that the plan was that at some point the same day you would repeat the whole process so that you could fly back from Luton to Moscow, another three-and-a-half-hour flight; that's correct, isn't it?
- A. Well, around that. I would say four hours, but that's the ballpark figure.
- Q. So we're talking here about a 13-hour round trip approximately; correct?
- A. Do you mean the flight took 13 hours?
- Q. Total round trip.
- A. It's just four hours.
- Q. The total round trip would be around 13 hours?
- A. Yes.
- Q. And that's really quite an effort, isn't it, especially given that you had only just come back from London the previous day?
- A. Well, yes, it is, unless you recall that it was G V: that was the most cutting-edge kind of aircraft at that time.
- Q. What I suggest, Mr Abramovich, is that these travel arrangements really speak volumes about the importance of this meeting at the Dorchester Hotel in London, don't they?
- A. Well, I don't know. That's the kind of conclusion that

you are drawing. I do not believe that that was the case, but this is the conclusion that you drew. For me, meeting with Berezovsky was always important. Some of them were more important, other meetings were less important. If he had asked me to fly to New York, I would have probably flown to New York if I had that possibility to do so.

Q. Here was a meeting where you had spent five days in London, you'd got back to Moscow, you get told that he wants to speak about the merger and you immediately arrange to take a trip back to London to talk to him about the merger. I suggest that that tells you that this was a very significant meeting to discuss the merger.

A. Are you asking a question? Am I expected to say "yes" or "no"?

Q. Well, you can comment.

A. What I can say is that the meeting with Mr Berezovsky, usually meetings with Mr Berezovsky generally for me were important and I was very particular about those and I was always happy to wait for him for a long time if I had to.

Q. Can we look at what you say at paragraph 166 of your statement about this. It's at page 85 in the English E1/03/85. I think it's at page 186 in the Russian

E1/03/186.

A. Did you say 186?

Q. Do read it to yourself: 166 on page 186.

Now, you say here that the reason why Mr Berezovsky wanted to meet was because:

"He liked to be informed about... events of significance in Russia..."

Do you see that?

A. Yes. Would you allow me to read this paragraph to myself?

Q. Please. (Pause)

A. Yes, I have read this.

Q. So you say that the reason why Mr Berezovsky wanted to meet was because he liked to be informed about events of significance in Russia and because he was interested in what you were doing.

Now, at this time Mr Berezovsky was still living in Moscow, was he not?

A. At that time, yes. Yes, he lived in Moscow.

Q. And so in general terms he was in a position where he could very well keep himself informed about events of significance in Russia; do you agree?

A. Yes, I agree with that, but I'm not sure I understand your question. Could he have been up to speed with what was going on? Yes, of course, he could. But he could

have not been up to speed with this unless he had heard this from Badri and then read about this from newspapers.

Q. But it's your own evidence that he had heard about it already from Badri and that Badri had passed this on to him. That's what you say. Is that not right?

A. Yes, I'm saying that Badri told him about this after I had told Badri about this.

Q. If that's right, then there was no need for you to fly to London, having just returned to Moscow, in order for you to tell him about it, was there?

A. What's your question? Was it necessary for me or not? I did not discuss that. It was offered to me that I should go and then -- so I did go. I don't understand what your question is.

MRS JUSTICE GLOSTER: The question is: what was the need for you to fly back from Moscow, having just returned there, if Berezovsky knew about the proposed merger already? Why did you need to go back to London?

A. At that point in time Mr Berezovsky was one of the most influential people in Russia and if he asked me to come and tell him about something, I usually did that immediately, without delay.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: If Mr Berezovsky had wanted to find out more

about this transaction and he wanted to hear it from you, you could have discussed it with him on the telephone, could you not?

A. Well, I don't think so. No, I don't think that we would have started discussing this over the phone.

Q. All right. That's your position. Can we then just consider the position of Mr Deripaska, Mr Abramovich.

It's your evidence, isn't it, that Mr Deripaska actively disliked both Mr Patarkatsishvili and Mr Berezovsky and did not get on well with either of them?

A. Yes. And with your permission I would like to clarify, if I may?

MRS JUSTICE GLOSTER: You may.

A. The situation was as follows. It took quite a long time. Mr Berezovsky -- at the request of Deripaska, if I understand correctly, Mr Berezovsky was helping him in the so-called aluminium wars. I do not mean to say that there were rivers of blood flowing there; "the aluminium wars" is a term and the way I understand this term is that it was a confrontation, a show-off between TWG on the one hand and Mr Deripaska on the other, mainly around the Krasnoyarsk smelter. And so Mr Berezovsky had offered to help Oleg and he had raised some debt for that, plus some money for the ORT. And then, some time

later, Badri began helping TWG against Mr Deripaska. And that loan, that debt, had not been repaid to Oleg and, to put it mildly, Oleg did not take kindly to this and he made it clear.

And therefore there were two people who were driving hard bargain against Oleg and playing a duplicitous game against Oleg, and Oleg got wind of this and he did not like it. In other words, to put it bluntly, they were cheating him.

Q. So you say that Mr Deripaska, who didn't like either Mr Berezovsky or Mr Patarkatsishvili, was nonetheless prepared to turn around, having just come back to Moscow, and go to a meeting in London with two men he disliked just because you wanted to talk to Mr Berezovsky about the merger?

THE INTERPRETER: I'm so sorry, Mr Rabinowitz, I'm afraid either yourself or me got a few names wrong.

MRS JUSTICE GLOSTER: Well, somebody's phone went off; that was part of the problem. Can you start --

THE INTERPRETER: Could you kindly repeat the question?

MRS JUSTICE GLOSTER: Repeat the question, please.

MR RABINOWITZ: Your evidence is that, despite disliking Mr Berezovsky and Mr Patarkatsishvili intensely, Mr Deripaska was willing to get on a plane and fly, take this trip to London just to talk to Mr Berezovsky?

A. No, I'm not saying that he flew there only for this. He flew there at my request and it made some economic sense and in order to draw a line under what had been happening prior to that under those aluminium wars. I mean, in order to achieve peace it was necessary to get together, meet and put an end to this. But he did not know that Mr Patarkatsishvili was going to be there.

Q. You see, in your witness statement what you say, Mr Abramovich -- and this is at paragraph 167 E1/03/85 -- is that you invited Mr Deripaska to come with you, you were still getting to know him, and you thought it would be a good idea on the way to discuss the further details of how your new business would operate in practice without interruptions, and that is why you asked Mr Deripaska to fly with you and he agreed. You don't say anything about trying to settle any aluminium wars; in fact, what you mention is Mr Shvidler commenting that he could get the repayment of his debt.

Is that still your evidence or are you changing this evidence?

A. I think that I did mention the debt. Yes, we did discuss the debt at that meeting, or maybe I misunderstood your question. You said: do I want to change my evidence?

MRS JUSTICE GLOSTER: I think it's being put --

A. No, I do not want to change my evidence.

MRS JUSTICE GLOSTER: It's being put to you, I think, that you don't mention in paragraph 167 the fact that Deripaska was flying to London because there was a possibility of resolving the aluminium wars.

A. That is true, I'm not writing about this. I was just trying to explain what the background had been, what had happened prior to that. So at that meeting we mainly discussed all the things that I listed here, but what I'm trying to do now is to give some broader context for this.

MR RABINOWITZ: You see, Mr Abramovich, I have to suggest to you that the reasons that you give, certainly in your witness statement, as to why Mr Deripaska would be willing to fly back to London on this 13-hour round trip, having just returned from London, are simply not a sufficient -- or do not properly explain why Mr Deripaska was willing to fly back.

The reason he was willing to fly back is that this was an important meeting that you were having with Mr Berezovsky, who you had told Mr Deripaska was a partner with you in the aluminium business; and that is correct, is it not?

A. No, it is not correct. If I understood you correctly, the \$13 million -- I mean, it sounded like it was not

sufficient in order -- the amount, the \$13 million, was not a sufficiently credible reason for people to go to London. This is the way your question sounded. Did I hear your question properly?

MRS JUSTICE GLOSTER: No, that's been lost in translation because the 13-hour round trip was referring -- the 13 figure was referring to the hours of the journey.

MR RABINOWITZ: Can we just look at the three reasons that you actually do give at paragraph 167 for why you say Mr Deripaska was willing to fly to London.

The first reason you say at paragraph 167 was so that you and Mr Deripaska could spend some quality time together on the plane where you could discuss things. That's the first reason, isn't it?

A. That is correct.

Q. And the second reason -- I think this is a reason you give -- is that he could ask Mr Berezovsky to repay him an outstanding loan of \$16 million. Is that a reason you give?

A. That is correct.

Q. And your third reason -- and this is the last sentence of that paragraph -- is that you wanted to demonstrate that you had powerful friends like Mr Berezovsky and Mr Patarkatsishvili, or powerful associates.

A. Yes. What it lists here are the reasons on my side and

on Deripaska's side, but what you are doing now is you are mixing the two together, as it were.

Q. Well, I'm just taking the reasons that you identify out of your witness statement, Mr Abramovich. Can we just look at them each in a little more detail.

It's right, isn't it, that you and Mr Deripaska had already just spent rather a lot of time together in early March 2000?

A. I wouldn't put it that way. I wouldn't say we had spent much time. We met at Kempinski, then at my place, and then I'm sure we went to -- we had meetings in Moscow. Then I was in London and he was in London, but we only met once.

Now, in order to put together a second-largest aluminium company in the world, one is required to spend much more time, much longer time together.

Q. Mr Deripaska was not a complete stranger to Moscow, was he? It was a place he would come and go frequently?

A. Well, he lived there.

Q. Absolutely, Mr Abramovich. If you wanted to spend quality time with Mr Deripaska, you could have done it in far more convenient surroundings than both of you, having got back from London on one day, getting on a flight back to London the following day. You wouldn't have had to drag him along on this trip.

A. Well, if your question is whether I picked the most comfortable surrounding, well, my answer is: no, probably not. But I told you that G V, which was the jet that we used, was the cutting edge, very low pressure, very quiet jet, and if this is what we're talking about, it was quite comfortable. G V is a comfortable jet; the Lanesborough Hotel is a comfortable hotel; and, well, let's face it, London is a nice place.

Q. As for the suggestion that he would fly back in order to talk about the repayment of an outstanding loan, why would Mr Deripaska have undertaken a 13-hour round trip just to ask Mr Berezovsky to repay him? He could have used the phone.

A. Well, it's hard for me to comment on that.

The thing is that Berezovsky took a long time to repay the money and I'm sure that he would not have agreed with Berezovsky on the repayment of the money over the phone and I'm sure that he did have a few meetings to discuss that debt and that was probably the first meeting at which they could have decided on some set-off, they could have agreed on a set-off, and that meeting gave a good opportunity for that.

And also \$16 million, for that time, at that time for Oleg was a rather significant amount of money.

Q. The suggestion that you wanted to demonstrate that you had powerful friends: it was well-known, wasn't it, that you were associated with Mr Berezovsky?

A. Yes, it was known to everyone but it would have not come amiss.

Q. There was no need for Mr Deripaska to fly to London in order to see that you were associated with Mr Berezovsky?

A. Just for -- only for that, it would not have been necessary. But if you take all those considerations together then it was necessary. I mean, mind you, it was not a vital necessity for him, but it was very useful, very helpful for all the sides, for all the parties, including it did make economic sense -- including the fact that it did make economic sense.

Q. Mr Abramovich, I have to suggest to you that your explanation of the reasons why you and Mr Deripaska were willing to turn around on 13 March and head back to London to meet Mr Berezovsky and Mr Patarkatsishvili is obviously untrue. Do you want to comment on that?

A. I disagree with your statement.

MRS JUSTICE GLOSTER: Can I ask you this question: why did it matter to you that Mr Berezovsky was in the loop about this transaction? What did you need from Mr Berezovsky that made it so important that you flew

back?

- A. To me personally, there was no benefit that accrued to me personally from this. If he had asked me to do this, I had to do this. I usually complied, if I could, with his requests. Therefore there was no benefit accruing to me from that meeting. But putting an end to that confrontation, let's put it that way, the confrontation between Badri, TWG, Oleg, and so on and so forth, was something that was important to me.

MRS JUSTICE GLOSTER: Yes, thank you.

MR RABINOWITZ: I thought in earlier evidence you had said that Mr Deripaska did not know that Mr Patarkatsishvili was going to be in London.

A. Deripaska did not know that.

Q. So how was it that his going there was going to provide an opportunity to put the confrontation with Mr Patarkatsishvili behind him?

A. Deripaska did not know about this but I did. And so when Oleg walked into that room in the hotel he was quite surprised and let's say that he was not very glad, let's put it that way.

Q. Mr Abramovich, I would suggest to you that it is absolutely plain that both you and Mr Deripaska and Mr Shvidler went to the considerable efforts of flying to London to this meeting at short notice because you

all recognised that this was an important meeting at which you were going to introduce Mr Deripaska to the partners which you had referred to in the preliminary agreement. That is correct, is it not?

- A. This is absolutely not the case and I think I already commented on the preliminary agreement.
- Q. Now, in terms of what was discussed at the Dorchester Hotel on 13 March, I think it's not in dispute that you did discuss the merger with Mr Berezovsky and Mr Patarkatsishvili as well as with Mr Deripaska?
- A. It is true that we did tell Mr Berezovsky about the merger.
- Q. And in fact that was the whole purpose behind your flying to London, having been told by Mr Patarkatsishvili that Mr Berezovsky wanted to hear about the merger?
- A. Berezovsky wanted to hear about the merger from me, he did not want to hear this from Oleg or anyone else, and I asked the others to tag along. Now, if he had needed any details then Mr Shvidler could have provided explanations about that. And the reason behind this trip was precisely all those things that we have just discussed.
- Q. Just sticking with your recollection for the moment, how clear is your recollection of this meeting on 13 March,

Mr Abramovich? (Pause)

A. Sorry, I did not realise it was a question. I thought you had said, "We will see how clear your recollection is". Well, I do not recall all the details but I do remember some of them.

Q. And I take it that there would obviously have been a discussion about the fact that the merger was with Mr Deripaska and that it was a 50/50 deal. Do you recall that?

A. It's very difficult for me to focus. I've no longer any feel for the questions that you're asking.

Possibly, yes. Possibly. I'm -- honestly, I'm --

MRS JUSTICE GLOSTER: Right. Well, I'm going to stop tonight. It's been a long day for everybody.

Right. Tomorrow, 10.30, 10.15?

Discussion re housekeeping

MR RABINOWITZ: My Lady, whatever you want. We are on track. According to the timetable, we will finish -- as long as things keep going -- within the designated time.

I was going to raise the question with your Ladyship of Friday sitting or not Friday sitting but I'm not suggesting, unless your Ladyship or Mr Sumption says that we should do this, that we should not sit tomorrow. So...

MRS JUSTICE GLOSTER: Right. Well, in order to consider the

question as to whether I should sit on a Friday, I would need to have a revised timetable.

MR RABINOWITZ: We can produce that for you tomorrow.

MRS JUSTICE GLOSTER: If you wish me to address that question.

MR SUMPTION: My Lady, we have got a revised timetable which Ms Davies is digging out, which we can hand up. This is, like all timetables --

MRS JUSTICE GLOSTER: It's flexible.

MR SUMPTION: This is not intended to be writ in stone, but it is the result of discussion between the parties and will tell your Ladyship where we think we are at the moment. (Handed)

MR RABINOWITZ: Can I just mention before my learned friend addresses you on this, I think it's generally agreed. The part which I don't think is agreed, perhaps still to be discussed, is the suggestion that there will be closing submissions immediately the evidence finishes, which is what this timetable suggests.

MR SUMPTION: My Lady, I understand my learned friend's difficulties about that. I'm not sure that it's a matter that we would ask your Ladyship to rule on at the moment.

MRS JUSTICE GLOSTER: No.

MR SUMPTION: But it may well be sensible for me to deliver

my closing speech on behalf of Mr Abramovich before the Christmas adjournment, even if my learned friend does so afterwards. Of course, that would involve Ms Davies having a right of reply on unexpected or unanticipated points and my learned friend would have to have the last word in any event.

MRS JUSTICE GLOSTER: Well, Mr Rabinowitz, if Mr Sumption's proposal were to be adopted, with the result that you wouldn't be making your closing submissions before Christmas, that might or might not free up Fridays.

MR RABINOWITZ: In response to Mr Sumption's proposal that I don't make closing submissions before Christmas, I can tell your Ladyship that I wasn't planning to, and if that means that Fridays are freed up then I would respectfully submit that that would be a good thing.

MRS JUSTICE GLOSTER: Well, why don't the two of you talk about it with the other counsel as to whether, if the defendant's closing submissions were to be presented before Christmas, that would enable a timetable to be formulated that didn't involve sitting on a Friday. But I'll rule on it if necessary.

MR RABINOWITZ: I hope we will be able to agree --

MR SUMPTION: My Lady, I'm sure that Mr Rabinowitz and I can sort something out that suits the court and all the parties.

MRS JUSTICE GLOSTER: Very well. I mean, it may be that we sit some Fridays and not others.

MR RABINOWITZ: Indeed.

MR SUMPTION: My Lady, there's one other small matter of housekeeping which Ms Davies would like to raise concerning Latvian Trade Bank.

MRS JUSTICE GLOSTER: Yes, very well. I signed some consent order the other day which should have worked its way back to you.

MS DAVIES: My Lady, that's the Chukotka one. Yes, we've got that. There's a further consent order but I need to explain it to my Lady because it's slightly --

MRS JUSTICE GLOSTER: Well, I signed another one.

MS DAVIES: No, that was to do with valuation evidence, my Lady, I'm told.

MRS JUSTICE GLOSTER: No, and yet another one.

MS DAVIES: I'm relatively confident that this one hasn't --

MRS JUSTICE GLOSTER: Mr Abramovich, are you all right? Would you like to go back to your seat? You don't need to sit there unless you wish to. You're coughing, that's all. If you would rather go back to your seat, you may do so.

MS DAVIES: I'm relatively confident that this one has not come to my Lady because we only managed to agree its terms yesterday. So this is a new matter, if I can put

it that way.

MRS JUSTICE GLOSTER: Right, okay. Well, pass it up.

MS DAVIES: Mr Gillis has been given it. I just need to explain how it arises because it's slightly unusual.

My Lady may recall the Latvian Trade Bank is the bank that was used by various companies connected to Mr Abramovich, in particular Pex Trade Corporation, Espat, Madison, Palmtex and Runicom.

In the course of the recent weeks it's become apparent that the Latvian Trade Bank may well retain documents relating to those companies but because the companies no longer exist, they cannot accept a request from us to provide the documents to them. But they have indicated in the correspondence, certainly so far as Pex and Espat are concerned, they have indicated in the correspondence which is attached to this clip that if an English court order were made, they would provide the documents.

That's their letter of 18 October, which is the second letter in the clip. They first of all explain -- it's slightly lengthy and I will just explain to my Lady -- that they can't do it on the basis of a request but then on the second page, in the passage in bold, they said they would be willing to provide the documents relating to Espat and Pex if there was an English court

order.

We then sent this correspondence to my learned friend and they asked for the order to be expanded -- that's covered by the first paragraph of the draft order -- to cover records relating to Madison and Palmtex and Runicom, which were other companies that had banking arrangements with the Latvian Trade Bank, and that's paragraph 2, but that is not covered by the letter from the Latvian Trade Bank because that's a request from my learned friend. We are happy for that to be accommodated in the order but I just needed to draw to my Lady's attention that it's not covered by the letter.

What's slightly unusual about this, my Lady, is that there is no office in this jurisdiction on which an application can be served, which is why there is no application notice being issued, but the Latvian Trade Bank have indicated through their letter that they're happy to comply with an English court order if it's made nonetheless.

MRS JUSTICE GLOSTER: So they're agreeing to submit to the jurisdiction for the purposes --

MS DAVIES: Of this order, yes.

Now, my Lady, I wasn't necessarily asking my Lady to make it today because we've, as it were, just raised it.

If my Lady wants to take it away and read it, then we can address any questions that are arising.

MRS JUSTICE GLOSTER: Yes, the letter is a bit opaque, isn't it, so I had better take it away and read it. I'll read that overnight.

MS DAVIES: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: No, the other order I signed related to, I think, some Curtis documents.

MS DAVIES: Oh, yes. That may well be correct, yes.

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: My Lady, might I just raise one matter and hand up a statement from a Mr Lugovoi which was provided to the various parties this morning and then if I could just explain the situation. (Handed)

Your Ladyship may recall that in connection with Mr Abramovich's application in March this year for further information in relation to the provenance of the Le Bourget transcript, both Mr Berezovsky and Mr Cotlick undertook to the court to notify the defendants in the event that they became aware of the possibility of further tape recordings of conversations.

Just for the record, my Lady, Mr Berezovsky's statement is at bundle J6/1, tab 20 at page 330 J6/1.20/330 and the relevant paragraph is paragraph 7, and Mr Cotlick's statement is at J6/1, tab 21 at

page 331 J6/1.21/331, and again the relevant paragraph is paragraph 7.

Just to put this statement in context, my Lady may know that in 2010 Mr Berezovsky was successful in libel proceedings in front of Mr Justice Eady against Vladimir Terluk and that was in connection with allegations that Mr Berezovsky was involved in the death of Mr Litvinenko. Mr Terluk's appeal against that judgment is being heard this week and in that context yesterday this statement from Mr Lugovoi was referred to in open court and it refers both to the circumstances in which the Le Bourget recording was made and it refers to the possibility of further recordings.

My Lady, pursuant to Mr Berezovsky's and Mr Cotlick's obligations, we've provided a copy of this statement to the defendants in respect of that. My Lady, I think if I could just summarise the position very briefly and take your Ladyship to the relevant paragraphs because there are only a few paragraphs that are relevant.

Mr Lugovoi was the head of security at ORT and the relevant sections in the statement are paragraphs 77 through to 87 of Mr Lugovoi's statement, and if I could take your Ladyship to that just very briefly.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Maybe I could just ask your Ladyship to read paragraphs 77 to 87.

MRS JUSTICE GLOSTER: Yes. (Pause)

What's the date this was sworn?

MR GILLIS: This was sworn on 26 October 2011.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: So, as my Lady can see --

MRS JUSTICE GLOSTER: I haven't got a signature. I've seen the date at the top of the first page but as I have no signature --

MR GILLIS: My Lady, neither do I. I was just taking the date from the front page. I'll see if there is a sworn copy which we can produce to your Ladyship.

As your Ladyship will see, those paragraphs really deal with three matters. At paragraph 77 to 81 Mr Lugovoi is suggesting that meetings and conversations were routinely recorded. And then at paragraphs 82 to 87 he then describes how his deputy, Mr Mikhail Sazonov, arranged the remote recording at Le Bourget and I'm informed in Skadden's letter of 4 August 2011 -- and that's bundle L(2011)13/185 -- that Mr Abramovich has been in touch with Mr Sazonov.

Then, my Lady, of most direct relevance to the undertakings that were given in respect of further recordings, at paragraph 87 your Ladyship can see that

Mr Lugovoi explains that, following orders from Mr Patarkatsishvili in 2006, he ordered Mr Sazonov to transfer part of the recording archive to Georgia and that in Georgia Mr Patarkatsishvili is reported to have sorted the recordings into three categories of Sibneft, Rusal and ORT and he also asked Mr Sazonov to make a copy of the ORT recording which was kept by Mr Lugovoi --

MR SUMPTION: Of the Le Bourget recording.

MR GILLIS: I'm sorry, yes, of the Le Bourget recording, which was kept by Mr Lugovoi in Moscow.

MRS JUSTICE GLOSTER: Right.

MR GILLIS: So, my Lady, no indication that Mr Berezovsky has access to any of these possible further recordings, but that's the further information that is available as regards the possibility of there being further recordings.

MRS JUSTICE GLOSTER: Right. So are you making any application?

MR GILLIS: No, I'm just bringing it to the court's --

MRS JUSTICE GLOSTER: Complying with the terms of the undertaking.

MR GILLIS: Exactly so.

MRS JUSTICE GLOSTER: Right, thank you.

Mr Sumption, do you want to say anything about this?

MR SUMPTION: My Lady, what it appears to indicate is that the Le Bourget transcript, its survival appears to have been a matter of conscious selection on the part of Mr Patarkatsishvili, given that there seem to have been a large number of other recordings at one stage that may well throw some light on the history of events. But I'm not going to make submissions on that at the moment.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: My Lady, your Ladyship didn't actually determine at what time we should sit tomorrow.

MRS JUSTICE GLOSTER: No, I didn't. 10.30 tomorrow?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: Very well. 10.30 tomorrow.

(4.27 pm)

(The hearing adjourned until  
Friday, 4 November 2011 at 10.30 am)

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Friday, 4 November 2011

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR ROMAN ABRAMOVICH (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Mr Abramovich, we were talking yesterday about the Dorchester Hotel meeting and you explained yesterday that you do not recall all the details of the Dorchester Hotel meeting but that you do recall some of them. I would like just to ask you about some of the details that you do recall.

There would obviously have been a discussion at the Dorchester Hotel meeting about the fact that the merger was with Mr Deripaska and that it was a 50/50 deal; is that right?

- A. It is possible that we exchanged a couple of words about that but we did speak about the merger a little bit.
- Q. Since it's your case that Mr Patarkatsishvili would have been very interested in understanding the detail of the transaction because you say he was going to be compensated based upon how you did, you would also have discussed the assets involved in the merger?
- A. No, we did not discuss those. The thing is -- and, if I may, I'd like to clarify. The thing is that, so far as I recall, by that time we had not yet agreed with

respect to the other assets, we had only agreed about KrAZ and things around KrAZ: Krasnoyarsk Aluminium Plant, Achinsky Plant and the other things. These were the only ones we had already agreed upon by that time.

Q. But that would make it more likely rather than less likely that you would discuss what assets were involved in the transaction, wouldn't it?

A. No, it would not.

Q. Which assets do you say Mr Patarkatsishvili was protecting for you?

A. I cannot give you a list of the assets that he was protecting, but on the whole there was a problem with the Krasnoyarsk group. The Bratsk plant was working stably on the whole, was working in a stable manner.

Q. You see, Mr Abramovich, if, as you say, Mr Patarkatsishvili's role was to ensure that you had protection in respect of your assets, surely you would have told him what assets were now to be merged with Mr Deripaska and what assets were not?

A. At that time we had not yet decided that all the assets would be merged and we were not -- we had not decided how, we had not yet discussed how they would be merged. We had not yet decided that with Mr Deripaska.

Q. Would you at least accept that you would have told Mr Patarkatsishvili that?

A. I think that the reverse was true: that had I said this to Mr Patarkatsishvili, I would probably have spoken to him about the KrAZ assets. But I don't think that we were discussing this. There is a low probability that we did this. I mean, I was not intent on concealing this in any way, it was not my idea to hide this, but we just did not discuss this.

Q. Do you remember telling Mr Berezovsky and Mr Patarkatsishvili that you had just been negotiating the transaction in London with Mr Deripaska's English lawyers?

A. I did not negotiate with English lawyers. That's why there was -- there was nothing that I could say because I don't think that I had had any meetings with English lawyers.

Q. Do you remember telling Mr Berezovsky and Mr Patarkatsishvili that there had been negotiations in London with Mr Deripaska's team?

A. No, I did not say that. I have not said that.

Q. Do you remember saying that you had agreed with Mr Deripaska that your arrangements would be governed by English law?

A. I was not aware of that at that time. It's not that I was concealing this but I just didn't know it. It made no difference to me as to what the governing law

would be.

Q. Mr Abramovich, we're not going back to this again but do you recall that the preliminary agreement that you made did say that the arrangements were to be governed by English law? Do you remember that?

A. I do remember that. What we discussed yesterday, there was a reference to English law and that's with respect to the agreement that was to be signed on the 15th. But I also remember that I did not read this agreement, therefore there is no way I could have known about this.

Q. I suggest to you --

MRS JUSTICE GLOSTER: I think what was said was "to be signed on the 15th", not "to be assigned on the 15th". What was said by the interpreter was "to be signed on the 15th". But could I clarify, please, whether "assigned" is being referred to by the witness here or "signed"?

MR RABINOWITZ: My Lady, is that addressed to the translator or would you like me to ask the question again?

MRS JUSTICE GLOSTER: What did everybody else hear? I think it's just a transcription query.

MR RABINOWITZ: It should be "signed".

MRS JUSTICE GLOSTER: "Signed". Well, could that be corrected in the transcript, please.

MR RABINOWITZ: So, Mr Abramovich, what I suggest is that

you did discuss all of these things with Mr Berezovsky and Mr Patarkatsishvili at the Dorchester Hotel meeting. But you dispute that, do you?

A. Yes, I do dispute that, and I can explain the situation that appertained there and that may help to clarify the situation.

Q. If you want to provide a further explanation, will you please go ahead.

A. When we arrived at the Dorchester Hotel -- and I think it was well past midday, past 12 noon -- so we walked into the room and there was Mr Patarkatsishvili there. Oleg was, to put it mildly, surprised, and he was quite, quite upset, he was angry. And then we spent a lot of time, a long time, waiting for Mr Berezovsky to come to us and there was silence, there was silence there, oppressing silence, and Oleg left the room several times, he spoke on the phone with someone.

And when Berezovsky joined us, not only was it not a formal meeting because he was -- he was not properly attired, but when Berezovsky joined us, the conversation was a rather brief one, therefore there is no way we could have discussed all those details. More than that, moreover, I was not even myself aware of those details.

Q. Mr Abramovich, you're suggesting you weren't aware of details relating to which assets were going to be merged

with Mr Deripaska?

A. No, I do not want to say that I did not know, I was not aware of the details of the assets that would be merged with Mr Deripaska's assets. Quite on the contrary: I was very well aware of that.

Q. Are you suggesting you weren't aware that there was going to be a 50/50 merger?

A. I knew that as well. What I'm saying is that your assertion with respect to English law is somewhat surprising to me because I never took part in this, I never participated in this -- definitely not with Berezovsky or Patarkatsishvili as to what the governing law would be and what law would apply where.

Q. The truth is --

MRS JUSTICE GLOSTER: Sorry, how long did the meeting when Mr Berezovsky arrived last?

A. Well, my feeling is that it was probably 20 to 30 minutes but it's really the feeling, the sense that I get now. Well, maybe a little bit longer than that but I cannot tell exactly. It was definitely not a long meeting. And we tried to defuse the situation, in a way, and improve the relationship somehow. But there was no one there who would be able to discuss questions of business.

MR RABINOWITZ: Mr Abramovich, I think other witnesses

suggest it was an hour. You wouldn't disagree with that, would you?

- A. I am not disputing anyone's evidence. What I'm saying is that this is my feeling, this is the sense that I got. I remember that the wait was very long but the meeting itself was a rather brief one.

The thing is that I was used to waiting, spending time waiting for Berezovsky, while for Oleg it was a first ever, so it was rather awkward. So -- he did not want to see Badri and so the whole thing, the whole thing was just unpleasant, even though at the end of the day everything -- at the end of the day everything went smoothly and we defused it, in a way.

- Q. Mr Abramovich, your evidence is that you, after spending a week in London, flew back to Moscow, got on the very next flight back or a flight back very quickly to go to London to discuss the merger with Mr Berezovsky, but you also say that when you arrived back in London for this meeting with Mr Berezovsky to talk about the merger, in effect nothing was said about it. I suggest --

- A. I'm not saying that nothing was said in a substantive manner. The substance was that there was going to be a merger, that the debt would be repaid, that Badri would get an airplane; these are the things that we discussed and that's it. The substance was that we need

to put an end to the confrontation, draw a line, it's a new life beginning. But discussing the applicable law was definitely not part of the substance, the way I see it at least.

- Q. I suggest to you that there was a much greater discussion of the merger than you are suggesting, but you have disagreed with that.

I also suggest to you that it was also agreed at the Dorchester Hotel between yourself, Mr Berezovsky and Mr Patarkatsishvili that you would manage the partnership's affairs in the merger with Mr Deripaska, and the partnership I'm referring to here is the partnership between yourself, Mr Berezovsky and Mr Patarkatsishvili. Do you agree with that?

- A. No, I do not agree with this.

- Q. I also suggest to you that you also agreed with Mr Patarkatsishvili and Mr Berezovsky that the arrangements as between the three of you, just like your arrangement with Mr Deripaska, would be structured offshore and governed by English law.

- A. No, that was not the case.

- Q. You also agreed that although Mr Berezovsky and Mr Patarkatsishvili would not be formally registered as shareholders in the new entity to be created, you would hold Mr Berezovsky and Mr Patarkatsishvili's 25 per cent

stake on trust for them; do you agree?

A. I do not agree with this either.

Q. And you also agreed that in order to ensure that Mr Berezovsky and Mr Patarkatsishvili's minority interest was protected, nobody would sell out without the consent of the other parties; do you agree?

A. No, I do not agree with that.

Q. Now, one of the matters that you do accept was discussed at the Dorchester Hotel meeting was that a plane would be bought for Mr Patarkatsishvili; that's correct, isn't it?

A. Yes, that is correct.

Q. And do you say that your agreement to buy a plane for Mr Patarkatsishvili was in return for his assistance in enabling you to acquire the aluminium assets that you'd acquired in February 2000 or was it for a different reason that you agreed to buy this plane for Mr Patarkatsishvili?

A. Could you please repeat your question? I'm not sure I understood the second part of it. What was the other reason?

MRS JUSTICE GLOSTER: I think if you're saying, Mr Rabinowitz, if you're putting to the witness, "You say that your agreement to buy a plane", wouldn't it be easier just to put his statement to him?

MR RABINOWITZ: I want to check to see whether he actually remembers this, my Lady, but we can do it that way.

MRS JUSTICE GLOSTER: Okay. It's just that there is a difficulty in him taking on board, as it were, the two limbs of the statement that you're putting.

MR RABINOWITZ: I'll do it this way.

What do you say was the reason why you agreed to acquire a plane for Mr Patarkatsishvili at this meeting, Mr Abramovich?

A. Badri asked for a plane, so we discussed that. My feeling is that I believe that he wanted a plane, we also discussed that I would pay the five-year maintenance after the purchase of the plane, and it was all with respect to the aluminium assets that he had originally helped us acquire. So I think that's it.

Q. Again, you say he asked for a plane and you agreed that he should have a plane; that's correct, isn't it?

A. Yes.

Q. But again, can you just explain why you agreed that he could have a plane?

A. We agreed -- I mean, I agreed that a plane would be made available to him because he had given me a hand in -- given me assistance in the purchase of the original assets and the thing was that we were moving on to another transaction, a further transaction, and he had

nothing on his hands. And so he asked me whether it would be appropriate for him to ask me to buy a plane for him and I said yes. By that time Badri was not a very wealthy individual. And so we bought the plane and we paid for the maintenance.

- Q. But do you not say, Mr Abramovich, that you had previously entered into commission agreements with Mr Patarkatsishvili and that his reward for assisting you with the original acquisition was documented in those commission agreements?
- A. Yes, this is what I'm saying. I -- one of the things that I'm saying is that there was a commission agreement and it was recorded on paper, but by the time the transaction was executed -- concluded with Oleg, Badri had not yet received anything, and prior to that we had agreed that he would not be asking for any payments.
- Q. But if you'd already agreed what he should get, as you claim, for his assistance, why should he then think he had a basis for asking for a plane as well?
- A. Why he thought so, I don't know, but he asked me and I agreed.
- Q. Well, why did you agree then?
- A. And I agreed because he had been of considerable assistance and his -- it was not very clear what his role would be in the future work with aluminium assets,

and so I agreed to this. So he asked me and I agreed and that's it.

MRS JUSTICE GLOSTER: Did he get his commission payment as well?

A. Not by that time. He received it much later, I think it was in 2004. When we signed the agreement, I think there was a term of -- for two months before the payment could be made and then we moved on to another transaction. So we agreed at some point in time that we would not be making payment at that time, we would sort it out some time later. But because it was already the year 2000 we had paid quite a lot and the cashflow was like a constant cashflow, and I wouldn't say that we had forgotten about this but it just so happened, but by that time I had not yet made the payment.

MRS JUSTICE GLOSTER: So the plane was in addition to the payments you subsequently made under the commission agreement?

A. Yes, that was the case. That's the way it was.

MR RABINOWITZ: Are you sure about that, Mr Abramovich? Are you sure it's your evidence that you made a payment under those commission agreements?

A. If I understood your question correctly, your question was whether I had made a payment to Badri, whether it was a final settlement. Now, whether the payment was on

the basis of the commission agreement or it was -- the reason for this was something different, that's a different matter. It was recorded in the form of a sale of shares actually.

Q. Mr Abramovich, the learned judge asked you -- my Lady asked you whether you had made a payment under the commission agreements and you said that you had, in 2004. And my question to you was whether you were sure that when you made a payment in 2004, that was a payment made under the commission agreement?

A. No, it was not a payment under the commission agreement. We recorded this as a share payment but it was on the basis of the debt that I -- or the payable that I had incurred prior to that on the basis, as a consequence of the commission agreement.

MRS JUSTICE GLOSTER: So the payment by shares which you subsequently made was in satisfaction, was it, of your obligations under the pre-existing commission agreement?

A. Yes.

MR RABINOWITZ: Now, we're going to look at these commission agreements in a little more detail but before we do, can we just be clear about this.

The commission agreements provided for a payment of around just over \$100 million; is that right?

A. 115.

- Q. And the payment you made in 2004 was \$585 million; is that right?
- A. Yes, that is correct.
- Q. And your evidence is that the \$585 million payment was in satisfaction of an obligation to pay \$115 million; is that right?
- A. I think you are distorting the sense of it a little bit but it was on the basis of that agreement, yes.
- Q. Well, I'm going to suggest that that makes no sense at all but perhaps we can start by looking at these commission agreements.

Now, your evidence I think is that the commission agreements were made with Mr Patarkatsishvili sometime around 15 February 2000, after you had concluded the agreement to acquire the aluminium assets on that day. That's correct, isn't it?

- A. Yes, so far as I can recall, it was very close to that time, if not on the very same day when we signed the agreement to make an additional payment to Mr Chernoi.
- Q. If you go to paragraph 157 at page 82 of bundle E1, tab 3 E1/03/82, page 183 in the Russian E1/03/183, we can see what you say about this. If you just read the first part of that paragraph, explaining the circumstances in which you say you made the agreement.

(Pause)

- A. Yes, I have read this.
- Q. Perhaps we can look at one of these agreements. You can find one of them at bundle H(A)18, page 162 in the English H(A)18/162 or page 156 in the Russian H(A)18/156. This agreement purports to have been with Dilcor International Limited: that was one of the four offshore companies which had acquired the aluminium assets under the 15 February agreement and I can tell you that the other three agreements are identical.

Let's just have a look at this contract. You can see, Mr Abramovich, that it's dated 3 February 2000; that is, before the master agreement was made on 15 February 2000. And that is a false date which has been inserted; that's correct, isn't it?

- A. Which is the false date: 3 February or 15 February is false?
- Q. To suggest, as this agreement does, that it was made on 3 February 2000 is false if your own evidence is correct because you say it was made on 15 February.
- A. Yes, that is true and this is exactly what I'm saying in my evidence.
- Q. And to be fair to you, when I asked you, in connection with the occasion on which you had been arrested, whether you -- by reference -- sorry. When I asked you, in connection with the occasion on which you had been

arrested, whether you had ever made fabricated or false documents, you accepted that there was some backdating going on and this, presumably, you would say is just one of those occasions, would you?

A. Yes, this is the document that I had in mind.

Q. Well, we will see in due course that it's certainly not the only document.

But what I'm going to suggest to you, Mr Abramovich, is that the date is not the only thing that is fake or false about this document. Perhaps we can look at clause 1. Do you see that clause 1 says:

"The Intermediary..."

And the intermediary for these purposes is Mr Patarkatsishvili.

"... shall find out any information on owners and potential sellers of shares in the following issuers:

"Krasnoyarsk Aluminium Plant..."

"Bratsk Aluminium Plant..."

"Krasnoyarsk Hydropower Plant..."

If this contract was made on 15 February, the day on which the contract for the acquisition of these assets had already been concluded, what sense was there in inserting a provision into the contract which suggested that Mr Patarkatsishvili's role was to be to find out information about these assets? That had already been

done.

A. This contract, on the whole, describes the work that Badri had carried out, but -- and we did backdate the contract, but the work that is set out here is something that he did do. So in that sense it is truthful: it corresponds to reality.

Q. Well, I suggest to you that that is not so. Let's look at the next clause:

"The Intermediary shall negotiate the potential sale of said shares to the Buyer by the persons referred to in paragraph 1..."

Now, again, at the date you say you made this contract with Mr Patarkatsishvili, that had already taken place, had it not?

A. Well, practically all the things that are listed here, they had all taken place already by that time.

Q. Then what was the point of producing a contract which represented on its face that these were things which were still to be done? You could just as easily have produced a contract which said, "In connection with the work you have done, we will pay you \$115 million".

A. Unfortunately I cannot say that because I did not take part in the drafting of this contract. Badri I think did this with our lawyers or with some of our employees.

Q. Well, Mr Abramovich, what you say in your witness

statement is that:

"After [the 15 February agreement was signed with Mr Deripaska] Mr Patarkatsishvili wanted to formally document his entitlement to a fee... We discussed this in my office... and agreed a fee of some US\$115 million. I remember that I called in Ms... Panchenko and asked her to process the relevant documents..."

So it sounds as if you were involved in this?

A. When you said "Deripaska" -- it was translated as Deripaska -- Deripaska had nothing to do with this. Either it was the wrong translation or it was the wrong question.

Q. Well, I don't know what the translation was, but the question was clear. You had made an agreement with Mr Deripaska -- sorry, you hadn't, you're quite right. I apologise.

The acquisition had been made from Trans-World and Mr Chernoi and then, following that, you explain in your witness statement that you had discussed and agreed a contract with Mr Patarkatsishvili and you then called Ms Panchenko in to assist in the documentation of it?

A. Yes, that is true. Now, if you call that taking part, active part in drafting the contract, well, I beg to differ.

Q. Well, let's just look at a few more clauses in this

contract. Do you see clause 4?

"The Buyer shall hereby determine the following terms and conditions pursuant to which he is willing to buy any shares...

"4.1. The shareholdings shall be major;

"4.2. The maximum share purchase price shall not exceed..."

Then certain prices are inserted there.

Now, that was all a sham, Mr Abramovich, because you absolutely understood at that time precisely what it is you were paying for these assets. Do you accept that?

A. Do I accept what: whether this is a sham or the whole thing is a sham? If backdating the contract is something you call a sham, then so be it. But...

Q. It's not just backdating the contract, Mr Abramovich --

THE INTERPRETER: I'm so sorry, my Lady, I'm afraid I missed out one sentence in what Mr Abramovich said, the very last one. Can I ask him, with your permission, to repeat the last sentence?

MRS JUSTICE GLOSTER: Yes, certainly.

Can you repeat the last sentence, Mr Abramovich, please.

A. So what I said is that if you call this a sham just because it was backdated, then so be it. But other than that, the substance is set out here.

Q. Look at clause 5 -- sorry.

A. But once again --

MRS JUSTICE GLOSTER: No, no, let the interpreter finish, please.

THE INTERPRETER: I'm almost done. I was listening to Mr Abramovich.

MRS JUSTICE GLOSTER: Right, okay. Go on, Mr Rabinowitz.

MR RABINOWITZ: Look at clause 5, Mr Abramovich:

"The Buyer and the Intermediary have agreed that, in case the share sellers propose terms and conditions worse than those specified in paragraph 4.2, the Intermediary shall be obliged to compensate any negative difference to the Buyer out of its own funds."

So this was suggesting that part of what you had agreed with Mr Patarkatsishvili was the possibility that he would have to make some sort of balancing payment if the terms agreed were worse than as identified here.

A. Let me say once again that I did not take part in the drafting of this contract, so I can only tell you what my ideas or what my presumptions are.

Q. You see, this, I suggest to you, is a totally false contract.

MRS JUSTICE GLOSTER: Well, hang on. Let's just start with this clause, please.

Was it a term of your deal with Badri that in the

event that the terms and conditions were worse than those specified in 4.2, Badri was to make a balancing payment to you out of his own funds?

- A. We did not agree on that term. It is worded in -- couched in very strange terms here. What happened was that Badri did want me to do this deal, he wanted to push me towards doing this deal, and he didn't care at what price I was going to buy this. And we agreed that I would not buy this at a -- for more than a certain price.

Now, why they listed those figures here, I don't know. There are many figures here that we never discussed. Maybe the lawyers needed this or maybe Badri wanted this, but I cannot give you any comment on this because I did not take part on this. But in general we agreed on something, but not more than that.

- MR RABINOWITZ: Mr Abramovich, your own evidence is that you first discussed this with Mr Patarkatsishvili on 15 February, which was after you had actually reached agreement with the sellers of the aluminium assets. That's correct?

- A. The fact that we needed to sign this protocol is something that we agreed upon on or around the 15th.
- Q. Your evidence is very clear, Mr Abramovich: that is when you say you discussed this and agreed it with

Mr Patarkatsishvili and that was after the master agreement had already been made. Do you agree?

A. What is the master agreement?

Q. The agreement --

A. Is that the agreement between us and TWG et altera?

Could I ask you to repeat your question, if I may?

Q. Your evidence is that after you had agreed with Trans-World and the other sellers on 15 February the terms on which you were acquiring the assets, you then had a discussion with Mr Patarkatsishvili about compensation?

A. We had previously agreed that Badri would get a commission. That's -- all the rest of it is something that we agreed upon in the process of it.

Q. And by that stage you would have known full well the price at which these assets were being acquired?

A. By the time this agreement was concluded we did know the price at which everything was being acquired because everything had already been signed.

Q. There could, therefore, have been no purpose in clause 5, which suggested a possibility of an outcome which was different to that which already existed?

A. From that point of view, everything that is listed here is something that could have not happened because everything had already happened. Not just this

particular paragraph; everything.

Q. The point about this particular paragraph is that it suggested that the payment that Mr Patarkatsishvili might receive might not be \$115 million, indeed that he might have to pay something to you, and that was impossible at the time this contract was made.

A. That is true. That is something that was impossible.

Q. And the same is true of clause 6, which again is based upon the false notion that there was still negotiation to be done in relation to these contracts?

A. By the time this protocol was signed, all the negotiations had already been carried out and concluded.

Q. And that is why I suggested to you that this is a sham agreement: it does not possibly represent the agreement you actually made.

A. No, this is not the case because it sets out something that we had agreed upon except that it was backdated. It sets out more details than the details that we had discussed, but the substance is this.

Q. Mr Abramovich, you and Mr Patarkatsishvili would obviously have known the true position in relation to any agreement that you did make with regard to commission; would you accept that?

A. If I understood your question correctly, yes, we did know what the actual situation was.

- Q. Can you then explain why you and Mr Patarkatsishvili considered it appropriate to produce an agreement which falsely misrepresented what had been agreed?
- A. I do not agree with your statement that it misrepresents this; it just goes into greater detail than what was necessary and what was the tradition. The only question is that it was backdated; I agree with that. But other than that, it sets out everything correctly, except that it goes into greater detail than it should have gone into. But drafting this agreement were lawyers, therefore I cannot give you any comment as to why they saw it appropriate to go into all those details.
- Q. Mr Abramovich, I'm not going to go through the other three so-called commission agreements; they are all equally dubious in the same way that this agreement is. But what I want to ask you is this: why do you say -- well, I think I may have asked that already actually.
- You see, what I want to suggest to you, Mr Abramovich, is that your evidence about these commission agreements is simply untrue. Do you want to comment on that?
- A. I do not agree with this.
- Q. Can we at least agree about this: do you say that it was only after the Dorchester Hotel meeting on 13 March 2000 that Mr Patarkatsishvili had these agreements notarised?

A. I am not saying this. I found this out only when some documents appeared in the process. But I was not aware of that.

Q. But I think you say in your evidence and indeed you rely in your evidence upon the fact that Mr Patarkatsishvili had these agreements notified on 16 March, that is to say immediately on his return from the Dorchester Hotel meeting?

For your Ladyship that's at paragraph 176 of Mr Abramovich's statement E1/03/88.

MRS JUSTICE GLOSTER: I don't think it is.

THE WITNESS: Can I read this?

MRS JUSTICE GLOSTER: It's not paragraph 176, it's another paragraph. There's something there about it, because I've read it, but it's not that paragraph.

MR RABINOWITZ: I think it's common ground that these agreements were only notarised --

MRS JUSTICE GLOSTER: Yes, but I don't think Mr Abramovich is saying that he knew it at the time.

MR SUMPTION: Paragraph 175, my Lady, what my learned friend wanted E1/03/87.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Now, can I ask you this, Mr Abramovich: if these documents had been in existence, as you suggest, since 15 February 2000, can you offer an explanation as

to why Mr Patarkatsishvili would not have had these notarised immediately and would only have had these notarised on 16 March 2000?

A. I have no knowledge about this. I can only speculate.

Q. Can you offer a suggestion as to why you suggest that might have been the case?

A. I believe that because we did the deal with Deripaska, Badri was left with an aftertaste that Oleg will squeeze me out and he would not get anything at all at the end of the day. But this is just my perception, the feeling that I have. It's just my speculation, purely my speculation. I think he -- something put him on his guard, maybe during the meeting at the Dorchester or after it. Maybe he was thinking about bringing an action with this and that's why he had it notarised. But I do not have any other ideas.

Q. Is it not actually your evidence that these commission agreements had, long before the Dorchester Hotel meeting, been agreed between you and Mr Patarkatsishvili -- sorry, let me start that again.

Your evidence is that you and Mr Patarkatsishvili had, long before the Dorchester Hotel meeting, agreed that these so-called commission agreements would be superseded by a further agreement between the two of you. Is that not your evidence?

A. No, I don't recall saying that those would be superseded by others, or maybe I misunderstood your question.

Q. Well, let me tell you what you said at paragraph 157, page 82 of the English E1/03/82 and 183 of the Russian version E1/03/183. After talking about how these agreements were created, you say:

"In the end I did not pay him this fee because we both agreed shortly afterwards that we should wait and see how things developed."

Now, that suggests, does it not, that shortly after you had made these agreements you decided that they would be superseded and not in fact represent the contract you made?

A. Well, maybe this is what the English translation says but in Russian it's very clear that we were not talking about any new agreements. There was no talk, no mention of any new agreements.

Q. Well, what did you mean when you said there, "we... agreed shortly afterwards that we should wait and see how things developed"?

A. Well, before the transaction with Oleg was done, everything was under a major risk. The 115 million compared to the original transaction was a lot of money. And so we agreed that we'll wait and then we'll see.

Q. You agreed that you would wait and then you would see

what exactly?

- A. How the situation evolves.
- Q. And are you suggesting that, depending on how it evolved, the amount you would have to pay would either be greater or less than \$115 million? Is that what you say you agreed?
- A. No, this is not what we agreed. There were many assets that were under risk; we could have lost many of them. For instance, the Achinsk Alumina Plant was in bankruptcy and if it hadn't been there at all, if there had been no Achinsk there, then it would have lost sense at all: there would have been no point in entering into that transaction because that was the only plant that actually produced the feedstock, the actual raw material.
- Q. Now, you explained yesterday that the deal that you did with Mr Deripaska in March meant that the aluminium transaction generally was a remarkably good transaction. Do you remember that?
- A. Yes, I do recall that. It was a very good transaction and that's why, at the end of the day, I paid more to Badri.
- Q. Why, following the Dorchester Hotel meeting with Mr Deripaska, when Mr Patarkatsishvili would have learnt that the deal that you had done was a remarkably good

deal, why then should he rush off and have these commission agreements notarised, given that you say they were largely irrelevant because what he was going to receive was going to depend on how things turned out?

Shall I break that down into shorter questions for you?

Now, as a result of the transaction with Mr Deripaska, the aluminium transaction that Mr Patarkatsishvili had, in a sense, introduced you to was a remarkable transaction; I think you've agreed with that. Your evidence is that Mr Patarkatsishvili --

A. Yes, I agree with that, yes.

Q. Your evidence is that Mr Patarkatsishvili, after hearing about the deal that you had done with Mr Deripaska, at that point ran off and notarised these commission agreements; is that right?

MRS JUSTICE GLOSTER: He didn't know that at the time, Mr Rabinowitz.

MR RABINOWITZ: No, that's his explanation now. It's his explanation in the witness statement.

That is your evidence, isn't it? That is what you have suggested was the reason why he went on the 16th to notarise this? In fact you repeated that evidence this morning.

A. I'm not saying that he did this on the 16th. What I'm

saying is that when I received the documents in the course of these proceedings I saw that I believe it was notarised on the 16th. This is the only thing that I can say.

And I speculated that perhaps he was unhappy with something or maybe he did not trust or believe Oleg; maybe he did not believe me or he did not believe that I would be able to structure a good relationship with Oleg; maybe there were other things that he did not believe in. But this is pure speculation.

Q. Why was any view that he had about Mr Deripaska relevant to your obligation to pay him commission?

A. Well, once again, I can only speculate. This is pure presumption on my part -- or assumption, rather.

Q. You see, Mr Abramovich, what I suggest to you is that these so-called commission agreements were only produced after the Dorchester Hotel meeting and they were produced by you and Ms Panchenko knowing that they were false agreements and that they were never intended by either side to have any legal effect at all.

Do you want to comment on that?

A. I disagree with you. I understand that I cannot be my own counsel but then, I don't know, then it would be strange for me -- it's really -- it appears strange. Why on earth did Patarkatsishvili then go and have those

agreements notarised?

Q. I'll tell you exactly why, Mr Abramovich. You and Mr Patarkatsishvili had agreed at the Dorchester Hotel that you would be paying a certain sum of money towards the acquisition of a plane by him; that's right, isn't it? Mr Patarkatsishvili wanted documentation to be able to show to a western bank so that he could open an account into which you would be making payments so that he could acquire this plane.

A. Can I comment?

Q. Please.

A. \$115 million could buy you four planes, I think.

Q. Well, Mr Abramovich, there are documents in the disclosure which show payments by you or by your companies to a company that Mr Patarkatsishvili set up called Bili SA, which was the company he used to acquire, maintain and fit out his aeroplane, running to at least \$50 million over the course of a year, the year immediately following the Dorchester Hotel meeting; and that Bili SA's account was set up with a western bank called Kathrein & Co; and indeed that in a file that we have found labelled "Kathrein & Co" were to be found these notarised agreements.

Now, you may not know anything about the detail of that and that's why I'm not going to take you through

all the detail about that, but if you want to comment on that, please do.

A. To be honest, I'm not sure I understand the connection between the two. Maybe it was a very long sentence. But, once again, you do not need 115 million to buy a plane; the more so since we said we would be providing funding for the maintenance of the plane.

Q. What about the maintenance of the plane over a period of time?

A. It was five years.

Q. Five years?

A. If my memory serves me right, it was five years.

MR RABINOWITZ: Okay. Now, we've dealt with events going up to March 2000 and I now want to move on to the events of the summer of 2000.

My Lady, this may be a convenient moment for a break.

MRS JUSTICE GLOSTER: Very well, I'll take a break. Ten minutes.

(11.34 am)

(A short break)

(11.52 am)

MR RABINOWITZ: Mr Abramovich, we're going to now move on to the events of summer 2000 and can I begin by asking you, please, to be given bundle A1 and to go to tab 2, page 7

A1/02/7. It's Mr Berezovsky's particulars of claim.  
What I hope you have it open at is paragraph C18, where  
Mr Berezovsky describes what transpired in late  
August 2000, after the ORT broadcast relating to the  
Kursk.

MRS JUSTICE GLOSTER: Does Mr Abramovich have it in the  
Russian?

MR RABINOWITZ: There isn't a Russian particulars of claim.

MRS JUSTICE GLOSTER: Right. So perhaps the translator  
could kindly come forward and translate it for him.

(Pause)

THE INTERPRETER: Mr Rabinowitz, did you say C18?

MR RABINOWITZ: So if you could read C17(1), (2) and (3).

THE INTERPRETER: (1), (2) and (3).

MR RABINOWITZ: And also C18 and the first sentence of C19,  
please. I'm sorry, I know that's a lot.

THE INTERPRETER: C17...?

MR RABINOWITZ: C18 and the first sentence of C19.

THE INTERPRETER: And the first sentence of C19. Thank you  
very much.

MRS JUSTICE GLOSTER: Do sit down if you would like to.

(Pause)

MR RABINOWITZ: I'm sorry that took so long.

MRS JUSTICE GLOSTER: Thank you very much.

MR RABINOWITZ: Mr Abramovich, my question is: do you say

you had no personal knowledge of the details of the meetings described in those paragraphs between Mr Berezovsky and Mr Voloshin and Mr Berezovsky and President Putin as well as the meetings which are described there attended by Mr Patarkatsishvili?

- A. Today, by now, I have read so many times about it, I've heard so many times about it, it's difficult for me to be certain what I knew at that time or not. But it seems to me that at that time I was not aware of these details.
- Q. But you were, I think, close enough to President Putin to know that in August 2000 President Putin was not happy about Mr Berezovsky's involvement with ORT. Is that right?
- A. I can agree with the second part, that I might have assumed or I might have known that President Putin wasn't very happy with Berezovsky's activity in ORT, but I would not assert that I was that close to President Putin.
- Q. You say you would not assert that you were that close to President Putin. Would you assert that you had a reasonably good relationship with President Putin at this time?
- A. Yes, we had good relationship, yes.
- Q. And did you not come to the chateau in Cap d'Antibes at

the end of August 2000 to tell Mr Berezovsky that President Putin was unhappy with his involvement with ORT?

A. August, you meant August, I was right to understand that? To be honest, I don't remember it. August?

Q. Well, Ms Gorbunova remembers this, Mr Abramovich, in evidence that I don't think was challenged. Do you dispute it?

A. To be honest, I don't remember what happened in August.

Q. You can put away bundle A1. Can I ask that you be given bundle H(A)21 and go to page 143 in the English H(A)21/143 and 143R in the Russian H(A)21/143R.

Just so you know what you're looking at -- you're probably very familiar with this -- this is an open letter from Mr Berezovsky to President Putin in relation to ORT that was published in Kommersant on 4 September 2000.

Can I ask you, please, to read the opening three paragraphs, which I think will give you a flavour for what Mr Berezovsky is saying. (Pause)

A. I've read it.

Q. And you would have been aware of this at the time?

A. Yes, I read it at that time.

Q. And can I just ask you to look at the last two paragraphs of the letter, where Mr Berezovsky sets out

a proposal that he's putting forward to President Putin about placing his shares in ORT "in a trust to be managed by a group of journalists and other representatives of the public". The last two paragraphs. (Pause)

A. I've read it.

Q. Mr Berezovsky says he will put his shares in a trust to be managed by these people and he invites the government to do the same.

Would you accept, Mr Abramovich, reading what Mr Berezovsky says here, that at least at this time, the time of this letter, he had no intention of selling his shares in ORT?

A. From what is written here, at that moment he had no wish to sell ORT shares.

May I -- your Ladyship, may I draw your attention to the first paragraph.

MRS JUSTICE GLOSTER: Yes.

A. It says that the president wants to manage ORT himself; it doesn't say that the president wants to obtain the shares. He's just talking about management and control.

MR RABINOWITZ: I'm not sure that was remotely connected to my question, Mr Abramovich, but thank you for that.

Now, a few days after this open letter of 4 September, Mr Berezovsky announced in a press

conference the make-up of teletrust; that was the entity into which he planned to place management control. Do you remember that?

A. I don't remember the press conference but I've heard about it.

Q. So that was the position at the end of September, with Mr Berezovsky having said that he would put his shares into this trust to be managed by people, and at that stage I think you accept Mr Berezovsky had made clear that he did not wish or intend to sell ORT?

A. Yes, that is so. May I comment?

MRS JUSTICE GLOSTER: No. Let's get on now, please.

MR RABINOWITZ: Now, your case is, I think, that

Mr Patarkatsishvili started discussing with you around mid-October 2000 that you might buy

Mr Patarkatsishvili's and Mr Berezovsky's stake in ORT.

Is that correct?

A. Yes, that is so.

Q. And in fact you say Mr Patarkatsishvili was pressuring you to consider doing this. What pressure do you say that Mr Patarkatsishvili placed upon you?

A. He was trying to talk me into it quite intensely.

Q. And I think you suggest that Mr Patarkatsishvili hoped that if Mr Berezovsky sold the shares, that would mean that Mr Berezovsky would calm down and, you say, the

potentially difficult situation around Mr Berezovsky would also be defused. That's what you say at paragraph 214 of your statement E1/03/98.

A. Yes, that's right.

Q. Mr Abramovich, why would you be concerned about what the political situation was around Mr Berezovsky at this time? We're talking about October 2000.

A. Do I understand your question correctly: why was I concerned with the situation around Berezovsky?

Q. Why would you be concerned that the situation around Mr Berezovsky was one that perhaps needed to be defused? Why should it matter to you?

A. At that time everybody knew that we were quite close to each other and that most of his money he derives from me, so I was concerned. I was concerned with what was going on around him; it could have reflected on me as well.

Q. And even if what you say about Mr Patarkatsishvili pressuring you around mid-October is true, that is not evidence that Mr Berezovsky himself at this stage had indicated any wish to sell ORT, is it?

MRS JUSTICE GLOSTER: Well, I'm not sure it's for him to comment on --

MR RABINOWITZ: Let me rephrase that question.

MRS JUSTICE GLOSTER: -- whether or not something amounts to

evidence.

MR RABINOWITZ: You're not at this stage -- and we're talking about mid-October -- suggesting that Mr Berezovsky himself had indicated any wish to sell ORT, are you?

A. In mid-October, I don't think so.

Q. And then, of course, on 26 October 2000 President Putin made a direct and public threat against Mr Berezovsky. Do you remember that?

A. From what I remember, Berezovsky's name wasn't actually mentioned. But Mr Berezovsky must have taken it as a direct threat, one can assume that, but his surname wasn't actually mentioned.

Q. Well, perhaps we can look at the report of this: it's at H(A)22 at page 260 H(A)22/260. I don't think there is a Russian translation of this. This is a report in the Moscow Times on October 27:

"President Vladimir Putin warned Russian's powerful oligarchs that the state would beat them with 'a cudgel' if they stood in the way of reform.

"In an interview with Le Figaro newspaper ahead of a visit to France, the Kremlin leader said business bosses who amassed vast fortunes in the immediate post-Soviet era were trying to use the media to intimidate political institutions.

"The state has a cudgel in its hands that you use to hit just once, but on the head,' Putin told the newspaper, which published the interview Thursday.

"We haven't used this cudgel yet. We've just brandished it, which is enough to keep someone's attention. The day we get really angry, we won't hesitate to use it,' he said.

"It is inadmissible to blackmail the state. If necessary, we will destroy those instruments that allow this blackmail.'

"Putin was responding to a question about criticism of him by Boris Berezovsky, a business magnate with substantial media interests who quit Parliament in July after accusing Putin of trying to turn Russia into a Latin American-style regime."

It was not just Mr Berezovsky who would have interpreted this as a threat by President Putin to him; you presumably would have understood it in the same way?

- A. Well, if I had been trying to blackmail the state, I would have interpreted the same way. What it says is those who blackmail the state -- if I heard and understood the translation correctly -- so those who blackmail the state may get a cudgel blow on their head. So had I been trying to blackmail the state, I would have interpreted it in that way, as a threat.

Q. Mr Abramovich, that is not even close to an answer to my question. My question to you was: it wasn't just Mr Berezovsky who interpreted this as a threat by President Putin to him; you would have understood it -- this may have been the translation -- in the same way, that is to say a threat to Mr Berezovsky?

A. Well, it can be assumed. I would imagine that at that time I would have interpreted it like that, perhaps, I'm not sure; but yes, there is a chance and a probability that I might have done. One has to be very much in the context to understand what's said here.

Q. Now, that was on 26 October and then on 6 December 2000 you and Mr Patarkatsishvili and Mr Berezovsky met at Le Bourget.

A. Yes.

Q. And the meeting with Mr Berezovsky was in France because that was where Mr Berezovsky was then living?

A. Yes.

Q. Can I then ask you to take up the transcript of the Le Bourget meeting and can you please be given bundles E6 and E7. Now, I will try and ensure that you have a reference to what you want to see in E7 by giving box references and, where possible, page references as well, so you can see your Russian version of your comments.

Can we start, please, on box 28, which is at page 8 of E6 E6/01/8 and page 9 of E7 E7/01/9. There is, I think, agreement between you and Mr Berezovsky that this section of the transcript records you and Mr Patarkatsishvili discussing, by reference to a document, the sums which you owed to Mr Berezovsky and Mr Patarkatsishvili. Correct?

A. Yes.

Q. Is this how discussions between you and Mr Patarkatsishvili were usually conducted?

A. One part of discussion was going on as usual but most of it were not as usual.

Q. Which part of the discussion would be as usual: the part to do with how much they were to receive?

A. More or less, yes. More or less, yes. The discussion on amounts, we did from time to time sit down and check, verify how much I was still owing.

Q. So is it right then that you would discuss with Mr Patarkatsishvili the cash or the income that you had generated from your dealings with Sibneft?

A. Yes, one can say that. Not just Sibneft; from the oil business. It's not really revenue or income; it's how much I was still owing, how much was outstanding. It wasn't directly linked to income or revenue.

Q. Well, we'll come back to that, but don't put away E6 and

E7. Can I ask that you be given the bolshoi balance, please. Your Ladyship I think has it on the computer but it's not on Magnum.

MRS JUSTICE GLOSTER: When you say "on the computer", you mean it's on a USB stick?

MR RABINOWITZ: I believe so.

MR SUMPTION: My Lady, it's on the hard drive and if a legal assistant could sit behind the witness, she could get it on to the screen and it could be consulted in the original Excel format.

MRS JUSTICE GLOSTER: Yes, that would be helpful.

MR RABINOWITZ: Mr Abramovich, while that's being done, are you familiar with this document, the bolshoi balance?

A. I've never seen it. I never took part in drawing it up. Moreover, I hadn't seen it even when I was preparing for these proceedings. So now it will be the first time that I set my eyes on it.

Q. Okay, that's fine.

MRS JUSTICE GLOSTER: Could you tell me whether it's -- I've got two Excel spreadsheets here.

MR RABINOWITZ: One's in Russian.

MRS JUSTICE GLOSTER: One is in English and one is in Russian, yes, fine. Thank you.

MR RABINOWITZ: Do you have it on your screen yet?

MRS JUSTICE GLOSTER: It will go on the screen in the

Russian because I've got it on my own computer here.

MR RABINOWITZ: Right, I think it's on your screen.

MRS JUSTICE GLOSTER: Just before we get there,

Mr Rabinowitz, at box 29, Mr Abramovich says he believes he came to the meeting "with a simple spreadsheet provided to me by Mr Shvidler, reflecting mutual accounting". Is that this spreadsheet?

MR RABINOWITZ: I don't believe so.

MRS JUSTICE GLOSTER: Have we got the spreadsheet in evidence?

MR RABINOWITZ: No disclosure at all has been made of any such document.

MR SUMPTION: It doesn't survive.

MR RABINOWITZ: If it existed.

Now, can you look on your screen, Mr Abramovich.

I want just to explain to you how this document works. The first section on the first page, starting with the reference to the administrative territorial unit total, that part of the document shows your cash receipts by month from various sources.

So, just taking an example, if you look across at the first line, you will see that in the year 2000, the first line is dealing with your ZATOs receipts and this shows that in the year 2000, you generated something like \$1.45 billion in cash from the ZATOs. Do you see

that? The very first line of the document.

A. I can see the line, yes.

Q. And would you accept that this gives you a fair idea of the amount of profits or income that you were generating from the ZATOs?

A. I can't even comment this. I've no idea what this reflects. I have no knowledge on this matter at all. I mean, I can listen to it all, with pleasure, but I can add nothing.

Q. Let me ask you this, if you say you don't know about that: would you accept that what this document shows is that it was possible for you and your colleagues to calculate just how much money you were making from your dealings with Sibneft at any point in time?

MRS JUSTICE GLOSTER: When you say "your dealings", what are you referring to, Mr Rabinowitz?

MR RABINOWITZ: Well, your Ladyship will recall two days ago we talked about the trading companies --

MRS JUSTICE GLOSTER: Transfers between -- dealings between the trading companies and Sibneft?

MR RABINOWITZ: And indeed the use of the ZATOs and the tax-efficient vehicles.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: You were able to calculate at any point in time how much income you were generating from being able

to own and control Sibneft in that way?

A. I will repeat the question to see if I understand correctly. Is it true that I know that my colleagues could estimate and calculate how much money we earned from ZATOs operations; is that the question? I am convinced that my colleagues could estimate and calculate how much we were earning; what I can't comment on is whether the table reflects that or not.

Q. All right. Let's just put that to one side. That's very helpful.

If you go back then to the discussions at Le Bourget in bundles E6 and E7 E6/01/8, again, if you look first at box 29, I want to ask you about your commentary to this. You refer here to having come to the meeting "with a simple spreadsheet" and then later down in the commentary you refer, you say, "By way of background to the contents of that table", which is the simple spreadsheet, to a claim in your third witness statement that you had previously agreed to pay Mr Berezovsky and Mr Patarkatsishvili \$305 million. Do you see that?

A. Yes, I see that.

Q. In fact you have produced no documents whatsoever, not a single one, which support the existence of any such agreement; that is right, is it not?

A. That is so. But the transcript at Le Bourget is

considered by you as evidence, as document, and it's discussed here. All I'm doing is I'm commenting the conversation. There's nothing else here.

Q. Prior to the disclosure of the Le Bourget transcript, you have never previously made any suggestion that there had been such an agreement under which you'd paid \$305 million.

A. I don't remember it, or didn't remember it. This is reconstruction; this is my attempt at remembering on the basis of what I read. I didn't remember it myself; I was just trying to comment on this conversation.

Q. You see, Mr Abramovich, I have to suggest to you that you have simply made up the idea that you had this agreement to pay \$305 million in the hope of being able to explain away parts of the Le Bourget transcript that, on their face, appear very strongly to undermine your case.

Do you want to comment on that?

MRS JUSTICE GLOSTER: Just a second, Mr Rabinowitz. There are a number of questions tucked up there. I mean, put to him the suggestion that he's trying to explain away the Le Bourget transcript and put to him, if you like, the separate question that it undermines the case. But I think he's going to get confused otherwise.

MR RABINOWITZ: I will just put the first of the questions.

I suggest to you, Mr Abramovich, that you have simply made up this claim to recollect this agreement in order to explain away aspects of the Le Bourget transcript. Do you accept that?

A. No, I don't accept that.

Q. Let's then look at the relevant part of the transcript.

Can you go, please, to box 33. It begins at page 12 of bundle E6, on to page 13 E6/01/12. This, I think, begins a conversation about the figures. And if you go to box 35 at the bottom of page 13 E6/01/13, you say there:

"So, this is last year's. That is what we had agreed, 275 million."

And that's you referring to the \$275 million figure and your evidence is that this was an amount that was related to Sibneft in the sense, at least, that you intended to source this amount from the oil trading business cashflows; is that right?

A. I think I've lost the thread of the question. You -- are you asking me whether this amount derives from Sibneft cashflows or from the trading companies' cashflows? Is that what you're asking me?

Q. I'm saying that it related to Sibneft in the sense, at least, that you intended to source this amount from the oil trading business cashflows.

- A. Well, this passage describes my debt to Mr Berezovsky but it can be concluded that this will come from the cashflow of oil trading companies, of course.
- Q. Mr Berezovsky says that the \$275 million figure reflected 50 per cent of the profits you said you had generated from trading Sibneft oil over a certain period and this figure was therefore what you owed to Mr Berezovsky and Mr Patarkatsishvili. But I take it you disagree with that?
- A. I disagree with that.
- Q. If you look then at box 37, do you see you say:
- "And 30 million -- it was... Aluminium."
- A. Yes, I can see that.
- Q. And again you say that this related to money generated from your aluminium investments; is that right?
- A. Yes, that is so.
- Q. So again, Mr Berezovsky says that it was due to Mr Patarkatsishvili and Mr Berezovsky because of your joint investment with them in aluminium. But again, I take it you disagree?
- A. I disagree, and I can explain and clarify at some point, when you think it's convenient.
- Q. Well, we'll get to that point in due course.
- Mr Abramovich, if, as you've suggested, it was always just a question of how much was due to

Mr Patarkatsishvili and Mr Berezovsky and if the reason for the payment of any particular amount was completely unconnected to the source, why would you be bothering to tell Mr Patarkatsishvili the source of the money?

- A. In October or in September 2000, when Mr Berezovsky left Russia, it turned out that all his accounts had been frozen and I think all he had was \$1 million to call his own. He would not have lived long on that \$1 million. So Badri came to see me and said, "Listen, the situation is such that Boris cannot go back to Russia, so we have a request to you: please give us a large amount of money, pay us a large amount of money, and we shall keep it for a rainy day".

Because the amount was 275 or \$300 million, it was such a huge amount for that time, I didn't quite understand where I would get it from. So we took out a loan. And when I was explaining to him that it was not possible, I said, "Listen, I'll get this from there, I'll get that from there, I'll get a bit from aluminium"; I was explaining to him where we will source the cash from. And this is -- then in part we're just repeating that conversation.

- Q. Mr Patarkatsishvili would not have been interested in the source of the money, Mr Abramovich, would he, if your story is true?

A. In ordinary times, in normal life, in ordinary life, he wouldn't have been interested. But because he told me, he gave me this challenge from Mr Berezovsky that by the end of December, as far as I remember, he needed this 300 million, then yes, he was bothered and interested as to whether I was able to do it and where I would source the money from and perhaps I would borrow some money, et cetera, et cetera.

Q. Now, your evidence about how this figure of around \$300 million was reached involves you saying that this was the amount which Mr Patarkatsishvili had demanded as a safety cushion for himself and Mr Berezovsky. Is that right?

A. Yes, it's right.

Q. But if that is right, can you explain why Mr Patarkatsishvili's response to being told about what was coming from aluminium was to say, "Ah, Aluminium. Yes, correct. It's 305"?

A. I've no idea why he said that. How can I say? How can I comment what he has said and why?

Q. You see, I suggest to you that it is simply not compatible with your suggestion that this figure was simply a safety cushion that Mr Patarkatsishvili had demanded. It only makes sense on the basis that your profits in the aluminium were the reason for the amount

of payment being made. That's right, isn't it?

A. No, that is not right.

MRS JUSTICE GLOSTER: Just a second.

Mr Abramovich, it was put to you:

"It only makes sense on the basis that your profits in the aluminium were the reason for the amount of payment being made."

Do you want to comment on that point?

A. I'm sorry, I do not agree with this.

MRS JUSTICE GLOSTER: Right. Thank you.

MR RABINOWITZ: Can I ask you next, please, to go to box 155 at page 58 in E6 E6/01/58 and page 55 in E7 E7/01/55.

You say in your witness statement, Mr Abramovich, that between boxes 155 and 450 there is a discussion relevant to ORT and that is why I want to look at what is said here, starting at around this point.

Are you there yet, Mr Abramovich?

A. Yes.

Q. Now, I'm just looking at box 156. You appear to be asking Mr Patarkatsishvili whether he planned to go to Moscow from time to time. Do you see that?

A. Yes, I can see 156.

Q. And Mr Patarkatsishvili, in response to your asking whether he had plans to go to Moscow, says:

"So far, no."

A. Yes, I can see that.

Q. And then he goes on to say, as you comment, that this was because there had been a raid on ORT. That's correct, isn't it?

A. May I just read this?

Q. Do.

A. If I have to comment my own comments, I would like to refresh them in my memory.

Q. Well, just read 159, which is where it's clear that you link this to the fact that there had been a raid on ORT.

(Pause)

You shouldn't have to read too far ahead, Mr Abramovich, to answer the question I've just asked you.

A. Be so kind and repeat your question again, please.

Q. Mr Patarkatsishvili, in answer to you asking him whether he had plans to go to Moscow, said:

"So far, no."

And then Mr Patarkatsishvili went on to link this to the fact that there had been a raid on ORT. Is that right?

A. Yes.

Q. And it is fair to say that Mr Patarkatsishvili thought that the raid on ORT was aimed at, among others, him,

and this is why the fact that there was a raid on ORT was considered by him to be a reason why he would not personally go back to Moscow at that time; do you agree?

A. Yes, it can be interpreted this way, although it's not quite exact. It's not a very exact description of what took place.

Q. I take it you would not dispute that at this time in Russia it was entirely believable that a raid on a company such as ORT might be aimed at getting particular individuals out of such a company?

A. No, I don't agree with this. If I remember correctly, I think in '98 there were criminal charges or a criminal case opened on this subject. It took a long time and all that happened was that people came along and confiscated documents, if that can be called a raid.

Q. I'm not sure that you entirely understood the question. The question is that at this time in Russia it was believable that a raid on a company such as ORT might be aimed at getting a particular individual out of that company, in this case ORT? That's what people -- they could believe that and they wouldn't be crazy to think that?

A. I don't agree.

Q. Well, can you just jump briefly to box 630. It's at page 204 in E7 E7/01/204 and 202 in E6 E6/01/202.

Do keep your hand in the file at page 59, box 156 as well.

Can you just read boxes 630 to 632 and your commentary on those boxes. (Pause)

- A. I've read them. I've read my comments as well.
- Q. You see, Mr Abramovich, your own evidence makes clear that the general director of ORT, Mr Ernst, certainly thought that it was believable that a raid could be aimed at a particular individual when he was told that by Mr Patarkatsishvili. Do you see that? That's your own commentary.
- A. Yes, I'm saying that jokingly Badri said it to Mr Ernst. Whether Mr Ernst could have thought that the Prosecutor's Office raid on a television company was aimed at him, yes, he might have done. It can be assumed that it may have been aimed at management but it is impossible to assume that it may have been aimed at shareholders. Moreover, the company was state-owned.
- Q. My question was directed to asking you whether you could accept that it was believable that a raid would be aimed at getting a particular individual out of the company. You said it was not. I showed you what happened with Mr Ernst, where he plainly believed that the raid could be aimed at him.

Now, do you accept that Mr Patarkatsishvili could

reasonably have believed that the raids on ORT could have been aimed at getting himself out of ORT?

A. I did not have that impression but I can't comment on what he might have been thinking. I personally did not have that impression and I saw him quite often and talked to him quite often.

Q. Why then was he linking the fact that there had been a raid on ORT with a concern about going back to Moscow at that time then?

A. Here it is said that during the raid one of the Prosecutor's Office people might have asked "And where is Mr Patarkatsishvili so we can question him?" So it was passed on to Badri and this is what we are discussing or partly this is what we're discussing.

Q. Can I ask you, please, to go next to box 161, so back where you were, page 63 in the English version E6/01/63. So this is still in the context of your asking Mr Patarkatsishvili about whether he had plans to travel back to Moscow and him highlighting the concern he had arising as a result of the Maski raid the previous day, and Mr Patarkatsishvili says:

"The problem is that I will have, that I will have, how shall I say it, if you know... you, yes, if you know that I have no problems, and I can give evidence, then absolutely -- I shall come with pleasure."

And it is clear from this, Mr Abramovich, that Mr Patarkatsishvili plainly believed that you were close enough to people in power in Moscow to know whether or not Mr Patarkatsishvili would have problems if he returned to Moscow. Do you agree with that?

A. I don't agree and, if I may, I'll clarify.

MRS JUSTICE GLOSTER: Yes, you may.

A. The raid took place on the 5th; we're meeting on the 6th. Badri couldn't have known a priori that there would have been a raid, but that's not the point. Anybody who was in Moscow at that time and who knew -- and Badri knew I was -- I knew Voloshin, Yumashev. It doesn't matter; I knew many people. Anyone in Moscow could have told him more than the person in France. Of course, he was asking everybody: do they know anything about it or not?

Was I clear in my clarification?

MR RABINOWITZ: Your answer was clear, Mr Abramovich. What I don't think that your answer explains is what in fact Mr Patarkatsishvili is saying here, because what he says is that -- and he's speaking to you, Mr Abramovich -- he says:

"... if you know... if you know that I have no problems, and I can give evidence, then absolutely -- I shall come with pleasure."

So it's plain that he's willing to place complete trust in what you tell him the position is.

A. That's not quite so. And then if we read on, we'll see I'm saying: yes, I can ask, but I can't guarantee anything.

Q. You were well aware, Mr Abramovich, that Mr Patarkatsishvili regarded you as close to people in power in Moscow; that's right, isn't it?

A. Well, many of my acquaintances and friends worked in the government; that is true.

Q. So are you accepting what I have put to you: that you were well aware that Mr Patarkatsishvili regarded you as close to people in power in Moscow?

A. Well, yes, it can be read like that, yes.

Q. And Mr Patarkatsishvili was right to regard you as close to people in power in Moscow, was he not?

A. I've already said that I knew many people in government.

Q. Can you please go to box 164 on page 64 of the English E6/01/64, presumably 66 in Russian E7/01/66.

You were responding here -- box 164, do you have that? You were responding here to what

Mr Patarkatsishvili has said and you say to him:

"You won't have any problems. (He said) that he won't have problems... and then it's on his..."

And your comment makes clear that you think this is

probably a reference to a conversation that you had had with President Putin. Do you see that?

A. Yes.

Q. So you were indeed in a position to relay President Putin's views to Mr Patarkatsishvili and Mr Berezovsky, were you not?

A. Yes, that's right.

Q. And it's right, isn't it, that if President Putin said that Mr Patarkatsishvili wouldn't be arrested, then he wouldn't be arrested? That's correct, isn't it?

A. I don't know that. I can't -- we're saying, "You won't have... problems"; we are not discussing arrest. My talk was two weeks prior to this Le Bourget conversation, on 29 November or something, and here we're discussing 5 December. Okay, a week prior that conversation took place.

Q. The thrust of the conversation here seems to be that Mr Patarkatsishvili had nothing to worry about because that is what President Putin had said. Do you accept that?

A. Yes, I passed on to him that, from my point of view, he had nothing to fear.

Q. And then just going to box 166 on page 66 of the English E6/01/66, you go on here to tell Mr Patarkatsishvili about your discussions at the Kremlin concerning

Mr Patarkatsishvili and ORT. It's not clear whether you're referring to a conversation with President Putin or Mr Voloshin.

A. Yes, it's not clear to me either.

Q. And as we see in the following boxes -- and I'll ask you to read them -- it's clear that you had previously had conversations with Mr Patarkatsishvili about your Kremlin discussions. You'll see that if I can invite you to read from box 167 to 176. (Pause)

Just to 176, if you would.

A. Right, I'm done.

Q. So it's clear from those boxes that you had previously had a conversation with Mr Patarkatsishvili about discussions you had had with the Kremlin. Do you accept that?

A. Yes, I agree. Whenever I could get a meeting with Putin, whenever or at least occasionally when I had a meeting with Putin, Badri always asked me to mention him and to discuss his position.

Q. And so, just looking at your commentary to box 176, it's clear that you were offering to act as an intermediary between Mr Patarkatsishvili and the Kremlin, going there to try to make certain of the Kremlin's views. Do you see that?

A. Yes, I can see the comment but I just don't understand

why it follows that I wanted to be an intermediary. The conclusion we can make is that Badri wishes me to talk about him to the Kremlin.

Q. And you are willing to do it; that's what you say here?

A. I have always been willing to do the things he asked me to do.

Q. And so --

MRS JUSTICE GLOSTER: Mr Rabinowitz --

MR RABINOWITZ: One more question, my Lady.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It depends on the answer, I suppose, but...

And it's clear from this exchange, Mr Abramovich, that you certainly did have, or at the very least were suggesting to them that you had, the ability to raise questions affecting Mr Patarkatsishvili directly with the Kremlin, with President Putin directly or with Mr Voloshin and through him to President Putin?

A. I didn't tell him that. He knew it well anyway.

MR RABINOWITZ: My Lady, that is a...

MRS JUSTICE GLOSTER: Very well.

Just a second. Ms Davies, your application for an order as against the Latvian Trade Bank. I've looked at the draft order. My concern is whether there should be some sort of recital that they accept jurisdiction.

I haven't looked at the relevant rule in the White Book

but what I'm concerned about is making an order against a foreign bank unless there is some sort of evidence or recital that they accept the jurisdiction of the court.

MS DAVIES: My Lady, of course. We had anticipated that was covered by referring to their letter in which they accepted, but we can bring that into the body of the --

MRS JUSTICE GLOSTER: Well, do they accept in their letter? I mean, they seem to be going along with a notion but they have not directly -- they appear to be going along with the notion that they'd be content with an order of the English court or a request by the English court, but I'm not sure that they're responding to your suggestion that: could you please provide an address for service within the jurisdiction.

How urgent is this? I don't want to hold it up but I am concerned that they appear to be envisaging some sort of letter of request by the English court rather than actually them agreeing to the jurisdiction and my making an order against them personally to produce the documents.

MS DAVIES: Well, it's clear from their letter that they wanted a legalised document --

MRS JUSTICE GLOSTER: Yes, I agree with that.

MS DAVIES: -- which we took to mean an order. But if your Lady is saying you would like us to clarify with them

whether -- in other words, to send the draft order --

MRS JUSTICE GLOSTER: Send the draft order to them.

MS DAVIES: -- and asking them to confirm that they're happy for it to be made in those terms, we can do that immediately and come back on it.

MRS JUSTICE GLOSTER: I think the draft order has got to recite their consenting to the jurisdiction of the court for the purposes of the court making this order and I would be happier, I think, to make an order in those terms if I were satisfied that they did not object to making an order.

MS DAVIES: We will amend the draft order, send it to them today I hope, and hopefully they can respond quickly and we can deal with this early next week.

MRS JUSTICE GLOSTER: Right. Well, the reason I'm saying this is that if you produce a draft order at 2 o'clock, I can then sign off on it and you can then get it sent.

MS DAVIES: Yes, of course.

MRS JUSTICE GLOSTER: Well, hang on. If you send them a draft order now in the terms that you've indicated --

MS DAVIES: What I can do is bring back a draft order at 2 o'clock, ensure that meets with my Lady's point, and then we can send it to them this afternoon.

MRS JUSTICE GLOSTER: Yes, very well. 2.05.

(1.04 pm)

(The short adjournment)

(2.08 pm)

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'll just deal with Ms Davies's order.

MS DAVIES: My Lady, I've added two recitals: one to deal with the submission to the jurisdiction and second to deal with the order only having any effect outside this jurisdiction with agreement, the Babanaft issue.

MRS JUSTICE GLOSTER: Yes, that's fine. Okay.

MS DAVIES: I'm grateful, my Lady. We'll send that to the bank and get their sign-off on...

MRS JUSTICE GLOSTER: If you can get it by 4.15 --

MS DAVIES: I don't know whether we'll get an answer from them back by 4.15 --

MRS JUSTICE GLOSTER: No, I'm sure you won't.

MS DAVIES: -- but hopefully by Monday.

MRS JUSTICE GLOSTER: Very well, thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, we're still in bundle -- you're in bundle E7; the rest of us I think are in bundle E6. Can you go to box 194. In E6 it's at page 77 E6/01/77.

You're talking here, about three lines down, about someone in power, I think it's Mr Ustinov, who is the general prosecutor, and you make it clear you regard him

as a fool and you explain that you have been asked "to develop the prosecutor's office". Do you see that?

A. To be honest, I cannot see this. I think this is your interpretation. This is just gobbledygook. But you cannot make the conclusion that -- at least in Russian you cannot draw the conclusion that I was asked to develop the Prosecutor's Office, based on what it says here in Russian.

Q. Isn't that your own comment about the Prosecutor's Office? Isn't that exactly what you say? I just want to find the exact reference to that. (Pause)

Well, leave that aside. I take it that you accept that what this conversation, at this part at least, shows is that you had a level of access to people at very high levels of the state, in this case the Prosecutor's Office. Would you accept that?

A. No, I do not accept that. I don't understand on the basis of what you have drawn this conclusion.

Q. Well, according to the transcript, what this has you saying, talking about Mr Ustinov, you say:

"A fool, yes, he is just a fool. He gives me tasks... sort of to develop the prosecutor's office..."

It's by reference to that, Mr Abramovich, that I have asked you that question.

MRS JUSTICE GLOSTER: What box is that, please?

MR RABINOWITZ: 194, the first comment made.

A. I do not know if I'm expected to give comment on what I said about Ustinov. All the rest is just blanks here. There are gaps and then a few words about the development foundation or fund. It does not mean that I was dealing with this. The development foundation I think was established by the government and I had nothing to do with this. I may have had an opinion about this, that this will not result in anything good, but at least what I can say is that I definitely had nothing to do with this.

Q. Can I ask you now, please, to go to box 451 in the --

MRS JUSTICE GLOSTER: Sorry, can you just answer a question on box 194. You say at the bottom of the page in the English:

"I don't know, he... to me... I don't know him well, although Putin... to me... don't know well..."

Did you know Ustinov?

A. I did not know him at all. I had not been introduced to him.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Who is it then that you were saying that, whilst you didn't know him well, President Putin knew him well? Who was that about?

A. It has been so many years, I cannot recall this with the

best of wish and all that I could have recalled I've written here. Once again, let me say that I did not know Ustinov.

Q. If you didn't know him, why were you calling him a fool?

A. Well, I can express my views and opinions about people, even if I don't know people.

Q. That's true.

A. It's my feelings.

Q. Very good.

Now, we'll come back to the discussions you were having about ORT shortly but can I ask you for the moment, please, to go to box 451. It's at page 154 of E7 E7/01/154 and 157 of E6 E6/01/157.

In box 451 we see that there is the beginning of a discussion about Sibneft and you are explaining here that President Putin was planning to implement new tax rules to prevent oil companies avoiding taxes. Do you recall that?

A. Mm-hm.

Q. You need to say "da".

A. Yes, I do remember that.

Q. And if you then go to box 458, in the English it's at page 160 E6/01/160, just picking it up at the -- box 458. You are explaining to Mr Patarkatsishvili and Mr Berezovsky that, in light of President Putin's new

tax rules to prevent oil companies avoiding tax, that you say:

"... next year there'll only be one way for us to get the money: legally, through paying taxes, as dividends."

"Legally, through paying taxes", and then you say, "as dividends".

Now, just to be clear about this, Mr Abramovich, you are not saying here, I think, that you had previously been acting illegally, are you?

- A. If you look at this whole section of the discussion, we're talking about the way in which we can receive money and what I'm saying is that for next year the only way to receive money is this legal way, ie through the dividends, through the way it's set out here. All the companies had to come into Sibneft: there were no longer tax breaks, there were no longer ZATOs.

So what I'm saying is that for next year the only way to receive money will be this because all the others -- all the other ways, including ZATOs and tax breaks, had been lifted or cancelled.

- Q. So I think your answer to my question is that I am right: you do not say you had previously been acting illegally, you were simply saying that the methods that you had previously used to generate profits from

yourself through Sibneft were being restricted in the future?

A. Yes, that is so.

Q. And then, just looking further down in box 458, you explain who would be entitled to dividends and you explain that all the shareholders, you say, including all the minority shareholders, would be entitled to dividends based on their shareholding. Is that right?

A. Yes, that is right.

Q. Now, just on the question of shareholdings, your case in these proceedings, we are told, is that at this time, December 2000, you personally owned at least 88 per cent of the company with the remainder free-floating. Is that right?

A. Yes, that is right.

Q. And in fact you've disclosed a document which appears to confirm the structures by which the 88 per cent was held. Can you please turn to H(A) volume 22, page 268 H(A)22/268.

I think we may have a translation of this. Your Ladyship will see that the version in the bundle is in Russian. We have an English translation of it. (Handed)

MRS JUSTICE GLOSTER: Can this be put on Magnum as well.

MR RABINOWITZ: It will be, my Lady. (Pause)

Now, Mr Abramovich, this is a document which you

have disclosed in these proceedings. It was described by your solicitors as simply dividends, is how they refer to this document. And what it appears to do is to set out the shares held in Sibneft and dividends payable in respect of those shares as of a certain date, which, as you will see if you look at the top left-hand corner of the document, is 30 October 2000.

A. Yes, I can see this. But prior to this moment today I have not seen this table.

Q. That's okay. So that is just over a month before the Le Bourget meeting and I can go through this document with you.

What it does is to show the Sibneft shareholdings in two ways. In the top half of the document there are the beneficial owners of Sibneft shares. So, for example, one sees White Pearl Investments Limited was the owner of 15.759 per cent of Sibneft; do you see that?

A. Yes.

Q. And the document also shows how much percentage of the shares was held by the other three companies that you were using to hold these shares immediately below that. Do you see that?

A. Yes. Yes.

Q. And what this also shows is that the beneficial holdings of shares by nominee companies totalled 56.059 per cent.

Do you see that?

A. Yes, I can see that.

Q. Can you say whether that broadly reflects your understanding of what the position was at this stage or do you not remember?

A. To be honest, I had no idea.

Q. All right. I'll carry on though.

Below that one has that part of the holding held in a type S account and 20.395 per cent of the shares are held there. Are you able to help us with what a type S account is or not?

A. I don't know. I was just about to ask you what it means. I've no idea.

Q. Right. Then the document refers to shares held, it says "Total of our shares held in the national depository centre", and I think there are 11 per cent of the shares which, added to the previous 20.395 per cent, gets one to 30.584 per cent (sic) according to this document.

Okay?

MRS JUSTICE GLOSTER: I thought it's 31.

MR RABINOWITZ: 31, sorry. 31.584.

A. Yes, I can see that.

Q. And then below that one has a reference for the number of shares held by Runicom Limited in Gibraltar and that's 0.946 per cent. Do you see that?

- A. Yes, I can see that.
- Q. And that then gives a total of 88.589 per cent, which the document describes as the total in "friendly structures". Do you see that?
- A. In Russian, it says "Total our shares" -- oh, no, it's a different line, sorry. Yes, yes, you're right. You're right.
- Q. And your evidence is that these beneficial interests are exclusively yours; that's right, isn't it?
- A. Yes.
- Q. And so whilst the 88 per cent was held in what you termed "friendly structures", the remaining 12 per cent or so was free-floating, not in a friendly structure; is that right?
- A. Yes.
- Q. And what the document also shows is that your stake, one way or another, was ultimately -- what you say was your stake one way or the other was ultimately owned by eight companies; that's correct, isn't it?
- A. Yes.
- Q. And Runicom was a Gibraltar company and the other seven companies were all based in Cyprus; that's right, isn't it? You may not remember that.
- A. I'm just not aware of this, I just don't know this.
- Q. Well, will you take that from me, that that is the case:

these were all Cyprus companies.

A. Yes.

Q. And then if we just look at the second half of the document -- by "second half" I mean below where it says "Register of shareholders" -- we see how the shareholding was actually registered with nominees. So, for example, we can see that ING Barings was registered as owning 23.305 per cent of Sibneft. Do you see that?

A. Yes.

Q. And you can see that that is made up of 6.754 per cent held by White Pearl Investments Limited and so on. I'm not going to go through all of that.

A. Yes, I can see that.

Q. But do you see that it also says "Others at ING Barings", 6.754 per cent?

A. Yes.

Q. And that means that was for other people and not for you; is that right?

A. It must be. Once -- but, once again, I told you that I've not seen this table. Do we have to go through this table together? Is this the procedure?

Q. I do want to take you through this table, Mr Abramovich. If you don't know what the reference to "Others at ING Barings" means, just say so, okay?

A. That's true, I do not know.

Q. Right. And just as we have seen the total amount registered in the name of ING Barings, we also see a total registered in the name of Fleming UCB and then Deutsche Bank and ABN Amro as well. Do you see that?

A. Yes.

Q. And you also see that, for example, at ABN Amro there is the comment "Others apart from us at ABN AMRO". But you can't help us with that; is that right?

A. I'm afraid I cannot.

Q. All right.

Now, if we can just stay for the moment with the holdings in the Cypriot companies, again, I don't think the arrangements were as straightforward as you personally owning 100 per cent of each of those in your own name. Do you remember that, whether that's right or not, that it wasn't simply you owning 100 per cent in your own name?

A. I have absolutely no idea.

Q. Can I ask you to be given a document at bundle H(A)44, page 210 H(A)44/210.

Now, this is a document again which you disclose, Mr Abramovich. As you can see, a lot of it has been blanked out. We can only see a certain amount of information on this. So far as one can tell, this shows the corporate information for a number of companies

which are within your control.

So, for example, if you go to page 213, you'll see at the top of the page a reference to Heflinham Holdings Limited, which is one of the Cypriot companies we saw on the dividend sheet, and I can tell you that what it says is that the real shareholder of that is a company called Esklar Limited, about five boxes along. This is the name of the company and then it says "Real shareholders" and it gives the name of Esklar Limited. Do you see that?

Then equally, if you look on the same page, Jimenson Enterprises Limited, which was another one of the companies we saw on your dividend sheet, it has a nominee shareholder, ATS Nominees, and then under the column "Real shareholders" it says Runicom Limited.

I don't want to take too much time going through this. You can just look at the final two entries on the page that you can see: Kindselia Holdings Limited, again still on page 213, the real shareholder is shown as Esklar Limited; and Kravin Investments has a real shareholder which is known as Mearam Limited.

Mr Abramovich, I'm not expecting you to recall the name of every one of the offshore vehicles through which these interests that you say you owned were held in Sibneft, but do you accept that this multi-layered

offshore structure is indeed how these interests were held?

- A. I think so, but I cannot assert this with certainty. I think so, otherwise those documents would not have been disclosed to you. But prior to today I have not seen this.

Q. Okay.

Now, we're going to go back to the Le Bourget transcript in a moment but before we do, do you recall that in your third witness statement you referred to a proposal which you say was made by Mr Fomichev? You can see it if you go to paragraph 196 at E1, tab 3, page 93 E1/03/93, and for you, E1, tab 3, page 194 E1/03/194.

At paragraph 196, if you look at the first sentence, you say that this proposal was made by Mr Fomichev at a time "Before Mr Patarkatsishvili's proposal for a large lump-sum payout". Do you see that?

A. Yes.

Q. And elsewhere in your evidence I think you suggest that this proposal by Mr Patarkatsishvili for "a large lump-sum payout" was made in early January 2001. That's right, isn't it?

A. I'm not sure. Which payment are we talking about: 305 million or 1.3 billion? What is it that we are

speaking about now? Both sums -- both amounts are pretty large amounts, so I'm not sure.

- Q. If you go to paragraph 268 on page 218 of the bundle you're looking at E1/03/218, in English it's at page 116 E1/03/116, it's the proposal that you say was made by Mr Patarkatsishvili in Courchevel. You see in that paragraph you refer to him making a proposal that you make a final pay-out to him.

So we know, according to you, that that was in January 2001 and my question to you is about the proposal that you say that Mr Fomichev made. You make it clear that that was a proposal made before Mr Patarkatsishvili's proposal and I'm trying to get a date on when you say Mr Fomichev made a proposal to you in the way that you explained at paragraph 196 of your statement.

- A. We are talking about different amounts here. So, I mean, the way I see it, it would be wrong to make reference to the Courchevel meeting and then the meeting in Megeve and confuse this, mix this up with the meeting that I had had with Fomichev and what had happened in Le Bourget. I think we're speaking about different things because one thing, one item, one clause here describes one meeting and the other clause, the other item describes a different meeting.

Q. I agree with you about that, Mr Abramovich. What I'm trying to do is identify the date for the Fomichev meeting and I can only do it by reference to the meeting you say you had with Patarkatsishvili because all you tell us about this proposal you say you had from Fomichev was that it was before the Patarkatsishvili proposal. So what I'm trying to ascertain is: when do you say that happened?

A. Based on the meeting with Patarkatsishvili one cannot draw any conclusion but I will do my best and assist you on this. There is a reference in Le Bourget to either 13 October or 13 September so, if I understand correctly, this meeting was prior to that, it had been prior to that.

Q. So you're suggesting that this proposal you say was made by Mr Fomichev was made prior to Le Bourget; is that right?

A. Yes.

Q. But you are unable to be more specific about when you say that proposal was made; is that correct?

A. I -- it looks to me like it was made before we started the pay-out of the \$300 million. At least that's the way I see it.

Q. Can you be more specific about when that was? Can you identify a date when you say broadly -- you cannot; is

that right?

A. I cannot give you a date, no. I'm just going by this text and so I'm trying to make some assumptions, but I cannot -- draw some assumptions, but I cannot give you a date now.

Q. Mr Abramovich, would you accept that this proposal that you say you received from Mr Fomichev is not mentioned in any document which is before the court? I obviously don't include your witness statements.

A. I'm sorry, I'm not sure I understood you. How does my conversation with Fomichev be filed with the court other than from me or from Mr Fomichev? Or maybe I misunderstood your question.

Q. One doesn't find a single document anywhere in all the hundreds of documents, thousands of documents, hundreds of thousands of documents, which mentions any proposal of the sort that you claim you had from Mr Fomichev, other, obviously, than your own witness statement. Do you accept that?

MRS JUSTICE GLOSTER: Well, he can't have looked at all of the documents.

MR RABINOWITZ: Well, I can tell him that it doesn't. But if he knows of a document --

MRS JUSTICE GLOSTER: The point that's being put to you, Mr Abramovich, is: isn't it surprising that there is no

written reference to the Fomichev proposal anywhere in the documents, if your story is true? That's the point that's being made to you. So can you comment on that, please?

- A. It is not strange because it was a proposal how to legalise the money; not to transfer money forever but how to use the shares in order to get a stream of dividend. It was not a proposal to transfer shares forever, indefinitely, in general; it was a way of legalising the income. And that was the way that had been proposed by Ruslan and I rejected this.

MR RABINOWITZ: I have to suggest to you, Mr Abramovich, that there was in fact no such proposal. Do you want to comment on that?

- A. You are wrong.

- Q. We'll come back to that.

Can we then return to the transcript of the Le Bourget conversation, bundle E7 for you, E6 for everyone else. Can we look at box 459, please E6/01/161. We see in box 459 that Mr Patarkatsishvili asks about legalising his and Mr Berezovsky's income.

Do you see that? He says:

"(So we shall legalise our income then?)"

Do you see that?

- A. Yes.

- Q. And if we look at your commentary to this, you comment:
- "Here, Mr Patarkatsishvili asked how they would be able to receive their money legally under the circumstances."
- A. In this paragraph, what I'm saying is that what we are doing now is banned, it's prohibited, but I'm trying to assist, to help Mr Berezovsky to get his money abroad, outside of Russia. So this whole discussion is around this: how can we legalise the money in a way that would allow him to receive the money abroad?
- Q. Do you see, Mr Abramovich, although your commentary says that Mr Patarkatsishvili was asking how they would be able to receive the money, that is not, as you can see from the transcript, what he appears to have said? His question isn't "how" at all; rather it is whether this is something that should be done. Do you see that?
- A. I can see what it says here. Well, first of all, with your permission, in parenthesis here, in brackets, is something which was not very well heard and so no one will vouch that what it says here is true. It was one of the interpreters who believes that he or she heard that, and there were interpreters from both sides.
- Q. You see, the question of how the money could be received legally was something you had already described: namely by being shareholders and receiving dividends. That is

what you're talking about at box 458, is it not? You say at box 458:

"So, nevertheless, next year there'll be only one way for us to get the money: legally, through paying taxes, as dividends."

You've already explained to them how. Do you see that?

A. Yes.

Q. And what Mr Patarkatsishvili was asking you in box 459, Mr Abramovich, is whether you would arrange for him and Mr Berezovsky formally to be shareholders, so that they also could receive dividends in this legal way.

A. Once again, if I may, the words in brackets are words that are hardly audible. This is an assumption of an assumption, so it could hardly be heard at all. Now, what you have in brackets is something that you just cannot hear. I've heard this recording many times myself.

Q. Let us just look at the answer that you give to Mr Patarkatsishvili, which is at box 460, from which it is clear that you were not willing to arrange for Mr Patarkatsishvili and Mr Berezovsky formally to be shown as shareholders.

Just looking at 460, you say:

"The idea is that we should legalise this process,

that's the idea. To say that this portfolio belongs to so and so, this one -- to so and so..."

Then you say:

"... and if you trust me, I shall do it in such a way so as not to have you visible..."

So at the beginning of this discussion you again explain what is meant by legalising the process and you say that it involves saying who in fact owns what part of the Sibneft shares, so that it is clear to whom a dividend should be paid. Is that correct?

- A. Could I ask you to repeat the question again? It was a very long question, at least until the last part of it. So to whom the dividends should be going; did I understand you correctly?
- Q. What I'm doing is making sense of what you've said at box 460. The first thing you say in the extract I read out is to explain what is meant by legalising the process, and you explain it by saying it involves saying who in fact owns what part of the Sibneft shares so that it is clear to whom a dividend should be paid.

That is what you are saying in the first part of box 460, is it not?

- A. What I'm saying is that the dividends will be received by the shareholders only, it will only be the shareholders who will be receiving dividends, and

because they are not shareholders then they cannot receive the dividends.

Q. What you are saying is that legalising the process involves identifying who owns what shares, so that those people can get the dividends; is that not right?

A. Well, you can interpret it this way but I think I've been saying exactly the same thing: it's only the shareholders that can receive dividends.

Q. What you then go on to say to them, and it is clear this is your preferred option, is that they should trust you and you will ensure that they receive what they're entitled to, but you want to do it in a way so that they are not visible. This is right, isn't it?

A. No, what I'm saying is that they trust me, then we leave everything as it was. I will make my payments for the krysha as I used to be making those payments. I will be receiving dividends because that's the only way for me to receive the income and then I will be paying -- making the pay-outs that I have to make to them.

And I'm making reference here to the fact that our relationship is bad, prohibited by law. I actually use the verdict "prohibit".

Q. Well, let's carry on with what you say. In box 460 you carry on explaining your alternative and you say this:

"... if you don't trust [me], then you need to (get

some valuations, some prices). There can be no official agreements between us. Well, first of all, it is forbidden. Secondly, there is no way not to break these agreements. In other words, the moment you decide you want to break them, you have the right to break them, and legally you... all this is (nothing)."

And perhaps we can just consider your response to Mr Patarkatsishvili's request for legalisation in the context of your concern that they should not be visible.

Do you accept, Mr Abramovich, that there was in fact no legal or practical reason why you could not, for example, have formally transferred beneficial ownership of some of the Cypriot companies to Mr Berezovsky and Mr Patarkatsishvili?

A. If you mean the level of my knowledge about those procedures at that time, then I disagree with your statement.

Q. No, that's not what I meant. What I asked was: do you accept that there was in fact no legal or practical reason why you could not, for example, have formally transferred beneficial ownership of some of the Cypriot companies to Mr Berezovsky and Mr Patarkatsishvili?

You had Cyprus companies. You couldn't see from those Cyprus companies who the beneficial owners were. You could have transferred the ownership of those

companies to Mr Patarkatsishvili and Mr Berezovsky and no one would have known that they were in fact the people who owned those companies and therefore the people who owned the Sibneft shares.

Do you accept you could have done that?

- A. Well, technically maybe I could have done that, but at that time I did not know this. And also why should I transfer shares to people who are not shareholders? And that did not resolve their problem of legalisation. They should have been able to -- they had to be able to demonstrate that they can receive the money.
- Q. Well, Mr Abramovich, the reason you should have transferred the shareholding to them is because they had been your partners since 1995 and you would have been registering in their name what had always been theirs. That is why.
- A. Well, this is not the case. And also, if you look at this, you will see that during this discussion no one raises this question with me; no one says that I have to transfer shares to them. What we are discussing is the legalisation of money, ie how to make sure that one can legally receive the money.
- Q. And what could have been done in order to ensure that they could legally receive their money is to register them or to ensure that they had ownership of a company

which was registered as a shareholder. That wasn't that difficult, was it?

A. Well, if at that time I had been a lawyer and I had understood it so well, then I would probably have come up with this. But at that time I did not know -- they did not know this. So it was a discussion about nothing, if you wish.

Q. You see, Mr Abramovich I suggest that in this passage you were coming up with reasons for refusing to formalise Mr Berezovsky's and Mr Patarkatsishvili's interests in Sibneft which were simply not truthful reasons.

A. I do not agree with this. But if I had owed them shares, they would have told me directly, "You owe us money so" -- I'm sorry, "You owe us shares, please transfer shares to us". Now, during this discussion no one raises the issues of shares with me.

Q. I'm not sure that's right and in fact the whole premise of this conversation, I would suggest, was that they did have an ownership interest in those shares. That is why they want to understand how they can receive dividends if that is the only way profits were going to be distributed. Do you want to comment on that?

MRS JUSTICE GLOSTER: Well, he doesn't agree with the premise, does he? He's made that perfectly clear. Do

you want to add anything else?

A. I disagree with the very premise.

MR RABINOWITZ: Can I ask you then to look at box 468

E6/01/164. You see, at box 468 we see that

Mr Patarkatsishvili in fact identified that it would be possible for he and Mr Berezovsky to have an interest in Sibneft which was formalised, even without them personally appearing on the share register. He says:

"We can suggest another, we can suggest another option... yes. Another option, whereby a bank would participate instead of us."

Do you see that?

A. Yes, I can see that.

Q. And then Mr Berezovsky contributes:

"To which we shall entrust management."

In the next box. Do you see that too?

A. Yes, I can see that.

Q. And in fact, whilst they may not have known this, what they were proposing was very similar to what you already had put in place for yourself: to use a western bank as a nominee shareholder. Isn't that right?

A. Am I expected to answer your first question or your second question?

Q. Well, if you want them separately, I'll give them to you separately. What they may not have known at this time

was that what they were proposing was very similar to what you had already put in place for yourself -- I'm not sure that there were two questions there -- which was to use a western bank as a nominee shareholder?

A. I used a bank as a nominee shareholder. At that time I did not know this, but I did use it.

Q. So there is no reason why they couldn't have done exactly the same, which is what they were suggesting?

A. But I was the shareholder and they were not shareholders.

Q. Well, we'll have to disagree about that, Mr Abramovich.

Can I ask you then to look at what you actually say in answer to Mr Patarkatsishvili's suggestion. We'll see that at box 470 E6/01/165. Do read that to yourself. This is a box where it really isn't very clear what's being said.

A. Yes, I have read this.

Q. But what is clear in box 470 is that you refer to a 44 per cent holding. Do you see that?

A. Yes, one could assume this, one could suppose this. Having said that, it says 40 here.

Q. It says holding, 44 per cent:

"... I am saying... holding... 44 [per cent]..."

Would you accept, Mr Abramovich, that if Mr Berezovsky's case is correct and he and

Mr Patarkatsishvili were entitled to half of your 88 per cent stake at the time, then 44 per cent would exactly match their entitlement?

- A. No, I do not agree with that. They never had 44 per cent, so from this paragraph you cannot draw any conclusion at all. If you add up all the figures here, it will add up to more than 100 per cent, therefore drawing a conclusion from there that someone has a right to some share here is very difficult to do. It's very difficult to understand what this says actually here.

I think when I became a deputy or even already governor, I held a press conference -- or maybe it was an interview with Vedomosti, I'm not sure -- and then at that time I explained the way I understood the way I owned shares and how I held the shares and this is the reference to that. So based on what I had told them, we could do something that would make it easy for them or comfortable for them to receive the money.

- Q. In your commentary here, you don't deal at all with the reference to 44 per cent in your commentary, even though Mr Berezovsky had in fact highlighted this in his commentary and you were supposedly responding to what he had said.

- A. What's your question?

- Q. Can you explain why you didn't respond to what

Mr Berezovsky said there?

- A. What I'm saying, I did not write down this figure 44; I wrote it in words. So if you read my comment, it makes reference -- except that it doesn't make reference to 44; it says 45. And by the way, I don't think it was 44; it was 44 and a little bit above 44. There were a few decimal points after 44.

MRS JUSTICE GLOSTER: Mr Abramovich, can you help me. In your commentary you say:

"... approximately half of which were under my control and the other half under the control of the management."

What do you mean by that?

- A. I never wanted to say publicly that I hold all the shares, I owned all the shares in Sibneft. So we came up with a sentence that does explain the situation but does not clarify it. So we always said that I control half of the company and the other half is controlled by the management. That kept investors happy and that made me happy as well.

MRS JUSTICE GLOSTER: But wasn't right, wasn't correct?

- A. Well, it's true that the management of the company did control the companies that managed Sibneft. However, in terms of ownership and the final beneficiary was myself. I was the final beneficiary, the ultimate beneficiary.

MR RABINOWITZ: Can we then just move on in the transcript to box 475 at page 166 in the English E6/01/475.

I don't know what page it is in the Russian.

What is happening in box 475 is that you continue to raise with Mr Berezovsky practical reasons why you say he cannot have his interest in Sibneft formally recorded, including, as you see in box 475, the suggestion that if this were to happen then the dividends would be taxed in Russia and the money would stay there. Do you see that?

A. It's not exactly the case. What I'm saying is that if you receive dividends in Russia then you'll have to pay tax, taxes, and then I'm saying that there is no way that then they could make their way into a western bank.

Q. But you are talking about Mr Berezovsky here, are you not?

A. The whole discussion is about Berezovsky. It's not only here; everything is about Berezovsky. The whole discussion is about ways and means that would allow him to receive the money. This is the only thing that we are discussing here.

Q. And if you go to box 476 E6/01/167, you can see that there Berezovsky responds to this further problem you have sought to raise by querying the point about Russian citizens. He says:

"Russian citizen? A Russian citizen if I reside in Russia for over half a year. I am not planning to live in Russia for more than half a year, am I?"

And he apparently took the view that your objection could not be one that would apply to him because he wasn't planning to live in Russia for more than half the year. That's right, isn't it?

A. No, it's not entirely the case. It wasn't an objection, we were just speaking. So he says that most probably he would not be spending more than half a year in Russia but that does not mean that he does not pay taxes, doesn't have to pay taxes in Russia. If my understanding is correct, I think you need to spend more than a year outside of Russia and then your tax position changes, if I'm not mistaken.

Q. And if you just glance at boxes 477 to 484, the transcript is not very clear, but you continue to identify problems in arranging matters in the way that Mr Berezovsky and Mr Patarkatsishvili want you to. Do you see that?

A. Yes, I can see that we are together trying to solve a problem that we are together faced with, to make sure that once Berezovsky is outside of Russia, so that he can receive the money, and one of the instruments that we're discussing is shares. But at the end of the day

I think we used the Rual, the aluminium trader company was something we used in order to make sure that he could receive the money.

Q. So what you were talking about here was registering shares in their names so they could get dividends; isn't that right?

A. We are discussing taxes here.

Q. But the question about taxes arises because you have made the point that the dividends get taxed; isn't that right?

A. Yes, dividends are taxed. That is so. That is the case. And so obviously if a Russian citizen receives an income, then he must pay a tax on that income.

Q. If you go to boxes 485 and --

MRS JUSTICE GLOSTER: Sorry, just before you go there, is there a withholding tax, so that the company has to withhold a percentage tax even if the dividend is being paid to somebody who is resident overseas?

A. I'm sorry, unfortunately I cannot answer your question. I simply do not know.

MRS JUSTICE GLOSTER: Don't worry.

Yes, Mr Rabinowitz.

MR RABINOWITZ: If you go to boxes 485 and 486 E6/01/168, you can see that Mr Patarkatsishvili's response to all the problems you are raising is to say:

"That's why I reckon that if a Western bank was involved in this..."

And Mr Berezovsky says:

"A Western bank with me behind it..."

And it's clear, is it not, that what was being proposed by Mr Berezovsky and Mr Patarkatsishvili was that a western bank should be a nominee shareholder for the two of them?

A. Mr Berezovsky here is asking me what I think about this and I'm saying below here that I have no view on this. I simply do not know.

Q. I don't know why you couldn't just agree with my question, Mr Abramovich. Your own commentary says:

"I agree with Mr Berezovsky that one of the proposals that was put forward by them was that a Western bank would be a nominee shareholder in Sibneft."

A. I'm not against this at all. What I'm saying is that I'm not an expert on this, I'm not a specialist, so I cannot assist you, I cannot answer this question, and this follows from all the things that follow below.

MRS JUSTICE GLOSTER: Choose your moment, Mr Rabinowitz.

MR RABINOWITZ: I have two more questions.

MRS JUSTICE GLOSTER: Yes, very well.

MR RABINOWITZ: And so it's clear from the transcript that

you are against this, Mr Abramovich. By "against this" I mean against what Mr Berezovsky and Mr Patarkatsishvili are suggesting. So that when you get to box 490 E6/01/169, you see Mr Berezovsky asking you directly:

"What do you have against this?"

Do you see that?

A. Yes, I can see that.

Q. And your response to this, the idea of Mr Berezovsky and Mr Patarkatsishvili using a western bank as a nominee shareholder for their shareholding, you can see at box 491. You say:

"Bor', come on, I don't have enough of a feel for the situation to be able to tell you whether this is good or bad. An agreement from me -- that's the easiest thing. You get it, don't you?"

So your response is that you consider it easier for Mr Berezovsky and Mr Patarkatsishvili to have an agreement with you than it would be to satisfy a western bank that they're entitled to a share of Sibneft; that's what you seem to be saying there, isn't it?

A. No, what I'm saying is the reverse. I'm happy to help them so far as I can and by doing as much as I can, except that I have no knowledge about this.

MR RABINOWITZ: My Lady, this may be the right time to

break.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(3.14 pm)

(A short break)

(3.34 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, we were dealing with box 491 E6/01/169, where you respond to Mr Berezovsky and Mr Patarkatsishvili's proposal to use a western bank as a nominee shareholder, where you say in effect that it is easier for Mr Berezovsky and Mr Patarkatsishvili to have an agreement with you than to satisfy a western bank that they are entitled to a share of Sibneft. Do you see that?

A. That's not quite like that. What I'm saying is that I have nothing against it.

Q. That's not all you say. You say the easiest thing is to have an agreement from you.

A. So what I mean is that -- okay, let me read it again, sorry. So I'm saying that I can't advise him, that I cannot give him a piece of advice.

Q. What Mr Berezovsky says in response makes it clear that he doesn't think you're addressing the issue which is of concern to him, and you see that if you go to box 495 E6/01/170, where he says:

"But this does not mean my legalisation, and this is the heart of the problem."

He says:

"I agree with you."

So it's clear that Mr Berezovsky wanted his state to be legally, formally recognised, is it not?

A. No, that's not right. He wanted to receive the money that could have been legally put in a western bank, the legal origin of which could have been proved to the western bank. And then I say that if he insists to become a visible shareholder, for money to go legally to him, then I have nothing to do with Sibneft because then Sibneft will have no future.

Q. I was just about to ask you about that. That's at box 496 E6/01/171 and this is your response to Mr Berezovsky wanting his state to be legally formally recognised. You say:

"Right, but if legalisation takes place, Sibneft company kills Sibneft company. And this is the way [that] it is..."

And what you are saying is that if Mr Berezovsky became formally entitled to ownership in Sibneft, then Sibneft could be destroyed by the Russian State. Do you accept that this was the implication of what you were saying?

- A. No, I don't agree. If we read the sentence just like that, it becomes total nonsense. But I am trying to comment, to an extent that I can. May I?
- Q. Well, we can see your commentary on this, if I may, just by looking at the commentary box because what I suggest is that what you say there reflects what I put to you about the Sibneft being destroyed by the Russian State. You say:
- "I respond by saying that if the shares are registered in Mr Berezovsky's name, Sibneft would be 'destroyed'. As I explain in my Third Witness Statement... the very last thing I needed right then was an official registration of Mr Berezovsky's association with Sibneft. If he were to become a shareholder in Sibneft at that time, when he was such a politically controversial figure and under criminal investigation, I thought that it could well destroy the future prospects of Sibneft altogether."
- A. In my comments it does say that Sibneft will not have a future. I say that investors will want nothing to do with a company whose shareholder is such a politically scandalous figure as Mr Berezovsky.
- Q. But again, Mr Abramovich, there was in fact no need at all for Mr Berezovsky and Mr Patarkatsishvili's formally recorded stake to be brought to the attention of the

Russian authorities, provided it was done through offshore companies or using western banks as nominees, which is precisely what you had done with your holding. That's right, isn't it?

- A. I am not arguing that it couldn't have been done. At that time I didn't know it, there were no grounds for it, and I didn't quite understand how it could have been demonstrated to a western bank that Berezovsky had no shares, then suddenly these shares appeared and they were legal. Perhaps today, with the knowledge I have now, I would have acted differently; but at that time I did not understand it.

And we were discussing what should be done. If he were visible as a shareholder, then the company is finished, it has no future. That's what we were discussing. So to use the company to simply legalise your income, I didn't agree with that -- didn't agree to that.

- Q. I suggest you were just making up excuses for not putting Mr Berezovsky and Mr Patarkatsishvili's interest on a formal footing when you were aware of available alternative structures. Do you agree with that?

A. No.

- Q. Then, just going back to the commentary, between boxes 497 and 517 you're dealing with aluminium and the

payment of dividends in respect of aluminium, and we looked briefly at that I think yesterday and we may need to come back to it next week. If you very quickly glance at it.

The next box I want to focus on is box 518 E6/01/177, which is where you come back to Sibneft. Can I ask you to read the transcript of what was said in box 518 to yourself. (Pause)

A. Yes.

Q. And you and Mr Berezovsky are, I think, in broad agreement as to what you are saying here. You are saying that if Mr Berezovsky insists on you forming an interest in Sibneft and becoming visible, you would respond by selling out of Sibneft because the company would then have, as you say, no prospects. That's right, isn't it?

A. On the whole I agree; with some amendments, but I agree.

Q. But, as we have seen, there was plainly a way to do this without them becoming visible, in the way that was concerning you, because Mr Berezovsky and Mr Patarkatsishvili could hold a stake anonymously through offshore companies or through nominee western banks in exactly the same way as you had. That is right, is it not?

A. Is this a statement or a question?

Q. It's a question.

A. I beg your pardon then, can you repeat it? Because I don't understand at which point this has become a question. Are you asking me whether it would have been possible to arrange it all through a nominal holding structure like I did?

Q. Yes.

THE INTERPRETER: It was a tiny technical glitch. It's all running again, sorry.

A. So technically it perhaps could have been done; I couldn't have done it. Perhaps it was illegal and at that time I had no knowledge of it. So I was not trying to deceive anyone; I just didn't understand how it could have been done. But I was happy to help in any way.

MR RABINOWITZ: Again, I have to suggest to you that what you were doing here was denying Mr Berezovsky and Mr Patarkatsishvili their right to have their interest in Sibneft formalised and doing so for a reason which was simply not valid. I take it that you do not accept that? That's a question.

A. I do not agree with this.

Q. Can we look next at box 519, please. It's on the following page E6/01/178. You see, looking at box 519, that Mr Patarkatsishvili moves the conversation on to ask you how much they might expect to receive in

terms of dividends in 2001. Do you see that?

A. Yes.

Q. And you say in your commentary that:

"... in this particular case, what Mr Patarkatsishvili means by 'dividends' are actually the 'krysha' payments."

But that is plainly not what he says, is it?

A. From what he is saying, it is impossible to make a conclusion either way. I am just trying to recall what he meant at that time.

Q. Well, you say it's impossible to draw a conclusion either way. We can see there is only one conclusion about what he is saying: he is talking about dividends. There is no dispute that this is an accurate translation of this, Mr Abramovich.

A. The translation is not contested. However, the meaning of the word "dividends" is contested.

Q. Well, can you just go back to box 458, please, at page -- in the English, page 160 E6/01/160. You see at 458 -- this is only a little earlier in the conversation -- you had been explaining that from 2001 payments from Sibneft would be through dividends.

I suggest that this is precisely what Mr Patarkatsishvili is referring to in box 519 when he asks you about the likely value of the dividends. Do

you disagree with that?

A. No, I don't agree. I think 20 minutes might have passed between what we discussed earlier and what we're discussing here. But you may be right; I can't say.

Q. So we have Mr Patarkatsishvili asking in box 519 on page 178 E6/01/178 about what would be the amount of the dividend to be received. Could you please read to yourself boxes 520 to 528, where the conversation about what dividend would be received continues. Just read 520 to 528 to yourself, please. (Pause)

A. I've read it.

Q. I suggest to you, Mr Abramovich, that there is only one interpretation that can be sensibly put on this discussion: namely that Mr Patarkatsishvili and Mr Berezovsky are asking about how much they will be paid by reference to the quantum of Sibneft dividends because it is the money that you will be making from these dividends which will decide their entitlement to funds. Do you disagree with that?

A. I'm sorry, I've sort of lost the thread as to what I need to agree or disagree with. The question was very, very long.

Q. Do you agree that this conversation was about Mr Patarkatsishvili and Mr Berezovsky asking how much they would be paid by reference to the quantum of

Sibneft dividends which would be distributed in the following year?

A. I agree to that, but that is not what we mean. Badri is asking, in my assessment, how much will Sibneft pay by way of dividend, because prior to that I explained that that was the only way of deriving revenue as of next year, only through dividends. So then he is asking: so how much dividend will be declared by Sibneft or will be received by Sibneft?

Q. The reason he is asking about the amount of Sibneft dividends is because that will determine how much they will receive as well in that year, will it not?

A. Well, to some extent, yes. One could say that they can't demand from me more than the company can make. To some extent, yes, you can make this conclusion, because I've already mentioned that that was the only remaining way of receiving profit, only through dividend. Everything else was forbidden.

Q. What they were trying to ascertain was what their share of that profit would be. Do you agree?

A. No. They were trying to understand how much I would be able to earn or how much the company will be able to earn.

Q. Can you look, please, at box 524 E6/01/179. It's clear from this that you and Mr Patarkatsishvili have

discussed how much money was generated from dealing with Sibneft in the previous year on an earlier occasion; do you agree?

A. It's not quite right. We had discussed it previously: when we were discussing \$300 million, we were discussing where the money would come from and I was telling him, "I can get it from here but there is no possibility of getting it from here". I said, "We may earn so much from here and we could earn so much from there", so as to pay him this cushion or this rainy-day money. So by this time, of course, he already had some idea of the income.

Q. The number he gives there, "in the order of 900 million", was not limited, was it, to Sibneft's own profits looked at in isolation?

A. This figure was given by him as an example. I don't quite understand where he got this figure from but he just voiced his guess. I can't comment on that. If we're talking about 900 million, right?

Q. But he seems to be responding to you saying:

"What does it depend on? I've told you... (How much have) have we earned this year? How much have we made this year?"

And he says:

"... in the order of 900 million."

And that suggests that there had been a previous conversation between the two of you as to how much profit would be generated.

A. So is the question whether we had a previous conversation?

Q. Indeed, in which the figure of 900 million had been mentioned.

A. I don't think so. No.

Q. 900 million could refer to how much money you had generated from your ownership and control of Sibneft in 2000; do you agree?

A. It's hard for me to say because Badri has suggested this figure and on the basis of this figure I explained why it's impossible to estimate beforehand what kind of income we'll have. And then I'm explaining: because if they tax us 600 from 900, we'll have one amount of revenue; if they tax us 70 from 900, we'll have another income. Just as an example I'm showing that. I don't think that there's a link with something specific.

Q. Is it not your own evidence that Mr Berezovsky and Mr Patarkatsishvili were paid in the order of around \$460 million in 2000?

A. If I remember correctly, 490 we might have discussed, but I cannot be very exact.

MRS JUSTICE GLOSTER: Is that \$460 million each or

\$460 million between them, Mr Rabinowitz?

MR RABINOWITZ: Between them.

You see, Mr Abramovich, just assume the \$460 million for the moment: that is roughly half of the \$900 million figure that you were talking about with Mr Patarkatsishvili.

A. Well, if we -- with amendments like this, 490 is also almost half. But this figure, 900 million, is not linked to anything; it's just a figure.

Q. Can we briefly go back to the bolshoi balance and look on it, if we may, at something called the Fomichev table or "FOM" table, I think about three pages from the end.

Now, I know you're not familiar with this table and if you're not following what I'm saying, just say so and we can raise it with someone else. But if you have that table, you will see that the balance -- let's just look at this slowly. It's divided into two sections, "PRB" and "PRBR". Do you see that? You can see the green line, "PRB" and then "PRBR".

A. I have already mentioned that I had never seen it before but I am willing to continue on this basis.

Q. Thank you very much. And I want to look at this but ignore some Rusal-related payments because at the moment you were talking to Mr Patarkatsishvili about Sibneft and so we can leave out the Rusal payments here.

If you look at the section above "PRB", that's the upper section, do you see that there is a \$7 million payment to Bili by way of a loan in October and then a \$614,000 loan to Bili in December?

A. Yes, I can see that.

Q. And those payments were to the Bili company, which had been set up for Mr Patarkatsishvili's aircraft, so we can take those out because they relate to Rusal.

Do you also see a \$16.27 million payment from May, which was the repayment of a loan made by Deripaska? Again, that was agreed at the Dorchester Hotel meeting and Mr Berezovsky's evidence is that that was to be set off against his profits from Rusal. Do you follow? That is what he says.

Do you follow? You don't have to agree with me, but do you follow?

A. Yes, I can hear and I follow.

Q. Thank you.

And if you then just take those two payments out, the PRB balance payments would total \$437 million approximately; it's 437,481,929 but let's just work with the \$437 million.

Then if you look at the PRBR balance, you see a \$25 million payment for a plane for Mr Patarkatsishvili. Do you see the \$25,348 "PRB(A1)"

reference?

A. Yes.

Q. And that just leaves \$3.8 million in payments under the PRBR section and that would suggest that the total non-related Rusal payments, using your own spreadsheets, is around \$441 million. Sorry, non-Rusal related payments was \$441 million.

I suggest to you that that is very close to half of the approximately \$900 million which you and Mr Berezovsky and Mr Patarkatsishvili were discussing as being the expected profits to be made from Sibneft in that year. Do you disagree with that?

A. I don't understand. Which year: 2000 or 2001? When you say "this year", you mean 2000 or 2001?

Q. This is for the year 2000.

A. So why is it then to do with expectation or estimation? Because we're in December. I don't understand what you asked me. Why "expected profit"?

Q. Because you're in December; you weren't right at the end of December. At box 524 you are saying, "How much have we made this year?" and Mr Patarkatsishvili says, "900 million". What I suggest to you is that that ties in -- 50 per cent of that ties in very closely with what your own evidence suggests was being distributed to Mr Berezovsky and Mr Patarkatsishvili for that year.

A. It's difficult for me to comment. I don't understand the table very well, therefore I can't really say much. But 441, whether it's close to 450, it's also close to 490 but it's all very approximate. But I can't tell you anything else. I know for sure that 900 was an approximate figure that Badri threw out and on the basis of that we were looking at possible tax payments or rather we were discussing possible tax payments.

MRS JUSTICE GLOSTER: Mr Rabinowitz, could you help me. I'm on the Excel spreadsheet but there are a number of different spreadsheets. Looking at the bottom, which one should I be on? "2000 total cash incl[uding] annual", "accrued", "payments", "summary payments", "total".

MR RABINOWITZ: Does your Ladyship have -- I think it's the third to last document in the bolshoi balance series. So it should look like this (indicating).

MRS JUSTICE GLOSTER: I don't have the bolshoi balance. I was told to look at it on the Excel spreadsheet.

MR SUMPTION: My Lady, it's the "FOM" tab at the bottom.

MRS JUSTICE GLOSTER: Thank you very much. That's what I needed to know. Thank you, yes, I'm there. And that's called the bolshoi balance, is it?

MR RABINOWITZ: The whole series of documents is called the bolshoi balance. This is called "FOM", Fomichev table.

MRS JUSTICE GLOSTER: Right, thank you. Yes, thank you very much.

MR RABINOWITZ: Now, just going back to the Le Bourget transcripts, can you just look at box 526 E6/01/179, Mr Abramovich, because the figure of \$900 million comes up again there:

"So, let's assume that next year we shall once again make 900 million..."

Now, how is that consistent with the answer you gave earlier that this \$900 million was just, in a sense, made up, an assumption, having nothing to do with what Sibneft had actually achieved in 2000?

A. You have to read the whole sentence, everything, and not just this box. I'm asking: how much do you think we earned? He says: 900. So on the basis of this 900, I'm giving him this breakdown and saying: look, if they tax us at 600, we'll have a certain amount of dividend; if they tax us differently, we'll have a different amount of dividend; if taxes remain as they are, then it will -- the figure will be the same as it is. That's all it means.

Q. Can I ask you next, please, to go to box 529 E6/01/180. Now, Mr Patarkatsishvili is asking why Sibneft has been managed so that it can no longer make money in the manner in which it had done historically.

Do you see that?

- A. Yes, I can see it, but it's not quite like that. It's not exactly what he's asking me, in my view.

MRS JUSTICE GLOSTER: What is he asking you?

- A. He's asking me: why is it that we're doing everything that I'm describing? Why is it we're drilling first, et cetera, and then I pay him? Why can't we do it vice versa? Why can't he count on a larger amount of money? Instead of making all these investments, why can't we just sort of surrender this money, give up this money? And I'm explaining that it's not possible.

MR RABINOWITZ: When he asks you this question about managing the company in this way, he asks it using "we".

He says:

"... why have we taken this decision, to work in this way?"

Do you see that?

- A. Yes, I can see that. Badri's Russian wasn't native, it was his second language, and he did mix up sometimes his grammar. Sometimes he says, "Why do you work like this?"; sometimes he asked me, "Why do we work like that?"

- Q. I suggest to you the reason he says, "Why have we taken this decision?" is because you all three know that he and Mr Berezovsky are part of Sibneft, because they're

your partners in Sibneft. That's right, isn't it?

A. No, that's not right. If we look at 155, you'll see that he's asking me: "Why did you" -- in singular, "you" -- "decide to do that?" It's just his Russian, the way he spoke it.

Q. Can we just look at your response to Mr -- can I just pause there.

You see, Mr Abramovich, you try and write off Mr Patarkatsishvili referring to "we" when he's referring to Sibneft but you also refer to "we" when you refer to Sibneft. It's not just Mr Patarkatsishvili's bad Russian; the three of you continually refer to Sibneft as though it is something in which all three of you have an interest, and that is why you both use the word "we".

A. Two boxes above, I am telling him that simultaneously we are drilling out many new fields, and he's asking me, "Why did we take such decision?" It's all to do with Russian grammar, Russian language. He is repeating my sentence. The correct way would have been to say, "Why did you take this decision?"

Q. That would only be the correct way, Mr Abramovich, if Mr Patarkatsishvili did not consider that he also had an interest in Sibneft so that it was his company as well.

A. No, that is not right.

Q. You, in response to him, say:

"There was no other for us... Everyone is doing it."

And then, going on to box 532 E6/01/181, you say this:

"No, of course, one could steal by fiddling with equipment, pretending that it is expensive, but acquiring it cheaply. Well, if we are ready to sink that low, then it is... We had put all that behind us. That's why..."

And then it becomes unclear.

Now, usually when someone says, "I have put that behind me", he means, "I used to do that, but I don't do that anymore". Is that what you meant: that you used to misstate asset values and fiddle the books?

A. We have never done it. When we acquired Sibneft, then all the contracts for equipment supply, they all had inflated -- raw materials, material contracts, they all had inflated values. As soon as the company became ours, we immediately put an end to that. I think we even went to court on that matter.

Q. Just going back to an earlier answer you gave, trying to explain away Mr Patarkatsishvili's use of "we", you said that he wasn't very good at Russian. Mr Sumption, when he opened the case, explained that Mr Patarkatsishvili's Russian was excellent; that was at Day 1, page 115.

Are you now suggesting that he was wrong about that?

A. I am not suggesting that. I'm not stating that he spoke Russian badly. He had a Georgian accent. He studied in a Georgian school, not in a Russian school, and he did mix up things like "I" and "we" and things like that. There were a lot of mix-ups there.

MR RABINOWITZ: My Lady, I'm not sure how long you want to go on.

MRS JUSTICE GLOSTER: I was going to rise at 4.15. Is that a convenient moment?

MR RABINOWITZ: This would be a convenient moment.

MRS JUSTICE GLOSTER: Very well.

Thank you very much, Mr Abramovich. You mustn't speak about your evidence or the case with anyone over the weekend. Do you understand that?

THE WITNESS: (Nods)

MRS JUSTICE GLOSTER: Very well.

Discussion re housekeeping

MRS JUSTICE GLOSTER: Mr Rabinowitz, is there anything we need to discuss now?

MR RABINOWITZ: No, my Lady. The only thing I wanted to raise at some point, and it may assist your Ladyship if I raise it now, is the possibility of not sitting next Friday. The reason I raise it with your Ladyship now is obviously in case your Ladyship has plans that you would

want to make. We are broadly, I think, on track and certainly those at this side of the court could use Friday off.

I understand my learned friend Mr Sumption, at least, has no objection to that. But if your Ladyship --

MR SUMPTION: I've made it clear to my learned friend that if he says that he needs Friday in order to be able to conduct the cross-examinations properly, I don't think I can properly object to that. We would be dismayed if Fridays started regularly disappearing from the timetable but, on the basis that it happens once or twice, I don't think I can reasonably object.

MRS JUSTICE GLOSTER: Right. So just looking at your timetable, Mr Rabinowitz, that you handed up last week, it looks as though we'll have -- well, Pompadur is one of your witnesses, isn't he?

MR RABINOWITZ: Yes, he is.

MRS JUSTICE GLOSTER: And Gorodilov and Mr Shvidler is perhaps starting on the Thursday.

And then we wouldn't sit on Friday the 11th; is that right?

MR RABINOWITZ: That is what I'm raising with your Ladyship. If your Ladyship doesn't want to take a decision on that now, I'm content to leave it over until next week to see

how we're getting on.

MRS JUSTICE GLOSTER: Right, okay. I mean, if you need time, well, provided we're up to speed on the general timetable, which we appear to be, and on the basis that only the defendant's closing submissions will be put in before Christmas --

MR RABINOWITZ: That is the basis upon which we would proceed.

MRS JUSTICE GLOSTER: Well, shall we see how we go, Mr Sumption and Mr Rabinowitz?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: But I've no objection to not sitting in this matter on Friday if that's your wish.

MR RABINOWITZ: I would prefer to see how it goes, but the only reason I want to raise it now is in case your Ladyship needs a lot of advance notice.

MRS JUSTICE GLOSTER: No, well, the person who needs advance notice is the person who, on the defence team, is arranging for the attendance of witnesses.

MR SUMPTION: Yes. I mean --

MRS JUSTICE GLOSTER: That's the only reason why I should decide now rather than next week.

MR SUMPTION: Yes. The real question is, in particular, Mr Mamut: we want to know whether he is going to be required on Friday or on Monday because he has to make

travel arrangements and so on.

MR RABINOWITZ: Well, I can tell my learned friend that now if he needs the best estimate: Mr Mamut should come on Monday and not Friday. I've discussed this with Ms Davies, I think.

MR SUMPTION: Well, on the footing that Mr Mamut is coming on Monday in any event, then there's no reason why your Ladyship should decide about Friday right now.

MRS JUSTICE GLOSTER: Because Mr Sponring and Mr Shvidler are around and it's not a problem?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well. Well, I've leave over the decision but in principle I've no objection to not sitting on the Friday, if that's what the parties want.

Very well. 10.15 on Monday.

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: 10.15.

(4.16 pm)

(The hearing adjourned until  
Monday, 7 November 2011 at 10.15 am)

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Monday, 7 November 2011

(10.15 am)

(Proceedings delayed)

(10.19 am)

MR ROMAN ABRAMOVICH (continued)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Mr Abramovich, can you please be given bundles E6 and E7. Back on the Le Bourget transcript. Can you in that transcript go to page 183 in E6 E6/01/183 or 181 in E7 E7/01/181. I want to look at box 540, please.

Just to remind you, the context of box 540 is the discussion between yourself and Mr Berezovsky and Mr Patarkatsishvili of the fact that from this point on, Sibneft would only be distributing profits by way of dividend. That is then followed by a discussion between yourself and Mr Patarkatsishvili as to whether or not Mr Berezovsky and Mr Patarkatsishvili should be shown as shareholders and you offer reasons why that shouldn't happen.

Then at 540, Mr Patarkatsishvili asks the question:

"And how will it work out, if at the moment it's... how will it work out that we'll be able to receive dividends? If we are not shareholders?"

And you reply:

"Why? We can take these dividends out assigning them to a company, and later we can disperse them very thinly."

You say, "Pay taxes", and then there's a gap.

"... management, 44 per cent is in a management-controlled trust. [The dividends] are taken out, taxes are paid, after that they... are dispersed through different routes..."

What you appear to acknowledge here, I suggest, is that 44 per cent, half of the shareholding you control, is their shareholding, but suggest that they should be paid by dispersing dividends which you receive through different routes, rather than them just receiving their entitlement themselves. Is that correct?

THE INTERPRETER: So sorry, the buttons got switched over. Start again.

- A. I don't agree. No shares have ever belonged to them. The fact that the word "spread out", "thinly dispersed" -- and "thinly", that means we'll be able to use the money that we got from the package so that the money eventually gets to Mr Berezovsky. The word "to spread out" means to split into very small portions.
- Q. What is happening here, Mr Abramovich, is that Mr Patarkatsishvili and Mr Berezovsky want -- they have

made this clear -- a formal recognition of their interests, but you're coming up with schemes to keep their interests informal. That is right, is it not?

A. No, that is not correct. The conversation in its entirety, or rather the largest part of this conversation, is about how to behave and what to do so that money comes to London.

During the weekend I re-read the transcript. The word "legalisation" is used here in two meanings: mainly, one of these meanings is the way of receiving cash into a London-based bank.

Q. And then look, if you would, at box 543 --

MRS JUSTICE GLOSTER: Are we leaving boxes 540 and 541?

MR RABINOWITZ: I was planning to leave that for the moment, my Lady. If you have a question --

MRS JUSTICE GLOSTER: May I ask a question on that, please.

MR RABINOWITZ: Please.

MRS JUSTICE GLOSTER: Mr Abramovich, in your commentary to box 541 you refer to:

"... Sibneft shares held in trust by the management (and owned by me as beneficiary)."

At the time of the Le Bourget meeting, was there such a trust set up by which shares were held in trust by management and owned by you as beneficiary?

A. At the time of that meeting I didn't really understand

it very well, although now, with the benefit of further knowledge, I know that this trust existed and I was the final beneficiary of this trust and, were I to die, in the event of my death, my children would acquire the right to that property held in that trust.

MRS JUSTICE GLOSTER: And whether or not you knew it at the time of the Le Bourget meeting, at that date, had that trust been set up?

A. As far as I know, yes, it did.

MRS JUSTICE GLOSTER: Right. And that was a trust held in trust by the management: that was your colleagues at Sibneft, your managerial colleagues at Sibneft or who?

A. My colleagues that were managing Sibneft: I think perhaps Mr Shvidler was a protector and Panchenko and Tenenbaum were trustees. But at that time I had no knowledge of that. I realised all this and learned that later. At that time I didn't even know such terminology.

MRS JUSTICE GLOSTER: Right. But when, in box 541, you refer to "44 per cent... in a management-controlled trust", that's what you're referring to, is it?

A. Yes, that's what I was referring to. And further on I'm talking about 90 per cent being in management trust. I don't remember the box, but I'm saying that later at some point.

MRS JUSTICE GLOSTER: Right. Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, you say in your commentary that the shares are "held in trust by the management". Are you suggesting that the shares were held in the name of the management?

A. I don't understand the terminology very well. What does that mean? What is the difference between "in the name of management" and "in management's trust"? What is the difference between these two?

Q. Well, I'd like you to tell me what you meant in your commentary. These are your words. You tell me what you meant when you said that these shares were "held in trust by the management (and owned by [you] as beneficiary)".

A. I've already described it: it was a trust where I was the final, ultimate beneficiary, but it was managed by the company's management.

Q. Okay. Can you then go to box 543, please E6/01/184.

You say to Mr Berezovsky:

"Somehow, legally, from Moscow. They can never get through to Borya."

That's Mr Berezovsky. Suggesting that a Russian citizen could not receive dividends on Russian shares outside Russia. But you presumably knew that that was

not true, did you not?

- A. If I remember correctly, that's not what I meant there. What I'm saying is that a Russian citizen cannot receive cash on an account held in a foreign bank.
- Q. Well, Mr Abramovich, you were talking, it's clear, in the previous boxes about dividends and what you seem to be saying in box 543 is that Mr Berezovsky, because he was a Russian citizen outside Russia, could not receive dividends on Russian shares. That's right, isn't it?
- A. No, that's not right. I mean, he can probably receive -- if he's a shareholder in any company, he presumably can receive dividends, but what he can't do is receive money in an account in a foreign bank without a permission of the Central Bank. It was forbidden -- well, in fact it wasn't forbidden but you had to have a permission from Central Bank. Even if you wanted to acquire an apartment abroad, you needed at that time to receive permission from Central Bank to export currency.
- Q. You yourself used a number of corporate vehicles set up outside of Russia to hold your Sibneft shares and presumably they were companies to whom dividends were paid. Is that right?
- A. I think that's right but I didn't have the need to receive legal money in an English bank. I didn't have this purpose. That was the purpose of Mr Berezovsky.

- Q. But what would be the difference between receiving money in a bank in Cyprus, which is perhaps where your Cypriot companies had their accounts, and receiving money in an English bank account?
- A. I can't tell you what the difference is. This was the requirement that Mr Berezovsky was trying to satisfy. For me there is no difference. But in some boxes here we're talking that legalising the funds from an offshore account to an English account would cost 15 to 20 per cent. They may have been deceived, they may have had another problem, but they could not do it, they were not able to do it.
- Q. Can we then just look at boxes 544 to 549, where the conversation turns to the tax payable on dividends, and can I ask you to read boxes 544 to 549 to yourself.
- (Pause)
- A. I have read that.
- Q. What you appear to be doing here is now warning about the taxation of dividends while offering to draw up a plan for them to pay minimum tax, which you assert would be some 35 per cent. Is that right?
- A. I think I'm saying that we can arrange it for it to be 30 per cent tax, if I read it correctly; and if no tax planning is undertaken then it will be 35. I think that's what we're discussing.

- Q. Can we then look at box 552 on page 186 in E6 E6/01/186. Just, if you will, read box 552 to yourself. (Pause)
- A. Yes, I have read that.
- Q. So here, Mr Abramovich, Mr Patarkatsishvili is identifying what he sees as the unfairness in your proposal at Le Bourget. He has identified in the boxes leading up to this a number of disadvantages apparently to him of the fact that from now on Sibneft profits will have to be subject to tax but, as he notes at box 552, your interest would continue to be held through a formal legal structure, which he refers to as being "legalised", and your income would be "earned officially... in your capacity [as] a shareholder"; but, as he points out, he and Mr Berezovsky will have problems.

That's right, isn't it? That's what he's saying?

- A. Perhaps it can be interpreted this way. But the problem was not that my income will be legalised. My income was always legalised. The problem is that they cannot legalise their income.
- Q. He plainly doesn't think that it's fair that your position should be dealt with in this way, legalised and officially earned, whereas his and Mr Berezovsky's position should not be. That's clear from what he is

saying in box 552, is it not?

- A. Yes, it can be interpreted this way but it's not that obvious to me. But basically I think it can be interpreted like that.
- Q. Would you accept that the reason he thinks that there's something unfair about this is because he does not see why any one of the three of you should be in a better position than the others?
- A. I don't agree with that. He understands it very well because I am a shareholder in that company and he was just receiving money through an arrangement with me. That's the entirety of the difference. And he understood that very well.
- Q. Then why do you say he seemed to think that it was wrong that you should have no problems when they should have all these problems?
- A. I explain it in the way that I had been the shareholder of that company from the very first day, from the day it was privatised, I remember it and I understand it very well, and you can follow the share ownership from the very first day until they got into my hands. Their problem was not with legalising the shares but with legalising of their income, and by legalisation they meant receiving cash in a London or English bank.
- Q. Can we just look at your response to the suggestion by

Mr Patarkatsishvili that this is unfair. You'll see it at boxes 553 to 555. Could you just read that to yourself. (Pause)

A. Yes, I have read that.

Q. Your response is not here to say, "What are you complaining about? Why should your position be the same as mine? I am, after all, the owner of these shares and you are just people who once, a long time ago, gave me assistance". It's nothing like that at all.

A. I'm not saying it to them because they know it anyway. This is not our first meeting. So in order to understand what it is that we're discussing, you need to know the context and what had occurred before. Otherwise it's very difficult to understand what's going on.

Q. What you actually say to them is to suggest that in fact your position is not that different to their position because, so you're saying here, you too are also not formally a shareholder. That's right, isn't it?

A. I am saying that I am not an official shareholder and if I needed to transfer money to an English bank, I would probably come across the same problem. But I didn't need to do that because I had no plans to go anywhere abroad.

Q. The point you appear to be making to them here is that

Mr Patarkatsishvili should not feel aggrieved because your positions are not different in the way that he has suggested after all, they are the same: neither of you are formally shareholders. That's right, isn't it?

A. From the formal point of view I was the beneficiary, I wasn't a shareholder anymore; well, anyway, I was a shareholder at all times but I was the beneficiary of the trust formally. But the position would not be any different: if I tried to transfer money to an English bank with all these procedures, I would probably have come across the same problem.

Q. Can you go, please, to box 580. It's at page 191 of E7 E7/01/191, 192 of E6 E6/01/192. Again, could you read that to yourself, please. (Pause)

Just box 580, Mr Abramovich. Tell me when you've read that, please.

A. Yes, I've read that.

Q. What Mr Berezovsky is doing here is telling you, in broad terms, what it is that he wants to do because, just glancing back at box 578, he anticipates a moment in the future where the existing arrangement will have to end. Do you see that?

A. Yes, I can see that.

Q. So he outlines this plan about what he wants to put in place for when that existing arrangement comes to an

end; that's right, isn't it?

A. Do I understand your question correctly that he is preparing a plan for when the existing arrangement is over, so he's discussing with me what's going to happen when the existing arrangement runs out? Indeed that's true, but that is not necessarily having anything to do with what we were discussing before. That may pertain to all the other shares he had in Transaero or in any other companies, I don't know, Logovaz or something else, Kommersant. It doesn't necessarily mean -- because we're jumping from one subject to another, I cannot agree with you that that is so; although yes, indeed, he is discussing the future arrangement to manage shares.

Q. And what you are anticipating is the fact that at the end of box 580, one of the things Mr Berezovsky is concerned about, as he says, he says there:

"And as for the shares, it would make sure that they are truly mine."

He wanted an arrangement which ensured that it would be clear that the shares were truly his. And that's right, isn't it?

A. Yes, that's right.

Q. I suggest --

A. And further on I say that that's a reasonable or

a sensible solution, but I can't help him because I don't understand anything about it.

Q. Since the conversation takes place almost immediately after your discussion about Sibneft and Rusal, I suggest to you it's clear that those are the shares that he is talking about.

A. Because I personally took part in this conversation, I don't agree with your statement. That's not quite so.

Q. Can we then move on to box 587, please. In the English it's on page 194 E6/01/194; I think in Russian it will be a page before E7/01/193. Can I ask you, Mr Abramovich, just to read to yourself boxes 587 to 592, please.

A. I've read it. And can we discuss 582 as well, because it follows and it explains and gives answers to the questions you raised just now.

Q. I will ask my questions about 587 and 592 and perhaps we can come back to your point about 582, which I think is about Mr Tenenbaum and Mr Shvidler being involved in the management of your shares. Correct?

A. No, that's not what I wanted to say. I wanted to say that Mr Berezovsky was asking for Mr Tenenbaum and Mr Shvidler to help him to select a company that would help him sort out his assets.

Q. Okay.

On boxes 587 to 592, what we see at box 587, Mr Abramovich, just looking at the first part of this, is that Mr Patarkatsishvili makes the point that they have been talking about a future structure to be put in place but he is interested in determining what should be done until then, which is to say in the immediate future, and before the point in time in the future for which Mr Berezovsky wishes to plan.

Do you agree?

A. Yes, I agree. He is mainly talking about next year.

Q. And it is obvious from what is then discussed, following that, that the topic of conversation concerns again Sibneft and dividends; that's right, isn't it?

A. Have we already abandoned 587 and gone on?

Q. 587 to 592 is where the discussion is about Sibneft and dividends, is it not?

A. Yes, that's right. May I comment 587, please?

MRS JUSTICE GLOSTER: Yes, you may.

A. In 587 Mr Patarkatsishvili says that he thinks that certain amounts should be agreed that they will be receiving next year. He doesn't fully understand how a company runs: that first dividends have to be declared and then you can pay out of them.

He wants the arrangement to be like it was in the past: that he would name an amount of money and then

dividends would be arranged to fit with that sum of money. And at the same time he wants these dividends to be paid out -- well, not the dividends but this cash to be paid out like in the past, not once a year or once every six months like in ordinary companies, but on the basis of need: as soon as money is needed, he would turn to us and we will pay.

MR RABINOWITZ: Perhaps I can ask you a question and you can answer it, rather than giving an answer in advance of any question.

What Mr Patarkatsishvili is asking about first is the amounts that can be expected to be received in the following year, having regard to what you have told him is likely to be the after-tax profit that Sibneft will be making in the coming year; that's right, isn't it?

A. May I ask you to ask this question again? You mean the amount of money he can expect? Because it was a long sentence; I didn't quite understand how the dividend crept up.

Q. The amount of money that he could expect to receive in the following year, having regard to what you have told him Sibneft is likely to be making in the following year.

A. Well, it can be interpreted in this way, yes.

Q. And his question here is obviously related to the amount

that will be paid out by way of dividends by Sibneft and you can see that he wrongly thinks that there will be a dividend payment every month; that's right, isn't it?

A. Yes. He thinks that, just like in the past, money can be drawn out of the company at any time. And I'm explaining to him that the company can't do that; that the company can only act once a general meeting of the shareholders has declared.

Q. And you can see from box 587 that Mr Patarkatsishvili is talking about "the amounts [that] we could receive monthly". You then correct him in box 588 about the possibility of a monthly payment of dividends and you say:

"We'll be able to receive them every six months."

Because that is the frequency with which dividends are paid; correct?

A. Yes, that's correct; but the meaning of the pronoun "we" is not the meaning that I put on that. I say that "we" means the company Sibneft and all the shareholders of that company. And after we, the shareholders, have received this money, we'll be able to spread it out and then I will be able to fulfil my obligation vis-a-vis Mr Berezovsky.

Q. And I suggest to you that when you and Mr Patarkatsishvili both use the word "we", that is

because you are talking about the three of you as partners.

A. That is not so.

Q. If you go down to box 590, we see you again say:

"We'll be able to receive them every six months, every month will not be possible."

So you are saying that whoever is going to be receiving whatever it is they're going to be receiving, that is going to happen every six months, not every month. That's right, isn't it?

A. Yes, that's right.

Q. And you and he then discuss whether this is necessary.

We can see in box 591 he says, still talking about the frequency of dividend payments:

"Can't we set it every quarter..."

And you say in box 592:

"In theory we can do it... [but this] is not customary."

And you explain to him that you had obviously asked the same question about the frequency of dividend payments. That is right, is it not?

A. That is right.

Q. We see, just looking at these boxes, and in particular at box 587 and box 590, that when you talk about who is to receive the money from the dividends, both of you use

the word "we" to identify who would be entitled to receive those payments. You are each talking about a group of persons that includes both you and them, are you not?

A. No, that is not right. Each of us uses this pronoun but each of us puts a different meaning into this pronoun.

Q. Would you agree, Mr Abramovich, that the whole basis of this conversation is that, following the changes introduced by the Russian State, he was approaching the distribution of money that he would receive on the basis that this would coincide with the times when Sibneft dividends were distributed to shareholders?

A. That's what I'm trying to explain to him: that I -- that between the payments that the company makes, I can't pay them. I can only pay them once I have received the money from the company myself.

Q. You see, I suggest the whole conversation about dividends is exactly the sort of conversation that one would have between shareholders where the receipt of money would depend upon when a dividend was paid, but it would not be the sort of conversation with someone who is just able to demand cash whenever they wanted it, as you suggest was the position of Mr Berezovsky and Mr Patarkatsishvili. Do you understand?

A. I understand your question but you are not right. This

is exactly what I said: we are discussing how I would be making payments to them out of the dividends I would receive.

- Q. Can we then go to box 641 on page 205 in the English E6/01/205 and page 208 in the Russian E7/01/208. Are you there yet? You see at box 641 Mr Berezovsky asks you:

"Tell me, please, do you reckon they could arrest Kolya?"

And that is a reference to Mr Glushkov.

- A. Yes, that is so.

- Q. This is on 6 December: this is the day before Mr Glushkov was due to visit the Prosecutor General. That's right, isn't it?

- A. Yes, it's correct.

- Q. And your response, which we see at box 642 over the page, is to say:

"I don't think they would."

- A. Yes. Yes, that's what I say.

- Q. So it would appear from this that the day before Mr Glushkov was due to visit the Prosecutor General, you were of the view that he would not be arrested. Is that correct?

- A. I thought, I assumed, guessed that he would not be arrested. I expressed my guess. But then I am

correcting myself and saying that in fact Krasnenker telephoned me and said that something was not quite right there.

Q. Well, whatever the reason, Mr Abramovich, it's clear from this that you guessed, thought that he wouldn't be arrested the following day. Can you explain why you thought that he wouldn't be arrested the following day?

A. I wasn't thinking about that. I just expressed my guess, my assumption. If somebody asks me, "Do you think he'll be arrested?" and then I say, "No, I don't think so", from my point of view there weren't such important -- such serious economic crimes alleged that he would have been arrested for. And then I correct myself and I say that Krasnenker had telephoned me and arrest is possible and I'm trying to explain to them what I know.

Q. Since we see that it's Mr Berezovsky asking you the question about this, you would accept, would you not, that Mr Berezovsky was also uncertain about whether Mr Glushkov would be arrested the following day?

A. You know, honestly speaking, at that time it seemed to me that he didn't care whether he would be arrested or not; it's just a logical development of the subject we were discussing. In the previous box we're discussing about problems in ORT; and then, an hour and a half into

our meeting, he remembers that Mr Glushkov may also have problems. I can't say this was the very first problem or issue that they discussed. First we discussed all the money and then we moved on to discussing Mr Glushkov.

Q. Mr Abramovich, that was not even close to answering the question I asked you. It is clear from the fact that Mr Berezovsky is asking you the question that he plainly was also uncertain about whether Mr Glushkov would be arrested the following day; that is right, is it not?

A. Yes, it can be interpreted in this way from this question. You can make the conclusion from this question, but it's not an obvious conclusion.

The person who comes from Moscow and -- a person who comes to Moscow, in the eyes of a person who has been outside Russia for a long time, appears more informed. But in fact it was all in the papers, the representative of the Prosecutor General spoke about it, and they're asking my opinion just out of curiosity.

Q. Whether they're asking it out of curiosity or not, it's plain that Mr Berezovsky is uncertain and your view is that he will not get arrested the following day; that is right, isn't it?

A. It's not correct. In one box I say that I think he won't be arrested and in another box I explain that

Mr Krasnenker phoned me and said the situation was complex and there are things that we need -- that must be thought over.

- Q. We know, Mr Abramovich, that the following day Mr Glushkov was indeed arrested, the day after you returned from meeting Mr Berezovsky at Le Bourget. Can you, in your own words, explain why you consider this happened, contrary to what you expressed here as your expectation?
- A. I don't understand. I should explain why he was arrested?
- Q. No. Why you consider Mr Glushkov was arrested the following day after your return from Le Bourget, meeting Mr Berezovsky.
- A. I didn't know why it took place the day after. First of all, he had summoned for a long time; everybody knew that he had been summonsed. If the Deputy Prosecutor General says that he's planning to arrest him, then the probability is close to 100 per cent that this person would be arrested.

So to speculate and to think of whether the Prosecutor General was right to arrest, I think that would not be correct, although of course I can continue and I can speculate if that's necessary.

- Q. You see, I suggest, Mr Abramovich, that the reason

Mr Glushkov was arrested the following day, contrary to your expectation, was because Mr Berezovsky didn't agree to sell the ORT shares to you that day. What do you say to that?

- A. I'd say to that that if you read this transcript in full, and in particular with regard to ORT, we had settled everything, we had agreed up on everything; there was nothing left to discuss. So if your assumption is right that Glushkov was arrested because Berezovsky refused to sell ORT, then I don't understand what it is that we settled and agreed upon here.

I left that meeting with the firm understanding that we'd agreed on everything: we agreed the arrangement, how to pay, what to pay and to whom. It's just that I immediately went on to my election campaign and we didn't have time to finalise the deal and the papers. Moreover, Berezovsky went away and Patarkatsishvili went away: one to Aspen, if I remember correctly, and the other one to Las Vegas. So the subject sort of -- the subject went away by itself until we all met again.

- Q. And if you go next to box 643 E6/01/207, do you see Mr Berezovsky asks whether the prosecution of Mr Glushkov was all Mr Ustinov's doing? We talked on Friday about the fact that Ustinov was the Prosecutor General; that's right, isn't it?

A. Yes, we discussed the fact that Mr Ustinov was the Prosecutor General, and perhaps the most aggressive Prosecutor General in the whole history of Russia, at least in my lifetime. So the question, "Is it Ustinov again?", then yes: if the Prosecutor General summons a person, it's difficult to assume anything else.

Q. And you reply, "Yes", and then in your commentary you say that you have no idea whether Mr Ustinov would pursue the investigation without President Putin's say-so.

But you know very well, Mr Abramovich, that this was very unlikely to have been something done without President Putin's support; that's right, isn't it?

A. Of course I don't agree with this. Prosecutor General does not report directly to the president. Of course, perhaps he listens to his opinion, but the Prosecutor General reports directly to the Federation Council, to the upper chamber of the Parliament.

Q. Mr Abramovich, we've already seen from earlier in this transcript that your own commentary on the risk to Mr Patarkatsishvili of arrest made clear that President Putin was in a position to say whether or not someone was at risk of prosecution, even though this was in law the responsibility of the Prosecutor General.

That's right, isn't it?

A. I didn't understand the question. Whether Putin decided who should be arrested and who should not be arrested; is that what you want to ask me?

MRS JUSTICE GLOSTER: I think he's asking you about a previous answer you gave, Mr Abramovich.

MR RABINOWITZ: A previous answer which you gave, which we --

MRS JUSTICE GLOSTER: Give him the box number, Mr Rabinowitz.

MR RABINOWITZ: Box 164 on page 64 of the English E6/01/64. It should be 63 of the Russian E7/01/63.

If you look at your commentary to box 164, this is you telling Mr Patarkatsishvili that he doesn't have to be concerned about being arrested and you refer to a conversation you had with President Putin in which he said that Mr Patarkatsishvili had nothing to fear and that he was free to visit Russia.

A. Yes, I can see that and remember it.

Q. That reflects the fact that if President Putin didn't want someone to be arrested, they wouldn't be arrested; and if President Putin did want someone to be arrested, they would be arrested. That's right, isn't it?

A. No, that is not right. This just says that President Putin is the most well-informed person. That doesn't mean that he influences who should be arrested

and who shouldn't. Most probably he receives a lot of information, amongst others, from the Prosecutor General. But I'm not convinced, although I cannot be completely certain, I cannot assert that he can influence the other way round.

Q. Now, we'll come back to the Le Bourget transcripts again shortly but can I just first ask you some general questions about the ORT transaction because they will assist us in understanding the Le Bourget discussion about this better. Can you please go to bundle H(A)26 at page 27 in the Russian H(A)26/27 and page 1 in the English H(A)26/1.

A. Yes, I can see that.

Q. And what you should have in front of you, Mr Abramovich, is the share purchase agreement by which your company Akmos acquired Mr Berezovsky's shares in ORT-KB. Can you see that?

A. Yes, I can see it.

Q. And it's correct, is it not, that this document was prepared by Mr Andrey Gorodilov in conjunction with members of the Sibneft legal department?

A. From what I know, yes.

Q. This wasn't in fact a Sibneft project, was it, the purchase of ORT? Sibneft weren't buying ORT?

A. Sibneft was not acquiring ORT, you're right.

A shareholder of Sibneft was acquiring -- the office of Sibneft, 8,000 square metres, the building belongs to me; it did not belong to Sibneft. Sibneft was renting part of that building. My office in my role of an MP was in that building; other companies were renting offices in that building.

So if you think that if something is happening in the building of Sibneft, then Sibneft is doing it, that is a wrong assumption.

- Q. I was just wondering why Mr Gorodilov was assisting you with this. He was employed by Sibneft.
- A. Mr Gorodilov, at that time, I don't remember if he was an employee of Sibneft or not, but perhaps he was not just a Sibneft employee. Mr Gorodilov was dealing with many of my matters; also Mr Shvidler, Mrs Panchenko, et cetera.
- Q. Now, in the Russian version you can see from page 37 H(A)26/37 -- it's not clear from the English version because that doesn't carry any signatures -- that the agreement was executed on 25 December 2000. That's correct, isn't it?
- A. Yes, I can see that.
- Q. If you go to page 38 in the Russian version H(A)26/38, page 12 in the English language H(A)26/12, you will see an identical agreement made for the purpose of

Mr Patarkatsishvili's shares in ORT-KB. That's right, isn't it?

A. Sorry, I missed the page -- oh, yes, yes, I can see that. Yes, I can see Mr Patarkatsishvili.

Q. And at that time, 25 December 2000, ORT, the company whose shares your company was acquiring here, owned 38 per cent of ORT; that's right, isn't it? Or I should have said ORT-KB, the company whose shares your company was acquiring here, owned 38 per cent of ORT?

A. As far as I know, yes. I don't know the situation right at that very time, but yes.

MRS JUSTICE GLOSTER: ORT-KB owned 38 per cent of ORT.

MR RABINOWITZ: And it's your evidence that by this time, 25 December 2000, you had agreed with Mr Berezovsky and Mr Patarkatsishvili that you would pay \$150 million for 49 per cent of ORT; that's right, isn't it?

A. Maybe I don't quite understand your question: is it about the date or is it about the amount of money or what is the question about?

Q. The amount.

A. If I remember correctly, I think the entire amount came up to 164 million.

Q. Right. Well, for present purposes that difference doesn't matter.

MRS JUSTICE GLOSTER: Was that for 49 per cent,

Mr Abramovich? The figure of \$164 million, was that for 49 per cent of ORT?

A. 150 million for shares; the rest is for make the money legal, to legalise the money.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So \$150 million for 49 per cent of ORT; that's correct, isn't it?

A. I think so, yes.

Q. On the basis that you say you were paying \$150 million for 49 per cent of ORT, the 38 per cent that you were acquiring from ORT by acquiring ORT-KB would have a value of around \$116 million: it's about three-quarters of the total that you were paying for the 49 per cent?

A. It's difficult for me to calculate it right now. The scheme was a bit different. If you allow me, I will explain.

Q. I just want to take you through these contracts first, Mr Abramovich.

MRS JUSTICE GLOSTER: Well, I think I'd like to understand.

You were purchasing 38 per cent by buying the shares in ORT-KB; is that right?

A. We were acquiring 49 per cent of ORT. Part of that, part of these shares were in ORT-KB. Another part was held by Logovaz directly, if I understand it correctly.

MR RABINOWITZ: That is correct. 11 per cent was held by Logovaz. 38 per cent was owned by ORT-KB. That gives you 49 per cent, for which you were paying \$150 million. That is correct, is it not?

A. In total we paid 164 million.

Q. Okay. Let's not argue about the -- I'm leaving aside the \$14 million for the moment, okay? Because I'm talking about the price you say you were paying for the shares. Do you follow?

A. I understand, but the arrangement was complex. If we calculate it in your way, we won't arrive at the point we're aiming at.

Q. Well, let's just see where we do arrive because if you're paying \$150 million for 49 per cent then one would expect 38 per cent of the 49 per cent to have a value of around \$116 million: that's three-quarters of the total. Would you agree at least with the maths?

A. Perhaps I'll agree with the maths, yes.

Q. Can we then look at paragraph 2.2 of the sale agreement for Mr Berezovsky: that's on page 28 of the Russian H(A)26/28 and page 2 of the English H(A)26/2. If you look at clause 2.2:

"The purchase price for [these are Mr Berezovsky's] shares... equals 5,000,000... Dollars..."

And we find an identical provision if you go to

Mr Patarkatsishvili's agreement, page 13 of the English H(A)26/13 and page 39 of the Russian version H(A)26/39.

A. Yes, I can see that.

Q. So, looking at these contracts, the total amount that they record you were paying for, in effect, 38 per cent of ORT was \$10 million.

A. Yes, I can see that.

Q. But that wasn't the true purchase price of those shares, was it, Mr Abramovich?

A. This is exactly what I wanted to explain from the very beginning: the deal was complex.

Q. And the documentation that you or Mr Gorodilov and the Sibneft legal staff produced was therefore misleading as to the actual position, was it not?

A. I wouldn't say that it was misleading or didn't reflect the true position. And again, it's not just Mr Gorodilov and our legal staff who were preparing this. The staff of Mr Berezovsky and Mr Patarkatsishvili took part in that: Ruslan Fomichev for instance. This is the fruit of joint effort.

Q. I suggest to you that is not true, and indeed earlier in your answer you did confirm that it was produced by Mr Gorodilov and the Sibneft legal staff, but let's just move on.

Why do you say that contracts which assert that the total purchase price for 38 per cent of ORT was \$10 million were not misleading?

A. So why the contract is not misleading; is that the question? So when did you ask me that?

MRS JUSTICE GLOSTER: Let's start again. Mr Rabinowitz, who are you suggesting is being misled by this document?

MR RABINOWITZ: Well, my Lady, we can come to that in due course.

MRS JUSTICE GLOSTER: Right. Very well.

MR RABINOWITZ: The first point to get clear is that -- and I'll put this in the form of a question to Mr Abramovich, if I may -- on the basis that that was 38 per cent of the 49 per cent of the shares in ORT that you were acquiring for \$150 million, the suggestion that the purchase price for these shares, 38 per cent of the ORT shares, was \$10 million does not properly reflect the price you were paying for these shares, does it?

A. If you look at it this way, indeed. But the arrangement was put in place which we discussed in Le Bourget in detail.

The problem was to receive the funds in an account in an English bank, as I've already explained. To do that and not to fall under regulation of Central Bank, we pay part of the money in Russia, \$10 million as far

as I remember, and the rest was paid into a Latvian bank, as instructed by Mr Patarkatsishvili.

I'm not going to assert it; I don't remember exactly how it was done. Andrey Gorodilov was very familiar with this arrangement and he'll be able to tell you in more detail. He has a more through understanding of how this was all set up.

- Q. Can we then just look at the other part of the acquisition. It is at H(A)26, page 49 in the Russian H(A)26/49. In the English one has to go to bundle B(B)2.04 at page 91 B(B)2.04/91, B(B)2 at page 91.

And again, this was a document produced by Mr Gorodilov in conjunction with the members of the Sibneft legal staff; that's right, isn't it?

- A. As far as I know, yes. But I'm sure, and as far as I know, Ruslan Fomichev initially also took part in this. I don't know whether the final version of the document is the sort of -- was prepared by our legal department but the fact that this is the fruit of joint effort is for sure.
- Q. Well, we'll come to that, but I suggest to you that it is simply not true that Mr Fomichev was involved in this.

But this document was again produced on

25 December 2000; that's right, isn't it?

A. Yes, that's right. I think Mr Ivlev also took part.

I cannot be 100 per cent sure, but I guess.

Q. And this was the agreement under which your company Betas acquired the other 11 per cent of ORT from Logovaz; that's right, isn't it? You may already have answered that question.

A. Yes, that's right.

Q. And if you were paying \$150 million for 49 per cent of Sibneft, one would, mathematically at least, expect the 11 per cent stake to have a value of about \$34 million; correct?

A. That's correct. I think we acquired Logovaz shares on nominal value, for nominal value.

Q. Indeed, that is correct. If you look at clause 1.1.1 -- it should be on the page you're looking at -- do you see that the purchase price is said to be 1.1 million rubles?

A. Yes, I can see that.

Q. And that was indeed a nominal value, was it not?

A. Yes, I can see that.

Q. And again, this does not reflect the true purchase price for these shares, does it?

A. If 164 million, if you divide that by the number of shares, then perhaps, no, it doesn't reflect.

Q. And the documents that you have produced showing the acquisition by your companies of the ORT interests held by Mr Berezovsky and Mr Patarkatsishvili show an amount being paid of very little over \$10 million in total, but you say the amount was \$164 million; that's right, isn't it?

A. From what I remember, altogether we paid 164 million, yes.

MR RABINOWITZ: My Lady, that may be a convenient moment. I'm happy to go on.

MRS JUSTICE GLOSTER: Right. Ten minutes, please.

(11.22 am)

(A short break)

(11.37 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, do you accept that the documents that we have been looking at were not the only occasion on which you or members of your team produced documents that did not reflect the true position of a transaction?

A. To be honest, I didn't understand, I didn't catch why they don't reflect it. Why do they not reflect it? Are you saying -- again, they are backdated. But everything else in my opinion, as far as I understand, although I cannot assert because I did not take part in their

preparation, I don't understand why they would not reflect the true state of things.

Q. Because collectively they represent your acquisition of the full 49 per cent of ORT and collectively they have an acquisition price of just over \$10 million, but we know that that wasn't the acquisition price, do we not?

A. I agree that the whole transaction was \$164 million. But that was the seller's task: to spread what shares he wants to get money for. That's the way the money was -- this transaction was structured in such a way because Mr Berezovsky had to get money abroad.

Initially this transaction was very straightforward: all the money had to be paid by us in Russia and Badri was saying that they were going to pay 13 per cent of Russian tax. And when they come against the hardship, problems with the government, he decided to take this money abroad.

MRS JUSTICE GLOSTER: Can I be clear. Just tell me: why didn't the agreements reflect the actual price that you'd agreed to pay? The agreements only had \$10 million or whatever in them; you agreed you told me to pay 164. Why didn't the agreements reflect the true price and put in this much lesser figure?

A. I cannot say for sure how much was paid for 38 per cent because the shares were split between ORT-KB and

Logovaz. I think 10 million was paid for Logovaz and everything else, if I remember correctly, was paid for ORT-KB, and if we split the number of shares into 164 million then it would not reflect the state of things. But as far as I remember, that was a requirement of Mr Patarkatsishvili: that they don't want to leave money in Russia at risk.

Therefore, the shares -- sorry, the money was paid in such a way so the lion's share, 150 or 140 million, was paid abroad; and 10 million that could have been potentially under risk of confiscation or some other risk in Russia, that 10 million remained in Russia and was divided between them into two accounts so that could use them in Russia, using credit card or in some other way.

MRS JUSTICE GLOSTER: So it was to avoid paying tax in Russia and to avoid the possibility of confiscation in Russia; is that what you're saying?

A. I cannot say that that was a possibility of confiscation in Russia. Transfer of money from Russia into a Russian citizen's account abroad is quite a procedure and to avoid this, this is what we've done.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: So my question to you, Mr Abramovich, is: do you accept that this was not the only occasion on which

you or members of your team produced documents or agreements that did not reflect the true position or transaction?

A. To be honest, I don't quite understand why they didn't reflect the true position. It's the demand of the seller. If the seller wants to document it in such a way and our task is to pay the money, so we're simply reflecting the seller's demand, the seller's request. However, if to divide the number of shares into the amount of money, then yes, it does not reflect.

Q. Well, perhaps we can come back to that, but perhaps for the moment we can look at some other documents which were produced by your team for a different transaction, which show just how this practice of producing what I will call false documents was really a common practice within your team.

Can you please go to paragraph 293 of your third witness statement: E1, tab 3, page 224 in the Russian E1/03/224 and page 123 in the English E1/03/123.

Now, you're referring at paragraph 293 to the payment of the \$1.3 billion which you agreed to make to Mr Patarkatsishvili and Mr Berezovsky in 2001 and what you say at paragraph 293 is that the first payment of the \$1.3 billion amount was made on 31 May 2001. Do you see that?

- A. Could I read the paragraph, please?
- Q. Please do, sorry. (Pause) It's paragraph 293.
- A. Yes, I've read it.
- Q. Do you recall that this was a payment which was arranged for you by your employee Ms Khudyk? Perhaps I can remind you.
- A. Sorry, do I remember that payment was organised by Ms Khudyk?
- Q. Correct.
- A. I know that Ms Khudyk worked for us and still works for us. As I said, that prior to this hearing I read -- I met Ms Khudyk maybe six or eight times, with all my due respect to her. As I remember, she worked at the back office and I haven't used her services that often.
- Q. Can I just ask you to look at what Ms Khudyk says about this. If you go to bundle E2, tab 6, at page 115 in the English E2/06/115, you're looking for paragraph 30. In the Russian it's at page 140 E2/06/140.

Now, she's also talking about arranging the payments of the tranches in respect of the \$1.3 billion and at paragraph 30 she explains that it was on 29 May that she was told by Ms Panchenko:

"... that Mr Berezovsky and (or) Mr Patarkatsishvili had agreed to a payment in cash directly to an account of Devonia to be opened with..."

That's the Latvia Trade Bank:

"... LTB."

Okay? Do you see what she says?

A. Yes, I can see that.

Q. And her evidence then is that she was only instructed to arrange this payment to Devonian on 29 May 2001. Do you see that?

A. Yes, I can see that.

Q. And her evidence is also that at the time Devonian did not itself actually yet have a bank account with the Latvian Trade Bank. Do you see that?

A. Yes. I do.

Q. Now, Ms Khudyk is the head of planning, finance and accounts department at Millhouse; that's right, isn't it? That's what she says in her witness statement.

A. That must be true then.

Q. She was previously --

MR SUMPTION: My Lady, could my learned friend please draw attention to the passage where Ms Khudyk is alleged to have said that the bank account didn't exist at the time?

MR RABINOWITZ: Well, it's very clear indeed in the passage that we're looking at. It says --

MRS JUSTICE GLOSTER: What paragraph?

MR RABINOWITZ: Paragraph 30:

"... to an account of Devonian to be opened with LTB."

Now, Ms Khudyk was previously financial director and from 1999 head of the Moscow office of one or both of the Runicom companies; that's what she says and I take it you wouldn't dispute that?

- A. I would not dispute that, but I cannot confirm this either.
- Q. Now, it's fairly clear from Ms Khudyk's evidence that the payment which you were talking about to be made on 31 May had to be arranged very quickly by Ms Khudyk if she had only been instructed to arrange the payment on 29 May. That must be right, mustn't it?
- A. With regard to speed of payment, if she was instructed on the 29th and she had to do it on the 30th (sic), that's indeed a very high speed of payment. We've paid about -- I think we have paid 38 million, maybe 36, 38 million or thereabout.
- Q. Can I ask you, please, to go to bundle H(A)30 and go to page 199 H(A)30/199. There is no Russian translation of this.

Now, I'll tell you what this document is, Mr Abramovich, and if I misdescribe it, I'm sure the translator can help you with this. It's the minutes or it purports to be the minutes of a meeting of the board

of directors of Pex. And Pex -- this is not the subject of any dispute -- is the company that was used on your side to make the payment to Devonian on 31 May 2001.

Okay? You can take that from me.

A. Yes, I agree with that.

Q. And at paragraphs 1 to 3 of this document it purports to record resolutions of Pex board of directors and what it says -- and I'll read it, they're short -- the first resolution that it says was taken was:

"To approve the following accrued distributable net profit as at 15 May 2001 which is in the amount of [\$1.3 billion]."

The second is:

"The net profit of the Company shall be placed at the disposal of the sole shareholder of the Company, [that is] to the company named Devonian Investments Limited."

And the third resolution is:

"To pay the above dividends to the shareholder as he would direct it."

Okay?

So it is a document that relates to the payment of \$1.3 billion to Devonian; would you agree with that?

A. From what you've read, I agree. And I don't have any knowledge about how this was done, if that was the

question.

- Q. Well, I'm about to ask you about that because Ms Khudyk tells us in her witness statement that this was prepared after she had been instructed by you on 29 May to arrange for this payment.

Do you see that in the first paragraph, three lines from the top, the document says that it is the minutes of a meeting which took place on 18 May 2001? Perhaps the translator can just show you that.

- A. Yes, I can see that.

- Q. So if one just looked at this document, one would be led to believe that there had been preparations for the payment to Devonian going on since 18 May 2001. Would you agree with that?

- A. If I got it correctly from the interpreting, it says that the company is receiving dividends in the amount of \$1.3 billion and -- if I understand correctly, and what we discussed was Devonian: that was the payment from that company to Devonian. I think these are related things but would not link them in such a way.

- Q. Mr Abramovich, that wasn't my question at all. My question related to the fact that this is a document which suggests that there had been preparations for the payment to Devonian going on since at least 18 May 2001. Do you agree?

A. Sorry, on what basis, on what document basis have you made such a conclusion?

Q. Three lines from the top. Well, let me read you the first paragraph of this:

"Minutes of the meeting of the Board of Directors of the Company held at the Andaluz Building [in the] Republic of Panama on 18 May 2001..."

So the document itself on its face represents that there has been a meeting on 18 May 2001. Do you follow?

A. Yes. Yes, I understand that the meeting was held on 18 May.

Q. That's what it says. It also suggests on its face that there had been preparations for the payment to Devonia going on since at least 18 May 2001. Do you follow that?

A. Yes, I follow that, but then again I lost the thread of thought. At what point did that become clear, that this company is being prepared for the payment on 18 May? This is the bit I didn't understand.

Q. Well, I can tell you that Ms Khudyk's evidence is that this was actually produced on 31 May 2001 and it is backdated to 18 May 2001.

A. Then it must be so, except I don't have this knowledge and it doesn't reflect it here in any way. Simply that contradicts what you just said before, that -- before

you said that it must have been prepared on 18 May so as to pay on 29 May and Ms Khudyk is saying that the document was prepared on 31 May in order to pay on 29 May.

Q. No, Mr Abramovich. The document falsely represents that something happened on 18 May when it didn't. It's a false document. Do you follow?

A. Yes, I follow.

Q. And this wasn't the only document that your people were producing which was a false document. Can I ask you, please, to go to bundle H(A)31 and go to page 122 H(A)31/122.

Now, again you may need some help from the translator. We don't have a Russian version of this. But I can tell you, Mr Abramovich, that this is or purports to be a request on behalf of Devonian that dividends payable to the company as a shareholder of Pex should be transferred to its account at the Latvian Trade Bank. Okay?

A. Sorry, is that an assertion or is that a question?

Q. I just want to make sure you understand what I'm saying. It wasn't a question. You need to say --

A. (Untranslated)

Q. Okay. Do you see that the instruction appears to have been signed on behalf of Devonian by Mr Matar Mohd Saeed

Ali Al Neyadi? (Pause)

A. (Not interpreted) Yes.

(Interpreted) Yes.

Q. Or even "da".

Will you accept from me, Mr Abramovich, that again this letter of instruction was in fact a document that was produced by Ms Khudyk or do you want me to show you her evidence about this?

A. I would like to see her evidence about this. Why is this document prepared -- produced by Ms Khudyk when this gentleman with a very complicated name has signed it?

Q. I'll show you. If you go to her evidence at paragraph 33: it's bundle E2, tab 6, page 141 in the Russian E2/06/141, 116 in the English E2/06/116.

If you look at paragraph 33, you'll see Ms Khudyk explains the document that she produced sometime -- she explains that it was on 31 May that she produced these documents. (Pause)

A. Okay, I've read her evidence but I cannot understand: does this reflect what it says in this document or not? Is it the same document? Does she mean the same document? I think she means some other document.

Q. I think she means this document. If you look -- I'm pretty sure she means this document. Well, we can check

with her. But this is the instruction from Devonia to Pex for the declaration and payment of dividends to the account of Devonia at LTB. There may be another version of the same document but this is certainly what she's referring to. Okay?

A. I didn't quite catch -- this document is the document that she's referring to. Is there another version of the document that she's referring to? How does this relate to Pex? I honestly did not take any part in preparation of this document so we'll be just discussing it starting from absolute step one, back to elementary school.

Q. Let's discuss that because what I'm going to suggest to you is that this is yet another document which your people have produced which is a false document. Shall I explain why I say that or will you accept -- do I need to explain why I say that?

Do you see that the date of the document is  
22 May 2001?

A. Yes, I can see the date.

Q. So if you just looked at the document on its face, you would be led to believe that there had been preparations for the payment to Devonia since at least 22 May 2001. Do you follow?

A. What I can hear, yes, I do agree. However, I don't have

an opinion. I really will have to see all these things from start to finish for the very first time.

Q. Ms Khudyk explains that she only produced this document on 31 May and backdated it to 22 May 2001.

Were you aware that this backdating was going on within your organisation, Mr Abramovich?

A. Well, to say that I were aware, I cannot say that I was aware. But I would not place such importance on it. If you are trying to say that I would oppose this, definitely not.

Q. What, you were happy with the backdating of documents, were you?

A. Usually I didn't take part in document preparation. That does not release me from responsibility from what's going on in my company. However, to say that I knew that something was backdated and some document was prepared and backdated, I cannot say that.

Q. You see, Mr Abramovich, it creates a false impression of what is happening and in that respect it is very dangerous to have documents like this in a --

MRS JUSTICE GLOSTER: Well, that's a matter for comment in the particular circumstances, isn't it, Mr Rabinowitz?

MR RABINOWITZ: Well, it is, it is.

MRS JUSTICE GLOSTER: I mean, whether or not it's dangerous will depend on all kinds of circumstances.

- MR RABINOWITZ: Can we look at another document then,  
please: H(A)30, page 40 H(A)30/40. This is a receipt  
from Devonia for shares in Pex. The translator will  
perhaps have to show that to you.
- A. Yes, I can see this.
- Q. Obviously you will understand that in order for Pex to  
declare dividends to Devonia, Devonia would first have  
had to be a shareholder in Pex?
- A. Yes.
- Q. And, as we have just seen in the documents that your  
Ms Khudyk was producing, the declaration of dividends by  
Pex and the payment of these to Devonia was the  
explanation given for the transfer of payments from Pex  
to Devonia; that's right, isn't it?
- A. Excuse me, could you please repeat? I agree about the  
transfer of money from the company Pex to Devonia but  
I didn't understand the first part of your question.
- Q. The explanation that was given as to why Pex was  
transferring money to Devonia was that these were  
dividends that were being declared by Pex to Devonia.
- A. Yes.
- Q. And for that to make sense, Devonia had to be  
a shareholder in Pex.
- A. From what I know during this hearing, I understood that  
the company Pex issued bearer shares.

- Q. Well, it still had to have those shares if it was going to receive the dividends? Devonia would still have to have those shares if it was going to receive the dividends?
- A. As I said, I think they issued bearer shares.
- Q. You see, what your staff were doing here was to ensure that prior to the declaration of the dividend there was a document which suggested that Devonia had received or held shares in Pex.
- A. I cannot either confirm nor deny this statement; I can only hear it. I don't know at what point in time these shares of Pex were transferred to Devonia and at what point the Pex dividends were declared, so it's hard for me to keep hold of all this. It happens sometimes in life, shares for which the dividend has already been declared, and sometimes it's already taken account of in the cost of transaction.
- Q. Well, I can tell you, Mr Abramovich, that this is, Ms Khudyk accepts, yet another false document, in the sense that she produced it on 31 May and backdated it to 14 May.
- Shall I show you Ms Khudyk's evidence on this?
- A. I cannot comment on this. If I understood correctly, Ms Khudyk says this is a false document. To be honest, I doubt that Ms Khudyk is saying that. However...

MRS JUSTICE GLOSTER: Well, it's being put to you that this is another backdated document, Mr Abramovich. Do you understand?

A. Yes, I understand.

MRS JUSTICE GLOSTER: That's why it's false. That's what is being suggested to you.

A. Yes.

MR RABINOWITZ: Can I ask you, Mr Abramovich, to go to bundle J2.2, tab 11, please J2/2.11/171.

This is Mr Mitchard's third witness statement, Mr Mitchard being your solicitor at the time of the strike-out. Okay?

A. Okay. "The strike-out", sorry, what does "the strike-out" mean?

Q. Do you recall that you made an application to try and get rid of Mr Berezovsky's claim?

A. Yes, I do.

Q. Can you go, please, to page 199 of this document, paragraph 44, please J2/2.11/199. Do you have a Russian version there? Is that what he's just been given?

A. Yes, I do.

Q. Thank you. All right.

Paragraph 44, Mr Mitchard is listing reasons why he says the Devonia agreement was clearly not a genuine

agreement. He says:

"In short, the Devonia Agreement was clearly not a genuine agreement. In addition to the points made above, it should also be noted..."

Go down to point (c), please. He says:

"Mr Marino's evidence is that 'the Sheikh did not actually commit to being involved in the transaction until on or about 29 May 2001'. The Devonia Agreement itself was said to have been 'executed on 12 June 2001'. However, as is apparent from Ms Panchenko's schedule of payments [which he exhibits], the first instalment of the US\$1.3 billion payment... was made on 31 May... to the designated account at Latvian Trade Bank, with the instruction for that payment having been delivered on 22 May 2001..."

In other words, Mr Abramovich, Mr Mitchard was relying on the date of a document that we now know to have been entirely fictitious.

A. Do I have to confirm? Sorry, what do I have to do?

Q. Well, do you want to comment on that?

A. The agreement with Badri was reached, as I recall correctly, on 29 May. Anything that happened before that, based on this, is fictitious. All agreements that were signed prior to 29 May, all were backdated, all of them are backdated. If I recall correctly, that was

29 May.

- Q. Can I ask you, please, to go to paragraph 9 of this statement. In the English it's at page 173 J2/2.11/173.

Do you see that Mr Mitchard in the first sentence explains who it was that he interviewed before producing this statement: yourself, Mr Shvidler, Mr Tenenbaum, Ms Goncharova, Mr De Cort, Ms Panchenko and Ms Khudyk. And it appears that no one told --

- A. (Untranslated)

- Q. It appears from what Mr Mitchard says that no one bothered to tell Mr Mitchard that the dates on those documents were all false; that's right, isn't it?

- A. From what Mr Mitchard has written here, it looks like no one told him that. But, on the other hand, it's logical to assume that in 2007 no one understood whether the documents were backdated or not and what date was on the document. It would have been very strange that one of those people listed here would remember that that document was signed on 29 May or on 18 May.

- Q. Now, I want to just go back and look, in the context of the ORT transaction, at how you say you came to agree the sale and purchase agreements involving Akmos and Betas. Can I ask you, please, to go to paragraph 213 of your third witness statement: that's bundle E1, tab 3,

page 98 in the English E1/03/98, in the Russian  
page 199 E1/03/199.

If we can just focus on the second sentence of  
paragraph 213 for the moment, you say there that:

"Mr Patarkatsishvili first raised the idea of  
selling the ORT shares to me in around mid-October 2000  
and I initially resisted."

Now, again, can you look at what you say at  
paragraph 214. You say there that it was only after  
some persuasion from Mr Patarkatsishvili that you were  
finally persuaded and agreed to purchase the ORT shares;  
that's right, isn't it?

A. Yes, I can see that.

Q. And then in the last sentence of paragraph 214 you say  
that after you had been so persuaded by  
Mr Patarkatsishvili, you met with Mr Voloshin and  
informed him of your intention to acquire the shares in  
ORT; correct?

A. Yes, I can see this.

Q. And so this would have been the first time that you  
discussed buying the ORT shares with Mr Voloshin; that's  
right, isn't it?

A. From what I can recollect, that was the first time, but  
I cannot be 100 per cent sure. I think most likely that  
was the first time. I would have not kept this news for

long.

- Q. So, Mr Abramovich, on the basis of your evidence then, this meeting that you say you had with Mr Voloshin must have taken place in late October or early November 2000; again, that's right, isn't it?
- A. If I understand correctly, we are talking about October here, so most likely that was October.
- Q. Late October or early November?
- A. Most likely, yes.
- Q. And when you met Mr Voloshin, Mr Abramovich, you had not yet in fact agreed with Mr Patarkatsishvili to buy the ORT shares; indeed you hadn't even definitely decided yourself whether to buy those shares. That's right, or do you not remember this very clearly?
- A. I think I've informed Mr Voloshin at the point when I decided that I will buy the shares. This is my logical conclusion; I cannot be 100 per cent sure. I can say for sure I would not buy -- I would not buy the shares if I did not inform him.
- Q. Well, can we just see what Mr Voloshin says about this. Can you go to bundle E1, tab 1 and turn to paragraph 30: in the English it's at page 9 E1/01/9 and in the Russian at page 21 E1/01/21. I just want you to look at the first few lines of that:

"The question of Mr Berezovsky selling his ORT

shares arose only later. As I recall, some time after the meeting with President Putin, Mr Abramovich asked me whether it made sense for him to buy the shares from Mr Berezovsky in order to avoid any... future conflicts in relation to ORT between Mr Berezovsky and the state."

Do you accept that what Mr Voloshin says about this is likely to be accurate?

A. Could I please read it from the beginning, what you said in this paragraph?

Q. Go ahead. It's just paragraph 30. (Pause)

A. Yes, I've read 30, paragraph 30.

Q. Do you accept that what Mr Voloshin says about what you asked him is likely to be accurate?

A. Sorry, what did I ask him about?

Q. He says here:

"... Mr Abramovich asked me whether it made sense for him to buy the shares from Mr Berezovsky..."

And what I'm asking you is whether you accept that his recollection of what you asked him is correct.

A. Do I understand correctly that the question asked, or asked as in requested from me? So that's why I can't quite get the question. Asking him, informing him, or I asked him as in requested from him? What is the question?

Q. You requested his view about something.

A. I would interpret that I have informed him and I asked him whether he doesn't mind, but I cannot say how to place the accents here because a lot of time has gone since then; I don't remember the detail.

MRS JUSTICE GLOSTER: Mr Abramovich, look at the first sentence of what Mr Voloshin said in his witness statement.

A. Yes, I've read it.

MRS JUSTICE GLOSTER: Does that accurately summarise what you said to him at the time?

A. Today I cannot say, because the accents are planned here, whether I've asked or requested him; I cannot say now whether it was this way or a different way because after such a length of time it's very difficult to remember the details, what was my question to him. Perhaps he's right.

MR RABINOWITZ: You see, it's clear from what Mr Voloshin says here that he recollects that you were speaking to him about whether or not you should buy those shares. Do you see that?

A. Yes, I can see that. Except I was going to buy ORT shares; it wasn't Mr Voloshin.

Q. Yes, but if you had already decided to buy the shares, it would have been somewhat misleading for you to have pretended to Mr Voloshin that you were asking him about

whether it was a good idea to buy those shares?

A. I didn't try to pretend. If someone would say -- if the president would say that it's not recommended for me to buy the shares or if Mr Voloshin would say that it's not recommended to buy the shares, I would not buy them.

It's quite an explosive product, these ORT shares, I mean their impact, so that's why I didn't want to play any part in it at all. If I would have felt that someone is against it, I wouldn't touch it with a bargepole.

Q. I think it follows from what you're saying that at the time you spoke with Mr Voloshin you obviously had not yet decided definitively to buy the shares. Is that right?

A. I cannot say at that point in time I've decided for sure or not, but if Mr Voloshin would tell me in plain Russian or if I would have felt that he is against it in any way, I would have not made another step.

Q. Equally, if that is right, you obviously couldn't already have reached an agreement to buy the shares; that is right as well, isn't it?

A. Since we're not talking about a specific date, I cannot agree. I think that Badri and I have agreed overall; therefore I think that's why I went to Voloshin. But again I wanted to say: if Voloshin would have said to me

that, no, he doesn't recommend it, then I would have not bought the shares.

Q. So you had certainly not reached a final agreement about this because, as you say, if Voloshin said, "Do not go ahead", you wouldn't have gone ahead?

A. It's important to understand here what is the final agreement. If drafting the documents, the final documents, which happened on 27 December I think. If an agreement is reached on the scheme or how to make the payments, that happened in Le Bourget. If to talk about the essence of the matter, which in my opinion is the most important, that happened round about 6 November.

Q. We'll come to that shortly. Can I now ask you just to go to paragraphs 215 and 216 of your statement: in the Russian it's at page 200 E1/03/200 and in the English at page 99 E1/03/99. Can I ask you to read paragraphs 215 and 216 to yourself, please.

A. Which -- whose statements are they?

Q. Sorry, your statement, so it's at bundle E1, tab 3. Paragraphs 215 and 216.

A. Yes, I have read this.

Q. So in paragraph 215 you are dealing with the meeting which you claim to have had with Mr Berezovsky in Cap d'Antibes on 6 November 2000. Do you see that?

A. I do.

Q. Then in paragraph 216, I think it's the fourth sentence, you say that:

"[You] told Mr Andrey Gorodilov of [your] agreement with Mr Patarkatsishvili to buy his and Mr Berezovsky's shares in ORT for US \$100 million [and that you] asked him to contact Mr Fomichev to arrange the details of the deal."

Do you see that?

A. Yes, I do.

Q. Now, I'd like to deal first with the suggestion that there was a meeting on 6 November, if I may. In paragraph 215 you say that you think:

"It is probable that I discussed the possible sale of ORT shares directly with Mr Berezovsky at a meeting in Cap d'Antibes [on] 6 November..."

And it appears from what you say here that you do not in fact have any independent recollection of any such discussion and that all that is happening here is that you are trying to reconstruct what might have happened from the fact that you say you were in Nice at around that time, and that is why you talk about what is "probable". Is that correct?

A. At the moment of putting together the witness statement I remembered that we met with Mr Berezovsky; I don't recall the dates. But based on the documents that

I received in the process, I can say with certainty that we met with Mr Berezovsky on 6 November exactly because of this matter. Moreover, Mr Gorodilov remembers that as well.

Q. Let's leave aside Mr Gorodilov for when he comes to give evidence but let's just talk about you.

The only reason you are putting the date of 6 November on this meeting is because you are reconstructing from documents which you have disclosed; that is right, is it not?

A. If the question is whether I understood the date or, sorry, if I recall the date, then certainly not. This is a reconstruction.

Q. Thank you. And it is a reconstruction based upon a document which has come out of disclosure to which you refer in your witness statement; that is correct, is it not?

A. Yes.

Q. And to support this reconstruction you identify a document which we will find, if you can turn it up, at bundle H(A)23, page 12 H(A)23/12.

A. Yes, I do see this.

Q. You see -- or I hope you see, because it's the part in English -- it relates to a flight, an invoice for a flight that was taken from Moscow to Nice on 5, it

looks, November 2000. Is that right?

A. Yes, it is.

Q. And this is the invoice that you say triggered your recollection that the meeting was on the 6th, is it?

A. Yes.

Q. Mr Abramovich, leave aside the fact that this suggests that the flight may have been on the 5th and not the 6th. Do you suggest that if you were in France that day, that necessarily meant that you would have met with Mr Berezovsky then?

A. That flight was not on the 5th but on the 6th. We left and we arrived on the 6th, that was midnight. So the dates switched -- they changed in flight. And we stayed at Maeterlinck Hotel, if I recall correctly. And the next day, if I recall correctly, round about lunchtime, I think that was the same day, the same 24 hours, I went to see Mr Berezovsky and Mr Gorodilov was waiting for me outside somewhere.

Q. That, I'm afraid, is not an answer to my question. Even if you were in France that day, do you suggest that it necessarily means that you met with Mr Berezovsky?

A. From my point of view, this necessarily does mean this. But understanding the cross-examination technology, I understand that one cannot assert it with 100 per cent certainty.

Q. You are not saying, are you -- I need to put that differently so we don't get confused.

Are you saying that you can think of no other reason why you might have gone to the south of France in November 2000?

A. I am certain that there couldn't have been any other reason, but this is reconstruction.

Q. Well, perhaps I can assist you then.

At this time, towards the end of the second half of 2000, you were in the process of buying the Chateau de la Croe; that's right, isn't it?

A. Sorry, the name of the chateau sounded strange.

Q. That's because my French is very strange; it's nonexistent. At this time you were in the process of buying the Chateau de la Croe?

This time I would in fact appreciate some assistance from my learned friend.

MS DAVIES: Croe.

MRS JUSTICE GLOSTER: How do you pronounce it, Mr Abramovich?

A. (Not interpreted) Chateau de la Croe.

MR SUMPTION: My Lady, it is spelt C-R-O-E.

MRS JUSTICE GLOSTER: Thank you.

A. (Interpreted) Sorry, I can hear English.

THE INTERPRETER: Yes, I think we've fixed the problem now.

A. Indeed, in the year 2000 I was buying the chateau. Sorry, may -- I cannot assert at what point in time the transaction was closed. It's easy to get this information because we can request documents from Mr Bordes, who assisted Mr Berezovsky and Badri in buying their chateaux. But I'm confident that in winter, I never visited that chateau in wintertime until the moment when it was completed. That was a completely destroyed, burnt-out building so it was, for certain, nothing to do there in wintertime.

MR RABINOWITZ: If you let me ask the questions, you'll find that your responses tie into the questions.

First, this chateau is also in Antibes, isn't it?

A. Yes, this is true. It's one chateau away from Mr Berezovsky's chateau and two chateaux away from Mr Patarkatsishvili's chateau.

Q. And you had retained Mr Bordes as the estate agent on this purchase; that's right, isn't it?

A. Yes.

Q. And in early November 2000 there were problems with the acquisition; do you recall that?

A. I don't recall any problems with the acquisition of the chateau. I cannot assert that there were no problems; I simply didn't know about them.

Q. Can I ask you, please, to go to bundle H(C)6 at page 68

H(C)6/68. This is a letter to you, Mr Abramovich, from Mr Bordes. You can see it's dated 1 November 2000. I shall read it and then someone will translate it for you. It says:

"Dear Roman,

"Obviously your representative Mrs Lorraine HICKEY and your solicitor Mr Mark Halama are more than crossed against myself because I criticized their approach of the fiscal and juridical negotiation concerning your eventual purchase of the three corporations controlling the... Chateau... in Antibes, and also because I suggested some solutions for the future and I asked to Mr Alexander MAMUT to oblige them to accelerate the negotiations due to the fact that we are facing a serious competitor."

Mr Abramovich, would it help if we had that paragraph translated or would it better if I read the whole? Because I don't want you to have to retain everything.

- A. This is not a complicated text, I shall remember it.
- Q. Thank you.

"Mr Alexander MAMUT by sending them my confidential correspondence to him and to you has increased the antagonism between us and now they don't keep us anymore informed of what they are doing, of their intentions and

of the appointments they are organising with the Vendors.

"They have the same attitude towards the important specialised attorney I recommended to you and that you accepted to retain, Me John HEINZEN in Paris.

"Consequently, I would like to ask you to insist that your two representatives, just as a matter of principle and politeness keep us informed. Also for my protection that you kindly return me the attached letter.

"I am sorry to ask you this, but you will certainly understand my position. I can imagine that being familiar with your interests it is normal for you to have a representative and I accepted it, but I am sincerely afraid to [lose] important interests like it already happened to me because of Mrs Lorraine HICKEY['s] behaviour."

So it looks as if at the beginning of November 2000 there was a problem developing with Mr Bordes and his handling of the acquisition; that's correct, is it not?

A. May I clarify, please?

MRS JUSTICE GLOSTER: Yes, do.

A. I do agree that there was a problem. The problem was as follows: the chateau was belonging to three companies and we didn't want to buy any companies and we didn't

take any tax risk. We were -- it was important for us to buy it all clear above board and pay all the taxes, the French authorities were monitoring this very carefully, and the previous owners wanted to sell these three companies to us, and this is the whole story.

Lorraine Hickey was -- well, she was quite tough and aggressive in negotiations and, therefore, perhaps an understanding (sic) has arisen, but... Except I don't understand why I need to visit a burned-down chateau in the middle of winter.

MR RABINOWITZ: Well, you wouldn't necessarily be meeting in the chateau; you could be meeting with Mr Bordes.

A. That is also illogical because Mr Bordes does not speak English -- sorry, does not speak Russian and I did not speak English and Mr Gorodilov doesn't speak English still, the same as myself. So there is no logic in that.

Q. You see, by early December you had in fact acquired the chateau, had you not?

A. I don't recall exactly what was the date but I didn't take any part in these negotiations, ie I knew that Mr Bordes wasn't happy with Lorraine's behaviour but I didn't know any more details.

Q. I suggest to you that you had very good reason to visit the south of France in November 2000, precisely because

you were finalising the acquisition of your chateau there.

A. Sorry, I didn't understand. What was the reason? What was the reason? You're saying I was finalising the acquisition of the chateau. I had no part in it; that was my lawyers' work. I could not have impacted the transaction in any way. I could have paid the money and the rest would have been the way the transaction would have been documented.

Q. Is it not the case that Mr Bordes's son spoke fluent Russian?

A. Neither Mr Bordes nor his son, as far as I know, speaks Russian. As far as I remember, he wasn't in business at that point in time at all.

Q. Sorry, who wasn't in business at that time at all?

A. If I recall correctly, in year 2000 the business was led by Mr Bordes Senior, not by Mr Bordes Junior. I cannot 100 per cent assert that he wasn't working in the office, but as far as I recall I dealt with Mr Bordes Senior: that's the father of the current company owner.

Q. You see, I suggest to you that if you were in the south of France on 6 November, then this was not to see Mr Berezovsky but it was rather in connection with the acquisition of the chateau. That is right, is it not?

A. This is completely ruled out and I insist that I had

nothing to do inside that chateau; as I explained, it was burnt out, there was nothing to do there. And I had no reason to meet Mr Bordes in the middle of winter because I spent every summer in the south of France; I could have had plenty of time to speak with him when I was spending my vacation there.

Q. I suggest the fact that you were dealing with the chateau also makes sense of the presence of Mr Gorodilov. In your witness statement you provide no explanation at all for why Mr Gorodilov should come to Nice to stay at the hotel at that time, do you?

A. Indeed I do not provide any explanation and I can explain that. The latest that I needed the help of Mr Gorodilov on, that was help in negotiations with Mr Bordes. If we would have negotiated the final transaction, that would have been a need to structure it and I would have really used the assistance of Mr Gorodilov there.

MR SUMPTION: I wonder if that needs to be retranslated because the transcribed answer is a little incoherent.

MR RABINOWITZ: What you seem to be suggesting in your answer -- let's see if we can work through this -- is that Mr Gorodilov was a person who would assist you in, for example, negotiating and dealing with the acquisition of the chateau. Is that right?

- A. This is completely not the case. The assistance of Mr Gorodilov in acquisition of chateau, I didn't need that assistance at all. There was no role for him there.
- Q. But, Mr Abramovich, you also do not provide any reason at all why you say Mr Gorodilov accompanied you to Nice on 6 November.
- A. There are several reasons: (a) he is my close friend; second reason, if we were discussing a payment scheme, I would have needed his assistance.
- Q. But he wouldn't have to fly there with you for you to be able to discuss a payment scheme with him, would he?
- A. If Boris or Badri -- if Mr Berezovsky or Badri wanted to talk to him or to speak with me in more detail than we discussed that in the meeting, then Mr Gorodilov would have been necessary, required.
- Q. And, as we shall see from Le Bourget, when Mr Gorodilov was necessary you could always phone him, because that's what you did at Le Bourget, did you not?
- A. Yes, this is true. We did call Mr Gorodilov from Le Bourget.
- Q. Now, so far as what happened at the meeting, which you say took place in early November, you I think acknowledged that you have very little recollection of this. That's right, isn't it?

- A. I indeed remember little about this meeting.
- Q. And you in fact say at paragraph 215 E3/01/99 that you "do not recall the details of what [you] discussed at the meeting"; that's right, isn't it?
- A. I do not recall the detail of what we have discussed, but from my point of view this is the meeting that Mr Berezovsky is describing and his witnesses are describing it. That meeting happened on 6 November, namely, and this is all that -- they are describing all this alleged taunting and putting them down that I supposedly did; all of that happened on 6 November.
- Q. And you also don't suggest that you actually recall whether you discussed ORT or not; that's right as well, isn't it? You say:
- "... I believe we probably discussed ORT."
- A. At the moment when I was writing the witness statement I wasn't 100 per cent sure at all.
- Q. And it's also correct that you don't claim to have discussed any sale price for ORT at this meeting?
- A. If I recall correctly, we've agreed the sale price with Mr Patarkatsishvili at my offices.
- Q. So it follows from what I'm saying that you don't claim to have discussed any sale price for ORT at this meeting; that's right, isn't it?
- A. Yes, I do not claim that.

- Q. And you certainly don't say in your evidence that at this meeting Mr Berezovsky told you that he wanted to sell his interests in ORT for \$150 million?
- A. Sorry, I didn't understand. What I do not claim: that Mr Berezovsky wanted to sell for 150 million? No, I don't claim that. I don't remember how it happened. If I recall correctly, it was in the offices of Sibneft company and I discussed the cost of \$150 million with Mr Patarkatsishvili.
- Q. In fact, Mr Abramovich -- and I'm not sure your witness statement suggests anything very much different -- you have no recollection of this particular meeting at all, do you?
- A. This is not so. I do recall that meeting.
- Q. You don't mention whether Elena Gorbunova was there or not; you can't recall, is that it?
- A. I recall Ms Elena Gorbunova; the question is whether she was related to that matter. She sat -- spent some time sitting at the table and left. We didn't discuss any detail -- I'm not sure whether we would have discussed any details in the presence of Ms Gorbunova. From my point of view...
- Q. You don't mention her at all in your witness statement, do you?
- A. I indeed do not mention Ms Elena Gorbunova in my

statement. I usually mention -- or at least my logic is built in such a way -- I mention those who were related to the meeting, to the negotiations, not everyone who was in the chateau. I also do not mention all people who would theoretically have been met along the way; or, for example, people offering a drink of water, I don't mention them either. Ms Gorbunova, for sure, definitely did not take part in any negotiations.

Q. You don't even mention in your evidence whether Mr Patarkatsishvili was there or not. Do you not recall whether he was there or not?

A. I recall that Badri set up that meeting. As usual, he asked me to arrive and meet.

Q. I take it you're aware that until August of this year you had made no reference to this meeting at all in your pleaded case. Do you recall that? Well, perhaps we can look at that.

Can you be given bundle K4, tab 34 and go to page 92 K4/34/92. Just to explain what this is, it is your defence document, but it's your defence document as it stood in April of this year, and if you go to page 134 K2/34/134, you can see the date and your signature. Okay?

Can you go back, please, to page 92 K4/34/92. I want to show you paragraphs D27.1 and D27.2, where

you're describing a meeting, and I will just read those to you and obviously if you need them translated specifically, the translator will help you.

"It is admitted that, on a date prior to 25 December 2000, Mr Berezovsky told the Defendant at a meeting between them and Mr Patarkatsishvili that he could no longer live in Russia, that he wanted to sell his (and, the Defendant assumed, Mr Patarkatsishvili's) indirect interests in ORT and [he] asked the Defendant to purchase those interests for US\$150 million. In order to assist Mr Berezovsky and Mr Patarkatsishvili, the Defendant agreed to do so, although the amount paid was, in the event, increased to approximately US\$175 million, an amount which was greater than the value of those interests.

"Given the passage of time, the Defendant cannot now recall where the meeting took place, although he believes it was unlikely to have been in southern France at that time of year."

So, according to this pleading, Mr Abramovich, where you signed a statement of truth, there was a meeting and it was a meeting attended by Mr Berezovsky and Mr Patarkatsishvili. Do you see that?

A. Yes, I can see that -- I can hear that.

Q. But your evidence now is that you say

Mr Patarkatsishvili was not there; is that right?

MR SUMPTION: No, my Lady, he did not say that.

A. I never said that.

MR RABINOWITZ: Sorry. Then please tell me what your evidence about Mr Patarkatsishvili is, in terms of the meeting that you're talking about in the pleading.

A. That we've discussed Ms Gorbunova in detail, as far as I understand, what you asked before that. And Mr Patarkatsishvili was the person who set up the meeting and certainly there were the three of us there. I don't know at what point it sounded like I said that there was no Mr Patarkatsishvili there.

Q. Well, Mr Abramovich, you do not mention anywhere in your witness statement that Mr Patarkatsishvili was at this meeting on 6 November, do you?

A. May I read the statement about this meeting? From what I can recall, I am writing about this. The ORT shares were discussed by the three of us at that meeting.

MRS JUSTICE GLOSTER: Are we talking about the meeting in the south of France or the meeting in your offices at Sibneft in the autumn?

A. We're talking about the 6 November meeting.

MR RABINOWITZ: In your witness statement, you do not say that Mr Patarkatsishvili was at this meeting that you claim happened at 6 November in Cap d'Antibes.

A. May I read my statement about this, please?

Q. Paragraph 215.

A. I have read this. I indeed do not directly say that Mr Patarkatsishvili was there but it can be seen from the context that we have discussed it with Mr Patarkatsishvili as well. If you read two paragraphs together, you can see that we discussed it together.

Q. You see, when I asked you about Ms Gorbunova and whether she was there, you explained that people who weren't centrally involved in the meeting, people who might have offered you water, wouldn't be mentioned; but people who would be involved in the meeting you would have referred to. And you don't refer to Mr Patarkatsishvili as being at the meeting you claim happened, do you?

A. In that paragraph I do indeed not refer to Mr Patarkatsishvili but I do refer to him in the following paragraph and in the previous paragraph.

In paragraph 215 I'm saying that the question is whether I've met with Mr Berezovsky about this. Yes, I did meet Mr Berezovsky directly. That means that Mr Patarkatsishvili -- we always negotiated with Mr Patarkatsishvili about this and so for me it was natural that Mr Patarkatsishvili was in that meeting. I did not state that specifically in this paragraph but if -- to have -- to read everything that's said by me

about this, that's obvious; at least it is obvious in Russian.

Q. Just going back to your pleading, D27, whenever this meeting was, your pleaded case was that this was a meeting -- so you said here -- at which Mr Berezovsky asked you to purchase his interest for \$150 million; that's the fourth and fifth lines of paragraph D27.1. But your evidence now is that you do not have any recollection of any such request having been made at this meeting in early November. That's right, isn't it?

A. As I said, I indeed do not recall in detail how this happened.

MRS JUSTICE GLOSTER: Right. Choose your moment, Mr Rabinowitz, please.

MR RABINOWITZ: We can stop now, my Lady, and come back to this.

MRS JUSTICE GLOSTER: Very well. 2 o'clock.

(1.02 pm)

(The short adjournment)

(2.00 pm)

MR RABINOWITZ: Mr Abramovich, we were looking at paragraphs D27.1 and D27.2, which you have in front of you K4/34/92. We had just talked about whether or not Mr Patarkatsishvili was in fact at this meeting, which was what you had said in the pleading, but that wasn't

reflected in your witness statement.

Again, just looking at paragraph D27.1, you can see that you said that whenever this meeting was, it was a meeting at which Mr Berezovsky asked you to purchase his interests for \$150 million. Do you see that?

A. Are we talking about my witness statement or are we discussing...

Q. The pleading, the...

MRS JUSTICE GLOSTER: This is an earlier version of your pleading, not your witness statement.

MR RABINOWITZ: Do you see that?

A. Of course my witness statement is much more precise than what was written much earlier than that. So, if I may, I will refer to your opening and you said that the more a person deals with something, the more he remembers, the more comes to him, and this is exactly what was happening to me. The deeper I immersed myself into this matter, the more time I dedicated to it, the more I remembered, the more details came to mind.

Q. You see, Mr Abramovich, it's not just a question of not remembering about the \$150 million purchase price being agreed there; your current evidence is that you positively assert that the \$150 million price was not requested at the 6 November meeting. That's right, isn't it?

- A. In my witness statement I say that the price \$150 million was agreed with Mr Patarkatsishvili in my office.
- Q. And it was at a much later stage than the 6 November meeting; that's right, isn't it?
- A. No, that is not correct. I can't tell you the date; it might have been end of October or it might have been the very beginning of November. I cannot remember the date. From what I remember, it was around 6 November; otherwise there would have been -- there wouldn't have been any point of going there. That's how I see it.
- Q. Well, let's just see what you actually said in your witness statement.

If you look at paragraphs 215 and 216 E1/03/99, that's where you're dealing with the 6 November meeting, and then in 217 you say: in accordance with what you say was an agreement, which at that stage you were talking about an agreement for \$100 million, you say that Mr Fomichev and Mr Gorodilov dealt with documentation dealing with this.

Then if you go to paragraph 218 on the following page E1/03/100, you claim, and I'm looking at the end of the second line:

"[You] particularly recall a meeting in [your] office in Sibneft where Mr Patarkatsishvili informed

[you] that Mr Berezovsky wanted [you] to pay more for their shares and had required the price now to be US\$150 million."

Now, that is plainly after the 6 November meeting.

That's right, isn't it?

A. No, that's not necessarily so at all.

Initially the price was \$100 million; at some point Mr Patarkatsishvili came and said that Mr Berezovsky doesn't agree to sell for 100 million, 150 million is the price that would satisfy them. To say it was after 6 November, I don't think it's possible to say that on the basis of this witness statement. On 9 October the movement of shares started but I can't remember exactly when the price of 150 was agreed.

Q. Well, in fact, not only is it possible to say that it was after this date but you do say it was after that date. Look at what you say at paragraph 219. You say:

"Accordingly, although the price (US\$150 million) for the ORT deal was agreed by mid or late November... certain aspects of the [transaction] remained outstanding."

So you're suggesting there a date certainly after 6 November: by mid- or late November.

A. It can be read this way. I'm not stating a date; I'm just saying that by mid-November it was already agreed.

6 November, as far as I understand, is prior to mid-November. It is precisely because I don't remember the date I'm saying that by mid-November the price had already been agreed.

Q. Mr Abramovich, I have to suggest to you that this supposed meeting that you say occurred with Mr Berezovsky in early November 2000 simply never happened. Do you understand? Do you want to comment on that?

A. My Lady, I insist that this meeting took place and it took place on 6 November. There's nothing else I can comment. I disagree with the suggestion of the plaintiff.

MRS JUSTICE GLOSTER: Can I just be clear that I understand your evidence. We've got the meeting with Mr Voloshin, the meeting you say occurred with Mr Patarkatsishvili at your office -- or at least one, maybe more -- and then we've got the meeting with Mr Berezovsky which you say happened on 6 November.

Can you put those meetings in any sort of order or are you saying, speaking today, you can't recall the chronology of those three meetings, the order of those three meetings?

A. I cannot give you the chronology. As I understand it, as I imagine, I remember, first there was a meeting with

Badri about \$100 million; then at some point, around 6 November, we agreed 150 million, maybe a bit later, and prior to that, there was a meeting with Mr Voloshin. This is the logic of how I understand this process but I cannot put the dates one after another.

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: Mr Abramovich, I suggest you are right to suggest you met with Mr Berezovsky in a chateau in Cap d'Antibes after he left Russia but in truth this meeting happened later, shortly following the arrest of Mr Glushkov in early December. That is right, isn't it?

A. After arrest of Mr Glushkov we never met with Mr Berezovsky in the south of France. We met once in Megeve.

Q. Can I just ask you next, please, to look again at paragraph 216 of your witness statement. It's at page 200 of the file in Russian E1/03/200, at page 99 in English E1/03/99. You refer in this paragraph to telling Mr Gorodilov of your agreement and asking him to contact Mr Fomichev to arrange the deal.

Do you say you told Mr Gorodilov on the day of the meeting that you say happened on the 6th or do you say it was later on, or do you not remember clearly?

A. Most likely we discussed it on 6 November but I cannot be precise as to what exactly and I cannot really be

sure.

- Q. And in fact would it be fair to say that a lot of what you say here is reconstruction rather than actual recollection?
- A. That is fair to say. Many of these things are reconstruction.
- Q. Mr Gorodilov's evidence seems to be that the conversation you say you had with him which led him to contact Mr Fomichev about an acquisition of ORT shares took place at the end of October, he says at the end of October/early November, but before 6 November.
- A. I think I've said the same. I said that it could have happened at that time. I did not give you the date when it might have happened. On the other hand, it would be strange if I had brought or taken Mr Gorodilov along with me, not explaining to him why it is that he is accompanying me there.
- Q. But the point I'm trying to make, Mr Abramovich, is that according to Mr Gorodilov the time when you told him about your agreement and asked him to contact Mr Fomichev was before 6 November. Do you want me to show you that or do you agree with Mr Gorodilov that that is when you told him about the agreement and told him to contact Mr Fomichev?
- A. I'm not contesting this. I'm saying that I don't recall

when it is -- when it was that I told him. I cannot give you that date.

- Q. You see, if it is right that you told him about the agreement and he should contact Mr Fomichev before 6 November, does that mean that you instructed Mr Gorodilov that he should start working on the transaction structures for this purchase before you discussed it with Mr Berezovsky on 6 November for the first time?
- A. That's quite possible. I can't see any contradiction here.
- Q. So your case is you instructed Mr Gorodilov to prepare these documents even before you had ever discussed purchasing Mr Berezovsky's ORT shares for the first time?
- A. Well, I'm not insisting; I'm just saying that it is quite possible. We were discussing this deal with Badri for quite a long time, so it's quite possible that documents could have been prepared in anticipation. I can't tell you the date. Very likely at some point it could have happened, it could have easily happened before 6 November; I just simply cannot tell you for sure.
- Q. And 6 November is the only occasion on which you suggest in your evidence that you might have discussed buying

Mr Berezovsky's shares in ORT with him before the meeting at Le Bourget; that's right, isn't it?

A. "With him" means with whom?

Q. Mr Berezovsky.

A. Yes.

Q. So if you are wrong about having seen Mr Berezovsky or discussed ORT with him on 6 November, it's pretty clear that you hadn't discussed it with him at all prior to 6 December; that would follow, would it not?

A. I sort of lost the cause-and-effect link. What follows from what, please, again?

Q. If you are wrong about having seen Mr Berezovsky or discussed ORT with him on 6 November, it would follow that you hadn't discussed ORT with him at all prior to 6 December, when you met at Le Bourget?

A. I'm convinced that we met with him and discussed acquisition of ORT shares.

Q. Although you acknowledge that you cannot in fact recall anything about that meeting on 6 November, including whether or not you in fact discussed ORT; that's right, is it not?

A. No, that's not so. The only thing that worried Mr Berezovsky at that time was ORT. So if I went -- I mean, to go to his home, to go to his place, to go to talk to him, or to go to Nice at that time and not to

visit him, or visit him and not discuss ORT, all of these things are totally incredible and impossible.

- Q. Mr Abramovich, the last answer you gave is reconstruction and perhaps, you would say, logical deduction, but you have no recollection of that, which is what I suggested to you.
- A. You are wrong in suggesting that. I don't remember the details of the meeting but I do remember that the meeting took place and on the basis of reconstruction, on the basis of consulting the documents, I then assert that the meeting took place on 6 November.

Q. No one disputes that a meeting took place; the dispute is about the date. You do understand that, don't you?

A. Yes, I do.

Q. Can we go back, please, to paragraph 216 of your statement E1/03/99. We've already looked at where you say you instructed Mr Gorodilov to work on the structure for the ORT transaction and you say that might even have been before you met with Mr Berezovsky.

What you go on to say in the paragraphs that follow is that the complications for the transaction arose from the need to pay the money to Mr Berezovsky and Mr Patarkatsishvili offshore; that's right, isn't it?

A. Yes, indeed. I said that initially the deal was structured in such a way and we planned it in such a way

that it would be a totally Russian transaction and they would pay taxes on the deal at the rate of 13 per cent.

- Q. Now, this concern of Mr Berezovsky and Mr Patarkatsishvili about being paid offshore was a concern that was raised fairly early on; it wasn't a concern which was raised at the last minute, was it?
- A. What do you mean, an early stage?
- Q. Well, certainly before you met at Le Bourget on 6 December.
- A. Yes, indeed. Absolutely.
- Q. Now, you don't suggest that you had any involvement in preparing a structure for the purchase of ORT, do you?
- A. I am not insisting that I took part in preparing the structure, no.
- Q. And you don't claim that you had any discussions with Mr Fomichev, do you?
- A. No, I had -- as far as I remember, I had no discussions with Mr Fomichev.
- Q. And you don't claim to have had any discussions with any of Mr Berezovsky's or Mr Patarkatsishvili's associates about a sale of ORT or about the structure for such a sale before December 2000, do you?
- A. I did not catch it. Are you counting Mr Patarkatsishvili among Mr Berezovsky's associates?
- Q. No, I'm talking about associates -- no, I wouldn't

include Mr Patarkatsishvili as Mr Berezovsky's associate for the purpose of this question. I'm asking you about the people who were their associates rather than either of them.

- A. It's unlikely that I would have talked to any of them about it.
- Q. The arranging of the sale and the arranging of the structure for the sale was something that you say you left entirely to Mr Andrey Gorodilov; that's right, isn't it?
- A. The structure of the deal, the arrangement of the deal, yes, indeed, I left entirely to Gorodilov; but I discussed this with Badri as well.
- Q. In terms of the structure and what was done in relation to the structure, you cannot give any first-hand evidence about what, if any, specific steps were taken to prepare a structure for a transfer of shares in ORT; that's right, isn't it?
- A. Well, it depends on what we call direct evidence. I didn't deal with the structure myself; I was informed, I knew a little bit, I understood a little bit, but indeed I wasn't engaged in it personally. So it is obvious that I am not a direct source for this information.
- Q. And you aren't able to give any first-hand evidence

about when any specific step was taken in terms of putting the structure together, are you?

- A. I can talk about the final structure but I can't talk about the initial structure. I remember that the movement of shares started on 9 November but which steps preceded and which steps followed that, I don't know, I don't remember.

And the final structure was agreed on 6 December in Le Bourget. If you read the transcript, you see all the steps as they went along because Badri and I keep recalling who was guilty of what, as it were, whose fault was what action and what we had to pay for and which action was done and not done.

- Q. You don't suggest that either Mr Berezovsky or Mr Patarkatsishvili personally had any involvement in preparing a structure for the transfer of the ORT shares, do you?
- A. I maintain that Mr Berezovsky and Badri, and in particular Badri, took part in organising the structure.
- Q. Do you suggest there was any contact between Mr Gorodilov and either Mr Patarkatsishvili or Mr Berezovsky personally in relation to the preparation of such a structure?
- A. If a telephone conversation is not a personal contact, then I don't remember anything else. I don't remember,

when I was discussing this 150 million, whether Andrey came into the office whilst I was talking to Badri or later. But most likely, no, there were no direct contacts.

- Q. Can I ask you, please, to go back to paragraph 217 of your witness statement E1/03/99. You say at paragraph 217:

"In accordance with this agreement, and consistently with the documents I have recently reviewed relating to this agreement, I understand that, as a result of a number of transactions arranged by Mr Andrey Gorodilov and Mr Fomichev, in the period 9 November to 12 November 2000, the shares [in ORT-KB]... were transferred out of all but one of the companies and into the personal names of Mr Berezovsky and Mr Patarkatsishvili."

And you can see, Mr Abramovich, in that sentence that you are avowedly giving evidence on the basis of the documents you have recently reviewed. Do you see that?

- A. Yes, I can see these words and I did say that mainly this is reconstruction.
- Q. That suggests that you don't yourself have any first-hand knowledge of these matters and that you were relying on the documents in order to piece together what

you say happened. That's right, isn't it?

A. In some cases, that is so. Some things I remember. But on the whole, you're right, I am relying on documents.

Q. And you say that the transactions which you were referring to and which you have used the documentation to put together were arranged by Mr Gorodilov and Mr Fomichev.

Now, Mr Abramovich, there are no documents whatever relating to these transactions which were produced by Mr Fomichev or even which were amended by Mr Fomichev. Is that something that you're aware of?

A. The question is whether I know that Mr Fomichev has not amended or edited any documents? No, I don't know that.

Q. Presumably when you conducted the review you say you conducted, you would have noticed that there are no documents either produced by Mr Fomichev or which were even amended by Mr Fomichev; or did you not notice that on your review?

A. I've already said that I'm not a man of detail, so I'm not -- I didn't read the documents all that attentively. But I'm not insisting that Mr Fomichev amended the documents. In no way am I insisting on that.

MRS JUSTICE GLOSTER: Mr Rabinowitz, if you look at paragraph 217, the reference is to "as a result of a number of transactions arranged by... Gorodilov and...

Fomichev".

MR RABINOWITZ: Well, he says that it's consistent with the documents he's reviewed.

MRS JUSTICE GLOSTER: Well, I'm not quite understanding the point that you're putting but I don't think it matters anyway.

MR RABINOWITZ: There are not only no documents which carry Mr Fomichev's involvement; there is also no correspondence to or from Mr Fomichev in which he sent documentation relating to these transactions to Mr Gorodilov or anyone else. Would you have noticed that in your review of these documents?

A. I've already mentioned that I didn't notice it, but it's quite possible. First of all, Mr Fomichev is not involved in these proceedings, so we can only get documents from one side: we can only get our disclosure. So it's not correct to insist that there are no documents from Mr Fomichev.

Q. I'm suggesting to you that the documents themselves do not show that the transactions were arranged by Mr Fomichev.

A. I can't either -- I can neither refute or agree with this. On the basis of these documents I have no understanding. That's all I can say.

Q. Can you go next to paragraph 219 of your witness

statement, please E1/03/100. You say in the last sentence of paragraph 219:

"I understand that Mr Andrey Gorodilov and Mr Fomichev continued to discuss these issues..."

You're talking about the mechanics of the structure.

"... between themselves."

Now, again, there are no documents relating to the structuring of an ORT transaction produced in November or early December which were produced by Mr Fomichev. Are you aware of any document that was produced by Mr Fomichev at this time relating to the structuring of the transaction?

A. I am not asserting that we have documents that come from Mr Fomichev. In Russian practice it is not customary to document meetings, to have protocols or minutes after every meeting. If a meeting took place, that doesn't mean that it would give rise to a document; not at all.

Q. So what is the source of your understanding here as to what occurred in this period in relation to structuring, if it's not documentation?

A. Documents which is part of these proceedings, which has been disclosed; number 1. Number 2: my absolute understanding that the only person in the organisation of Mr Patarkatsishvili and Mr Berezovsky who even theoretically could have taken part in such a deal is

Mr Fomichev.

Q. Yes, but, Mr Abramovich, if there are no documents which either come to or were sent to Mr Fomichev, it appears that the only basis for your understanding is an inference that it must have been Mr Fomichev who was involved because he was the only person in the organisation of Mr Patarkatsishvili and Mr Berezovsky who even theoretically could have been involved. Is that what you're saying?

A. Well, not quite so. What I'm saying is given that the fact that the other side has not disclosed any documents for these proceedings, I cannot say for sure that these documents don't exist. Therefore we're forced to work with the documents that have been disclosed, that we have disclosed for the purposes of these proceedings.

Q. And none of those suggest that Mr Fomichev had any involvement at all. Do you understand what I'm saying to you?

A. Yes, I understand what you're saying. It doesn't follow from the documents in these proceedings that Mr Fomichev had anything to do with these documents but in fact, in reality, this is exactly what happened: he was involved.

Q. Can you then go back to paragraph 217 of your witness statement E1/03/100. I want to look at the second-last sentence of that paragraph. You're

referring here to corporate notices and you say:

"In addition, corporate notices were then served of Mr Berezovsky's and Mr Patarkatsishvili's intention to sell their shares to a company that was associated with me."

And then in the last sentence you say:

"It is possible that I was told about this at the time but I cannot now recall."

Again, you don't suggest that you were personally involved in producing or serving any such corporate notices, do you?

- A. In fact I am saying that I did not participate personally.
- Q. And you don't suggest that you remember being shown these corporate notices before they were sent, do you?
- A. I think that it's very unlikely that I was shown these corporate notices.
- Q. And you don't suggest that you would have known when those corporate notices were produced or served?
- A. In my evidence I say that I have now seen these documents and on the basis of that, I'm giving evidence. If you ask me whether I remember that corporate notices were served, of course I don't remember it.
- Q. So all your evidence is based upon a reconstruction of what you see in documentation in the case; is that

right?

A. The question is: just what do you mean by "all", "all your evidence"? If you're asking me when shares started moving, then yes, that's on the basis of documents I have seen. Whether all my -- if you're asking me whether all my recollection, all my memory is based on these documents; no, of course not, not all my evidence and not all my recollection.

Q. I'm just talking about the documentation relating to the movement of shares, corporate notices and the like.

A. And I said that from the very beginning. Why did we need to go over it? I said from the very beginning that I cannot remember this. My evidence here is based on documents and is reconstruction.

Q. And then at paragraph 18 --

MRS JUSTICE GLOSTER: 18 or 218?

MR RABINOWITZ: Sorry, 218.

Can I ask you to read paragraph 218 to yourself,

Mr Abramovich. (Pause)

A. Yes, I have read that.

Q. So you here are talking about a meeting that you say you had with Mr Patarkatsishvili in Moscow in late autumn 2000 and if you go down to paragraph 219, you appear to be more specific about this. You say, I think, that it was in mid- or late November; is that right?

- A. This is what is written, yes.
- Q. Mr Gorodilov in his evidence says that the meeting may well have been after 28 November 2000. I don't suppose you would disagree with that, would you?
- A. May I read Mr Gorodilov's evidence, please, on this subject?
- Q. If you go to bundle E2, tab 4, it's at page 67 of the Russian E2/04/67 and page 26 in the English E2/04/26. It's paragraph 64, I think I may have said that. He refers to this meeting about eight lines from the bottom. He says:
- "It is possible... that the meeting in Mr Abramovich's office took place after 28 November."
- A. Yes, I can see this.
- Q. And as I understand your evidence about this meeting in late November, you suggest that whilst you discussed possible structures for buying shares in ORT at that meeting, there was still no decision about what structure should be used. Is that right? It seems to be what you're saying at paragraph 219.
- A. The final decision on structure, the absolutely final decision was taken on 6 December.
- Q. Just so that we're clear about this then, I think you're accepting that by the time of the Le Bourget meeting on 6 December, the position remained that, while structures

had been discussed, you had still not decided on the structure for the transfer of the shares from Mr Berezovsky and Mr Patarkatsishvili to you?

- A. That is not so. Everything was discussed and agreed. The actual arrangement for the deal hasn't been ready; the arrangement of how money should be paid and in what form has not been taken. Everything else was decided, including the price.
- Q. You see, I don't think you understood the question. I was in fact following on from what you had said, which was that the final decision on structure was taken on 6 December. And all I said to you was that prior to 6 December there hadn't been a final decision on structure and that must follow from what you had said, Mr Abramovich?
- A. Well, the problem is that on the one hand you're using the word "structure" and on the other hand you're using the word "arrangement". The arrangement for payment was agreed on 6 December. The structure for the deal had been discussed ages ago and agreed.
- Q. Well, we'll see if that can possibly be right when we look at the Le Bourget transcript.

But would you accept this: that before the meeting at Le Bourget, given that there were still outstanding issues relating to the arrangement or structure,

whichever word you prefer, it would not have been possible to execute any transactions for the transfer of shares in ORT from Mr Berezovsky and Mr Patarkatsishvili to you?

A. Of course I don't agree with that.

Q. If you had not yet agreed the final arrangements or structures under which this transaction was to take place, how could it have made any sense to execute any transactions for the transfer of shares, given that you hadn't finally concluded the structure that was to be put in place?

A. Well, the structure had in fact already been agreed and there is a big difference between an arrangement for payment, how money should be paid and received legally in London, and the structure of share transfer. These are two different things. This is a very obvious business logic.

I've already mentioned, before lunch, there is a difference between -- and, I mean, we have to agree what we call termination of the deal, the end of the deal, what is a scheme, what is an arrangement. For me the essence of a deal and the end of a deal, the deal is closed when we agree that one is selling and the other one is acquiring the shares and when we discuss the structure. The rest is an arrangement to transfer the

cash, and that can take as long as it must.

Q. Can we go back to the Le Bourget transcript, please, at bundle E6 and E7. Can you go to box 206, page 81 of the English version E6/01/81.

A. Yes.

Q. Now, could I ask you please, can you read to yourself boxes 206 to 211, please. (Pause)

A. I beg your pardon, until which box?

Q. 206 to 211.

A. I've read. I've read them.

Q. And what is discussed in boxes 206 to 211 relates to the announcement which you made to the Kremlin press pool that you would be willing to act as an intermediary in the sale of Mr Berezovsky's shares in ORT; that's right, isn't it?

A. No, no, no, this was not my statement. This was a closed meeting over lunch with editors-in-chief of various newspapers. It was devoted to my election campaign to the position of governor and at the meeting I was asked: is it true that I was planning to acquire ORT shares? First of all, I wasn't expecting that. Secondly, Badri asked me never to tell anyone about that. That's why I open -- that's why I answered in such a way that, "No, I have no plans, and even if I were to buy them, I would most probably act as an

intermediary to resell later". It was not an official press conference; it was a lunch with journalists.

Q. Whether it was a lunch with journalists or an open meeting, you were telling them that you would be willing to act as an intermediary in the sale of Mr Berezovsky's shares in ORT; that's right, isn't it?

A. I gave them this version, yes, that is so. Moreover, if after I had acquired those shares I had managed to sell them to anybody at all, I would have been delighted to do so.

Q. And it wasn't a question of you acting as an intermediary for resale afterwards. If you look at your commentary at box 207, what you said was:

"I... said... I was not buying ORT but that I could theoretically act as a trusted intermediary between Mr Berezovsky and the Government..."

That is not what you have just claimed you were saying, is it?

A. I think that's exactly what I've just said. I just extrapolated the sentence a little bit.

Q. Right. And when you say this, at the end of box 207, that you are willing to act as an intermediary, Mr Berezovsky asks:

"Intermediary in what?"

And you reply:

"Should the question of selling shares arise. But currently, as it were, this is not being discussed."

That's at page 84 of the English E6/01/84.

A. Yes.

Q. So what you were telling the journalists then is that, in relation to ORT, should the question of selling shares arise, you would act as an intermediary, but that this had not yet arisen?

A. I'm using these Russian words, "kak by" --

THE INTERPRETER: The witness is asking the interpreter to translate this into English because it's an important phrase, "kak by": "as it were", "as if", "as it were".

MR RABINOWITZ: Well, it says:

"But currently, as it were, this is not being discussed."

That is to say a sale of the ORT shares is not being discussed. That is what you told the journalists?

A. No, that's not the same. That's not what I said to the journalists. I said to the journalists, "I don't want to buy and most likely I'll be an intermediary", but here I'm saying, "as it were", hypothetically.

Q. Okay. You see, I suggest to you that when you were telling the journalists that the question of selling shares had not yet arisen, you were telling them the truth.

- A. Your statement is not right. It's not something I do, talk about something before the deal is done. There would have been rumours, there would have been a lot of noise around and then there was still nothing happening, no movement. So telling the journalists, who are curious, of course, to tell them something before it had happened, that's not something I do. Once the deal is done, we make a press release. This is the way to act.
- Q. Mr Abramovich, on your case there was already an agreement in principle and if that were the truth, you could have told the journalists that, could you not?
- A. Of course not. What is the point of telling something to the journalists before the deal is concluded? What, just to have attention attracted to that, for the deal to be jeopardised? What is the point of talking to the press before the transaction is finalised? None at all.
- Q. Let's just go back to the transcript. If you can go to box 211 E6/01/85, you'll see from box 211 and following there is a discussion between you and Mr Patarkatsishvili about the possible sale of ORT shares and this goes on for a while.

Can I ask you, please, to go to box 237 E6/01/96. At this point you start discussing with Mr Patarkatsishvili the methods of structuring the transaction; do you see that? 237.

A. Yes.

Q. Thank you. And then if you go to box 249 at page 99 of the English E6/01/99, you say that you had spoken to President Putin and he had said that if you --

A. May we -- I beg your pardon, may we dwell a little bit on 237? I would like to add a few words on 237.

MRS JUSTICE GLOSTER: Right. Make the point.

A. In 237 I'm saying that overnight from the 5th to the 6th, Gorodilov told me about this arrangement, and on the 6th I am reporting on this arrangement to Mr Patarkatsishvili and Mr Berezovsky. From my point of view it proves that I wasn't -- or hadn't planned this trip beforehand. I came there on request of Mr Patarkatsishvili, on the 5th, in fact. My plan was to fly to Chukotka.

Q. Box 249, page 99 E6/01/99, you say that you have spoken to President Putin and he has said that if the sale of ORT could be achieved quietly and he was kept out of it, then he would not stand in the way of money being paid to Mr Berezovsky; that's correct, isn't it?

A. Well, I'm telling them in great detail about my conversation so there's nothing much I can add.

Q. What you can do is to tell me whether what I summarise as being your conversation is correct.

You say you have spoken to President Putin and he

has said that if the sale of ORT could be achieved quietly and he was kept out of it, then he would not stand in the way of money being paid to Mr Berezovsky; and that is correct, is it not?

A. That's part of it. He said that he didn't want to participate. He said, "It's nothing to do with me. Do it between yourselves. This is your private business".

Q. And the issue that you are discussing with Mr Berezovsky and Mr Patarkatsishvili here related to the fact that, if there was going to be a sale, Mr Patarkatsishvili and Mr Berezovsky wanted to be paid in England and not Russia; that's right, isn't it?

A. Yes.

Q. And President Putin was focused upon getting ORT from Mr Berezovsky but at this time not so concerned about Mr Berezovsky receiving some money; that's correct, isn't it?

A. No.

Q. Mr Abramovich, it's just not right to say that President Putin had no interest in whether or not Mr Berezovsky gave up his interest in ORT. Can I ask you, please, to go back to box 449 at page 154 E6/01/154.

A. Yes, I can see that.

Q. This is an exchange that arises after you have been

discussing ways of structuring any transaction and, as we see, you say here:

"What, then, should we sign then so that I could take it to Vladimir Vladimirovich, show it to him and say: here you are, the deal is done..."

That plainly shows, Mr Abramovich, that President Putin was interested in ensuring that the deal was done.

A. That's not so. I got involved in this deal: I said that I was going to acquire it, I don't know directly or through Voloshin. Since I got involved and I'm taking part, then of course I have to explain at what point I will finalise the deal. And in 450 Badri says:

"... we have signed everything [already]."

Q. You see, Mr Abramovich, if President Putin had no interest then why would you be talking about rushing back as soon as you could to show him a piece of paper to show that you had done the deal? That's not the way you would have behaved if President Putin had no interest in whether this deal was done.

A. At that point, after I had already explained, that was concerning me; I was concerned and worried. If I promised the president that I would do the deal, that I'm planning to make this deal, then I of course have to inform him that I have finalised the deal.

If I may add, ORT shares, the 49 per cent, in particular they are valuable only in the hands of Mr Berezovsky because he influences content. Not a single normal businessman who thinks about the financial aspects, he doesn't need ORT shares because this is a loss-making enterprise capable of creating only problems and would never bring any profit to anyone, at least in the foreseeable future.

- Q. Did you promise President Putin to do the deal to acquire ORT shares?
- A. No, I didn't promise. I just promised that if I buy them, I'll inform him. In fact I don't even remember whether I promised it to him directly or through Mr Voloshin. I can't be precise here.
- Q. In the course of the meeting at Le Bourget you suggested that on a number of occasions that a deal for you to buy 49 per cent of ORT should be closed at that meeting; that's right, isn't it?
- A. It was closed at this meeting in fact. Well, the arrangement -- in fact the deal was done earlier but the arrangement was finalised at the meeting.
- Q. Can you go to box 428, please. It's at page 148 of E6 E6/01/148. You see you say there:

"We could now close this deal as it is, and later -- I promise -- we shall always find understanding on this

matter..."

So that's one occasion on which you refer to closing the deal.

Can you look then at 430. You say again:

"(So then) we shall finalise this deal, so that I could report on it without further ado, (that) the deal is done..."

And you say that would be reported to President Putin or Mr Voloshin.

I suggest to you it's clear from this that at this point you obviously didn't think that the deal had been done.

A. 428 is where I say that I promise that we will anticipate find a solution later: that means that I promise to pay some of the money for legalisation that Mr Berezovsky had achieved earlier. That's nothing to do with this. But in 430 years, in fact I would agree with you.

Q. And can you next go to box 449, please. It's on page 154 of the English E6/01/154. This is the third occasion in a fairly short space of time where you talk about the need still to complete the deal. You say:

"What, then, should we sign then so that I could take it to Vladimir Vladimirovich, show it to him and say: here you are, the deal is done..."

- A. I've already commented that in 450 Badri says we've already signed everything.
- Q. You expected that when the deal was done, it would be put in writing; that's right, isn't it?
- A. From the legal point of view, a concluded deal, a closed deal, if that's we mean, then that's when all the documents are ready; I agree with you.

But at the meeting we were discussing a different thing. I meant this thing but Badri was waiting for instructions in ORT-KB for shares to be transferred. That's what Badri meant.

- Q. I think we can agree, Mr Abramovich, that no agreement was signed at Le Bourget; that's right, isn't it?
- A. Yes, we can agree on that. No agreement was signed in Le Bourget. Moreover, I had no text of any agreement with me. There was nothing to sign, there was nothing prepared.
- Q. And Mr Berezovsky, in the course of the meeting, did not once say anything to indicate even that he would be willing to sign an agreement at that stage, did he?
- A. That's not true.
- Q. Where do you say Mr Berezovsky said anything that he would be willing to sign an agreement at that time?
- A. There are references to -- well, not references but there are replicas made by Mr Berezovsky. Moreover, at

the time 408, 410, when I am on the phone, the two of them, Badri and Mr Berezovsky, are discussing between themselves. If you would like to go back to that, we can read it, then I'll explain to you. It's difficult for me to quote from memory, it's difficult to remember the text and the number of boxes that the text refers to.

Q. When the meeting ended you had nothing signed to take to President Putin to show him you had completed the purchase of ORT, did you?

A. I, at that point, didn't have to bring anything. I already said I went over there to discuss the arrangement. I didn't go there to conclude the deal in a legal sense and this is why there was nothing to sign, nothing to be signed and nothing to be taken back.

Q. And since you had agreed to keep President Putin informed, you would have had to tell him that no sale had been agreed and certainly that you had been unable to get an agreement in writing; that's right, isn't it?

A. You're absolutely wrong. I left with a firm understanding that the deal is done, finalised. We discussed the arrangement and all the final issues have been resolved. We have resolved how payment could be made for them to receive the money in the bank that they wanted to receive it in.

- Q. I suggest to you you would have gone back to Moscow and reported back to President Putin that you had been unable to close the deal and President Putin would have been very disappointed about that. That's right, isn't it?
- A. That is not right. I did not meet President Putin at that time. In fact, immediately after Le Bourget, on the 7th, I was planning to leave. On the 6th, after the meeting I went straight to Moscow and from Moscow I was planning to leave for Chukotka immediately.
- Q. And it was precisely because you had been unable to produce a concluded deal with Mr Berezovsky and Mr Patarkatsishvili, that is what led to Mr Glushkov being arrested the next day; this is right, is it not?
- A. Of course not. We have discussed already that Glushkov's arrest was envisaged. The Deputy Prosecutor General has already declared or announced that on the television to him. So there was a -- and to link these events, that's quite wrong.
- Mr Glushkov, if I understand it correctly, was arrested on charges related to Aeroflot; nothing to do with ORT.
- Q. Mr Abramovich, I'm not going to go around this one again but in fact we saw an exchange between you and Mr Berezovsky in which you said you did not think

Mr Berezovsky would be arrested the following day. Do you remember that?

A. Yes, I remember I said that I didn't think he will be arrested but in the following box I say that Krasnenker phoned me and told me that problems could be expected. But, again, I was only putting forward my guesses.

Q. Now, again -- stay with Le Bourget and the transcript -- one of the things that was discussed were possible transaction structures so that, in any transaction, the purchase price for ORT could be paid offshore outside of Russia.

With that in mind, can I ask you please to go to paragraph 216 again of your witness statement. That's at page 200 of E1, tab, 3 in Russian E1/03/200, page 99 in English E1/03/99.

In the second sentence you say that Mr Berezovsky and Mr Patarkatsishvili "were very keen to receive their money in their personal names in foreign personal accounts", and that this complicated the transaction.

Do you see that?

A. Yes, I can see that.

Q. And if you then go back to the Le Bourget transcript at [box] 364. In bundle E6 it's at page 130 E6/01/130.

Can I ask you to read boxes 364 to 367.

A. I think something is wrong in pagination. We have --

okay, sorry, I've found it.

MRS JUSTICE GLOSTER: I don't think you've been given the Russian pagination, I think that's the problem.

MR RABINOWITZ: Page 127, please, in the Russian E7/01/127.

A. I need to read 364; yes?

Q. 364 to 367, please. (Pause)

A. Yes.

Q. Mr Patarkatsishvili is talking to Mr Gorodilov about the need for contractual documentation for a payment of money to him and Mr Berezovsky offshore.

And then if you go to box 379: page 132 of E6 E6/01/132 and 129 of E7 E6/01/129. 379, you can see that Mr Patarkatsishvili is explaining that the contractual documentation is needed because he and Mr Berezovsky now have personal accounts, bank accounts in the west to which the money needs to be transferred. Do you see that?

A. Yes, I can see that.

Q. And you were in fact aware that those bank accounts were in London? I think you may have mentioned that earlier.

A. Today I know that they were in London. At that time I didn't quite understand it. I might have guessed. I cannot be 100 per cent sure at that time that I knew they were in London.

Q. Can you go back to box 400, please. It's at page 135 in E6 E6/01/135 and 134 in E7 E7/01/134.

Do you see Mr Patarkatsishvili is talking about receiving the money in London in the accounts?

A. On 394 Mr Berezovsky said, "I'm ready to do all this".

Q. Mr Abramovich, can you answer my questions, please.

MRS JUSTICE GLOSTER: You have to go down to read box 400, where Mr Patarkatsishvili refers to receiving the money in London.

MR RABINOWITZ: And then if you go also to box 402 E6/01/136, again you'll see that he refers to the accounts in London.

A. Do I need to confirm? Yes, he's talking about accounts in London.

Q. If you go to box 412, page 141 E6/01/141, you actually say in the commentary that the money will be -- you're talking about money being transferred to "Mr Berezovsky's accounts in London". Do you see that?

A. So 412, am I right?

Q. I referred you to 412.

A. Yes, I have read that.

Q. 412, yes? And if you go to box 234 on page 95 of E6 E6/01/93 and if you look at your commentary at the end of 234 -- page 90 -- again, in your commentary you're talking about them receiving "proceeds of the ORT sale

in England".

A. Yes, I can see that.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Very well. Ten minutes, please.

(3.15 pm)

(A short break)

(3.30 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, do you recall that at the

Le Bourget meeting you told Mr Berezovsky and

Mr Patarkatsishvili about a proposal that Mr Gorodilov

had for a structure for you to purchase the ORT shares?

A. Yes, I recall that at Le Bourget meeting we've discussed that arrangement, the way we shall make the payment for ORT.

Q. And if I can ask you, if you still have bundle E1 in front of you, to go to your witness statement at paragraph 235: it's at page 207 in the Russian E1/03/207 and 106 in the English E1/03/106.

You say, just reading the first few lines, talking about Le Bourget, you say in the first sentence:

"We therefore discussed a possible plan proposed by Mr Andrey Gorodilov whereby companies associated with me would purchase the shares for a relatively small amount (US\$20 million) paid in Russia, and then companies not

associated with me would make a separate (larger) payment of the remaining amount to Mr Patarkatsishvili and Mr Berezovsky's designated foreign bank accounts."

And then in footnote 76 on this page you refer back to boxes 261 to 305 of the Le Bourget transcript. And what in fact happened at Le Bourget was that you explained Mr Gorodilov's proposal to Mr Berezovsky and Mr Patarkatsishvili; that's right, isn't it?

A. I started to explain that but I got quickly confused and Gorodilov was explaining that himself.

Q. Indeed. And Mr Patarkatsishvili and Mr Berezovsky did not know about the proposal before you explained it to them at Le Bourget; that's right, isn't it?

A. Yes. Yes, that was the initial time they've heard it.

Q. And this is reflected in Le Bourget at box 339 but we don't need to turn it up.

At some point, as you say, you needed Mr Gorodilov to help to explain the proposal; that's right, isn't it?

A. Yes, that's right.

Q. At no point in the conversation relating to Mr Gorodilov's proposal do either Mr Berezovsky or Mr Patarkatsishvili suggest that they already know of Mr Gorodilov's plan; that's right?

A. Yes, that's right. Their initial plan was related to an auction (sic) and then Andrey made his proposal, perhaps

a more elegant scheme.

- Q. Now, can I ask you to go back to the Le Bourget transcript at box 261. At E6 it's at page 103 E6/01/103. And this is the box where you start explaining Mr Gorodilov's plan for a structure for you to purchase ORT. Do you see that?
- A. Yes, I do.
- Q. And then at boxes 263 to 266 E6/01/104 you can see that there is a discussion about that plan.
- A. Yes, I can see this.
- Q. Yes. And if you look at the last sentence of box 263, you are explaining that although some money will be paid in Moscow, the remainder of the money will be transferred to Mr Patarkatsishvili and Mr Berezovsky in the west. Do you see that?
- A. Yes.
- Q. And Mr Patarkatsishvili checks with you that this will be a transfer made under a contract; that's in box 264, do you see that?
- A. Yes.
- Q. And then at box 265 you explain that the transfer will not be done under a shares sales contract and that the offshore transaction will be done under a more complicated contract. Do you see that?
- A. Yes.

- Q. And it's clear from this that this isn't something that had previously been discussed with Mr Patarkatsishvili; that's right, isn't it?
- A. He did not discuss this very scheme. He discussed an option scheme. Therefore it's saying either about shares or options here.
- Q. Well, if we just look at box 266, we can see that Mr Patarkatsishvili expresses his concern that it must be clear that the money comes from the sale of their shares. Do you see that?
- A. Yes, I do.
- Q. And just to be clear, Mr Abramovich, you accept that the money that you were talking about transferring was in reality to be the purchase price for the shares in ORT; that's right, isn't it?
- A. How do you mean "the purchase price"?
- Q. Well, you were buying the shares in ORT from Mr Berezovsky and Mr Patarkatsishvili and the money that Mr Patarkatsishvili is concerned about is the money that he is going to receive for the sale of those shares; that is to say the purchase price, what you are paying him for those shares.
- A. Yes.
- Q. And so what Mr Patarkatsishvili is asking is that the contractual documentation should show the true position

that the money is the purchase price for the sale of the  
ORT shares; that's right, isn't it?

A. One could look at this point in this way. In actuality,  
the way they worded -- the way they wanted that are two  
phrases which are mutually exclusive. A Russian citizen  
selling Russian company shares can get his money in  
Russia. They were worried about not being able to get  
the money in Russia; therefore this complicated scheme  
has come about.

Q. Well, if you look at box 269 E6/01/105, you can see  
that you are responding to Mr Patarkatsishvili at 266  
saying:

"... it will be seen that these are the monies we  
receive for the sale of shares?"

And you say:

"Yes, shares or options."

So you are saying that it will be seen that the  
origin of the money is the sale of either shares or  
options; that is right, is it not?

A. Yes, this is right. As I said, I got confused in these  
matters quite quickly and I asked them to speak to  
Andrey Gorodilov, who understood the matters better.

Q. And just again to be clear, Mr Abramovich, this is the  
first time in the conversation at Le Bourget that anyone  
has mentioned the possibility of a sale of options;

that's right, isn't it?

- A. As far as I know, it was not. That was the original idea, the idea involving an option, and here it's mentioned the first time. So the sale of the shares is being -- has been mentioned for the first time in this way.
- Q. I think we're talking about the sale of the options being mentioned for the first time at Le Bourget at this point in the conversation.
- A. If I understand correctly, the initial transaction, ie initially, we decided to do it using an option; and later we decided to go down this road, as it was done at the end.
- Q. You see, this idea of using both the possibility of a sale of shares or options really reflects the point that you made at box 265, where you explained to Mr Patarkatsishvili that the transaction would not be by way of a simple sale contract for shares; that's right, isn't it?
- A. After all, the transaction was done in a very simple way: in one bank the money was transferred from one account into another account. Or am I answering the wrong question?
- Q. I'm not at all sure about that. Maybe if I repeat the question. I don't want to take up too much time over

this but let me repeat the question and you can see if this was the question you thought you were answering.

My question to you was that this idea of using both the possibility of a sale of shares or options really reflects the point that you made at box 265, where you explained to Mr Patarkatsishvili that the transaction would not be by way of a simple sale contract for shares.

A. I'm not quite sure how to answer this question because I'm not sure at which point the question arises here, in your question. Where is the question?

MRS JUSTICE GLOSTER: Yes, I think the question is too complicated.

MR RABINOWITZ: Let me ask it in this way. The reality is --

MRS JUSTICE GLOSTER: Just a second, Mr Rabinowitz. Asking him to answer whether it reflects an answer he has given is just too difficult, for me anyway.

MR RABINOWITZ: What is happening here is that you are proposing that a sale of an option should be the alternative transaction structure for the sale of the ORT shares. You're introducing this as an alternative structure. That is right, is it not?

A. No, this is quite the opposite. The initial idea was using the options. But since I always -- it wasn't my

strong point, these schemes. When I arrived there, thinking about all these ideas, I already forgot what the conversation was about. Therefore I asked -- I put Badri in touch directly with Andrey, Mr Gorodilov, and they discussed how it should be done.

Q. Can I ask you to look at box 325, please. It's at page 118 in the English version E6/01/118 and 116 in E7 E7/01/116.

You see, in box 325 we have Mr Patarkatsishvili -- do you have it? -- having spoken to Mr Gorodilov saying:

"We shall have a contract for an option, which we sell to a western company, and in return for that we get a minimal share of the money, and separately for the sale of the shares. Do I understand it correctly?"

Do you see he says that?

A. Not quite. I'm still looking for it. (Pause)

Yes, I've found it.

Q. So just read to yourself box 325 then, please. (Pause)

A. I have read it.

Q. So Mr Patarkatsishvili is asking a question here: he's asking you whether he has understood the proposal. Do you see that?

A. Yes.

Q. And it's clear from your commentary that this is Mr Gorodilov's proposal?

A. This is not quite the way it was. I have already explained: since I was talking how it should be done, I already forgot what I started talking about, what was the start, because it's not my strong point, these schemes. So when I start talking about the end of the plane, this is not because I had a problem with my head; it's only because I was dialling the number to connect Badri with Mr Gorodilov.

Q. Okay. Can we put away bundle E6 for the moment. I want to move on from Le Bourget.

Can I ask that you please be given bundle K2 and go to tab 12. Now, this is a copy of Mr Berezovsky's particulars of claim as they stood in June 2008. Can I ask you, please, to go to page 137 K2/12/137 so that we can look at paragraph 22, please.

The first sentence of paragraph 22 of Mr Berezovsky's claim says this:

"On 7 December 2000, Russian State authorities arrested Nikolai Glushkov... Mr Glushkov is and was at all material times a close... friend of Mr Berezovsky and Mr Patarkatsishvili."

And just so that there is no confusion about this, it's clear that the pleaded date of Mr Glushkov's arrest is 7 December. That's right, isn't it?

A. Yes, that's right.

Q. Can I then ask you to go to page 138 and look at paragraph 27, please K2/12/138. Now, the first sentence of paragraph 27 says:

"Soon after Mr Glushkov's arrest, in December 2000, Mr Abramovich met Mr Berezovsky and Mr Patarkatsishvili at Mr Berezovsky's home in Cap d'Antibes, France."

It's clear from that that the pleaded period in which Mr Berezovsky is saying the meeting took place is from 7 December, which is when Mr Glushkov got arrested, to 31 December 2000. And that's right, isn't it?

A. The question when was Mr Glushkov arrested or is the question about the time period we are discussing here?

Q. Mr Glushkov, we know from the pleading, was arrested on 7 December. Mr Berezovsky says that:

"Soon after Mr Glushkov's arrest [7 December], in December 2000, Mr Abramovich met Mr Berezovsky and Mr Patarkatsishvili... in Cap d'Antibes..."

So it's clear that what Mr Berezovsky is saying is that the meeting was somewhere between 7 and 31 December 2000. Do you agree?

MRS JUSTICE GLOSTER: Well, that's what Mr Berezovsky is saying, okay? Mr Berezovsky is pleading here that sometime between Glushkov's arrest until the end of December you met him and Mr Patarkatsishvili in Cap d'Antibes, okay? That's what he's saying; you don't

need to agree with it or not. That's what he's saying.

Okay, go on, Mr Rabinowitz.

MR RABINOWITZ: Can you go to tab 13 in the same bundle.

This is your defence which you put in in response to Mr Berezovsky's pleading. Can I ask you, please, to go to page 164 K2/13/164, where we can see what you say in response to the suggestion that Mr Glushkov was arrested on 7 December.

Look at paragraph D22. You see that it says:

"... the first sentence is admitted..."

So you're admitting there that Mr Glushkov was arrested on 7 December. Okay?

A. Yes.

Q. And then if you go to page 165 and look at paragraph D27.1, we'll see what you say in response to what Mr Berezovsky had said in paragraph 27.1. You say:

"It is admitted that, on a date prior to 25 December 2000, Mr Berezovsky told the Defendant at a meeting between them and Mr Patarkatsishvili..."

And then you go on to say what was discussed there, including about the sale of ORT.

So you are admitting here that the meeting was before 25 December 2000; that's right, isn't it?

A. Yes, that's right. It is strange if the meeting would have happened after 25 December if we've signed the

documents before that date, if we have already signed the documents. I was based on the following: I looked at the documents and the dates and at the signatures and the meeting must have clearly happened before that.

Q. What I'm going to suggest, Mr Abramovich, is that this pleading makes clear that you instructed your lawyers in June 2008, when this was produced, that the meeting did take place between 7 and 25 December. Do you understand what I'm suggesting?

A. No, I don't understand what you're suggesting. If I have heard correctly, it doesn't follow from this document. Again, what I managed to understand, it said here that the meeting was before 25 December.

Q. Mr Abramovich, if it was your case that in fact the meeting took place before Mr Glushkov's arrest, why did you not say that in your defence, rather than just saying only that it was prior to 25 December?

A. At that point in time I don't -- I didn't remember when we met. I just thought what I recalled, I looked at the documents that were shown to me. If the document was shown on 25 December, I asked: is it possible to suppose that we met after 25 December? No, not at all; it's a very illogical statement. And it's not connected in any way to Mr Glushkov's arrest.

Q. You see, the first time that you ever suggested that the

meeting that you say took place in Cap d'Antibes to discuss ORT in fact took place before Mr Glushkov's arrest was in your third witness statement, which you served at the end of May this year; that's four years after the proceedings commenced. And I suggest to you that if the position was that there had been a meeting before Mr Glushkov's arrest, you would have identified that fact a long time earlier.

A. The thing is that for me the arrest of Mr Glushkov was not a landmark. I was just based -- basing myself on the documents. I do not link the sale of ORT shares with arrest of Mr Glushkov. That is a completely made-up, trumped-up position, that one thing was linked to another, unfortunately.

Q. Now, I think you agree that you did meet with Mr Berezovsky and Mr Patarkatsishvili at Mr Berezovsky's chateau at some stage between the beginning of November 2000 and the end of December, but there is a dispute about the date. Correct?

A. I indeed agree that we did meet but the dispute is about the date and this is the problem; or rather there is no dispute.

Q. Well, there is a dispute because you say it was on 6 November and Mr Berezovsky says that it is sometime in early December. (Pause)

Okay. Now, in order to try and establish that the meeting could not have been in December, you have in fact produced a great deal of evidence, and I want to go through that evidence with you just to see if it does in fact establish what you would like it to establish, namely that there couldn't have been a meeting in December. Do you understand?

A. Yes.

Q. Can we start from this: can we take it that you do not dispute that it is perfectly possible for a person with your resources to leave Moscow mid-morning, travel to the south of France and be back again that evening?

A. No, I do not dispute this fact.

Q. I think it's your own evidence that, provided one has access to a private jet from a supplier such as Global Jet, one could get from Moscow to Nice in just over three and a half hours' flying time; that's right, isn't it?

A. That's right. If the plane is ready, indeed one can fly there for three and a half hours -- in three and a half hours.

Q. And you explain that there would be a handling time of 15 minutes at the airport and then a 15-minute journey from Nice Airport to Cap d'Antibes?

A. Well, it depends on the day. If it's the 7th or 8th,

then I think there was some sort of summit going on, so the nearest airport that would in theory be able to accept planes would be Marseilles Airport and that would take two/two and a half hours to get from there by car, or was it an hour -- it would have been an hour and 15 minutes' travel by helicopter.

- Q. By helicopter, that's right. But in any event, you could get from Moscow to Cap d'Antibes and back -- certainly if you left Moscow by mid-morning, you could be back in Moscow that evening?
- A. It would have rather been quite late. Maybe you could call that an evening.
- Q. Okay. And do you also accept that when travelling to Cap d'Antibes, there are a number of airports nearby which one could travel to and from where one could take an onward helicopter flight: Nice, Marseilles, Lyon and Cannes?
- A. Cannes is unlikely. Possibly Lyon or Marseilles.
- Q. And in the year 2000 it was not unknown for you to fly between Russia and Western Europe and back on two successive days; that's right, isn't it?
- A. I wouldn't dispute that.
- Q. All right.

Now, can I then ask you some questions about evidence which you haven't made available to the court

which might have assisted for determining your location in the period 7 to 9 December.

First, are you aware that you and indeed your team have produced no diaries or calendars at all for yourself for the period December 2000?

A. I certainly didn't keep any diaries ever.

Q. Would anyone in your team have kept a diary for you?

A. For me? Unlikely. Perhaps someone will keep their personal diary but they didn't do it for me.

Q. And in --

MRS JUSTICE GLOSTER: So who kept your business meetings?

Who kept records of when you were going to be having business meetings or meetings with people?

A. At that point in time it was either secretaries of -- or some of my assistants. Usually it would be a secretary.

MRS JUSTICE GLOSTER: So they would keep some sort of diary recording where you were going to be and what meetings you were going to?

A. I would not call it a diary. It wasn't like a book where they would write down who I'm going to meet. I was planning that myself. Everything was organised. I didn't take -- I didn't keep a diary. Usually they would pass on phone [calls] to me and the rest I kept myself.

MR RABINOWITZ: Mr Abramovich, at this time you were

obviously a busy person, you had a series of businesses with which you were involved; that's right, isn't it?

- A. Yes, one could assert that. Yes, I was a busy person.
- Q. And you were involved -- by this stage you were becoming involved with politics, with the Duma?
- A. At that point in time I was already a deputy and I was starting my gubernatorial campaign. I was taking part in an election campaign.
- Q. Indeed. So in addition to being in the Duma in Moscow, you were starting to campaign to be the governor of Chukotka.

Now, someone must have been trying to keep track of what your engagements were in this period. You say it was your secretary?

- A. The secretary had nothing to do with my locations, my relocations across Chukotka. I had two assistants in the Duma, Ponomareva and Morozova; and Chukotka, I had my own assistants; and in the Moscow office, that was mostly connected to business meetings.
- Q. Yes, but someone, your secretary or someone else, must have kept a record of your appointments; that's right, isn't it?
- A. Meetings, if they happened in my office, yes, they kept a record of those.
- Q. They wouldn't keep a record of you having to be at

a meeting in someone else's office?

- A. I think that's unlikely, although that's possible.
- Q. Wouldn't there have to be some coordination between the people who were responsible for keeping track of the various aspects of your life, that is to say the people who were dealing with your political responsibilities and the people who were dealing with your business responsibilities, so that you could be sure you didn't have a clash between engagements relevant to each?
- A. Sorry, I did not understand the question. Did they coordinate it between themselves so I would not have a double booking, two meetings in different places? Did I understand the question correctly? Perhaps -- I think I was coordinating that myself.
- Q. What, without writing anything down ever?
- A. I myself never make any notes. Usually if I write something down, I can't read it afterwards. I haven't got the most beautiful handwritings, the tidiest of handwritings.
- Q. The secretary that you currently have, Marina, is she the same secretary that you had in this period, December 2000?
- A. I think so. I think then she was an assistant and I had another two or three secretaries. They worked from 9.00 until -- 9.00 am to 1.00 in the morning. And apart from

the secretaries, there were other people that assisted me.

- Q. Now, I take it that you do not dispute that in December 2000 you had and made use of a mobile telephone?
- A. Sorry, what is the basis of that assertion, that I did not use a mobile phone?
- Q. No, the assertion is exactly the opposite: that you had and did use a mobile telephone.
- A. Surely I must have had a mobile phone but I used it very rarely. One couldn't call me on my mobile phone and all the calls were connected mostly via the office, although perhaps some of my friends were able to call me directly.
- Q. Whether they were connected via the office, you did use a mobile telephone in this period. Are you able to provide any explanation for why you haven't disclosed a single mobile phone bill for any date, including the period we're presently looking at, December 2000?
- A. Because the company that operates in Moscow doesn't keep records of mobile phone bills. We did try to find them.
- Q. But you haven't disclosed any; that's right, isn't it?
- A. This is not a question to me. We just simply couldn't find them. We tried all telephone operators. We looked everywhere, but no documents were preserved and this is

unintentional. Simply the thing is I think they keep records for four years and that's all.

- Q. Presumably you also had and used credit cards in December 2000?
- A. I had credit cards but I usually didn't use them.
- Q. Well, again, can you explain why you failed to disclose any credit card records for this period?
- A. This is only linked to the document storage period and then I used them very rarely. I could perhaps pay by credit card two or three times a year and sometimes I didn't use them at all.
- Q. So that is some of the evidence that has not been put forward before the court. What I'd like to do now is look at some of the evidence you have put before the court. Just so you are clear about this, I'm going to suggest that none of this evidence actually establishes what you say it establishes.

Now, the first category of evidence you have produced are photographs. I take it, though, that you accept that you haven't been able to produce even a single photograph of you in the period of 7 or 8 December that would put you somewhere other than in Cap d'Antibes?

- A. Indeed, from 7 to 8 December I was not photographed. That's true.

Q. So that puts the photographs to one side.

Now, you have also assembled evidence from a number of people claiming to have been with you or seen you in December 2000. A lot of this evidence relates to the period after 9 November, where it's agreed you were not in Cap d'Antibes. But I do want to look at a small part of that evidence because I will be submitting that it demonstrates that you have been willing in this case to procure evidence to support your case that simply cannot be taken at face value. Do you understand?

MRS JUSTICE GLOSTER: Do you want to start that tomorrow morning?

MR RABINOWITZ: I would very much prefer to start that tomorrow morning.

MRS JUSTICE GLOSTER: Yes, because it seems silly to start it now at 4.15.

Thank you, Mr Abramovich. That's all for today. Don't talk to anybody about your evidence or the case.

Discussion re housekeeping

MRS JUSTICE GLOSTER: I've got one or two housekeeping matters, Mr Sumption and Mr Rabinowitz.

On Wednesday, there's going to be apparently a student demonstration which may result in the closure of Fetter Lane for vehicular access. I'll let you know tomorrow what the arrangements are. We'll still be able

to get to the court and hopefully get along Breams Buildings but one may need to walk from somewhere and I'm not sure when Fetter Lane is being closed, but I'll let you know that tomorrow.

The other thing is that no courts are sitting in this building on Wednesday, 7 December, so that's going to be a non-day. We've got Mr Allen, somebody has got Mr Allen coming provisionally on that day, and Mr Bean, question mark, the day before. But you'll have to rearrange Mr Allen.

MR SUMPTION: My Lady, Mr Allen of course is my learned friend's witness but I'm sure that can be done.

MRS JUSTICE GLOSTER: Yes. He's the expert in --

MR RABINOWITZ: The valuation expert.

MRS JUSTICE GLOSTER: -- valuation. Two days is necessary to cross-examine him, is it?

MR SUMPTION: Probably a bit less.

MRS JUSTICE GLOSTER: Right. Well, anyway, I tell you that because it may impact on whether Mr Bean is called or not.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: I don't know whether my learned friend can give us an update on how long he expects to be cross-examining Mr Abramovich for.

MR RABINOWITZ: Well, I hope to finish as planned on Wednesday. If it runs over, it will not run over for very long into Thursday. It's very hard to predict, as your Ladyship will appreciate, because one doesn't know --

MRS JUSTICE GLOSTER: I appreciate that. It's impossible to predict in these circumstances.

Therefore whether or not we sit on Friday is another matter, is it?

MR RABINOWITZ: Indeed. I think we should just keep that under review.

MRS JUSTICE GLOSTER: Play it by ear. Very well.

Okay. 10.15 tomorrow.

(4.14 pm)

(The hearing adjourned until  
Tuesday, 8 November 2011 at 10.15 am)

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Tuesday, 8 November 2011

(10.15 am)

(Proceedings delayed)

(10.28 am)

MRS JUSTICE GLOSTER: I apologise to the parties for keeping the court waiting. I was in a meeting outside the building.

Yes, Mr Rabinowitz.

MR ROMAN ABRAMOVICH (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Mr Abramovich, I was about to take you to some of the materials that had been gathered to support your case that you could not have been in Cap d'Antibes in December and I'd made it clear to you that I was going to be submitting that this evidence shows that you have been willing to procure evidence to support your case that simply cannot be taken at face value.

I don't expect that you will dispute the fact that you are a person of substantial power and influence in Chukotka and indeed that you have been in such a position for more than ten years now?

A. "Influence", the word "influence" sounds bizarre; but yes, indeed, I have been working in Chukotka for many years.

THE INTERPRETER: I'm repeating the answer.

A. The word "influence" sounds a bit bizarre; but yes, indeed, I have been working in Chukotka for several years.

MR RABINOWITZ: And you personally have been directly involved in actively soliciting the evidence that you have obtained from individuals in Chukotka; that is right, is it not?

A. No, that's not right.

Q. Can you go, please, to paragraph 263 of your third witness statement: E1, tab 3, page 115 in the English E1/03/115, page 216 in the Russian E1/03/216. Do you see at paragraph 263 you say:

"To confirm my recollection..."

And you are dealing with the position in Chukotka.

"... I... asked the officials and other people I met when I was in Chukotka at that time to provide me with any documentation that shows I was in Chukotka from 10 to 26 December 2000."

Now, that suggests you were directly involved in soliciting this evidence from the people of Chukotka.

A. I did not directly participate in obtaining this evidence and soliciting it. What is written here is what I've said. I had no contacts with those people at that time at all.

Q. You say, "What is written here is what I've said", and

that seems to suggest that you were involved with this. But can you look at bundle E5, tab 11, page 47 in the English E5/11/47 and page 123 in the Russian E5/11/123.

If you look at paragraph 111, the second-last sentence, you are again dealing with aspects of your visit to Chukotka and you say:

"At my request, several residents of the Bilibino district who attended that meeting have kindly provided me with written confirmations of it."

Again, Mr Abramovich, that suggests that you were directly involved in soliciting and obtaining this evidence, doesn't it?

A. That's not so. If you read this sentence in Russian, it says, "Upon my request". So this request was passed on. I hadn't -- haven't visited this village for at least five years I think.

Q. Well, can I show you, if I may, just one of the documents which you received in response to your request. If you go to bundle H(A)99 and you turn to page 37 in the Russian H(A)99/37, 37T in the English H(A)99/37T.

Do you see on this document, which is a letter from a Mr Zivilev, who claims that he can confirm that you personally took part in the celebration of Chukotka's

70th anniversary on 20 December 2000 in Anadyr, do you see:

"... further to a request by Roman Arkadyevich Abramovich."

Doesn't that suggest that you were involved in requesting this correspondence?

A. I can't see the word "request" here at all.

Q. The second line of the document, top right-hand corner:

"Copy: further to a request by Roman Arkadyevich Abramovich."

A. It says "Upon request". It's an official term saying a request. That doesn't mean my personal request to someone; it's an official requisition or request. If a person has an official public position, I have to send him an official request.

Q. My Lady, I wonder if we can get the translator just to translate the word for us, since there seems to be a dispute about what the document actually says.

THE INTERPRETER: It says, second line from the top, "Copy" --

MRS JUSTICE GLOSTER: Just a second. Can you translate it very literally, please.

THE INTERPRETER: Okay, my Lady, I shall go from the top of the page:

"For submittal to court and other official bodies.

"Copy: following an official request of Roman Arkadyevich Abramovich."

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: Thank you.

Now, still on the evidence that has been procured in the form of statements from the people in Chukotka, are you aware that on four separate occasions your lawyers told Mr Berezovsky's lawyers that the evidence from these people in Chukotka had been provided without any written request for that evidence having ever been made and that that turned out to be untrue?

A. I know nothing about that.

Q. Well, you can take it from me that that is what has happened. If the lawyers want to address it with you in due course, they can.

The position in fact, Mr Abramovich, is that it was only after Mr Berezovsky's written opening made the point that the four confirmations given simply couldn't be true that it was acknowledged by your lawyers that there was indeed a written request in existence that had elicited the evidence from the Chukotkans. Are you aware of that?

A. I didn't quite get it. What is the question?

Q. Are you --

A. So I've already mentioned that if there was some kind of

correspondence, I have no knowledge of it at all.

- Q. Perhaps we can just look at the document that was at that stage produced. Can you go to bundle H(A)99. It's at page 27.001R in the Russian H(A)99/27.001R, page 27.001 in the English H(A)99/27.001.

You should have there a letter dated 12 April 2000 (sic) and it appears to be a letter from the Duma of Chukotka. Is that the letter you're looking at?

- A. Yes.

- Q. Just reading what it says:

"Dear Aleksander Aleksandrovich!

"The Duma of the Chukotka Autonomous Okrug (at the request of Roman Arkadievich Abramovich, the Chair of the Duma of the Chukotka Autonomous Okrug) asks that you provide information about the presence of [yourself] in the Chukotka Autonomous Okrug in December 2000. This information is needed so it can be provided to court agencies and other official agencies."

- A. It also says "upon official request". So the Russian word "zapros" means "official request"; the Russian word "pros'ba", there would just be a request. So in Russian there is a bit difference between these two terms, an official -- so you can't write in this letter, "I am asking you" -- for instance to the Customs authorities, you can't just ask, "I'm asking you"; you have to write,

"I'm officially requesting", which is what is written here.

- Q. Just for the transcript, I think I said or the transcript records that the letter is dated 12 April 2000; it is dated 12 April 2011.

Mr Abramovich, can you tell us this, please: can you explain why the request made of the Chukotka Border Protection Directorate was made on behalf of the Duma of Chukotka? What did the request for use in your private litigation have to do with the Duma's function?

- A. That's the rule. As a private individual, I cannot -- well, perhaps I can, but there's a very low probability that I will get an answer or a reply from them. If I make this official request as the chairman of the Duma, I have a chance. This is why I asked my deputy to write this official letter.

However, had it been a request from a private individual, we would have been waiting for a long time. I'd still be waiting for them to reply. Usually FSB Russia, if I understand it correctly -- this is my feeling anyway -- FSB Russia would not react to a private individual. That's the way things are. That's the rule in Russia.

- Q. Can you explain why the request says that the information was needed for "court agencies and other

official agencies", and in particular can you indicate what those other official agencies are?

A. It's a standard form of words for an official request.

You have to state why it is that you need these documents; otherwise you will get no reply.

Q. Faced with a request in these terms, Mr Abramovich, the individuals approached in Chukotka, seeing that the request was coming either from the Duma itself or even from you as the chairman of the Duma, would have been very concerned to ensure that they gave you precisely what it was they knew you were looking for; that's right, isn't it?

A. I don't agree with that. First of all, this person didn't know what it is that I wanted to receive because I just wanted to understand where I had been at that time. That's the first thing.

Secondly, the Federal Security Service and the Border Directorate and border protection services of Russia are in no way subordinate to the Duma of Chukotka Autonomous Okrug or region.

Q. Would it be fair to say that the reason that care was taken to ensure that there should be almost no written requests either in existence or handed over was because you well understood that if the court were to see the way in which these requests were framed, this would

expose the fact that the person who had been asked to give the request was likely to have felt under some pressure to give you evidence that would be of assistance to you?

A. Absolutely disagree. No.

Q. Can I ask you, please, just to look at one or two examples of the sort of statements or evidence that you did obtain from these people and can I ask you, first, to go to bundle H(A)99, page 48 H(A)99/48 and it's 48T in the English H(A)99/48T.

Now, as you can see from the heading of this document, this is described as "Testimony" and it comes from a Ms Makarova and again we see that it has the statement towards the top on the right-hand side:

"Copy on request to [yourself]."

And:

"For production in court and before other official bodies."

Then Ms Makarova says this. After explaining who she is, she certifies -- and look at the words:

"... that, on 17 December 2000, I as a member of a delegation of residents from the village of Keperveyem, Bilibinsky district, Chukotka Autonomous Region, was present at the meeting with Roman Arkadievich Abramovich, member of the State Duma of the

Federal Assembly of the Russian Federation, and MA Zurabov, Chairman of the Russian Federation State Pension Fund, which took place in the Bilibino community centre."

Keep a finger on that page and go over to the next page, page 49 in the Russian H(A)99/49, page 49T in the English H(A)99/49T. It should be just the next -- yes, close to the next page.

Now, this is a statement from an SA Antipova and again she explains who she is, and then look at the words that she uses in giving her evidence. She again certifies:

"... that, on 17 December 2000, I, as a member of a delegation of residents from the village of Keperveyem, Bilibinsky district, Chukotka Autonomous Region, was present at the meeting with Roman Arkadievich Abramovich, member of the State Duma of the Federal Assembly of the Russian Federation, and MA Zurubov, Chairman of the Russian Federation State Pension Fund, which took place in the Bilibino community centre."

The words, Mr Abramovich, are identical. Do you accept that this suggests that these people either agreed between themselves what to say or that they were told by someone precisely what to say?

- A. It all depends on what kind of request they got, official request they got. Most likely this is the answer to the question that was put to them. Whether these people agreed with each other, it's not very likely. I didn't quite catch where it was happening; I had many meetings. I can't insist that these people were at the same meeting. But in my view it's very unlikely that these people agreed with each other beforehand. What would be the reason for that? They have no reason to have done that.
- Q. You see, Mr Abramovich, you say, "It all depends on what kind of request they got, official request they got", but we will never know because according to your solicitors, who have apparently checked with your team, no written requests were ever in existence and therefore the only way in which a request must have been made would have been by someone telling these people precisely what to say.

Do you want to comment on that?

- A. Yes, I can comment. Nobody was telling these people precisely what to say, that's for sure. Moreover, if you are talking about me, then I wasn't even there.
- Q. Let's just have a look at one more example of this. Can you go to page 31 H(A)99/31. It's 31T in the English H(A)99/31T.

This is a statement from a Ms Rechkunova, who says, after giving her name, she was:

"... born in 1961, a Russian citizen, residing at the address..."

And what she certifies is that:

"... on 12 December 2000, RA Abramovich had been in our cafe three times (for breakfast, lunch and dinner), and on 24 December, he was dining in our cafe with his entire team."

Now, go, if you would -- keep a finger in that page -- to page 35T in the English H(A)99/35T, 35 in the Russian H(A)99/35.

Again, the name is similar but presumably that's because they are related. They apparently are born in the same year. The wording here is again identical. But again, you say that's just the way these people chose to express themselves and that's not because they were told what to say here; is that right?

- A. I insist this because, as far as I understand, they're husband and wife. And there are photographs in the case materials from this particular cafeteria.
- Q. Mr Abramovich, there are numerous other examples of such documents produced from Chukotka which strongly hint at this evidence having been dictated. I'm not going to go through any more of it because it does relate to

a period where in fact there is no dispute that you were in Chukotka.

What I want to do next is to look at a further category of evidence that you try to rely upon in seeking to establish that you could not have been in Cap d'Antibes in December 2000 and that is evidence from your bodyguards.

Can I ask you, please, to go to paragraph 127 of your fourth witness statement, which you will find at E5, tab 11, page 127 in the Russian E5/11/127, pages 51 and 52 in the English E5/11/51.

MRS JUSTICE GLOSTER: Just before we go there, Mr Rabinowitz.

Mr Abramovich, can you help me, please. There are a number of these statements. Who identified whom should be asked to provide the statements? Because presumably you must have told your solicitors or your advisers, "Well, I was in that cafe, I was at that meeting, go and speak to those people". So the question I'm asking you is: who went along in Russia or in the Autonomous Region of Chukotka and found the people and asked them to sign a statement pursuant to the request? Who did that?

A. I didn't go there, for sure. It was done in the following way: I telephoned my deputy, he telephoned

everyone -- because I couldn't remember where I was at what point of time -- he telephoned to everyone who could theoretically have any recollection. So it looks like that. He rings to the head of the village, the head of the village disseminates this information; and the people who remember anything -- some people might have recollections, some people might have photographs -- they come along and they tell them. And the form of words is a standard Russian form of words: I confirm, this and that and the other.

MRS JUSTICE GLOSTER: I'm not asking you about the form of words; I'm just asking you about how you went about the process or somebody on your behalf went about the process of gathering these statements.

So you said to your deputy, "I need to establish where I was in December, I've got a formal request, please go and find the following people", or somebody on your behalf said that?

A. Indeed. It was my deputy who signed the letter, Dallakyan; we saw his signature. He took care of that. In towns, in terms of Chukotka they're large towns of 5-10,000 people, there the request was done through the internet. But in villages of 100, maybe 150 inhabitants, it was done through the head of the village. It is an elected position, head of the

village, and he can gather people to a meeting and the citizens can tell him what they remember.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: Let's just try and get some clarity about that, Mr Abramovich.

When you say you spoke to your deputy about this, you're talking about your deputy in the Duma and that is Mr Andrey Gorodilov; that's right, isn't it?

A. Andrey Gorodilov and Aramais Dallakyan.

Q. And they got in contact with Mr Gorenichy, Sergey Gorenichy, who is a lawyer or has been a lawyer with Sibneft; isn't that right?

A. Yes.

Q. And it was Mr Gorodilov and Mr Gorenichy who were involved in obtaining these statements in this form; is that right?

A. Yes, yes. Not in this form. They took part in organising this, yes.

Q. Right.

Now, I've asked you, if you would -- and I see you have it -- to look at paragraph 127 of your fourth witness statement, page 51 of bundle E5 at tab 11 E5/11/51, page 127 in the Russian E5/11/127.

What you say here, dealing with your attempt to establish that you could not have been in Cap d'Antibes

in December, is this. You say:

"In addition to all the evidence of my movements itemised above, I am also able to provide further corroborative proof that during the entire period of 6 December 2000 through 2 January 2001, I was in the territory of the Russian Federation. In the years 2000 -- 2001, the private security firm Centurion-M provided security services to me. When I was in the territory of the Russian Federation, I was escorted by bodyguards. Individuals who served as my bodyguards were issued weapons for every 24 hours that I was in the territory of Russia. This was documented in a special Record of Issuance and Collection of Weapons and Special Equipment, which is maintained by Centurion-M and strictly controlled by the department of internal affairs of the Tagansky district of the directorate of internal affairs of the Central Administrative District of the city of Moscow. For the purposes of these proceedings, I requested this information to be provided to the English Court. The director general of Centurion M has signed a corresponding statement No 47 of 2 June 2011 and provided me with a copy of the Record of Issuance and Collection of Weapons and Special Equipment."

Now, just let's be clear about what you are saying

here. The first thing you seem to be saying here is that whenever you were in Russia, you were accompanied by armed bodyguards; is that correct?

A. Yes.

Q. Secondly, you are saying here that those armed bodyguards would be issued weapons for every 24 hours that you were in Russia; is that correct?

A. Yes.

Q. Third, you are saying that the issue of such weapons to your bodyguard had to be recorded in a register; is that right?

A. Yes.

Q. And fourth, what you appear to be suggesting here is that if one could look at the register then provided it showed that arms had been issued to your bodyguards for a particular 24-hour period, this could be regarded as corroborative documentary proof that you would have been in Russia in the period from 6 December to 2 January; is that correct?

A. If we're talking about 24 hours, yes.

Q. Can we then look at the document that you have produced, which you say corroborates your evidence. Can you first go to H(A)99, page 39 in the Russian H(A)99/39, page 39T in the English H(A)99/39T.

This is the statement from the director general of

Centurion M that you were referring to at paragraph 127. You see it's dated 2 June 2011 and, as you can see, the letter says -- this is from Mr Romanov -- that Centurion M provided security services to you while you were in Russia in 2000/2001. He then says:

"For the purposes of personal protection of RA Abramovich... CENTURION M Private Security Firm created a special group that consisted of 24 hour shifts of bodyguards. In December of 2000 the shift managers were..."

And it then names them.

"... who went through the daily arming procedure in the weapons storage room of CENTURION M Private Security Firm only when starting their shift and that of mandatory disarmament once their shift was over."

And he then explains that this is all strictly regulated.

And he then sets out, looking at the last paragraph before the bullet points, in the journal from which he has extracted this material:

"... there are records of times and dates when weapons were issued to [your bodyguards] prior to their assuming the responsibilities of bodyguards [to you] and times and dates when weapons were collected after termination of their respective shifts between

03 December 2000 and 02 January 2001."

And can we just look at two entries in particular here. Can you first please look at the third bullet point, which records that Mr Brusentsov took out weapons at 6.33 am on 6 December 2000 and did not return them until 10.03 am on 7 December. Do you see that?

A. Yes.

Q. But you accept, Mr Abramovich, that you attended a meeting at Le Bourget Airport with Mr Berezovsky and Mr Patarkatsishvili during the day on 6 December 2000; that's correct, isn't it?

A. Yes, I accept. This is why they're talking about 24-hour shifts. I mean, I can be taken out from these 24 hours for a bit. If during these 24 hours I left and came back, this doesn't help us, because in the morning the person gets his weapon, then in the morning I leave for France for a couple of hours, then I come back; this person is not going to surrender his arms because his 24-hour shift is not over. However, if I leave Russia, the 24-hour period is over, then he does have to hand over his weapons, if I don't come back within the same 24 hours. That's how I understand the system.

Q. All right. Well, let's assume that that may be how it works. Can we look at another bullet point then.

Would you look at the next bullet point, which is

Mr Drobushevich -- sorry, let's just do this.

Mr Brusentsov returns the weapon on 7 December; you see that, do you? He takes it out on the 6th, then he returns it on the 7th?

A. Yes, yes.

Q. Following that, the next entry here is Mr Drobushevich who collects the weapons on 10 December and then returns them on 26 December. Do you see that?

A. Yes, I can see that. Drobushevich is the person who accompanied me to Chukotka.

Q. The difficulty of this for you, Mr Abramovich, is that if your evidence is true about how the system works, you were not in Russia from 7 December until 10 December, because if weapons were checked in on 7 December, the next time they were checked out was on 10 December.

MR SUMPTION: My Lady, if my learned friend is going to put this sort of point, he should actually be referring to the weapons book and not to the letter purporting to take contents out of it.

I have to say I question the appropriateness of my learned friend cross-examining on points that have been expressly conceded on Mr Abramovich's behalf. We have in fact conceded that the weapons book provides no valuable evidence, primarily for the reason which the witness has given.

I also, with respect, question whether it is appropriate for my learned friend to beat about the bush in this way. In taking documents, for example, relating to the events in the cafe on 24 December, is he actually saying or is he not that Mr Abramovich instructed people to obtain lies that he was somewhere else? In which case let him say that out loud and not simply tiptoe around the point and allow innuendos of this sort to go on to the record.

I respectfully suggest that this is not the way in which to make very serious allegations of falsification of evidence.

MRS JUSTICE GLOSTER: Two points, Mr Rabinowitz.

Firstly, put the weapons book or don't put the weapons book, but put it against the background of the concession made on behalf of Mr Abramovich.

Secondly, if you are suggesting that Mr Abramovich wasn't in Chukotka on a day where the witness says he was, I think you should put that directly. I think Mr Sumption is right about that.

MR RABINOWITZ: My Lady, can I deal with the second point first because in my respectful submission there is nothing in either of my learned friend's points.

So far as the second point, I accepted when I started with Mr Abramovich that there was no dispute

at all about his being in Chukotka in this period. The point that I was making is that there is a great deal of evidence which has been obtained from people in Russia which cannot be taken at face value. We will come to other examples of this, but there is a stream of this sort of letter where, frankly, it is simply unreliable evidence, and that is the first of the examples.

MRS JUSTICE GLOSTER: So the point you're making which you say goes to Mr Abramovich's credit is that he's the sort of person who will go round collecting up highly questionable evidence; that's the point you're making?

MR RABINOWITZ: That's the point, and it is through people like Mr Gorenichy, and we will come to other examples of it. And I don't resile from the point I've been making to Mr Abramovich. It's the first of the --

MRS JUSTICE GLOSTER: No. Well, I think -- just a second, Mr Rabinowitz, please. Then I think you should put that specific point to Mr Abramovich, namely that he is the sort of person who will go around collecting unreliable, concocted evidence.

MR RABINOWITZ: Well, I thought I had. I thought I had, but if I haven't, I'm very happy to put it again.

MRS JUSTICE GLOSTER: Well, that's the first point.

Now, what about the weapons book point?

MR RABINOWITZ: The weapons book, my Lady, I can show you

what it looks like if you go to 42T H(A)99/42T. It is completely --

MRS JUSTICE GLOSTER: Which bundle, please?

MR RABINOWITZ: In the bundle you're in. It is --

MRS JUSTICE GLOSTER: H(A)99?

MR RABINOWITZ: 99. It is completely --

MRS JUSTICE GLOSTER: In the translation or not in the translation?

MR RABINOWITZ: Well, that it will be -- it's in the translation.

MRS JUSTICE GLOSTER: H(A)99...?

MR RABINOWITZ: 42T.

MRS JUSTICE GLOSTER: Right. Just a second, please.

MR RABINOWITZ: It is completely incomprehensible.

MRS JUSTICE GLOSTER: No, just a second. Let me just get that, please. (Pause)

42T, yes?

MR RABINOWITZ: The reason I've gone to what Mr Romanov has extracted from this is because, in my respectful submission, it is incredibly difficult to read the record and if Mr Romanov is better based to read it, then in my respectful submission the easier way to deal with this with the witness is to show what Mr Romanov says.

MR SUMPTION: My Lady, the trouble about Mr Romanov's letter

is that it's inaccurate, as my learned friend, if he had bothered to read the weapons book instead of giving it up as incomprehensible -- we have had no difficulty in reading it. It contains dates, it contains precise amounts and times of equipment delivered, and if we compare that with Mr Romanov's letter, it is plain that Mr Romanov has made a number of mistakes.

Now, we didn't go into this in detail in our written submissions precisely because we conceded that the weapons book was itself not reliable evidence of Mr Abramovich's whereabouts. So that this seems both irrelevant and inappropriate, if I may say so, given that Mr Romanov's letter is not the primary evidence involved.

MRS JUSTICE GLOSTER: Right. Mr Rabinowitz, for my assistance, can you explain to me -- don't put it to the witness yet -- what the purpose of going to either the letter or the weapons book is if there isn't -- well, is this to establish that --

MR RABINOWITZ: It's to establish that the witness has consistently put forward evidence which he says supports this alibi which doesn't do it.

MRS JUSTICE GLOSTER: Right. Well, are we talking about the meeting in December or the meeting in November?

MR RABINOWITZ: As your Ladyship knows, Mr Abramovich's case

is that the meeting must have been in November because he couldn't have been at a meeting in December.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: And what he has done in seeking to establish this, whilst not disclosing certain documents which we talked about yesterday, is to rely first on photographs; second on evidence from Chukotka; third on this statement from the security people; and then on further evidence that we are going to come to.

MRS JUSTICE GLOSTER: Okay. Well, put this point -- I mean, for my part I'd rather look at the weapons book because I can understand the weapons book once I've got it in the right position, and if you're putting a point about a specific date, I think you should put a point about a specific date, because otherwise it's difficult, for me at any rate, to ascertain its relevance.

MR SUMPTION: My Lady, the relevant page for this date is in fact at page 26 and not on the page that is -- R(J)/06/26, rather than the page which is up on Magnum.

MRS JUSTICE GLOSTER: What, that's the page for the November date or for the December date?

MR SUMPTION: For the December date, 7 December.

MRS JUSTICE GLOSTER: Right.

Well, I don't want to take you out of your course,

Mr Rabinowitz, but I do need to be clear precisely what you're putting to the witness in relation to his alibi.

MR RABINOWITZ: Well, perhaps I can do it shortly and then come back to the weapons book.

MRS JUSTICE GLOSTER: Fine.

MR RABINOWITZ: Do you accept, Mr Abramovich, that the weapons book does not establish that you could not have been in Cap d'Antibes during the relevant period, by which I mean 7 to 9 December?

A. As far as I understand, I have no right to assert whether it does prove or it doesn't prove.

MR RABINOWITZ: Can I come back to that, my Lady, because I have to say I'm still struggling to read this weapons book in the way my learned friend says is easy. Can I move on to another category of evidence?

MRS JUSTICE GLOSTER: Yes, please do.

MR RABINOWITZ: Now, can I just ask you this about Centurion M, Mr Abramovich: is this a company with which you have a relationship? Is it connected to you in any way?

A. This company is directly linked to me.

Q. You didn't say that in your witness statement though, did you? You simply put this forward as if it were an independent company providing independent evidence.

A. I didn't say that. I don't know which way I own it.

Perhaps I own it. It's a small company that provides security services not just to me, perhaps to other people, but I'm sure it depends on me. Presumably through the payments I make to it, it is dependent on me, but I am not aware of the formal way it is owned. Perhaps I'm even a shareholder in this company, but to be quite honest I've no idea.

- Q. But what you were aware of is that it was a company connected to you and you were aware of that when you made your witness statement, were you not?
- A. I had no wish and there is no need to conceal the fact that Centurion is interested in my custom, in having me as a client. I have no idea, maybe I'm a shareholder; I cannot confirm or disprove. Maybe it belongs to me in its entirety. It's such a tiny service company that I can't really tell you anything about it.

Q. Now, the next way --

MRS JUSTICE GLOSTER: Sorry, Mr Rabinowitz, are you putting to the witness that he had the ability, because of his shareholder control, to dictate what the records say?

MR RABINOWITZ: I will put that. I'm suggesting that the witness ought to have explained in his evidence --

MRS JUSTICE GLOSTER: I appreciate that.

MR RABINOWITZ: Well, I'll put the point my Lady has.

Mr Abramovich, do you accept that you had the

ability, because of your connection, your shareholder control of this company, to affect the evidence that Centurion M was going to produce for the court?

- A. No, I don't agree. If we refer just to this book, to the record, this register, the arms register, is controlled by the Ministry of Interior. It's a very important accounting document and I cannot influence it at all. I wonder if that answers your question?

Now, if you are wondering whether the company is keen to have me as a client: of course it is. Am I the only client of this company? No, but I am the largest client. Perhaps the whole of our organisation is a client of this company; I have no idea. It is also possible that I am its shareholder; I simply don't know.

- Q. Now, the next way in which you've tried to establish that you could not have been in Cap d'Antibes at any time from and after 7 December is by producing documents relating to your air travel arrangements and I want to therefore ask you some questions about that.

It's your evidence, I think, that the only means of air transport that you would have used at this time to go from Russia to the south of France would be on a chartered plane. Is that right?

- A. At that time I think so, yes.

- Q. But --

- A. The question is whether I will take a scheduled flight and whether I will take a train? With almost 100 per cent certainty I would say: no, I wouldn't take a scheduled flight or a train.
- Q. And is it right that at this time -- and we're talking around December 2000 -- the people in your organisation with responsibility for arranging your travel arrangements included Mr Zhadovsky; is that right?
- A. Yes, Mr Zhadovsky.
- Q. Zhadovsky, I'm sorry. Ms Ivanova?
- A. Yes.
- Q. And was Ms Goncharova also involved in organising air transport for you?
- A. I think that she was involved in internal Russian air travel but not travel abroad. I think so. I'm not sure but I think she didn't deal with my travel abroad. She doesn't speak English.
- Q. Now, I'm not going to take you to the correspondence on this, Mr Abramovich, but you can take it from me that we've been provided with a list of individuals who were consulted from within your team in searching for relevant flight records and neither Mr Zhadovsky nor Ms Ivanova were on that list. Were you aware of that?
- A. No, I wasn't aware of that. I didn't take part in that correspondence.

Q. So you're not able to help us as to why those particular individuals were not asked to provide relevant records?

A. Mr Zhadovsky hasn't been working in our organisation for long time now. Maybe people approached him but he didn't want to provide any -- I just don't know.

MR RABINOWITZ: My Lady, I don't know when you want to take the break. I'm happy to carry on but...

MRS JUSTICE GLOSTER: Why don't you carry on for a bit because we didn't start until 10.30.

MR RABINOWITZ: I want to move on next to the flight records which have been disclosed.

It's right that you have produced a number of records from a company called Global Jet; you're aware of that?

A. Yes.

Q. But it's right also that Global Jet, although they have provided a quantity of records, have explained that they cannot say that their records for this period are exhaustive; are you aware of that?

A. Well, if they said so, then I suppose that's so. I have no knowledge of that.

Q. And so, even putting to one side any other private jet providers, one cannot be sure even that all Global Jet documents have been disclosed. Do you follow?

A. No. No, I don't. You mean that they have intentionally

concealed or withheld a number of documents or do you mean that their archive is just not complete?

MRS JUSTICE GLOSTER: I don't think this is a useful debate, is it? I mean, the position is as you've stated, Mr Rabinowitz. He can't comment on it.

MR RABINOWITZ: No, I'm just asking whether he follows; I didn't ask him to comment.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: So let's just put Global Jet to one side for the moment.

You don't dispute, I think, that you might have flown on a plane provided by a different jet provider to Global Jet?

- A. From my point of view it's not very likely because we had good relationship with Global Jet and I was satisfied with their service. But I cannot insist 100 per cent that this could not have happened; you're probably right. Apropos they continue maintaining and servicing all my aircraft. This is to this day the company that looks after all our aircraft.
- Q. Can I just, on this subject, ask you about this. One of your witnesses, Mr Gorodilov, has explained that Mr Zhadovsky flew to meet Mr Berezovsky in France and then to meet Mr Patarkatsishvili in Italy at the end of December 2000. The purpose of the flight was to obtain

signatures on the ORT sales document. Do you remember that?

A. Yes.

Q. And what Mr Gorodilov says is that Mr Zhadovsky flew from Moscow to France and then to Italy to get the documents and then came back to Moscow with the executed documents. Again, presumably you remember that?

A. Yes.

Q. And during this period Mr Zhadovsky, like you, would have been travelling on charters between Moscow and France when he was travelling on work-related matters; that's right, isn't it?

A. No.

Q. You think he would have been flying on standard planes, scheduled airlines?

A. I'm convinced that he flew normal airlines, scheduled flights. Mr Zhadovsky was not a high-ranking employee of the company who could afford each trip on a chartered jet. But because this was an important trip, he was allowed to use a plane. Perhaps it was the first time or a couple -- two times or three times he flew a chartered plane and us paying for it.

Q. Okay. But we can at least agree on this: that on this particular occasion he took a chartered flight?

A. Yes.

Q. Now, there has -- you may be aware of this, you may not -- been some investigation about Mr Zhadovsky's flights. People can see how he got from Moscow to Nice but it is unclear how he got back. Okay?

I just want to show you a document --

A. What happened, he disappeared? He disappeared?

Q. No, it's assumed that he got back but it's not clear how he got back. You can tell us that he got back: presumably you saw him?

A. Well, yes, I saw him.

Q. Can I show you, please --

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm assuming that there's some relevance in Mr Zhadovsky's travel arrangements.

MR RABINOWITZ: There is.

Can I ask you, please, to go to a document which you will find at R(H)1, tab 63, page 69 R(H)1/63/69. Now, this is a document that Skadden produced to assist in seeking to ascertain how Mr Zhadovsky travelled between Nice and Brescia and Brescia and Nice and we know that it comes from Global Jet.

If you look, you will see in the document there's a reference to flights between Nice and Brescia and then Brescia and Nice, do you see that, on the 29th of the 12th?

A. Yes.

Q. Then below that you will see "EX: RA02803" and then it says "JTT9605"; "ETA", which is presumably expected time of arrival, 1500 at Nice. Do you see that?

A. Yes.

Q. And "JTT" appears to correspond to a Russian company called Jet-2000 that has provided chartered jets since 1999. Are you aware of that? Are you aware of Jet-2000?

A. No, I don't know it.

Q. Perhaps I can hand up something from their website which explains that they've been providing charters since 1999. (Handed)

So you have two documents there. The first one says "Jet-2000 Business Jets", "About us", and they then explain they're an award-winning full-service business aviation provider, and in the second sentence of the first paragraph they explain that since 1999 they have been providing charter jets.

And then the second document that you have should look like that (indicates). You see towards the bottom of the document that it identifies "JTT" as the code for Jet-2000; do you see that?

So what this indicates, I suggest, Mr Abramovich, is that Mr Zhadovsky, when he flew from Moscow to Nice, was

put on a flight by Jet-2000. Do you see that? From the document at R(H)1/63, page 69 R(H)1/63/69.

A. Yes.

Q. And would you accept therefore that Jet-2000 appears therefore to be another jet provider that your business was using at this time, in late December 2000?

A. You can make this assumption. The question is what kind of quality jets they supplied and the year these aircraft was manufactured. Whether such a plane would have been chartered for myself, I'm convinced that it wouldn't have been. Was I willing to risk my life and fly to Nice for a chat? I doubt it.

MRS JUSTICE GLOSTER: Just a second, Mr Rabinowitz. How do we know from just looking at this page that the Jet-2000 aeroplane flew to Russia? I mean, all this is looking at is Nice-Brescia, Brescia-Nice.

MR RABINOWITZ: But he also explains that he was getting to Nice in order to get from Nice to Brescia. If your Ladyship looks below the Nice-Brescia, Brescia-Nice, your Ladyship sees an entry, "EX: RA02803", "JTT" -- this is the number of the plane, expected time of arrival in Nice. This is an aircraft which flies from Moscow to --

MRS JUSTICE GLOSTER: I thought Brescia was in Italy.

MR RABINOWITZ: Well, indeed. But what is happening was

Mr Zhadovsky was getting from Moscow to Nice, he was then having to get from Nice to Brescia, Brescia back to Nice. Global Jet were dealing with the Nice-Brescia, Brescia-Nice part of this, but Mr Zhadovsky had to get from Moscow to Nice.

And what this indicates -- and indeed this appears to be the view of Skadden themselves, they explain this in correspondence --

MRS JUSTICE GLOSTER: Well, it may be the view of Skadden.

I just don't see from this page that the reference to Jet-2000 is necessarily -- you say it arrives at 3 o'clock in the afternoon.

MR RABINOWITZ: In Nice.

MRS JUSTICE GLOSTER: I see. So you say that's from the Russian airline, I see.

MR RABINOWITZ: Well, that's where he was coming from. That's again not in dispute.

You see, Mr Abramovich, I suggest to you this was another airline which your business and indeed you might have been using at the time. You dispute that, do you?

A. Well, I'm not disputing that -- I'm not asserting that Global Jet was the only company we were using. From what I remember, Global Jet was the company I was using. For me, this particular aircraft would never have been chartered. I don't want to appear arrogant but it's

practically 100 per cent certain.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(11.28 am)

(A short break)

(11.44 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: What I'd like to ask you about next,

Mr Abramovich, is the evidence that you have produced relating to passport stamps and whether this is a category of evidence that establishes that you could not have been in Cap d'Antibes at the beginning of December.

Now, you accept, I think, that you have no Russian exit stamps in your passport on 6 December 2000?

A. Yes, this is so. So have we finished with this, with the jets?

Q. Yes, we've finished with that, yes.

So this is an example, we can agree, I hope, of the possibility of leaving Russia without a passport stamp?

A. Yes. Yes, I agree. That is unusual, but such a thing happened so, yes, it is possible. But the usual practice is that it's not possible to cross the border just like that.

Q. And you accept also, I think, that it is equally

possible to enter Russia without getting a stamp?

A. Everything could happen but, from my perspective, it's also quite unlikely.

Q. Can I just ask you, please, to look at a document at L(2011), volume 26, page 181 in Russian L(2011)26/181, 182 in English L(2011)/26/182. It may be that it needs to come on to the screen for you, Mr Abramovich. I don't know if we've got the bundles in court.

This is a letter from a Mr Mochalov of the FSB Border Guard Service. Read through, if you would, the whole letter. I'd like to focus for the moment on the last sentence of the last paragraph of this letter.

(Pause)

A. Okay.

Q. So Mr Mochalov of the FSB Border Guard Service makes the point that it is possible that stamps were not applied, which I think reflects what you were saying; is that right?

A. Well, there is always a human factor, there is always a human error. It's always present. They have automated control system and they also have the passport stamps, as it said here. So he is saying that there could be an instance where a passport stamp is not applied, is not put in.

Q. You also accept that you have no French exit stamp in

your passport for 6 December 2000; you agree with that, don't you?

- A. That also happens if you stay within the area. If you don't leave the railway station, then they might not stamp it, or if you don't leave the airport. But that can not happen in Nice, that's for sure; there they don't have such an area.
- Q. You see, I suggest, just as a matter of common experience, whatever the rules may be in different countries, it's not uncommon for passport stamps to be omitted. Do you agree with that?
- A. Are you speaking about Russia or France?
- Q. France.
- A. If we are discussing whether France has a rule that when you exit the country you have a stamp in your passport -- are we talking about this or are we talking about entry stamp? For example, if you are exiting England, United Kingdom, there is no exit stamp. These are the rules. In the US, when you are exiting the country, also there is no stamp.
- However, Nice Airport, it's quite possible to -- it's impossible to leave Nice Airport without an exit stamp, and the same about entry. I think the rules are quite rigid. I think that's because of Monaco.
- Q. Do you accept that, as well as there being passport

stamps missing from your passport, there are also some pages of your passport that contain illegible passport stamps?

Perhaps I can take you to an instance of this. If you can be given bundle H(A)38, page 99.002 H(A)38/99.002.

Do you see on page 27 -- your passport's got the numbers 26 and 27. On page 27, the top stamp on page 27, you can see that it appears to have the words "ROISSY-LB", which presumably is Le Bourget. Do you see that?

A. I think that probably is an exercise for the experts, I wouldn't be able to help, I'm sorry.

MR SUMPTION: My Lady, Roissy is not Le Bourget; it is an airport north of Paris. Le Bourget is somewhere else.

MR RABINOWITZ: It is illegible; we can't really see any date for that at all, can we?

MRS JUSTICE GLOSTER: Well, I think that's a matter for me on the basis of what we read and what the forensic experts say. I don't know whether I'm going to be assisted by what Mr Abramovich is going to comment on this document.

MR RABINOWITZ: Okay.

I want to show you another document that you rely on in order to support your case that you didn't leave

Russia between 6 December and 2 January 2001 and that's a letter from the FSB guard service.

Before I do that, can I just ask you this: on 6 December, your then wife accompanied you to Le Bourget, didn't she?

A. Yes. She did.

Q. Did she stay with you in the airport?

A. I do not remember exactly. I'd completely forgotten that she was with me. I didn't remember that. I've made such conclusions based on her passport.

Q. You see, her passport also has no entry stamps for 6 December. I withdraw that question, actually.

I want to show you the border guard letter which you have relied on. It's at R(J) tab 4. The Russian is at page 8 R(J)/04/8 and the English starts at page 5 R(J)/04/5.

Now, the order of these letters is as follows. If you go to the English at page 7 R(J)/04/7 and the Russian at page 10 R(J)/04/10, you see a letter from a member of the Federation Council of Russia, Mr Malkin, dated 18 April 2011, and he writes to the head of the Border Guard Service of the FSB of Russia, Mr Pronichev. Do you see that?

Mr Malkin in his letter asks Mr Pronichev for an explanation of the procedure for crossing the Russian

Federation state border when exiting from the Russian Federation, as well as information on the crossing of the Russian Federation state border by you during the period from 1 December 2000 to 10 January 2001. Do you see that? Mr Malkin's request appears to have been made pursuant to some procedure which allows members of the Federation Council to ask questions of and for documents from organs of the Russian State.

So you had been asking Mr Malkin to make a request under the Federation law entitling members of the Federation Council to make such requests; is that right?

A. Sorry, I didn't understand. What was the question? Did I agree that Mr Malkin would contact the first deputy director? I agree. But with regard to the -- with regard to law, the member of the State Duma or the member of the Federation Council has -- is entitled to contact any state authority, any state body.

Q. Okay. Can we now look at the information which Mr Pronichev provided: that's at page 5 in the English R(J)/04/5 and page 8 in the Russian R(J)/04/8. Now, do, if you would, read this letter to yourself. (Pause)

You see then that he -- you see that you do see then that he says:

"Based on the available records and documents, the information sheet requested by you was prepared..."

And the information sheet is on the following page, if you could go to that, please: page 9 in the Russian R(J)/04/9, page 6 in the English R(J)/04/6.

Now, according to this information sheet, you left Russia on 6 December 2000. Do you see that?

A. Yes.

Q. So your passport didn't show any Russian exit stamp for 6 December 2000, did it? I think we've established that.

A. Yes, we've established that there is no mark in my passport. But upon the request whether they have any data in this regard, they have confirmed that they do have the data.

Q. Let's just look at that a little more carefully. We know that your passport doesn't have any stamp and that would suggest, would it not, that whatever the available records and documents were which were used to compile this information sheet, it could not have been your passport?

A. Sorry, and what is the question? Whether my passport is a document? Yes, it is a document. Was it in the list of these documents on the basis of which the conclusions could have been drawn? Yes. Sorry, I do not understand the question.

Q. The point is this: that whatever the available

information, whatever the documents and records were that Mr Pronichev says he was relying on, one thing we know for sure is that that couldn't have included stamps in your passport because there is no stamp in your passport showing a Russian exit on 6 December.

A. Indeed, my passport did not have any exit stamps for 6 December. We have discussed this.

Q. And so -- you may not know this but this led -- there was a discussion between the solicitors to try and ascertain what the available records and documents were that Mr Pronichev said that he was looking at.

Can I ask you, please, to go to bundle L(2011), volume 26, page 181 in the Russian L(2011)26/181, page 182 in the English L(2011)26/182. Now, if you're on page 182 of L(2011)26, do you see the third paragraph?

A. Is that my witness statement?

Q. No, it's a letter. You should be looking at it -- it's on the screen, sorry.

The third paragraph of this letter, which is from a Mr Mochalov, says:

"With respect to information concerning border crossings in 2000-2001, during this period, airports in Moscow and some other cities in the Russian Federation carried out an automated registration of persons

crossing the border (by surnames, first names and passport numbers)."

Mr Mochalov then goes on to say that:

"... we are not allowed to disclose either the means used to collect such information or the relevant registration records."

And he then says:

"Nonetheless, the automatic registration system employed during the period referred to above makes it possible to confirm the facts outlined in the previous letter to Mr Malkin of 23 April 2011 and the list attached thereto. These facts are also confirmed by the marks made in the document proving the identity of the citizen of the Russian Federation abroad."

Now, there are a number of things about this that I would like to ask you about. First, you see that we're not told anything about what the automatic registration system was or how it worked, and so obviously there is no way that the court would be able to assess the reliability of that system, since it's not told anything about that. Okay? I just want you to know that that's what I'm going to be submitting.

Do you want to comment on that?

MRS JUSTICE GLOSTER: Well, I don't see how his comment can be useful. It's a submission and a comment by you.

I don't see what Mr Abramovich can add to what you've said.

MR RABINOWITZ: Very well.

MRS JUSTICE GLOSTER: Or, if he does so, what relevance it will have.

MR RABINOWITZ: Let's look at the next thing.

You see that Mr Mochalov appears to be referring, when he says, "These facts are also confirmed by the marks made in the document proving the identity of the citizen of the Russian Federation abroad", to passport stamps: that appears to be what he's referring to, doesn't it?

A. Sorry, what is he referring to? He's saying -- he's referring to something they've got and also referring to the passport data as well.

Q. So he says that what he is saying is confirmed by the marks made in the passport. That's what he is saying, is it not?

A. No, it's not what he is saying. He's saying they've got the data, plus they've got the passport marks and also they've got the document -- that's what they call it, it's a foreign passport.

Q. Indeed. So what he is saying is that the data that he has given is confirmed by the passport stamps?

MRS JUSTICE GLOSTER: Mr Rabinowitz, at the end of the day

it's what I think this statement means that matters; not, with respect to him, what Mr Abramovich thinks.

MR RABINOWITZ: You see, there is a problem with this, Mr Abramovich, and it's this: if Mr Mochalov is referring to passport stamps, are you able to offer an explanation or try and offer an explanation of how he can say the data confirming that you left Russia on 6 December is confirmed by a Russian passport stamp? Because we've seen that there is no exit stamp on 6 December for you from Russia.

A. Here he is referring to the automatic system of data collection and registration and also to the passport. If to put this system to one side and only consider the passport, then perhaps your assertion would be correct. But Mr Mochalov, he said that -- he has written that they've got the data and moreover they've got the passport.

Q. Now, the --

MRS JUSTICE GLOSTER: Mr Rabinowitz, the marks that are referred to at the end of the last sentence of the penultimate paragraph of this letter are not necessarily stamps, are they? They could just be marks. Who knows?

MR RABINOWITZ: Who knows? But in a sense one isn't then helped by this at all because, in my respectful submission, it's difficult to see what other marks he

can be referring to; and if they are stamps, then this suggested this is unreliable evidence again because he cannot say that there was a stamp which confirmed the other evidence because there isn't a stamp.

MRS JUSTICE GLOSTER: But isn't this all submission on the basis of the forensic evidence for me rather than, as it were, you testing out the theory on the witness?

I mean, what can he say that can add to his credibility of lack of credibility on this point?

MR RABINOWITZ: My Lady, I want to put to him what I'm going to be submitting to your Ladyship. It will be said if I don't that I needed to put it to him.

MRS JUSTICE GLOSTER: Well, I'm not sure it will be. You put what you're going to be submitting.

MR RABINOWITZ: Well, I have now put it, so I don't need to take any more time on this.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Mr Abramovich, in addition to what we have looked at, you have also given evidence on what you say is your recollection of meetings that you had in the first part of December and I want to ask you about some of those recollections, if I may.

MRS JUSTICE GLOSTER: Just before we go there, can you give me the reference again to the passport page that has the omission for 6 December or the passport pages you're

looking at that don't reflect exit from France or entry into Russia.

MR RABINOWITZ: Well, it's difficult to give you a page reference for something which isn't there, my Lady.

MRS JUSTICE GLOSTER: Well, precisely.

MR RABINOWITZ: But it's accepted --

MR SUMPTION: My Lady, they do in fact reflect entry into Russia; I think that's common ground.

MR RABINOWITZ: What is accepted is that there is no French exit stamp for 6 December.

MRS JUSTICE GLOSTER: What, from Le Bourget?

MR RABINOWITZ: That's right. And what is also accepted by Mr Abramovich is that there is no Russian exit stamp in his passport for 6 December: that's at E8, tab 8, page 104 E8/08/104, page 117 in Russian E8/08/117.

Now, my learned friend --

A. May I say something with this regard?

MRS JUSTICE GLOSTER: Yes.

A. In theory there should have been four stamps: exit from Russia, entry to France, exit from France and entry to Russia. I only have two stamps: entry to Russia and entry to France. In other words, I didn't have the stamp when I exited Russia, when I --

MRS JUSTICE GLOSTER: Yes. When you exited Russia --

THE INTERPRETER: I do apologise, that was too fast.

A. I flew out of Russia; I didn't have the stamp.

I arrived to France --

MRS JUSTICE GLOSTER: In the morning of 6 December and you went to Le Bourget.

A. I arrived to France and a stamp was put in my passport.

We were in the area, we didn't leave the airport territory; we had a conversation there and I got back to the plane. My passport wasn't stamped in France.

I arrived to Russia, I got a stamp in my passport.

It's the same set of stamps that my wife has in her passport. When I was giving evidence I didn't even know that she was with me, so I just simply didn't remember that.

MRS JUSTICE GLOSTER: Okay, thank you.

MR RABINOWITZ: Just before we leave passport stamps, on the question of Roissy and LB, in your witness evidence you refer to a document at H(A)38, page 99.001

H(A)38/99.001 as indicating that you arrived at

Le Bourget on 6 December 2000. Can I ask you just to take that up, please.

MRS JUSTICE GLOSTER: Roissy is Charles de Gaulle, isn't it?

MR RABINOWITZ: I'm not sure it is.

MRS JUSTICE GLOSTER: It is according to the internet.

I mean, whether that tells you anything or not --

MR RABINOWITZ: But if it's got "LB" after it -- it's an

area.

Mr Abramovich, can you look, please, if you have that, at the stamp just above the divide on the right-hand side.

MRS JUSTICE GLOSTER: Mr Rabinowitz, before we go there, whether the initials "LB" signify Le Bourget or not has to be a matter of record, doesn't it? I mean, somebody must be able to --

MR RABINOWITZ: What I'd like to ascertain is whether Mr Abramovich has been relying on "ROISSY-LB" to say that he arrived at Le Bourget.

MR SUMPTION: My Lady, I can accept, notwithstanding what I said earlier, that "ROISSY-LB" is the stamp that is applied at Le Bourget because --

MRS JUSTICE GLOSTER: So your evidence is wrong, Mr Sumption?

MR SUMPTION: What I said earlier was wrong; that's quite right. That must be so because when one looks at the 6 December stamp and everybody agrees that the entry was at Le Bourget -- indeed the arrival of his plane is actually recorded at the beginning of the tape -- one can see that "ROISSY-LB" --

MRS JUSTICE GLOSTER: Is Roissy-Le Bourget rather than Charles de Gaulle, yes.

MR SUMPTION: -- must be Le Bourget, even though it's not at

Roissy. I apologise.

MR RABINOWITZ: Which is, of course, precisely the point I was making.

MRS JUSTICE GLOSTER: Fine. Okay, well, I'm clear now anyway.

Mr Rabinowitz, it's clear that the stamp on page H(A)38/99.001, dated 6 December, is the entry stamp for Roissy-Le Bourget on 6 December 2000.

MR RABINOWITZ: I took your Ladyship to that simply to identify that "ROISSY-LB", contrary to what Mr Sumption suggested, is Le Bourget.

Now, I want to move to the final part of your evidence which seeks to establish that you could not have met Mr Abramovich in Cap d'Antibes in the period 7 to 9 December, and can we begin by looking at what you said about this period in your third witness statement. Can I ask you, please, to go to bundle E1 at tab 3, please, and go to page 216 in the Russian E1/03/216, 114 in the English E1/03/114.

At paragraph 261 you are dealing with the period 7 to 9 December and what you said here was that:

"... upon returning to Russia after the meeting at Le Bourget airport on 6 December, I remained in Russia for the entire period through to 2 January 2001. I was in Moscow from 7-9 December..."

And, as we see here, at this stage what you recall during this period, 7 to 9/10 December, is an official meeting with Mr Alexander Nazarov and President Putin around 9 or 10 December. Do you see that?

A. Yes. I said in the witness statement, "I think I had the meeting", but this is what Mr Nazarov was saying. I think I don't say this in other witness statements.

Q. What you say is:

"... (as I recall I was at an official meeting with Mr Alexander Nazarov and President Putin around 9 or 10 December)..."

So this statement was based, according to your witness statement, on your own recollection, Mr Abramovich.

A. No, it wasn't based on my recollection; it was based on what Mr Nazarov said to me. He remembered that we had a joint meeting together. He didn't remember what date it was; I think it was 9th or 10th. But if we look at other witness statements -- at my other witness statements, it might be described differently.

Q. Well, it is, and that's the point, Mr Abramovich.

I want to start by looking at what you said here.

At this stage you were saying that it was, as you recalled, a meeting with Mr Nazarov and President Putin.

Was that simply wrong? Was it not a recollection of

yours?

- A. I said, "as it seemed to me"; I'm not saying that I'm asserting it. This is what I recall. Mr Nazarov said that we had a meeting and explained to me that was the 9th or the 10th and it turned out that it wasn't to be the case. And so in my other witness statements I've taken that into account and I've described it in more detail, more precisely.
- Q. Let's look, if we may, at your next witness statement to see how this deals with this: bundle E5, tab 11. It's at paragraph 106, please E5/11/45.

MRS JUSTICE GLOSTER: Page?

MR RABINOWITZ: Page 45, paragraph 106. Page 121 in the Russian E5/11/121. You say here:

"With the help of the members of my team who assisted me during the gubernatorial elections in Chukotka, I am now able to reconstruct in greater detail the events of December 2000."

You say that you're:

"... absolutely certain that [you] did not leave Russia during the period of 7 December... through 2 January 2001..."

And then if you go, please, to paragraph 108, you deal with the period of 7 to 10 December and you deal with this specifically. What you say again, as regards

this period, is:

"As I am reminded by Mr Alexander Nazarov ([who was the] former Governor of the Chukotka Autonomous District), the two of [you] met with President Putin on 9 or 10 December. That meeting was also attended by Mr Konstantin Pulikovsky who was at the time the authorised representative of the President of the Russian Federation for the Far Eastern Federal District. At that meeting we discussed the upcoming elections..."

So it's clear, first, that you identify only one meeting that you say you have in this period; that's correct, isn't it?

- A. In my subsequent witness statements I'm saying that Mr Nazarov was incorrect: that meeting didn't happen, it happened earlier. And this is based on Mr Nazarov's words, I read -- what I'm saying in this witness statement. It seemed to him that we met on the 9th or the 10th but that meeting didn't happen. And I was trying to ascertain the date and for every date I was trying to give maximum detail and everything that I knew I was trying to reflect in my witness statement.
- Q. So, just to be clear, having said there was this meeting in your first witness statement and that you recalled it, you then say you spoke to Mr Nazarov and he recalled more detail about it and that is what you then

identified as the only matter that you say you can rely upon for showing you in this period to be in Moscow, but you accept now that what is said at paragraph 108 is incorrect. Is that right?

A. I do not agree for a number of reasons. First, to do -- paragraph 261, you're saying that I was asserting in my witness statements. I didn't assert; as I said, it seemed to me.

And secondly, in my second witness statement I am saying that I am quoting Mr Nazarov; I myself do not recall it. In subsequent witness statements we are discussing that the meeting did happen; most likely it happened earlier. That meeting with Pulikovsky and Nazarov and the president did happen, but I cannot assert the date. It's most likely it was the end of November.

Q. Can you please just go to your commentary on Le Bourget at E6 -- well, you had better go to E7, tab 1, page 156 (sic). In E6 it's at E6, tab 1, page 62 E6/01/62. You see, in your commentary, E6, tab 1, page 62, in the English at box 159 --

A. Is it possible to show it to me in the Russian text, to quote the Russian text pagination?

MR RABINOWITZ: I did give that to you: it's at E7, page 156, I hope. We're looking at box 159.

Mr Abramovich, are you on page 56? I think I may have said 156 but you should be on page 56 of E7 E7/01/56. Yes?

Now, you see in your commentary to Le Bourget you talk about communication you had with President Putin on 9 or 10 December in Moscow.

A. Mm-hm.

Q. And this appears, does it not, to be a reference to the same meeting that you were referring to in your third and fourth witness statements?

A. Sorry, could the question be posed again? From my commentary it's clear that that meeting was on the 9th?

Q. This suggests, does it not, again that you were saying here that you met President Putin on the 9th or 10th?

A. Could I read it, please, and then I'll comment.

MRS JUSTICE GLOSTER: It's quite far down the commentary. In the English it's on about the fourth page of the commentary to box 159. (Pause)

A. Yes. Yes, I've read it. If I understand correctly, we were submitting Le Bourget transcript at the same point when the third witness statement was submitted, so everything I knew at that point in time, it's reflected either here or there. But this is based on what Mr Nazarov told me and he said he's got diaries and he shall find them, but he couldn't find anything and his

assistant also couldn't find any -- didn't find any records.

MRS JUSTICE GLOSTER: So you're telling the court now that you think you had the meeting with Putin at the end of November sometime?

A. This is only a reconstruction. I cannot assert the dates. If we interpolate all the schedules when I was in Moscow and when the president was in Moscow, then only 29 November would work, but I cannot say that I can recall the date for sure. It definitely was not the 9th or the 10th because the president wasn't in Moscow.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: But, Mr Abramovich, it's fairly clear from what you are saying that you do not have a clear recollection of who it was you met in this period, in early December 2000.

A. That's exactly what I'm saying: I do not recall. This is only based on the documents.

Q. And just on that, you were translated as answering the question from my Lady as saying that all of this is a reconstruction. You say:

"I cannot assert the dates. If we interpolate all the schedules when I was in Moscow..."

What were you referring to when you were referring here to "schedules" which showed when you were in Moscow

and when you weren't?

A. Sorry, that's the word I used. These are not schedules. Perhaps the word "schedule" or "chart" could be used. When I was in Moscow and when the president was in Moscow, if you can put these -- what would you call it? -- schedules, dates, if you put them together, then, yes, there would have been a theoretical possibility: only the 29th. It's just a figure of speech, the word "schedule".

Q. Now, more recently, as you've suggested, when I think it had become clear that you couldn't have met President Putin on the 9th or 10th because he was not in Moscow, you have now given evidence that in fact you saw certain other individuals, including Mr Davidovich, Mr Zurubov and Mr Adamov in Moscow and I'd like to ask you about that, if I may.

A. Yes, but again it's only based on reconstruction. I myself do not recall this.

Q. Okay. Let's just see what evidence you are relying on here and I appreciate you telling the court that you don't remember this.

Can you go, please, to your sixth witness statement and first go to paragraph 14: that's at bundle E8, tab 8, page 106 in the English E8/08/106 and page 119 in the Russian E8/08/119.

At paragraph 14 you say:

"[You've been] reminded by Mr David Davidovich that [you] met with him that day in Moscow to discuss the delivery of vehicles of the make 'Gazel' (which were vans to be used as transport) to Chukotka."

I think you accept that you have no recollection of this, but it's your evidence that Mr Davidovich remembers this from some 11 years ago; is that right?

A. I remembered the story with these Gazels because that was quite an unusual one. If I may, I can tell it, if it's important.

Q. Well, we will come to it shortly but I just want to ask you a few questions first about Mr Davidovich, if I may.

Mr Davidovich is a close associate of yours, is he not?

A. Yes, one could say that.

Q. Well, he is the executive director of Millhouse LLC; correct?

A. I think so.

Q. And it's right, is it not, that he's been sitting in court on a number of days during these proceedings?

A. Yes, and he is in the courtroom now as well, as we speak.

Q. And he is a close and trusted friend of yours?

A. Yes.

Q. Now, even assuming that Mr Davidovich was trying to be impartial about this, given how long ago it was, you would accept, I take it, that Mr Davidovich could be wrong about the date of the meeting?

A. I cannot accept it and, if I may, I shall explain.

MRS JUSTICE GLOSTER: Yes, you may explain.

A. There are two aspects to the story. I have asked to organise vehicles for Chukotka and any person who never visited Chukotka would think it was just some territory with a road network. And when the vehicles would be crossing the tundra and if there is snow or a snowstorm, we had big red crosses on them, on the vehicle roofs, so as to be seen from the helicopter in case anything happens from the vehicles. There is no road network in Chukotka; it's only helicopter transport. One can only move by car in small towns. Therefore that was just not necessary; that was an extra.

Mr Davidovich, having spoken to me, left for Nizhny Novgorod to work on these vehicles -- there was some mistake about these red crosses -- and he arrived there on the 7th, after our conversation with him. We'd spoken with him in the office and he arrived there and in the hotel it was -- he was checked in in the hotel. So basically it's only a reconstruction, of course I don't recall what date it was; and retroactively,

looking back, it works out that it was on the 7th. This is all I've got to say.

- Q. Well, can I ask you this. Let's proceed on the basis that Mr Davidovich is right that he went to -- I think he went to the Hotel Volna in Nizhny Novgorod from 7 December onwards.

It doesn't follow, Mr Abramovich, that your conversation with him had to have been on the 7th; it could have been on the 6th, it could have been on the 5th, just to give two examples. That's right, is it not?

- A. I disagree. Yes, one can make such an assumption. It's hard to speak about the 6th because I was in France. But overall in our organisation it was the following way: if I asked for something to be done and it's not done, that would have been unusual. I really needed these vehicles to reach Chukotka as fast as possible because there was no transport there whatsoever. So my assertion that he left on the same day as soon as I spoke to him, especially as the flight was only about 30 minutes long, this is what I assert.

- Q. But do you accept that you have no recollection about it?

MRS JUSTICE GLOSTER: Just a second. Sorry, what flight is only 30 minutes long?

A. The flight between Moscow and Nizhny Novgorod, where these vehicles are being manufactured. I indeed have no recollection in this regard and it would be wrong to say otherwise. This is pure reconstruction. I remember the story with the vehicles and I certainly do not remember the date.

MR RABINOWITZ: Mr Davidovich stayed at that hotel, didn't he, for six months?

A. Yes, he did, Mr Davidovich stayed there for six months. Moreover, he even started to work for them because after that we've bought it, bought the factory.

Q. He would have been making plans ahead for his visit to that hotel in Nizhny Novgorod; he wouldn't have made a reservation on the 7th and flown out on the 7th?

A. That is a factory hotel. He would not have -- it's not a city hotel. And Nizhny is not a very frequented town; it's an industrial town.

Q. Mr Abramovich, what I'm suggesting to you is that you have to accept that it must at least be possible that your conversation with Mr Davidovich before he left for Nizhny Novgorod could have been on 5 December and didn't have to be on 7 December.

A. I rule out this possibility based on my own knowledge and recollection, but if you think that that could be possible -- well, usually in our organisation the way

the organisation is built is that decisions are executed immediately, asap.

- Q. I want to ask you next about the meeting you suggest you had with Mr Adamov, the minister of atomic energy, which you deal with at paragraph 18 of your witness statement E8/08/106. This is a meeting you say you had on 8 December.

Now, again, you have no recollection of this meeting either, as I understand it?

- A. Yes, I remember that there was a meeting but I don't remember the date of the meeting.
- Q. But you say Mr Adamov has told you that you met him on the afternoon of 8 December to discuss questions relating to the Bilibino power station?
- A. Yes.
- Q. And you say that Adamov is certain that your meeting took place on 8 December because he apparently was not in Moscow on 9 December. Is that right?
- A. Yes, I agree. He left for Bishkek on 8 December to give a honours document to the Bishkek president from the president of Russia and there was some inauguration and he left in the evening.
- Q. So he left in the evening on the 8th. But, Mr Abramovich, you give no reason to explain why Mr Adamov is sure, some 11 years on, why the meeting

must have been on 8 December rather than, for example, on a date shortly before then.

A. Did I understand the question correctly: how can I assert that the meeting happened on 8 December and not before that?

Q. Yes.

A. I cannot confirm it myself. This is only based on his words. He went to the ministry, he went through the documents and that's what he was able to get out of -- fish out of there.

Q. Can we just look at what Mr Adamov in fact says. We have the letter from Mr Adamov at bundle L(2011), volume 29, page 253 in the English L(2011)29/253, 252 in the Russian L(2011)29/252. I think it will come on to your screen.

It hasn't yet come on to Mr Abramovich's screen.

(Pause)

So he says:

"I have received your request regarding meeting with Mr Abramovich on 8 December..."

Just pausing there, someone appears to have asked him about a meeting on 8 December. Can you explain how --

A. Would it be okay to see the whole letter, please?

MRS JUSTICE GLOSTER: There's a problem with the computer

display functionality. (Pause)

MR RABINOWITZ: What about getting it on the smaller screen?

MRS JUSTICE GLOSTER: I can get the Russian on my smaller screen: it's just one page back from the English.

MR RABINOWITZ: Can you just read that letter to yourself, please. (Pause)

You see that Mr Adamov explains that "[his] work diary at that time was maintained in Outlook", but he says that "no copies of any entries still exist". Do you see that?

A. Yes, I do.

Q. And he then says:

"... there are known dates of certain events which I remember very well."

And he identifies some of those things which he says he remembers very well: meeting the president of Kirgizia. Having said that, he just says:

"Prior to my departure to... (Kirgizia) Mr Abramovich asked me for a meeting, since he had to go to Chukotka himself. My recollection is that this meeting did actually take place on 8 December 2000."

So, again, Mr Abramovich, I suggest that one is none the wiser at all about what it is that Mr Adamov says he is relying upon in order to come up with a date of 8 December. He doesn't seem to suggest there's any

documents he's looked at at all.

A. These are his recollections. I cannot help you. If this is not enough, this is all I was able to do in this regard.

Q. You see, I suggest that Mr Adamov simply doesn't explain how, over 11 years ago, he can remember that the meeting was on 8 December as opposed to another date.

MRS JUSTICE GLOSTER: I think the witness has given his answer.

MR RABINOWITZ: I think he has.

MRS JUSTICE GLOSTER: He can't comment. And at the end of the day, it's a matter for me to address the validity or the value of this evidence, isn't it?

MR RABINOWITZ: Let's look at paragraph 20 of your witness statement: page 107 in English E8/08/107, page 121 in the Russian E8/08/121. Bundle E8 we're still in.

Here you are talking about having been reminded by Mr Zurabov that you met with him on 8 December and you specifically say that you had not remembered it, that is to say when the meeting took place. E8.

A. Yes, I did not remember it. Initially we thought to meet -- we were going to meet at the State Duma because he was going to speak at the Duma, but because there was a rumour that perhaps a terrorist act could be organised, an explosion, I went to sort it out. So the

meeting happened, as I can recall, in our offices after his speech.

Q. You see, in your witness statement, whilst you refer to Mr Zurabov reminding you of this, you give no reason at all why this meeting should have been on 8 December as opposed to some other date.

A. I already said that the meeting had to happen on the 8th, on the day when we were voting -- there was a state hymn issue on the agenda and Zurabov had to speak after lunch with the pension reform presentation and both of us were going to fly to Chukotka together and because it was delayed, we flew by different planes.

So we had to discuss it at some point and, from what I can recall, the meeting happened and, from what I can recall, that happened on the day when the Duma was voting on the state anthem.

MRS JUSTICE GLOSTER: What's the journey time from Moscow to Chukotka by private aeroplane, by private jet?

A. Usual flight -- there are two flight routes, the north and the south one: the north one takes nine hours and the southern one takes 11 hours.

MRS JUSTICE GLOSTER: And that's by private jet? You travelled in private jet, did you, to Chukotka?

A. To Chukotka, yes, we went by charter to Chukotka.

MR RABINOWITZ: Now, can I ask you about the suggestion you

make that on 8 December you voted in the Duma in Moscow.

It's right, isn't it, that in December 2000 you were a member of the State Duma of the Federal Assembly of the Russian Federation as the representative of Chukotka?

A. Yes.

Q. And the State Duma of the Federal Assembly sits in Moscow; that's right, isn't it?

A. Yes.

Q. Now --

A. This is the parliament.

THE INTERPRETER: Sorry, that might have been interpreter's mistake. It's not an assembly, it's a parliament.

MR RABINOWITZ: And the first time that you have claimed that you were in the Duma on 8 December to vote on draft laws about national anthem/flag/crest of Russia was one week before trial in your sixth witness statement; that's right, isn't it?

A. Yes, this is correct. The thing is that initially Mr Berezovsky was asserting that the meeting took place round about Christmastime and then obviously we were trying to focus to understand where I was at that point in time. And with regard to the 7th or the 9th, he changed his opinion not so long ago, so obviously later we started focusing on these dates.

Q. Now, can we just look at what you say at paragraph 17, please. You have it there: E8, tab 8 E8/08/106, in the Russian it's at page 120 E8/08/120. You say that you recall well attending the vote on 8 December and that you were recently reminded of the date of the vote by Ms Ponomareva.

Do you happen to know how Ms Ponomareva recalled this? Was she with you at this time, on 8 December?

A. I cannot say whether she was with me on 8 December but she was overseeing my work in the Duma. So that person was the person who would know, or maybe there was a second assistant: I mentioned her yesterday, I mentioned Ponomareva and Morozova.

Q. There is only one document you have disclosed relating to the Duma session of 8 December and that is the chronicle of the session of 8 December, which you can find at H(A)25, page 162, at 162.003 in the Russian H(A)25/162.003 and 003T in the English H(A)25/003T. H(A)25.

Now, I'm not inviting you to take a lot of time reading through this, but I can tell you that there is no reference in that document to you having been present in the Duma on 8 December.

A. Certainly there was no reference in that document but this is an official registration. I'm certain that it

should have been registered in the Duma and certainly this can be found somewhere, but I didn't recall on what date the voting was held. I remember that I was voting on the anthem and therefore my recollection that I voted and the date on which I voted, in my understanding, that gives us, if not an evidence, then something close to evidence, something close to proof.

Moreover, the story with the police dogs with the bomb, planted bomb in the Duma, also was quite a rare thing and I also recall that story -- or that's happened and I was in the hall when that was announced, when the announcement was made.

Q. Mr Abramovich, you do refer to the story with the police dogs and the bomb, but that is in fact a story which was publicised by way of the transcripts of the Duma session being published online; that's right, isn't it? The fact that that had happened was something that anyone looking at the internet could have discovered.

A. Is the question whether the story about the dogs was publicised, and about the voting on the anthem? Yes, certainly it was.

MRS JUSTICE GLOSTER: It's being put to you that you could have made up this story because the reference to the dogs and the bomb threat was on the website, so it would be easy for you to make up the story without actually

having been there in the Duma at the time.

That's right, Mr Rabinowitz; that's the suggestion that you're making?

MR RABINOWITZ: That's right.

MRS JUSTICE GLOSTER: What do you say about that?

A. I remember that I voted on the anthem, I remember that I was in the Duma and I remember the announcement about the dogs. I didn't know that that happened on the 8th. But if you put all the parts together, then one can make --

MRS JUSTICE GLOSTER: Sorry, you did know or you didn't know that happened on the 8th?

A. I did not know that that was the 8th. But when we started looking...

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Sorry, you say "when [you] started looking": when you started looking for what?

A. We started looking for where I was on these dates. If I may, I will say a couple of words how this happened.

Q. Please.

A. I asked the secretaries to take their telephone book and ring all their acquaintances that someone -- everyone who knows or remembers something about that time. And bit by bit people started saying what they remember, what they recall; some might have some pictures, some

pictures might have been preserved; and thus we were able to recall these dates.

Q. Mr Abramovich, you voted in the Duma in Moscow on 14 and 20 December when you say you were in Chukotka; that's right, isn't it?

A. No, this is not right. My colleague Zubov voted for me. I passed my card to him. He is ex-governor of Krasnoyarsk Krai and he was sitting on my right.

Q. You gave a proxy card to Mr Zubov and on 14 and 20 December he exercised -- sorry, you gave your own card to Mr Zubov to use as a proxy and on the 14th and the 20th he voted for you; is that right?

A. Yes, that's right.

Q. And there is a record shown in the public records of you having voted in Moscow on 14 and 20 December; that's right, isn't it?

A. I don't know about this. Are you saying is there a record or whether I voted? I didn't vote because my colleague voted for me --

Q. There's a record --

A. -- and I cannot say whether there is a record or there isn't one.

Q. Well, take it from me: there is a record of your vote having been cast.

What we haven't been able to find, however, is any

record of any vote by you on 8 December 2000. Can you perhaps assist as to why that would be so?

A. I'm confident that if it was open vote, that there is registration, and I'm confident that maybe you're mixing things up.

Q. Mr Abramovich, I would just like to summarise our case on the Cap d'Antibes meeting to give you a final chance to comment on it.

First, we say that you originally admitted this meeting, before seeking to change your case. Do you dispute that?

A. No, I do not dispute that. I'm saying that there was a meeting in France, yes.

Q. Second, we say that your own recollection of events, whether or not prompted by a third party, is unreliable and that any evidence you do give is based entirely on reconstruction. Do you dispute that?

A. I'm sorry, I've missed it. What is it based on?

Q. Reconstruction.

A. Yes. Mainly everything is based on reconstruction.

I remember I didn't leave Russia, but everything else is reconstruction.

Q. Third, we say you have notably omitted to produce relevant materials, such as diaries and mobile phone records and credit card receipts, or indeed to ask

individuals to search for that -- I'll leave out the last bit, sorry.

You have notably omitted to produce relevant materials, diaries and mobile phone records and credit card receipts, for the relevant period. Do you dispute that?

A. Sorry, it might have been again an interpreter's error. It sounded like I deliberately didn't produce something. Did I understand the question correctly?

Q. You have failed, whether deliberately or otherwise, to produce these sources of evidence.

A. The evidence that Mr Rabinowitz is talking about, we simply couldn't find them because it looks like they were not preserved.

Q. And fourth, we suggest that the evidence that you have relied upon to try and establish that you could not have been in the Cap d'Antibes in December, and in particular in the period 7 and 9 December, simply doesn't establish that fact. Do you dispute that?

A. This is not for me to choose. I've done all I could in this regard, with regard to submitting evidence.

MRS JUSTICE GLOSTER: Is that a convenient moment?

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: Before I rise, there may be a problem about tomorrow because of this demonstration. I'm just

going to have a meeting with the court staff to see what the impact of closing Fetter Lane is going to be, or might be, on all of us tomorrow. So could you come, as it were, prepared to deal with how we're going to get into the building if there's no vehicular access anywhere around. You may need to have to cope with that. That's all.

Okay. I'll let you know further at 2 o'clock.

(1.02 pm)

(The short adjournment)

(2.10 pm)

MRS JUSTICE GLOSTER: Mr Rabinowitz, Mr Sumption, the position for tomorrow is that at present the police are saying it's business as usual. The road will be closed to vehicles, however, from 10.30 am in the morning until the evening but this may change with little or no notice, but in the meantime we should continue business as usual.

The pavement will be open to the public. The march starts somewhere near the LSE around 12.00 noon and it's anticipated that the demonstrators will be coming up Fetter Lane from between 12.30 to 2.00 pm, depending on the numbers. Apparently the number of protesters will be in the region of 5,000 to 10,000. That's what's anticipated.

The problem will be therefore at its worst over lunch, so if any of you leave the building to go back to chambers or somewhere for lunch, there will be a risk that you may be delayed getting back in. Can you please make your own arrangements so that at least the participators who need to be here in the afternoon will be here and won't get lost in some demo. That particularly goes for Mr Abramovich, if he will still be in the witness box tomorrow, and Mr Rabinowitz and somebody at least from your team, Mr Sumption.

If you would like me to start at 10 o'clock, with a view to perhaps rising at 12 o'clock, I'm happy to do that; but it seems to me that that may make it worse, it may make it better.

MR RABINOWITZ: I think we can cope with arranging lunch.

MR SUMPTION: If your Ladyship starts at 10.15 as usual, I'm sure we will find a way. Mr Rabinowitz's armoured cars will then be able to arrive outside without let or hindrance.

MRS JUSTICE GLOSTER: Right. Well, if we start at 10.15, that should be all right and that should give you time to get away. But I think that there will be, as I said, a problem at lunchtime if anybody leaves the building.

Very well. Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, you deny that you were at any

meeting at Cap d'Antibes in December 2000 but I'm going to give you a chance to comment on Mr Berezovsky's evidence as to what occurred at that meeting, should you wish to comment.

Mr Berezovsky says that you told him at this meeting that you were there as a messenger from the Kremlin. You dispute that, do you?

A. Yes, I dispute that. Should I comment after each of your statements or should I listen to the end of the sentence or the paragraph?

Q. It's probably better if you do it at the end of each sentence.

Mr Berezovsky also says you told him and Mr Patarkatsishvili that you were there at the specific request of President Putin and Mr Voloshin and that he and Mr Patarkatsishvili had to agree to sell their interests in ORT immediately. Do you accept that?

A. Are we discussing just the alleged meeting on 7 December, do I understand it correctly, or are we discussing a possible discussion?

Q. We're discussing what Mr Berezovsky said happened at Cap d'Antibes.

MRS JUSTICE GLOSTER: Can we be clear about the date. The date that Mr Berezovsky is putting forward is between the 7th --

MR RABINOWITZ: The 7th and the 8th, I think he said. He said the 7th or the 8th.

Do you want to comment on the second of those parts of the evidence?

A. On the 7th or the 8th, on either 7th or 8th December I was not in Cap d'Antibes, so everything that we discuss later will follow from this statement.

Q. All right. Perhaps then it will be quicker if I just read to you the remaining parts of what Mr Berezovsky says you told him --

MRS JUSTICE GLOSTER: Just a second. Mr Rabinowitz, in the agreed chronology that has been provided to the court recently, the dates upon which Mr Berezovsky alleges the meeting in Cap d'Antibes occurred were the 7th to the 16th. Has that been modified to just the 7th or the 8th?

MR RABINOWITZ: I think Mr Berezovsky's evidence was that it was the 7th, the 8th and perhaps he said the 9th as well, and it's on that basis --

MRS JUSTICE GLOSTER: Right, so I shall delete that. Only I need to be clear.

MR SUMPTION: My Lady, it's also been conceded in correspondence that it couldn't have occurred after the 10th.

MRS JUSTICE GLOSTER: So it could have occurred on the 10th?

MR SUMPTION: Well, the position in correspondence is that it could not have occurred after the 10th. The position on Mr Berezovsky's evidence is that he says that he believes that he recalls it occurring on the 7th but it could have happened on the 8th.

MRS JUSTICE GLOSTER: Yes, thank you.

Well, you heard that, Mr Abramovich: those are the possible dates that you're being asked to address.

MR RABINOWITZ: So it will be quicker, if your answer is simply going to be, "I wasn't there on the 7th or the 8th", if I can tell you everything he says and then you can just, if you want, comment on it.

He says you told him that if they did not sell their shares at the price you specified, then Mr Glushkov would be in prison for a very long time. He says also that you said that if he agreed to sell, Mr Glushkov would be released. And he says that you also said that if they did not sell the shares, President Putin would seize them in any event.

And finally Mr Berezovsky says that you told him that you would pay \$175 million but that you would deduct \$25 million for money you had spent on President Putin's campaign, so that while Mr Berezovsky had previously thought he would be getting \$175 million from you, you reduced this at the last minute to

\$150 million.

Now, there are two more bits and I'll read them and then you can comment.

Mr Berezovsky says that he had decided that he would be willing to hand over ORT, if this would secure Mr Glushkov's release, as soon as he heard of Mr Glushkov's imprisonment; but that at this meeting with you, he understood that he was being blackmailed and that the promise of Mr Glushkov's release was being held out in return for the sale. And Mr Berezovsky says that he said to you at the end of the meeting that he felt betrayed by you and that he never wanted to see you again.

- A. It was difficult for me to remember all of that. So, if I may, I'll concentrate on two statements that, in my view, are senseless, nonsense.

On the one hand, according to Mr Berezovsky, I asserted that if he sells me shares -- so I was ready to pay for the shares -- then Mr Glushkov would be released from custody. On the other hand, I was also saying, allegedly, that if he sells the shares to me -- sorry, if he doesn't sell the shares to me, they would be confiscated anyway.

In my view, this is not entirely logical. In other words, I wanted these shares for myself; but everything

we heard and everything we discussed in Le Bourget points to the fact that it wasn't my idea to get these shares for myself. This is my guess, my assumption; I don't want to assert it.

Apart from that, I wanted to say that everything that Mr Berezovsky alleges is not true on this point.

- Q. It wasn't your idea to get these shares for yourself; you were in fact doing it because President Putin and you discussed that you would get these shares from Mr Berezovsky. That's right, isn't it?
- A. I didn't quite understand the question. Is the question whether I discussed with President Putin that I would get these shares? Yes, I did discuss.

MRS JUSTICE GLOSTER: No, that's not the question.

MR RABINOWITZ: The reason you were acquiring ORT was because President Putin wanted Mr Berezovsky to give up the shares in ORT and you were assisting President Putin in achieving that end?

- A. President Putin didn't want the shares. It wasn't the shares that he wanted. He wanted Mr Berezovsky and Mr Patarkatsishvili to leave management of the company and relinquish control, stop influencing the content of the programmes. The papers in themselves weren't that necessary.

And in my evidence I'm explaining that ORT is

a rather bizarre organisation. The essence of the company is a licence, it's based on a licence. It was easy to take that licence and give it to any other organisation. The broadcasting licence did not belong to Mr Berezovsky. He held only 49 per cent of ORT.

So, in the end, the situation might have developed in the following way: the licence might have been transferred to another company and Mr Berezovsky might have kept the shares. So, to avoid that, Badri talked me into buying these shares.

MRS JUSTICE GLOSTER: So what do you say is the reason for your purchase of the shares in ORT? Because Badri asked you to do so? Because of President Putin's concern about Berezovsky? What do you say was your reason for buying the shares?

A. I had two reasons. Number one, I was associated closely with Mr Berezovsky, I was like a shadow of Mr Berezovsky, so if at some point he wouldn't calm down and if he didn't stop using ORT in his fight with the government, I would suffer personally and most importantly Sibneft as a company would not be stable.

Secondly, Badri understood that very well: he understood that sooner or later this would come to a sorry end. Badri understood that and he was persuading me, talking me into acquiring the shares;

then Boris would calm down and then we'll see what should be done with it. Initially, from the very first discussions, we discussed that I would acquire these shares, I would hold them for a while; and later, when it all settles down, he'll take them back. However, this option was forgotten very soon.

MR RABINOWITZ: Mr Abramovich, in answer to the previous question, you explained that:

"President Putin didn't want the shares. It wasn't the shares that he wanted. He wanted Mr Berezovsky and Mr Patarkatsishvili to leave management of the company and relinquish control..."

So President Putin didn't want the shares, but what he did want was for the shares to be taken away from Mr Berezovsky and Mr Patarkatsishvili; that is right, isn't it?

A. Well, "taken away", I don't quite understand this word. Do I have to confirm that I took them away? I didn't take them away; I paid for them.

Q. Well, allowing for the fact that you paid for them, President Putin did not want these shares in the hands of Mr Berezovsky and Mr Patarkatsishvili and that is why, at the behest of President Putin, you bought the shares from Mr Berezovsky and Mr Patarkatsishvili?

A. Mr Putin did not task me with buying the shares. You

can see it from Le Bourget transcript and I'm explaining it: he says, "It's your personal business, please don't bring me into that".

Q. Did President Putin think that you were associated with Mr Berezovsky?

A. From what I know, yes, he did.

Q. Why did President Putin think that you were associated with Mr Berezovsky?

A. Everybody knew that. Everybody knew I was linked to him. It was an absolutely obvious thing.

Q. Now, can we next just look at your third witness statement: bundle E1, tab 3, page 209 in the Russian E1/03/209, 107 in the English E1/03/107. It's paragraph 238. Can I ask you to read the first sentence of paragraph 238 to yourself, please. (Pause)

A. Perhaps I'm looking at a wrong paragraph. 238, third witness statement? It's not really about that.

Q. No, it's about the acquisition of the ORT shares. It should begin, "In the end, therefore"; yes?

A. Yes. (Pause)

I've read it.

Q. And so you say here that at Le Bourget you agreed that the shares in ORT would be sold for a minimal amount of \$10 million and you say that afterwards there would be a side payment of \$140 million and you say that you

added a further \$14 million as half of the so-called commission.

But, of course, although you were negotiating with Mr Berezovsky and Mr Patarkatsishvili, they did not themselves own all of the 49 per cent of ORT which was privately owned, did they?

A. Are you asking me whether the shares were registered in their names or what are you asking? I didn't quite catch it. What do you mean "they did not themselves own"? They were registered as held by companies that belonged to them, as far as I remember.

Q. It's common ground that immediately prior to the sale of ORT, Mr Berezovsky and Mr Patarkatsishvili owned 38 per cent of ORT through a company called ORT-KB; that's right, isn't it? I think we've seen this yesterday.

A. Yes, yes.

Q. And Logovaz owned a further 11 per cent; that's right as well, isn't it?

A. Yes.

Q. Can I ask you, please, just to look then at your fourth witness statement: bundle E5, tab 11, page 28 in the English E5/11/28 and the reference is 102 in the Russian but that sounds like it may be wrong E5/11/102.

MRS JUSTICE GLOSTER: What paragraph, please?

MR RABINOWITZ: Paragraph 59.

In this paragraph, Mr Abramovich, about eight lines from the end, you say that you recollect that you called Mr Dubov at the end of December 2000 and that you informed him that you and Mr Berezovsky and Mr Patarkatsishvili "were closing the ORT deal". Do you see that?

A. Yes.

Q. And you told him this because you thought he was still the general director of ORT? Sorry, of Logovaz, not ORT. The reason you informed Dr Dubov that you were acquiring these shares is because you thought he was still the general director of Logovaz, which held 11 per cent of the shares?

A. I cannot assert that at that time I thought that Mr Dubov was director of Logovaz. Mr Dubov was the only person I knew in Logovaz.

Q. And you thought he was in a position of authority at Logovaz?

A. Do I understand correctly that we're talking about his authority? I didn't know if he had any authority to sign documents or not. He was just the only contact I had in Logovaz. But it can be assumed that he had certain authority. Whether he was director general or

not at that time, I did not know.

Q. And this was the first time that you had discussed with Dr Dubov the sale of these shares; that's right, isn't it?

A. Yes.

Q. And he said to you that if you told him how much you wanted to pay for the shares, he would pass that on to Mr Frolov; that's right, isn't it?

A. I don't remember this. The thing is I don't know Mr Frolov, I've never seen him, and I don't remember this conversation at all. I do remember that I telephoned him but I can't say that he mentioned Mr Frolov; I could not assert that.

Q. But you could not dispute it either; is that right?

A. It's true, I can't. I can't dispute this either.

Q. You expected Logovaz to hand over the shares for nothing; is that right?

A. For nothing? That I was not going to pay anything? No, I didn't expect that. I think we agreed on nominal price.

Q. And the reason you expected Logovaz to hand these shares over for a nominal price is because you knew that Dr Dubov was also a friend of Mr Glushkov; that's right, isn't it?

A. That's absolutely not right. I had no idea that

Dr Dubov was a friend of Mr Glushkov.

Q. As for why you called Dr Dubov, that is explained in this paragraph of your witness statement: you called him because you had told President Putin that the agreement to acquire ORT would be finalised by the end of the year?

A. Yes, this is possible. Only I don't understand why I telephoned Dr Dubov and how that is connected.

Q. You telephoned Dr Dubov because 11 per cent of the shares were held by Logovaz and you needed those 11 per cent of the shares to be sold before the end of the year?

A. With all my respect to Dr Dubov, he certainly couldn't have taken such a decision himself in Logovaz. Rather his position was director general, I don't even know what his position was called at that time, but he could not have taken such a decision single-handedly. Badri had to instruct him.

If I just called him and asked him, and if you're asking me whether he could have taken that decision on his own, without seeking approval of the shareholders, the answer is: of course not.

Q. Do you say you told Dr Dubov of the importance to President Putin of having the sale completed by the New Year?

A. Of course not.

Q. You had promised President Putin to get the deal done by the end of the year; that's right, isn't it?

A. Even if I had promised, I would not have told Dr Dubov about the details of this conversation. So this is -- my main contention is this: that there's no link.

MRS JUSTICE GLOSTER: Well, did you promise?

A. I can't agree with the word "promised". Well, I promised that once the deal is closed, I would inform him. I don't remember if I told him that directly or via Mr Voloshin. But I did say: when I finish the deal, I will inform.

MRS JUSTICE GLOSTER: Did you tell President Putin or Mr Voloshin that you would close the deal by the end of the year?

A. My feeling is that I might have said that, I could have said that, but I cannot be completely certain that I said, "By the New Year I will close it". But it is possible. In fact, I must have given him a date, I must have given him the date that I'm planning to conclude it by that date; but whether it's linked to the New Year, perhaps.

MR RABINOWITZ: Well, in fact, Mr Abramovich, your evidence in paragraph 59 suggests that that is precisely what you had said to President Putin. You said you had "informed

[him] of the finalisation of the agreement to acquire [the] shares before the end of the year", and you wanted to ensure that it was in hand before you left Moscow before the end of the year.

MRS JUSTICE GLOSTER: Well, that's not quite the same, Mr Rabinowitz, as promising President Putin that he would conclude the deal by the end of the year.

MR RABINOWITZ: Well, I was picking up on your Ladyship's question, which was: did you tell President Putin that you would close the deal by the end of the year?

MRS JUSTICE GLOSTER: Right, okay.

MR RABINOWITZ: And that is why, because you had told President Putin that you would get this done by the end of the year, that you were pressing Dr Dubov to finalise the arrangements for the sale; that's right, isn't it?

A. I've already said that in my eyes, Mr Dubov, with all my respect to him, he's a very good man. He was not a party to negotiations so I could not have put pressure on him; there simply wasn't any reason for me to do so. Most importantly, however much pressure I might have put on him, he would not have done anything without instructions from Badri.

Q. Can we then turn to the question of what you did do with the 49 per cent of ORT after you acquired it.

It's your evidence that at no time did you cede

control over any part of your stake in ORT to the Russian government; that's right, isn't it?

A. Yes, that's right.

Q. In fact --

A. Did I understand the question: we're talking about the shares?

Q. The shares. But in fact, Mr Abramovich, the truth is that you allowed the Russian government to control ORT, so that it ceased to be an independent channel; that's right, isn't it?

A. No, we must understand what we're discussing. Are we discussing the shares or was I interfering with the content of the programmes? I never interfered with the content of the programmes and I never transferred or handed over any shares.

What is an independent channel? The controlling stake had always belonged to the government. The director general who was in that position prior to my acquiring the shares was the same after I acquired the shares; he's there to this day. The same director general was in fact, I think, employed by Mr Berezovsky at one time, or at least he was nominated to the president by Mr Berezovsky.

I don't understand how I was meant to demonstrate the independence of the channel.

Q. Mr Abramovich, your evidence earlier had been that what President Putin wanted was for Mr Berezovsky and Mr Patarkatsishvili to cease to control the channel and that is why you had got involved in acquiring their shares.

Once you had acquired the shares, you allowed the Russian government to control ORT, so that it ceased to be the independent channel it had been under Mr Berezovsky's control; that is right, is it not?

A. Of course not. Mr Berezovsky, through Mr Patarkatsishvili and directly, worked with the journalists, told them what should be broadcast, where to get material, et cetera et cetera. Naturally I never did that.

Besides, it was never my purpose. That's why I didn't really want the shares. They have no value to me and in my hands. That's why I didn't want to acquire them initially.

Q. You did not yourself appoint any representatives to the ORT board, did you?

A. I think for a while Badri was a representative there and then I think Yakov Rusin, the same -- I don't really remember very well, but I think exactly the same man who represented Mr Berezovsky. But later I think our lawyers were on the board; I don't remember.

But to be quite honest, I didn't care at all about it; I wasn't interested.

Q. In fact you made clear that you would not be taking any active part in the TV company's operations; that's right, isn't it?

A. Again, what do you mean by saying "TV company's operations"? Would I interfere in the content of political programmes? I have no opinion to express, I have no wish to express it. I had other things to do. So at that level of course I never interfered.

The question -- if you ask me whether I handed over the shares ever; no, I didn't. This is my property. Programme content, I am not interested in that.

Q. Let me show you some evidence on this so that you can have the opportunity to comment. Can you go, please, to bundle H(A)61 at page 70 H(A)61/70.

Now, it's a report -- as you can see, it's in English -- by the internationally respected Committee to Protect Journalists and it dates from 2001; you'll see that if you look at the reference from the internet. If you go to page 74 H(A)61/74, what is reported here is this -- I'll read it to you, it's not a very long extract -- just below the picture on page 74:

"The fate of the national television channels ORT and NTV should also be decided in the course of 2001.

In February 2001, Berezovsky sold his 49 percent stake in ORT to the Kremlin's new favourite oligarch, Roman Abramovich, who immediately announced that he would allow the Kremlin to name all 11 members of the ORT board. Immediately, the Kremlin announced it would appoint Lesin, Putin's chief of staff Vladislav Surkov, and three other senior officials to the board. In short, ORT has now joined RTR as a wholly state-controlled television network."

Do you wish to comment on that?

- A. I don't understand what it is that I'm expected to comment. Whether it became a state channel from the point of view of share ownership? No, the director general remained the same. As for the board of directors, if I remember correctly, 11 government officials were meant to be appointed and then they changed their mind and they appointed other people, public figures. The most important thing is that the state had always held 51 per cent.
- Q. It may have held 51 per cent but what had always worried President Putin was that Mr Berezovsky had, in effect, exercised control over this channel, but I don't think I'm going round that one again.

Now, why did you not want to appoint directors to the board of ORT to protect your investment?

A. At some point we did appoint some directors. In order to appoint someone, you need to put a list of nominees beforehand to the AGM. But to be quite honest I did not take part in any management matters and I said straightaway, and I repeat again, that this investment in terms of business was not of any to me at all. Doing this, I was saving my other business and I was helping Mr Berezovsky and Badri. ORT's shares themselves were of no interest to me at all and I never planned to acquire them.

Q. Can I ask you, please, to go to bundle H(A)29 at page 33 H(A)29/33. This is a report in the Moscow Times of 6 February 2001 and it refers to the fact that you had acquired the 49 per cent stake in ORT. There is a quote from someone saying that:

"'Roughly speaking... [you had] paid off Berezovsky on behalf of the Kremlin,' said the source close to Abramovich."

And then it has this halfway down:

"Last week, the government announced plans to nominate all 11 members of ORT's board. Interfax reported that Berezovsky's representatives -- including his long time proxy at ORT, Badri Patarkatsishvili, daughter Yekaterina and favourite anchor Sergei Dorenko -- will be replaced by Deputy Prime

Minister Valentina Matviyenko, Press Minister Mikhail Lesin, Culture Minister Mikhail Shvydkoi and President Vladimir Putin's deputy chief of staff, Vladislav Surkov."

That is an accurate report, is it not, as to what the government had announced?

A. I've already said at some point the government did indeed plan to appoint 11 of the 11 possible members of the board, but later they gave up that plan.

Q. Now, I want to leave ORT behind.

Mr Berezovsky says that after you had met in Cap d'Antibes in December 2000, he never spoke to you again until he served this claim on you. You're aware of that, I think?

A. Yes.

Q. You claim that there was a further meeting in Megeve in France on about 10 January 2001 where you met with Mr Berezovsky and Mr Patarkatsishvili; is that right?

A. Yes.

Q. Now, can we please just look at how your pleaded case has changed over time. Can you please take up bundle A1 and go to tab 3, page 57 in the English A1/03/57 and in the Russian it's at page 61R A1/03/61R. I want to look at paragraph D45.2, if I may.

Now, you'll see that there are some crossing-outs

and changings, and I can tell you that these were changes which were made in August of this year, so just shortly before the trial, and they reflected what you had said for the first time in your witness statement in May. Okay? So what is added are the underlined words and then it crosses out the parts that are not wanted.

Can you just look at paragraph 45.2. I want to just read it ignoring the additions and just including the words that were deleted, so that we can see what your case was until very recently. What you had been saying was this:

"It is, however, admitted that, at a meeting which, to the best of the Defendant's recollection, was at St Moritz Airport in January or February 2001 and prior to the meeting at Munich Airport referred to in paragraph D46 below, Mr Patarkatsishvili requested the defendant to pay Mr Berezovsky US\$1.3 billion."

Okay? And that wording --

THE INTERPRETER: Excuse me, sir, the interpreter apologises: we did not have the text on Magnum, we could not interpret at that rate. So if you would like the witness to hear it, please say it again slowly.

MR RABINOWITZ: I don't think that's necessary because Mr Abramovich has got his own Russian version in front of him.

A. I beg your pardon.

MR RABINOWITZ: Thank you.

And so that was the wording that was first in your defence and that was so from June 2008. The meeting, as you see, that you refer to is a single meeting in January or February 2001; do you see that?

A. Yes.

Q. And it was a meeting that you say was attended by Mr Patarkatsishvili and you make no reference to Mr Berezovsky at all being at this meeting; do you see that?

A. That's what I remembered.

Q. And it was also a meeting at which, so you had pleaded, Mr Patarkatsishvili had asked for \$1.3 billion; do you see that?

A. Yes.

Q. And if what you were saying here was true, one would expect that this would have been a very clear recollection given the unique circumstances, even for you, of someone asking you for over \$1 billion. Would you accept that?

A. Yes, that's quite unique, I agree. The question is what it is that I was meant to remember. I remember that we had a meeting, I remember more or less what we talked about, but the details I did not remember.

Q. Now, since May 2011 you in fact tell a very different story. You now say that your recollection is that in early January 2001 Mr Patarkatsishvili contacted you and asked you to meet, and you say you then met first in Courchevel on about 4 or 5 January 2001; is that right?

A. Yes.

Q. And you say that at this first meeting Mr Patarkatsishvili had proposed to end his and Mr Berezovsky's relationship with you with regard to Sibneft; that's right, isn't it?

A. Yes.

Q. And the proposal, you now say, had been that in return you would make what you describe as "one final huge payment" to Mr Patarkatsishvili and Mr Berezovsky; is that right?

A. Yes.

Q. And this conversation, on your evidence, would have been a very memorable conversation because it was at a time when you say you had been struggling with how you were going to deal with the increasingly unreasonable demands being made by Mr Berezovsky directly and via Mr Patarkatsishvili; is that correct?

A. Yes.

Q. And so, as far as you were concerned then, this demand for a huge payment would have been another demand from

Mr Berezovsky, even if it was Mr Patarkatsishvili who passed the demand on to you?

A. I didn't understand the question, "It would have been", et cetera.

Q. You say at the time of the meeting you were struggling with how you were going to deal with increasingly unreasonable demands being made by Mr Berezovsky, directly and via Mr Patarkatsishvili, for money; yes?

A. I don't understand, I was struggling.

MR RABINOWITZ: This is your evidence. If you go to --

MRS JUSTICE GLOSTER: Why don't you take him to his witness statements?

MR RABINOWITZ: Paragraph 269 of your third witness statement: E1, tab 3, it's at page 218 of the Russian E1/03/218 and 116 of the English E1/03/116.

So you say you were struggling with --

A. 269?

Q. 269.

A. Here I'm saying that it was difficult for me to understand what to do with unreasonably growing requirements. I'm not saying I didn't know how I would pay them.

Q. I wasn't suggesting that you were saying that.

You had these increasing demands from Mr Berezovsky; it was troubling you that he was making these increasing

demands. This is your evidence; yes?

A. Yes.

Q. And here you have Mr Patarkatsishvili coming along in January and asking for yet another huge payment; is that right?

A. Yes. Rather he said, "We need to sever our relationship and to finalise this. I would suggest you pay one last amount and that will be it". I'm not insisting that it had to be paid off as a lump sum. But he said, "Look, to finish our relationship you should pay a lot and that will be it then".

Q. Now, whereas previously you had said there's only one meeting, you now say there's a second meeting at Megeve in France; that's right, isn't it?

A. Yes. At the time when I was giving evidence to Paul Mitchard, I did not remember that there were two meetings then. Most importantly, the first meeting was not as important compared to the second, so they kind of merged into one in my memory.

Q. Yes. The second meeting you refer to is at paragraph 267 of your statement E1/03/116.

Do you see there's one other important change, Mr Abramovich, and that is that you now claim that Mr Berezovsky was also present at this meeting, don't you?

MRS JUSTICE GLOSTER: What, the meeting --

A. Yes, I do claim.

MR RABINOWITZ: In Megeve.

A. Yes.

Q. So it's not just a question of your saying, "Well, there were two meetings and in my mind it had merged into one". Not only have you gone from one to two meetings but whereas previously you hadn't suggested that Mr Berezovsky was at these meetings, in your evidence since May this year you are now suggesting that Mr Berezovsky was also there. That's right, isn't it?

A. Yes, I maintain that Berezovsky was there too.

MRS JUSTICE GLOSTER: At both the meeting in Courchevel and at Megeve?

A. No, just at the meeting in Megeve.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: And this recollection is really just another example of reconstruction by you, is it not?

A. Some parts are reconstruction. Some parts are what I recalled, remembered.

Q. You tell us that your personal assistant reminded you that you went to Megeve; that's right, isn't it?

A. Yes, you could say so. But I saw that from the documents as well.

Q. Well, from the documents that would plainly be

a reconstruction. But we have not only your looking at the documents but Mr Sponring, your personal assistant, telling you that you were there. But you have no recollection at all of this meeting, being in Megeve?

- A. From the very first day, when there was a half-day's interrogation, I explained there was a meeting in the Alps but I didn't remember the place. I remembered that I visited that place once and never went back there, and I also remember that Badri was spelling his holiday there. And what I had in my head was are the following: as far as I knew, Badri didn't ski; he often walked with a stick, in fact. So it must have been some kind of place -- as I envisaged it, as I imagined it, it must have been a luxury place, a chic place, where it is not necessary to just ski; where you can simply have a good time in the winter.

And I also know that I've never been to St Moritz.

So I decided perhaps it must have been St Moritz.

MRS JUSTICE GLOSTER: And in fact it was Megeve?

MR SUMPTION: I wonder if the translation may have gone wrong in that last --

- A. In fact it turned out to be Megeve.

MRS JUSTICE GLOSTER: Mr Abramovich, according to paragraph 267 of your statement, you met Mr Patarkatsishvili first in Courchevel.

A. Yes.

MRS JUSTICE GLOSTER: And you were staying in the same hotel there, were you?

A. No. He flew in to meet me -- perhaps he had other business, I don't know -- but he came to Courchevel to talk to me and we agreed, as I now know, that we will meet in Megeve. At that time I thought it was somewhere else, so initially I thought it was just one meeting.

The meeting in Courchevel actually did not stick in my memory. I thought that we'd only met in St Moritz but then gradually I reconstructed this meeting on the basis of the documents, on the basis of my own memories and on the basis of what Mr Sponring remembered.

MRS JUSTICE GLOSTER: So he flew in to your hotel in Courchevel, you say, for the purposes of having a meeting with you; is that right?

A. I didn't stay at a hotel at that time. We were renting a villa. We met in a hotel. If I remember, it was a Byblos hotel, if I remember correctly. We just met there.

MRS JUSTICE GLOSTER: Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Now, Mr Sponring is your personal assistant, isn't he?

A. Yes.

- Q. And at the time he was your private personal live-in chef; is that right?
- A. Yes. Yes, if we understand the word "live-in" correctly.
- Q. I'm sure there's no misunderstanding about that, Mr Abramovich. But you say he was --
- A. No, no, I mean he didn't always live in our house.
- Q. Right. He didn't live in your house but in effect he, what, cooked for you in your home; is that it?
- A. Yes.
- Q. But you say he was with you at Megeve?
- A. Yes. If I remember correctly, he did not spend his nights in the house where we were living, if I remember correctly. Well, in Courchevel he didn't stay the night in the house where we were living, answering your previous question; and in Megeve, yes, he was with us.
- Q. The impression you give in your evidence is that you had entirely forgotten about this meeting in Megeve until Mr Sponring reminded you of it. Is that right?
- A. Not quite right. I remembered there was a meeting, I already explained that I remembered there was a meeting in the Alps, I remembered what it looked like, I remembered that we came by helicopter, I remembered the snow-covered helipad, but I didn't remember the location. And I forgot that Mr Berezovsky was there

too, I did indeed forget that.

Q. As for the contents of the Megeve meeting, you say that this was not a meeting like Le Bourget, where you had prepared a document with numbers on it to discuss; you were having a high-level meeting to discuss the principle of a pay-out. That's your evidence, isn't it?

A. High-level meeting and that we discussed the principles of the pay-out. Now, the level was exactly the same as in Le Bourget, so here the level hasn't changed if that's what we're comparing.

Q. So you don't say, for example, that there was any discussion about the \$1.3 billion figure for payment at all at this meeting?

A. Whether we were discussing 1.3 billion, I don't remember that. I'm not maintaining that. I think -- I think 1.5 was the figure I was suggested but I don't remember exactly when that took place.

Q. You see, if you look at your defence, what you had pleaded was that at this meeting Mr Patarkatsishvili requested you to pay Mr Berezovsky \$1.3 billion.

MRS JUSTICE GLOSTER: Paragraph?

MR RABINOWITZ: Paragraph D45.2 A1/03/57. You can pick it up in the new pleading. Perhaps it's easier to read at K4. You can read it in D45.2. Do you see -- you need to ignore everything in blue:

"... prior to the meeting... Mr Patarkatsishvili requested the Defendant to pay Mr Berezovsky US\$1.3 billion."

- A. Yes, I can see that, and there is a reference, "as much as the Defendant can remember". This is what I remembered at the time. Naturally, in my further statements and my further evidence on the basis of documents, on the basis of sitting there, trying to remember, discussing it with other people, I reconstructed this somehow in my memory and naturally my next witness statement was more detailed than what I could remember when I was interviewed for the first time.

MRS JUSTICE GLOSTER: Did you go to Megeve specifically for the purpose of meeting Mr Patarkatsishvili and Mr Berezovsky at the heliport or were you staying there for a holiday?

- A. I went to Megeve from Courchevel. We flew by helicopter from Courchevel to Megeve, talked at the helipad, and from there I went straight to the airport in Geneva. So this was -- I went there for the purpose of the meeting.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: Now, you say in your evidence -- this is at paragraph 271 E1/03/117 -- that you don't recall Mr Berezovsky saying anything at this meeting you say he

was at. Do you say then it was a meeting at which just the two of you, Mr Patarkatsishvili and yourself, talked a lot about details?

A. No, I don't assert that just the two of us were talking; mainly the two of us were talking. In terms of potential payment, the two of us talked. I'm not asserting that Mr Berezovsky was silent throughout; I just thought that for the purposes of these proceedings he didn't say anything. Of course I remember a little bit of what we discussed, but let me assure you: it has nothing to do with what we're discussing here. Just personal things.

Q. You actually --

A. I haven't finished yet, I'm sorry.

Q. Sorry, carry on.

A. Now, it looks, of course, a bit bizarre: three adults meet, the two of them are talking, the third one is silent. But if you look at the Le Bourget transcript, Berezovsky doesn't say much there either, although we were sitting there for two hours talking.

Q. Mr Abramovich, in fact what you say in your witness statement at paragraph 271 is that you do not recall Mr Berezovsky saying anything. Are you now trying to change that evidence?

A. I'm just trying to say that I don't remember

Mr Berezovsky saying anything that may be of relevance for these proceedings. I'm not saying that he was silent throughout.

Q. Because having Mr Berezovsky sitting silently throughout anything would be wholly out of character, wouldn't it?

A. Well, you can make your own conclusions about his character but if we look at the Le Bourget transcript, he -- now, if I hadn't read that, if I hadn't read the transcript in detail, I would have just remembered my own discussion with Badri; I wouldn't even have remembered that Mr Berezovsky was saying anything or discussing anything and at this meeting at Megeve it was like that.

What I remembered or what I might have remembered is what I talked about with Badri because Badri was leading in the meeting. But I can assure you Mr Berezovsky did not keep quiet; it's just that it was not relevant to these proceedings and to what we're discussing now.

Q. Mr Abramovich, the suggestion that you can draw a comparison with Le Bourget, I would suggest, is completely false. Mr Berezovsky was only quiet during discussions of matters of detail or the structuring of the proposed ORT transaction. Other than that, he, certainly made himself heard.

Do you want to comment on that?

A. Well, I don't know whether there is any point. It's not up to me whether there is any point to discuss this, but if you count the number of characters, how many were uttered by Berezovsky, by Badri, and how many were uttered by Berezovsky on the substance, then it can be discounted. In my point of view, I'm not insisting, but I think that's...

He didn't say anything significant that I would remember, any contribution that he would have made that I would have remembered. I really can't remember. And again, I'm just discussing any replicas by him that would have been relevant to these proceedings.

Q. In your description of the Megeve meeting you make no reference at all to any discussion about Nikolai Glushkov; that's right, isn't it?

A. That's right, I'm not mentioning Nikolai Glushkov. And why should I make a reference to Mr Glushkov every time?

Q. You see, on your case this was the very first time you had met Mr Berezovsky after the arrest of Mr Glushkov, isn't it?

A. Yes. That doesn't at all mean that each meeting with Mr Berezovsky started or ended with our discussing the arrest of Mr Glushkov.

Q. Mr Abramovich, it doesn't need to start or end with your discussing Mr Glushkov. Your evidence has it that

Mr Glushkov and the subject of his imprisonment was not even mentioned.

A. Indeed, I don't remember us discussing Mr Glushkov. It might have happened, but I don't remember it.

Q. If it had happened and you did remember it, you would surely have put it in here because you wouldn't suggest that the imprisonment of Mr Glushkov is a matter of irrelevance to this dispute, would you?

A. Sorry, I didn't get it. To which proceedings, to which process? To the cost -- to the price of Sibneft potentially? Which process? Which proceedings? I have lost your thought of what we're discussing here today. What are we talking about? Do it again.

Q. Mr Abramovich, Mr Glushkov and his imprisonment form a central part of the facts relating to this dispute; you wouldn't dispute that, would you?

A. I don't dispute that. I have a different idea of what is the central part of this case; but no, I don't contest it.

Q. Earlier in an answer you explained that all you were seeking to put into your witness statement were facts which were relevant to the issues in this dispute. Correct? Do you remember that?

A. Yes, I do.

Q. If it was therefore your evidence that Mr Glushkov and

his imprisonment was a subject that had come up at this meeting, that is something that you would surely have included in your description of what was discussed at this meeting?

A. If I'd remembered, I would of course have included that. Why would I conceal the fact that we discussed the fate of Mr Glushkov? I just don't remember it.

Q. You see, I suggest to you that if there really was this meeting, one of the things that Mr Berezovsky would plainly have wanted to discuss with you, even on your case, would have been the fact that Mr Glushkov had been imprisoned; but you make no mention of that having been discussed at all.

A. First of all, I don't remember it; and secondly, if I remember correctly, at some point I described that Badri had handed over a letter to me, maybe for me to give to Voloshin. If I remember correctly, Mr Voronoff, who was with Mr Berezovsky for a long time in Aspen, also says that they did not discuss Mr Glushkov much.

I would imagine that at that time Mr Berezovsky, notwithstanding the fact that he is disposed very well towards Mr Glushkov, he didn't start every meeting with discussing Mr Glushkov and his fate with any interlocutor he might have.

Q. You say at this meeting that Mr Berezovsky and

Mr Patarkatsishvili asked for some amount in excess of \$1 billion to be paid to them and that this -- well, let's just take this in stages or you'll -- I should break the question down.

You say at this meeting Mr Berezovsky and Mr Patarkatsishvili asked for some amount in excess of \$1 billion to be paid to them; that's right, isn't it?

A. Given the fact that we had a series of meetings, I don't remember what we discussed at which point exactly, but I -- from what I managed to remember, I understand that I left with the feeling that I would have to pay at least a billion and I think they had been left with the same feeling.

Q. Now, that would be an amount more than you had paid them in all the previous five years combined, would it not?

A. Yes, indeed. No doubt.

Q. It would be something like double everything that you had paid them, in your case, in the previous five years.

A. Well, if your task here is not to test my mental arithmetic ability, then perhaps I might say it's a bit greater. But we can sit down and calculate it if you wish.

Q. What I suggest to you, Mr Abramovich, is that if this meeting happened, it would have been a most memorable meeting. But your recollection, as we've seen and

heard, is remarkably indistinct, isn't it?

A. The question that my memory is indistinct; is that what I need to confirm? I have to judge myself that I have this indistinct recollection?

Q. Well, do you disagree with that?

MRS JUSTICE GLOSTER: What's being put to you, Mr Abramovich, is that this was a very significant meeting, if you're right, and surely if you were being asked to pay this huge sum, you'd remember the details of the Megeve meeting more clearly.

Can you comment on that, please?

A. It's hard for me to comment. But I could have remembered it better, but I told you everything I remember on that matter.

MRS JUSTICE GLOSTER: How long was the meeting with Mr Patarkatsishvili in Courchevel when you say he first raised the question of this payment?

A. In Courchevel I think the meeting was not long at all, 20/30 minutes.

MRS JUSTICE GLOSTER: What, you met in the hotel bar or something like that?

A. I think we met in the lobby. Well, it's a lobby and a bar all in one.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: How long do you say this meeting was,

Megeve?

A. Well, I don't know; 40 minutes, an hour perhaps, something like that.

Q. But again, you don't have any clear recollection of the length of the meeting either?

A. Well, I can't tell you exactly how long it was.

(Mobile phone rings)

MRS JUSTICE GLOSTER: Mobile phones are not to be switched on in court.

MR RABINOWITZ: You see, Mr Abramovich, I have to suggest to you that your account of this meeting is just not credible. Do you want to comment on that?

A. I told you everything I remember on the matter. It's difficult for me to say whether it's credible or not.

MRS JUSTICE GLOSTER: Well, that's a matter for me at the end of the day.

MR RABINOWITZ: My Lady, I don't know whether this is a convenient moment for you.

MRS JUSTICE GLOSTER: Yes, very well. I'll take ten minutes.

(3.20 pm)

(A short break)

(3.37 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Abramovich, I just want to summarise

where we have got to on meetings in late 2000 and early 2001.

We all agree that you met with Mr Patarkatsishvili and Mr Berezovsky at Le Bourget Airport on 6 December 2000; that's right, isn't it?

A. Yes.

Q. And this was, you say, a candid and amiable meeting?

A. For the most part, yes. I had a strange feeling, but overall, yes. Badri usually asking detailed questions, so he would not usually do that in peaceful times, so to speak. But overall, yes.

Q. That's your evidence, in fact. If you go to bundle E5, tab 11, paragraph 98, page 42 in the English E5/11/42 and 117 in the Russian E5/11/117, that is what you say about it. You say:

"Looked at as a whole, the transcript... supports [your] recollection that it was a candid and amiable meeting."

Do you see the second line?

(Mobile phone rings)

MRS JUSTICE GLOSTER: Is that the phone that went off before? Is it the phone that went off before? If any phone goes off again, the person whose phone it is will be asked to leave the court.

Yes, continue, Mr Rabinowitz.

MR RABINOWITZ: So you have the meeting at Le Bourget, which is a candid and amiable meeting. Then we say that you met with Mr Berezovsky and Mr Patarkatsishvili a little later, but still in December 2000, but you deny that.

(Mobile phone rings)

MRS JUSTICE GLOSTER: Right. Could you leave the court, please. Somebody's phone just went off: could they please leave the court. If it was your phone, madam, could you please leave the court.

MEMBER OF THE PUBLIC: It wasn't my phone.

MRS JUSTICE GLOSTER: Well, whose phone was it? Could you leave the court, please. Thank you. Yes, could you just leave the court, please.

That's three times now a phone has gone off this afternoon. It just wastes everybody's time. Thank you very much.

MR RABINOWITZ: So again, Mr Abramovich, you have the meeting on 6 December, which was a candid and amiable meeting. Then we say that you met Mr Berezovsky and Mr Patarkatsishvili a little later, but still in early December 2000, but you deny that; that's right, isn't it?

A. Yes. If I don't have to comment point -- paragraph 98, then yes. I discuss this in more detail in other witness statements. But for the main part, yes.

Q. And of course we say that at the end of the Cap d'Antibes meeting, Mr Berezovsky had made clear that he never wanted to see you again; but again you deny that?

A. I deny this because I don't recall -- I don't remember that meeting.

Q. So, on your case, this difficult meeting never happened; that's right, isn't it?

THE INTERPRETER: I do apologise, the interpreter apologises, I think the witness said, "because that meeting didn't happen".

A. There was no meeting in December.

MR RABINOWITZ: And so you never, on your case, had a difficult meeting with Mr Berezovsky at this time; is that right? In early December.

A. I assert that there was no meeting in December at all, such difficult or that type of meeting.

Q. But you say that you then met Mr Berezovsky again in Megeve in early January 2001 -- we've talked about this -- and this was, you say, the first time the two of you had met since Le Bourget, which was, as we've seen, a cordial meeting; is that right?

A. Yes.

Q. And according to --

A. I -- sorry, I've missed -- whose assertion was it that

the meeting was cordial?

Q. Le Bourget I think people agree was a cordial meeting.

A. Mm-hm.

Q. According to you, the meeting that you say happened at Megeve in early January 2000 was also a cordial meeting. You can see that if you look at paragraph 105 of your fourth witness statement: bundle E5, tab 11, page 45 E5/11/45, in the Russian at page 120 E5/11/120. The second last line, paragraph 105.

A. (Untranslated)

Q. Something may have gone wrong; I'm not sure your answer was translated there.

THE INTERPRETER: Sorry, the witness said, "I've missed the paragraph number".

MR RABINOWITZ: Sorry. We're looking at paragraph --

THE INTERPRETER: If I've heard correctly.

MR RABINOWITZ: It's paragraph 105 of your fourth witness statement, so E5, in the Russian it's at page 120, I believe.

A. I have read this, yes.

Q. And so the meeting at Megeve you say was a cordial meeting. And if you look at paragraph 273 of your third witness statement, so that's back to E1, tab 3, in the English it's at page 117 E1/03/117 and in the Russian at page 219 E1/03/219, in the last line of that you

say:

"We left on very amicable terms."

Do you see that?

A. I see. Does it contradict?

Q. No, it's a similar way of saying it was a cordial meeting. I'm not suggesting those two are in contradistinction.

A. Sorry, the intonation in your question was that I've said something not quite right. So I didn't understand what the question was about.

Q. Well, I do suggest -- well, let me ask you the question.

You see, you accept that since these meetings, which you say were all cordial, since this time you have never again met up with or spoken to Mr Berezovsky, apart from one occasion where you say you exchanged a couple of words, where you bumped into each other in Israel.

That's your evidence, isn't it?

A. From what I can recall, yes.

Q. It's right, isn't it, that while you had been invited to all of Mr Berezovsky's parties since 1996, you were not invited to Mr Berezovsky's party at the end of January 2001?

A. I think not. Or maybe; I just simply do not recall.  
May I add, please?

Q. Well, can I ask a question, please.

Mr Abramovich, can you explain then why, if, as you say, you have these amiable meetings with Mr Berezovsky at this time, why there was the sudden ending of your relationship with Mr Berezovsky?

A. Is that a question how do we treat the friendship? How close this friendship is? We've never discussed this. Mr Berezovsky was at some of my birthday parties. When I was invited, I was attending; and again, that wasn't every time. But from what I can recall, in 2001 indeed I didn't attend Mr Berezovsky's birthday party. And the important thing: that in the circumstances and in the position that he's taken, I think even if he would have invited me, I probably would have not gone.

Q. Mr Abramovich, we have seen from your evidence that you say you were concerned about Mr Berezovsky and what was happening in relation to ORT, so that you were willing to fly over to talk to him about getting rid of ORT. You say everyone knew you were very close; President Putin knew you were very close. But after these two meetings, both of which you say were cordial, you have never had anything to do with Mr Berezovsky, save that on one occasion you bumped into each other in Israel, in a hotel lobby.

Are you able to offer any explanation as to why you and Mr Berezovsky broke off your relationship after

December 2000?

- A. I beg your pardon, the question was very long and that was at speed. I simply cannot -- I can't keep up with either remembering it or answering it. There was something --

MRS JUSTICE GLOSTER: Let me put the question, Mr Abramovich.

What is being asked of you is: why, if you had friendly meetings with Mr Berezovsky at Le Bourget and then at Megeve, why suddenly does your relationship break up and you never see each other again until the meeting in Israel, and then only accidentally? What is the explanation, if everything was so rosy in the garden at Megeve, for this break-up in your relationship?

- A. This is the question about the nature of our friendship. Our friendship was based on my pay-outs. That wasn't a friendship when -- as, for example, it's me, my friends, we are friends for many years and it doesn't matter for me what the position is, where they work; we simply are friends. And with Mr Berezovsky, our friendship was based on my pay-offs. Each time when he would invite me, obviously I would arrive, if I had such opportunity. But this word, the word "friendship" that we are discussing here, big friendship, strong friendship, friendship between men, this is not quite

the same.

Moreover, after the situation with Kursk submarine, I started looking at Mr Berezovsky in a completely different way. For me it was a turning point in our relationship. I think that he took a completely dishonourable position. It was a large tragedy for Russia and people who were in the submarine, they were still alive, everyone knew they could not be rescued from there; everyone understood that. That was the horror in the country. And he used that, you know, to demonstrate to the president who is boss, who has to be listened to, whose recommendations have to be adhered to. And from that moment on, I started treating him somewhat differently.

So I cannot say that our friendship stopped or our relationship ceased at a single point in time, that something was just switched off; it's not so. There was a gradual transition. Then with Badri I kept some relationship, I maintained relationship for a long time after this, and Badri was my main contact. So I think that would be all.

Moreover, if I may add, he broke off not just with me; he broke off, he stopped communicating not just with me, all people that communicated to him at that point, and Mr Yumashev and his big friend Mikhail Denisov and

all, everyone who we started with together, they all stopped communicating with him, socialising with him.

Q. Mr Abramovich, I'm not going to get into the question of your friendship again because we went through that on the first day of your evidence.

But on your evidence you had incredibly generously agreed that you would be paying Mr Berezovsky a sum or a half-sum of over \$1 billion. Why do you say Mr Berezovsky would never have invited you again to a party after this point in time?

A. Sorry, I don't understand the question: why he did not invite me or why did I pay that money? How does it fit together?

Q. Why did he not invite you? You see, on your evidence, Mr Berezovsky should have been very grateful to you; but you accept that you were not invited by Mr Berezovsky at any time thereafter to his birthday parties and indeed he had nothing to do with you.

Are you able to offer an explanation as to why that would have happened if, as you say, you had only had cordial meetings which ended in you agreeing to pay him a great deal of money?

A. Unfortunately I still do not understand the question. You're asking me about Mr Berezovsky and I have to explain why Mr Berezovsky didn't invite me to his party,

to his birthday party. And most importantly I don't understand the gist of the question because the question is not to me: why did he not invite me? I have explained my attitude to this and he explained his attitude to this and I don't know what I should add.

Moreover, I don't remember very well that I've been to many of his birthday parties. Perhaps I've been to two parties out of our joint parties over five, six, seven years. But to say that I was a regular fixture at his birthday parties, I cannot say that. Moreover, I don't remember that he was attending my birthday parties, if it helps in any way to clear the situation.

Our friendship was quite specific, it was a sort of a one-sided friendship, although we did indeed socialise a lot and it was very interesting for me.

- Q. And you went on holiday around eight times in about three years with your families; that's right, isn't it? We saw that on the first day of your evidence.
- A. Yes, certainly we went on holidays together, our wives were friends. And most importantly, talking about my wife, even people that I'm not necessarily friends with, if my wife is friends with, if our children communicated, were friends together, then we would still go on holiday together. I can't say that we didn't communicate. We had a good relationship.

MRS JUSTICE GLOSTER: Did you go on holiday with Mr Berezovsky's family in the summer of 2000?

A. I don't recall it. That could be, but I don't recall it.

MR RABINOWITZ: Ms Gorbunova gives evidence that you were in the same place on holiday and that you saw each other in the summer of 2000.

A. From what I can recall, during the interrogation a couple of days ago you said that I arrived to say that Mr Putin is concerned about what happened with Kursk submarine, the way it was presented in the media. But I didn't hear -- or maybe I just missed -- that I was on holiday together with them that summer. I doubt it very much, although I cannot assert it for sure.

The thing is that in Russia the vacation finishes in August and, as far as I recall, then the submarine has sunk on 9 or 12 August. So it would be very unlikely that we would have gone on holiday in September.

Q. You see, Mr Abramovich, I suggest to you that, as with your denial of the Cap d'Antibes meeting, your account of the Megeve meeting is simply untrue.

You did not meet with Mr Berezovsky in Megeve, did you?

A. To be honest, I didn't catch the connection between vacation, Cap d'Antibes and Megeve. Maybe the

interpretation was incorrect. Maybe we didn't finish with discussing the friendship or the vacation?

- Q. Let me tell you what the connection is then, Mr Abramovich. You see, Mr Berezovsky's case is that the last time you met was a very angry meeting in Cap d'Antibes in which he told you that he never wanted to see you again. Now, that fits in with what happened thereafter: that you never did see him again, except for this occasion in Israel.

Your evidence, however, is that you had a cordial, amiable meeting in Megeve in January 2001; but notwithstanding that, you never saw each other again except for this occasion in Israel. And I'm suggesting to you that it is clear from what happened afterwards that Mr Berezovsky's evidence as to when you last met is correct and that your evidence as to when you last met is false.

- A. I disagree with you. Do I need to comment or not?

Q. Not if you don't want to.

- A. I think that our friendship was quite specific, has a specific element, although it did exist: our relationships were based on pay-outs. So at that point when we agreed the final pay-out, I think the interest in me was gone. Therefore I don't know what else I could add on that matter.

Q. I want to turn to the question of the intimidation of Mr Berezovsky in 2001 but what I want to do first, by way of background, is to just go back in time for a moment to the circumstances surrounding the arrest of Mr Gusinsky in June 2001.

Now, Mr Gusinsky was in 2001 chairman of the board and majority --

MR SUMPTION: Does my learned friend mean 2000?

MR RABINOWITZ: 2000, sorry. Absolutely. I apologise.

I do mean 2000.

Mr Gusinsky was in 2000 chairman of the board and majority shareholder of Media Most, which owned NTV, a popular independent television channel in Russia; that's right, isn't it?

A. Yes.

Q. And in June 2000 Mr Gusinsky was arrested and criminal charges were brought against him; do you recall that?

A. I do not recall the date, but that was the story.

Q. And you will be aware, I think, that the European Court of Human Rights later -- that was in May 2004 -- concluded that there were facts that strongly indicated that during the course of his detention Mr Gusinsky had been subject to intimidation directed to getting him to dispose of his interests in Media Most. You're aware of that?

- A. Yes, I've heard about this.
- Q. And you will also be aware, I think, that Mr Lesin, who was at the time the acting minister for press and mass communications, was implicated in this suggested intimidation?
- A. Do I need to confirm this or what I've heard about it? What do I have to say? I really don't know what was happening there.
- Q. You can take it from me that Mr Lesin was involved. Do you have no recollection of that?
- A. I recall that there was a story with Gusinsky but with regard to detail, what followed what, I do not recall that exactly. Yes, I remember there was some story.
- Q. And Mr Lesin, who was involved, the minister, later became a board member of ORT; that's right, isn't it?
- A. Yes, possibly.
- Q. And what happened with Mr Gusinsky was that he was persuaded to sell his interests at a price determined by Gazprom, a State-owned company, in return for which it was agreed that all criminal charges that had been brought against him would be dropped; that's right, isn't it?
- A. From what I recall, this is right. The thing is, maybe I can start -- say a couple of words from memory, if I may, about the story.

MRS JUSTICE GLOSTER: Yes, go on.

A. Mr Gusinsky financed his company using Gazprom's money and I think that his debt was about \$600 million from various structural divisions of Gazprom, and at some point in time the market dropped and he couldn't return the debts. And this somehow was used and Lesin indeed had some bearing on that, had some relation; I don't know the details.

And then Mr Berezovsky spoke in the press and said that since NTV takes an anti-government stance and is financed by the government money, then this cannot be done because, he said, if I recall his interview correctly, the government would not allow to use its own money at the same time to fight the government. And initially he was siding, so to speak, with the government and then he changed his position.

MRS JUSTICE GLOSTER: Right. Go on, Mr Rabinowitz.

MR RABINOWITZ: For your Ladyship's note, the facts of Gusinsky's arrest and detention are a matter of public record. The ECHR report is in the authorities bundle at O2, tab 8.109 O2/8.109/1.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, I'm not going to ask you to comment on the detail of the case, Mr Abramovich, but do you accept that already by late 2000 the facts of the case were

widely known in Russia?

- A. Yes, I do. I don't know how detailed that was, but it was known.
- Q. And that included it being widely known that Mr Gusinsky had been persuaded to sign an agreement handing over Media Most in return for the criminal charges against him being dropped; that's right, isn't it?
- A. Yes, it is right.
- Q. And I suggest, Mr Abramovich, that if someone with close ties to the Kremlin had threatened another businessman at this time that state officials might be persuaded to use criminal proceedings for some illegitimate purpose, that would be a credible threat, would it not?
- A. I do apologise, could you please put the question again? That was -- I didn't quite follow what it was about. Was there a credible threat? Are we talking about Gusinsky or Mr Berezovsky or myself?
- Q. In light of what had happened with Mr Gusinsky and Media Most, if someone with close ties to the Kremlin had threatened another businessman at this time that state officials might be persuaded to use criminal proceedings for some illegitimate purpose, that would be a credible threat, would it not?
- A. I still cannot understand what you are trying to assert. At what point do we have the Kremlin officials, state

officials, they have to be convinced? I understand -- I understand that Gusinsky had problems. Yes, parallels could be drawn that Berezovsky could have similar problems. But at what point in time do we have state officials that could have been used?

Q. Given what had happened to Mr Gusinsky, if someone like yourself had said to another businessman, "If you don't sell your interests in a company at a reduced price, I will have you or a friend of yours imprisoned until such time as you agree to sell on the terms that I want to acquire", that would have been something that the person to whom it was being said could have believed to be true?

A. To be honest, I doubt it, but what can I say? You know -- if I may comment, please?

Q. Go ahead.

A. The story that I could have threatened Mr Berezovsky, this is not just false; this is concentrated falsehood that you could sell in pharmacies. This is a sample to be shown to students at university what is falsehood, what is a lie, that I was threatening Mr Berezovsky.

Q. Mr Abramovich, can I ask you, please, to go to bundle H(A)25 at page 162.001 in the Russian H(A)25/162.001 and at 162.001T in the English H(A)25/162.001T.

Now, again, just so you know what this is, it's a transcript of a radio interview with Mr Berezovsky which, if you look at the bottom of the page, you will see took place on Ekho Moskvyy on 7 December 2000. Do you see that?

A. I do apologise, it's impossible to understand anything in the Russian copy. If I may, I will try to hear it, if you read it out to me.

Q. All right. Can I first just ask you this: you would have learnt of this interview fairly shortly after it was given, would you not have, given that you had an interest in acquiring ORT?

A. To be honest, this business press, this press organ, I've never seen it, I've never heard of it. And then it's such a small print I can't even read the letters. Is it possible to bring it out on the screen?

Q. It is on the screen.

MRS JUSTICE GLOSTER: No, the English is on screen.

MR RABINOWITZ: Perhaps it can be brought on the screen in Russian.

MAGNUM OPERATOR: I could give him the iPad.

MRS JUSTICE GLOSTER: Yes, why don't you give him the iPad.

(Handed)

THE WITNESS: Thank you.

MR RABINOWITZ: Just perhaps to assist you as you try to

make out the small print, what the presenter begins by saying is that:

"There has been a new turn of events in the so-called 'AEROFLOT case'. Nikolai GLUSHKOV, the former first deputy general director of AEROFLOT, was taken into custody and placed in the LEFORTOVO pre-trial detention centre. The Prosecutor General's Office has confirmed that new charges have been filed against him. That is why, upon arriving at the Prosecutor's Office for routine questioning today, GLUSHKOV was promptly arrested. Sources at the Prosecutor's Office point out that new evidence of his guilt has recently surfaced, including documents provided by their Swiss colleagues. It is interesting that a similar charge was brought only yesterday against another person in the AEROFLOT case, Aleksandr Krasnenker. He is the company's former... director. When asked by ITAR-TASS why KRASNENKER was not arrested, his lawyer replied: 'They probably forgot'. According to the lawyer, Boris KUZNETSOV, the new charges are related to credit agreements between AEROFLOT and the companies ANDAVA and FORUS which date back to 1996. We are now trying to get well-known businessman Boris Berezovsky, who served as a witness in the AEROFLOT case, on the line, and if we manage to get through to him we will return to this topic."

So one sees, just pausing there, Mr Abramovich, that unlike Mr Glushkov, Mr Krasnenker, who was a friend of yours, had not been arrested. Is that correct?

A. Krasnenker wasn't arrested. But he's also a friend of Mr Berezovsky and, if I can understand correctly, he's a friend of Mr Glushkov. He had to sign a recognisance not to leave and he was also often called to attend the General Prosecutor's Office, but he was not arrested.

Q. Now, do you see Mr Berezovsky's first response when asked to comment on the arrest of Mr Glushkov, which contains his assessment of the position? What he says, he says he's only just heard about Krasnenker and he'd heard about Glushkov earlier. He says:

"The actions against KRASNENKER are absolutely consistent with the authorities' actions. My assessment is as follows. This is pure blackmail. Blackmail against me. And it is blackmail in the best KGB tradition, so to speak. In other words, the president said that he would bash my head with a cudgel. The cudgel turned out to be too short; he cannot reach me here. So he started hitting people close to me. In other words, it is in the very worst tradition: blackmailing someone by putting pressure on their relatives, their associates, their friends."

Do you see that?

A. Yes, I do.

Q. And the "cudgel" reference, of course, is to President Putin's direct and public threat against Mr Berezovsky from late October which used that metaphor; you'll remember that we saw that yesterday or last week. Do you remember that?

A. Yes, I do.

Q. Now, I'm not going to ask you whether Mr Berezovsky was right to perceive the arrest of Mr Glushkov as an attack on Mr Berezovsky by the state, but you knew that this was what Mr Berezovsky believed was happening, didn't you?

A. Yes, I did.

Q. And you would accept that Mr Glushkov's prospects of being released were connected to Mr Berezovsky's political campaigning; that's right, isn't it?

A. The question was: do I agree that Glushkov's problems were related, connected to Berezovsky? If to -- bear in mind that they're somehow siphoning money out of Aeroflot, the company that they owned, and then they were taking that money, then in that sense, yes, the answer is yes.

Q. My question to you in fact, Mr Abramovich, as you probably know, was to ask whether you would accept that Mr Glushkov's prospects of being released were connected

to Mr Berezovsky's political campaigning.

A. Yes, one can make that assumption. I think if Mr Berezovsky would stop publicly, if he would stop publicly put the blame on everyone, then surely Mr Glushkov's chances would increase. That was my feeling.

Q. And do you see, just looking at the fourth-from-last answer that Mr Berezovsky has given, that Mr Berezovsky also explained that he was concerned that other people should also not be made the target of attacks and because of that, he was abandoning his plan to transfer his shares to Teletrust?

Perhaps I can read it to you. Shall I read it?

It's the answer which --

A. If you could, please.

Q. You've got it? He says:

"You know, despite all the talk, all the speculation that I sold those shares, all 49% of those shares currently belong to me and my partner, Badra PATARKATSISHVILI, and in this situation I believe it makes absolutely no sense to struggle on against such risks -- not risks to me personally, but to my friends and family. Therefore I will decide within the next two..."

"Weeks", it says, but it should be "days" in the

Russian.

"... what to do with these shares."

The English translation has a mistranslation in that it says "two weeks" but it should say "days".

A. Sorry, and what was the question?

Q. Well, I'd asked whether you'd seen it, but I've now read it to you.

And what this suggests is that on this day, the very day of Mr Glushkov's arrest, Mr Berezovsky appears to abandon what had been his Teletrust plan. Do you see that?

A. Yes, but I knew that that happened much earlier.

Teletrust, so to speak, died before it was born. And the Teletrust idea was to pass on 49 per cent and for the government to pass on their 51 per cent; and of course the government didn't plan to do it at all. And the initial idea was that both the government and Mr Berezovsky would finance that. And the statutory fund, if I recall, should have been contributed into by the cultural figures and the representatives of Russian culture and there was such an amount that they would never be able to pay that sum in.

So it was pure fiction, Teletrust; it was just a discussion topic. And the first meetings with those representatives for culture didn't go beyond the first

point, didn't get very far.

- Q. Well, it is clear from this document that this is the point in time where Mr Berezovsky announced that he was abandoning it and that was the very day of Mr Glushkov's arrest.

What I suggest to you is that it is clear that his announcement of the fact that he was abandoning that plan was directly related to Mr Glushkov's arrest. That is clear, is it not?

- A. No, it's not clear because Mr Berezovsky lives in the media; he breathes its ether and he decides what he's interested in. It's only what's happening in the media. Importantly, every day he solves a different task. So if you would keep track of everything he is saying, you would never ever understand what is really happening. As he himself was telling here when he was giving his evidence, one day he was playing, next day he was telling the truth. And if to cite what he was saying to the media, there would be never ever any clarity.

Whether he was using the situation that formed around Mr Glushkov in order to announce this? Yes, he did. If you look at it in detail, it says the 9th; and in truth he announced, if I recall it correctly, on the 7th. Moreover, in the announcement, in the press release, it was said that he was giving an interview in

Paris and at that point in time he was, as he said himself, in Antibes, Cap d'Antibes. There is a lot of confusion here.

So to base my opinion in the press releases, I wouldn't do that. I don't think it should be the main source. This is just my feeling.

Q. Mr Abramovich, before we leave this document, you say you have not seen this or you didn't hear about it before, but this is a document which comes from your own disclosure. Are you aware of that? It's not a document from Mr Berezovsky.

A. Delovaya Pressa documents, this is a newspaper or a magazine or internet site, I just never seen it before. Indeed, Mr Berezovsky did give that interview on the 7th at Moscow radio station. Indeed, it does say that the interview was given in Paris at some hotel and Mr Berezovsky was asserting that was done in Cap d'Antibes when he found out about the arrest of Mr Glushkov. That's why I'm saying it's very hard to rely on all this, although possible.

MR RABINOWITZ: My Lady, I don't know whether you were proposing to sit --

MRS JUSTICE GLOSTER: Yes, I wasn't going to sit beyond half past, so if that's a convenient moment.

MR RABINOWITZ: Your Ladyship is asking whether this is

a convenient moment?

MRS JUSTICE GLOSTER: Yes, is this a --

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: Very well. I'll sit at 10.15 then tomorrow and you'll take into account the difficulties that may be around tomorrow as a result of the demonstration. Very well.

(4.23 pm)

(The hearing adjourned until

Wednesday, 9 November 2011 at 10.15 am)

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Thursday, 10 November 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR ROMAN ABRAMOVICH (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Mr Abramovich, at the end of yesterday I was asking you questions about the sale of the second tranche of 25 per cent of Rusal in 2004.

There was, in the context of the discussions relating to that sale, a discussion about there being a series of transactional documents that acknowledged that there were two beneficial owners of the 25 per cent stake in Rusal, but subsequently it was decided that the sale documentation would acknowledge that there was in fact only one beneficial owner of the 25 per cent stake in Rusal, namely Mr Patarkatsishvili.

Were you aware of that change in the transaction structure at the time, Mr Abramovich?

A. If the question is whether I had ever seen those documents: no, I didn't.

Q. Can I just take you to one document, just ask you about this: bundle H(A)76, page 51 in the Russian H(A)76/51 and 57 in the English H(A)76/57.

Now, we have here a draft letter which has come out of your disclosure and it was a letter which was sent

I think by email by Mr Streshinsky to Ms Khudyk on 17 June 2004. Can I ask you just to read it to yourself quickly, please. (Pause)

A. May I ask a question about this letter?

Q. Can I ask a question first.

MRS JUSTICE GLOSTER: Well, if he wants to identify what the document is -- are you asking what the document is?

Yes, can you explain what the document is?

MR RABINOWITZ: It appears to be a draft letter which was produced by someone on, I think, Mr Anisimov's side and sent to Ms Khudyk under an email dated 17 June 2004. In fact my questions relate to trying to get to the bottom of who, in a sense, was responsible for what is produced here.

Can I ask you this, Mr Abramovich: do you see that in the first line, the first sentence of the letter --

MRS JUSTICE GLOSTER: Just a second. Wouldn't it be easier if we looked at the email so we know what this was an attachment to?

MR RABINOWITZ: If your Ladyship wants to go to -- in the English I think it's H(A)76, page 65 H(A)76/65.

MRS JUSTICE GLOSTER: I just think it might be fairer for the witness if he's --

MR RABINOWITZ: It's not going to help at all, my Lady, but I'll show your Ladyship.

MRS JUSTICE GLOSTER: It's not? Right, well, let me just look.

MR RABINOWITZ: Page 65 in the English H(A)76/65 and page 23 H(A)76/23 -- I see, they're both in English. H(A)76, page 23 and page 65 give you two emails.

MRS JUSTICE GLOSTER: Page 65 and 23? So which one is it an attachment to?

MR RABINOWITZ: Well, it's going to be an attachment to one or the other. There were two letters drafted on 17 June and the email at page 23 is "CoalcoLetter17jun" and the email at 65 is "CoalcoLetter2-17jun". This is one or other and they're being sent by Mr Streshinsky to Ms Khudyk.

MRS JUSTICE GLOSTER: Okay. You see where they come from, Mr Abramovich, do you? Right, let's go back to the document then.

MR RABINOWITZ: So the document again was on page 51 in the Russian H(A)76/51 and 57 in the English H(A)76/57.

Do you see, Mr Abramovich, that it begins by saying:

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find... an alternative structure."

And this suggests that there had been a telephone conversation at this stage and that someone on your side of the transaction had said that because of

representations previously made to banks, the structure of the transaction would have to change.

Can you assist as to who on your side of the transaction is likely to have been the person involved in the telephone conversation?

A. Well, if we bear in mind that this letter is from the -- perhaps Streshinsky, then most likely his contact was Natalia Khudyk, this is how I understand it now, or perhaps Irina Panchenko, but I can't be certain.

Q. So you think either Ms Khudyk or Ms Panchenko? Thank you very much for that.

A. Possibly. However, a letter like this, from my point of view, should have been addressed to the lawyers. It is formulated in a complicated manner. For a person without legal training, it's difficult to digest. It describes the deal in a very complex manner.

Q. The sentence we looked at also refers to "representations... previously made to the banks". Now, again, just so I know who to ask about this, who in your organisation would be likely to be the person making representations to banks about ownership interests in Rusal?

A. If we're talking about Rusal as a company, Rusal had its own management and those managers would have been explaining something to the banks. But I don't quite

understand what organisation we're talking about when you're asking me about "in your organisation". And what kind of representations to banks? I don't quite understand which representations to banks. I really would like to try and answer your question but I don't quite understand what it is that you're asking me. What representations to banks?

Q. Well, let me be very clear then. This letter refers to "representations... previously made to... banks" and it appears to affect -- the representations made to the banks appear to have been about who owns the interest in Rusal or how those interests are held.

What I'm trying to understand from you is who in your group -- is it Ms Khudyk, Ms Panchenko, Mr Tenenbaum perhaps? -- who is the person who is most likely to have been making representations to banks -- if you don't know, then just say so -- about who owned the interests in Rusal?

A. I don't know.

Q. All right.

A. Moreover, I don't even know why the banks would wish to know and would need to know who held what shares and interests. I can't see the logic of any of this.

A company would negotiate with a bank regarding a loan.

I doubt that shareholding structure has any bearing on

borrowing, on loans, in my understanding. So I don't understand this letter at all.

- Q. Well, a bank might have asked the question and it might have been of concern to it to understand precisely, for example, whether you alone were the beneficial owner of these 50 per cent of shares.

All right. Can you perhaps assist me with this: if you don't know who would have been potentially making representations to banks about this, can you tell me who you think might know the identity of the person dealing with the banks? Would it be Mr Tenenbaum?

- A. Well, I can't tell you that you shouldn't be asking Mr Tenenbaum, of course you should, but I can't insist that he would know. I would think that rather Ms Panchenko should know, but perhaps he also knew who was negotiating what.

- Q. Okay.

Now, you have said in your witness statement that you were not involved in the negotiations for the second Rusal sale but you say at paragraph 307 E1/03/128 that you did see some of the final documentation, including a deed of acknowledgement, and I wonder if we can just look at the deed of acknowledgement.

Can you go, please, to bundle H(A)84 at page 60  
H(A)84/60.

MRS JUSTICE GLOSTER: Mr Rabinowitz, just for my information, before we leave H(A)76, page 57 H(A)76/57, is there any evidence as to what the "alternative structure" is in the documentation?

MR RABINOWITZ: My Lady, we will see some of that in the course of the evidence.

MRS JUSTICE GLOSTER: Very well. Thank you.

MR RABINOWITZ: H(A)84, page 60 H(A)84/60. This is, I think, the deed of acknowledgement that you refer to in your witness statement and it's, as you see, dated 20 July 2004. It's between yourself and Mr Deripaska; do you see that?

If you look at page 63 H(A)84/63, you'll see that Mr Deripaska has executed this version of the document and if you go -- you can keep your finger there, but if you go to page 209 H(A)84/209, you'll see a version of the document where you have signed. Page 209. Do you see that?

Now, can we go back to page 61 H(A)84/61, Mr Abramovich. If you look at clause 2, clause 2 is the acknowledgement that you make to Mr Deripaska on 20 July 2004, and in fact that's really the whole point of this deed, that you make this acknowledgement. Do you see that it reads:

"RAA..."

That's you.

"... states and acknowledges to [Mr Deripaska] that with respect to the Shares (including predecessor shares) and the Business Interests represented thereby (as defined in the Deed of Release)..."

And just pausing there, you can take it from me --

MR SUMPTION: Could we get the translator to take the witness through this clause?

MRS JUSTICE GLOSTER: Yes, certainly.

Madam translator, could you come forward and translate to the witness clause 2, please. (Pause)

A. I have to say that it will be difficult for me to comment. It is formulated in a very complex way.

MR RABINOWITZ: Well, let me help you with that a little bit, Mr Abramovich, because this is a contract that you've signed. In clause 2, just so that you understand it, the reference to "the Shares" there and "the Business Interests" is a reference to 25 per cent of the joint venture with Mr Deripaska as held through Rusal Holdings and the reference to "Beneficial Owner" is defined earlier on in the contract as being a reference to Mr Patarkatsishvili. Okay?

I'll tell you what this acknowledgement says: it says that you were expressly acknowledging to Mr Deripaska that whoever Mr Patarkatsishvili, in the

deed of release or otherwise, said was the beneficial owner of the 25 per cent stake in Rusal, that would be, to the best of your knowledge and belief, who the beneficial owner was. In other words, you were acknowledging to Mr Deripaska that Mr Patarkatsishvili was going to make a statement about who the beneficial owner of these shares was and that, to the best of your knowledge and belief, whatever Mr Patarkatsishvili was going to say about it was correct.

Do you understand that?

A. Well, I understand everything you're saying. But what's been read to me in Russian, I mean, you know, you have to then translate from that Russian into other Russian for me to understand what it means and I am not capable of grasping that legal Russian. But what you are saying, I do understand.

Q. Right. I've tried to put it in language that both of us can understand because the legal language here is not straightforward.

You can see also that there is a reference in clause 2.2 (sic) -- or perhaps you remember that you were told this -- there is a reference to the deed of release and this being where Mr Patarkatsishvili was going to say who the beneficial owner was, and clause 1.1.5 of the contract we're looking at, on the

same page, page 61 --

THE INTERPRETER: I do apologise, there isn't clause 2.1  
(sic) in this document.

MR RABINOWITZ: It's just clause 2. Sorry, I may have said  
clause 2.1.

It's just clause 2. That refers to a deed of  
release and if you look above, maybe the translator can  
help you, at clause 1.1.5 it says "Deed of Release", and  
clause 1.1.5 tells us that it is a document which is  
attached to this agreement.

And if you go to page 64 in this bundle H(A)84/64,  
we can see the deed of release which was attached to  
this document, and at clause 3.1 on page 66 H(A)84/66  
we have the relevant representation from  
Mr Patarkatsishvili about who the beneficial owner of  
this 25 per cent of shares was.

A. May I ask a question at this stage?

Q. Please do.

MRS JUSTICE GLOSTER: Well, is it because you don't  
understand the document? What's the problem?

A. I -- well, the fact that I don't understand the  
document, that's one thing and that's obvious. But  
there are two documents here: one of them is signed by  
me and another one isn't signed by me.

MR RABINOWITZ: Correct.

- A. For some reason we're not looking at the document I had signed, which would have been logical from my point of view, and we're discussing a document I hadn't.
- Q. They're identical documents. The way it works, Mr Abramovich, is clause 7.2 of the document says that you and Mr Deripaska must each sign but you don't have to sign the same document. So Mr Deripaska signs one of the identical documents and you sign the other. But the clause I've taken you to is identical. Okay?
- A. Mm-hm.
- Q. All right.
- A. Okay, I got it. Thank you very much.
- Q. Now, if you go to page 64 H(A)84/64, which you may be at, you will see the deed of release which is exhibited to the document that you signed and indeed Mr Deripaska signed; and then if you go to page 66 H(A)84/66, you can see the representation which Mr Patarkatsishvili makes about who the beneficial owner of the 25 per cent stake is.

And if you have clause 3.1, what it says -- and perhaps the translator can help you with this -- what Mr Patarkatsishvili represents and warrants at clause 3.1 at page 66 is that:

"... during the Period..."

And I can tell you, Mr Abramovich, that "the Period"

means, if you go back to page 65 H(A)84/65, "the period commencing on March 15, 2000 and ending on Completion".

"... during the Period..."

So that's the period from 15 March 2005 (sic).

"... [Mr Patarkatsishvili] was the sole and ultimate beneficial owner of the Business Interests..."

That, as you've seen or as I've told you, means that Mr Patarkatsishvili was warranting that he was the sole and ultimate beneficial owner of the 25 per cent interest in the Rusal joint venture.

Now, the date 15 March 2000 is the date of the written agreement that you made with Deripaska; do you remember that?

A. Earlier you said 15 March 2005, and of course we had finished all that. But this was a slip of your tongue, so we've...

Q. This was a slip of my tongue. It's from 2000.

So what Mr Patarkatsishvili is warranting is that from the date of your contract with Mr Deripaska he has been the beneficial owner of 25 per cent of the Rusal joint venture investment. Okay?

And the other thing that he warrants, and this is in the second part of clause 3.1, is that the stake was not held by Mr Patarkatsishvili "for the benefit of any

other Person", and he also says:

"... and no Encumbrances or Claims were imposed or asserted in respect of [that interest] during the Period."

Okay?

Now, just to summarise where we are, in the deed of acknowledgement, which was the first document we looked at, which was the one that you signed, you acknowledged to Mr Deripaska that whoever Mr Patarkatsishvili said was the beneficial owner of 25 per cent of Rusal was the beneficial owner of 25 per cent of Rusal and had been the beneficial owner of 25 per cent of Rusal since 15 March 2000.

In turn, Mr Patarkatsishvili warranted in the beneficial ownership deed of release that he was the beneficial owner of 25 per cent of Rusal and had been since March 2000.

And what I want to ask you is this, Mr Abramovich: how is this consistent with your present case that you, and you alone, at all times were the owner of the full 50 per cent of shares in Rusal?

A. May I explain?

Q. Please do.

MRS JUSTICE GLOSTER: Yes, please do.

A. At the time when the question arose that for Badri to

receive money, shares should be re-registered in his name, and the question arose because under the original contract we couldn't pay him this amount of money, at that time it was clear that commission amounting to 540 or \$575 million -- I can't remember at what time we were discussing it -- not a single bank would receive this amount of money as commission payment.

So we decided that we will give him shares, so that he could receive this money legally through the banks he wanted. At the time when we finalised the deal with Oleg Deripaska, we would do that; and then, in the course of this procedure, we had to explain how he got these shares, how come he was holding these shares. So we wrote that he was holding, owning these shares from 15/03/2000.

I can't tell you that I understand all this mechanism very well, not at all. I can't say I understand it very well. But this is my assumption, my guess.

- Q. So your case is -- tell me if I have this right -- that you deliberately created a false document which deliberately misrepresented whether Mr Patarkatsishvili was a beneficial owner in these shares; is that right?
- A. If the question is whether Mr Patarkatsishvili was indeed the beneficiary owner of these shares from

15/03/2000, then the answer is: no, he wasn't. If the question is whether I had the right to hand over the shares to him when I felt I wanted to and I was owing him some money, could I pay him with shares, I think that I had the right to do that.

So I don't quite understand where false and falsification and fictitious comes in.

Q. Well, Mr Abramovich, just looking at your answer, the question is whether Mr Patarkatsishvili was indeed the beneficial owner of these shares.

Now, you have signed an agreement which says that whatever Mr Patarkatsishvili says about this, that is true. But you are now saying that you were, in effect, party to an arrangement which deliberately misstated who was the beneficial owner of these shares. Is that your evidence?

A. Badri asked me to help him to arrange this transfer so he could receive this money and when he was asking me and whatever he was asking me to do, I always tried to assist him.

Q. Mr Abramovich, I have to suggest to you that you are simply not telling the truth and that this document, when it acknowledges that you were not indeed the owner of the full 50 per cent of the shares, was stating the position as it in fact was, namely that you held that

25 per cent of shares for someone else.

Do you follow what I'm putting to you?

A. I understand your question and that is not right. The answer is no.

Q. And the reason this document was acknowledging Mr Patarkatsishvili's beneficial interest was because Mr Patarkatsishvili was indeed a purchaser of the aluminium assets under the master agreement of February 2000 and, as a result of that, he, with his partner, Mr Berezovsky, came to hold 25 per cent of the shares in Rusal which you agreed to hold as trustee for them.

That is the truth, is it not, Mr Abramovich?

A. That is not true. That is not so. I never held anybody's shares for anyone on trust, as a trustee.

MR RABINOWITZ: Thank you very much, Mr Abramovich. I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much.

Yes, Mr Malek.

MR MALEK: I have no questions, my Lady.

MR ADKIN: My Lady, I have no questions.

MRS JUSTICE GLOSTER: Mr Mumford? No.

Right, Mr Sumption.

Re-examination by MR SUMPTION

MR SUMPTION: I'm afraid it's not quite over yet,

Mr Abramovich. I want to ask you a few questions of my own.

Could Mr Abramovich please be given a bundle of the Russian-language transcripts of the hearings during which he's been giving evidence.

Now, Mr Abramovich, could I please ask you to turn to the transcript for Day 17. You'll find that in the Russian version, the pages that I'm going to refer you to are contained within the text. Could you please turn to page 26.

MR RABINOWITZ: Before my learned friend goes any further, I should just mention that we don't actually have Russian transcript versions of this. If you're going to be putting points about what is the proper translation of X or Y --

MR SUMPTION: No, I'm going to be putting the transcript to the witness but in a version that he can understand without having to have it translated for him.

MRS JUSTICE GLOSTER: What's the position in relation to that? Is it a payment issue?

MR SUMPTION: I'm told that it is. Clearly, since I'm referring to it, my learned friend must be entitled to see a Russian-language copy if he wants, but I'm not going to ask Mr Abramovich to engage a translator.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: I think it would be worth someone on my side who understands Russian at least having --

MRS JUSTICE GLOSTER: Yes. Well, I'm going to direct that one copy is passed over to a Russian speaker on Mr Rabinowitz's side without prejudice as to any question as to costs, which no doubt can be argued later.

MR SUMPTION: Indeed.

My Lady, I'm not sure that we've got an extra copy in court, apart from the witness's copy, but I'm having enquiries made about that.

MRS JUSTICE GLOSTER: Okay. Well, we can go on in the meantime.

MR RABINOWITZ: Can I ask my learned friend just to clarify this: is the version that is being put to the witness the version produced by the translators with or without Skadden's corrections? Because, as I understand it, there has been quite a lot of toing and froing about trying to get them to accept particular words.

MR SUMPTION: I understand it's simply a type-up of the audio feed. I'm not sure who does the typing-up.

MS DAVIES: Without corrections.

MR SUMPTION: Without any corrections.

MRS JUSTICE GLOSTER: Okay. Well, if there's a correction point, I'll give you an opportunity to deal with it.

MR SUMPTION: Mr Abramovich, could you perhaps look at page 26 here on Day 17, in the numbering which you'll find embedded in the page. At the top of page 26 you will see that you are being asked about the 1995 agreement -- sorry, I'm trying to find the exact reference, forgive me.

MRS JUSTICE GLOSTER: I think it's on page 25 I ask a question, line 19, or Mr Rabinowitz at line 13 on page 25.

MR SUMPTION: Yes, let me just find the bit that I'm looking for. (Pause)

At the bottom of page 26, Mr Abramovich, my Lady asks you a question about two-thirds of the way down the page and your answer is -- this is about what was agreed before August 1995:

"After that, what happened was that it was clear that 51 per cent would be held by the government while 49 per cent could be privatised. In order to privatise 49 per cent, a certain number of auctions had to be held, and we agreed that Mr Berezovsky would help me in this."

Do you see that answer that you gave in the Russian transcript, Mr Abramovich? Now, when you said that you "agreed that Mr Berezovsky would help me in this", what were you referring to as "this"?

- A. At that time I meant the subsequent loans for shares auction. I was slightly confused with this question about August and I forgot what was happening when. But of course we agreed about these shares for loans -- loans for shares auction much later; I think it was end of October or something like that, if I remember.
- Q. I see. So the answer that I have just read to you, if you've still got it in front of you, you say that you were confused between the auction of the 49 per cent and the loans for shares auction. So if we can sort the confusion out: what did you intend to say?
- A. Mr Berezovsky didn't help me at all with the auctions for 49 per cent, but of course and indeed he did help me in a very serious manner during the loans for shares auction.
- Q. And was there an agreement about what would happen in relation to the 49 per cent? What you've just told us is that he didn't help you. Was there any agreement on that subject, as to whether he would help you with the 49 per cent?
- A. There was no agreement at all.
- Q. Now, could I please ask you to leave that transcript open and to take up bundle H(A)02, at page 102 H(A)02/102. 102 is the Russian-language version of a document that the rest of us can see at 102T and 103T

H(A)2/102T, which in my bundle is just before the coloured page, immediately before the document in Russian.

Now, you were taken to this document and it was suggested to you that Oil Finance Corporation was the same company as NFK, which was subsequently the successful bidder in the loans for shares auction. Do you remember that being discussed in your evidence? And you said it was not, it was a different company.

A. Yes, I remember.

MRS JUSTICE GLOSTER: Mr Sumption, can you give me the reference to the transcript where --

MR SUMPTION: It's at Day 17, pages 142 and 143.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, do you remember when NFK, the company that subsequently succeeded in the loans for shares auctions, was created?

A. It was created just before the auction, just prior to the auction, if I remember correctly, in December. I mean, I can't remember the exact date, but something like December.

Q. Could you please be given bundle H(A)09/28 H(A)09/28. In Russian it's at 28R H(A)09/28R and for the rest of us it is immediately after the Russian version.

In the Russian version this is a copy,

Mr Abramovich, of the Audit Chamber report into the loans for shares auction. Do you remember that document?

A. Yes. I do.

Q. If you turn in the Russian text to page 31R H(A)09/31R. In English it's at page 36 -- I'm afraid the bundle I'm using is paginated differently. Right. It's --

A. May I -- I can answer.

Q. You've got it in the Russian text, right. Does that help you to identify the exact date?

A. Yes.

Q. What is the exact date that you see there?

A. It's the date when the company was set up: 07/12/95.

MR SUMPTION: I will give your Ladyship the exact reference to the English translation. It was at page 36 but the reference has been changed subsequently.

Mr Abramovich, I wonder if you could turn back to the transcript now. You can put away bundle H(A)09. Would you please turn to page 64 in the transcript of Day 17. The first answer that you give on page 64 begins in English:

"This is almost what you mean."

Do you see that? Now, what you're being asked about here is krysha and in particular you're being asked

whether you needed krysha after the creation of Sibneft. That's what Mr Rabinowitz was asking you about and I just want to ask you to clarify a particular part of your answer.

In the first answer you give on page 64 you say -- I'm reading from the English. It says:

"This is almost what you mean. I'm saying that in [the] start of the '90s... I needed both kinds of protection... and in some sense, yes, both, one and the other."

That's a reference to physical and political krysha. And then you say:

"The business after creation of Sibneft didn't require krysha. After Sibneft was created, political krysha was required, yes."

I wonder if you can clarify those two sentences, where you're recorded as saying in the transcript, "The business after the creation of Sibneft didn't require krysha", and then in the next sentence you say, "After Sibneft was created, political krysha was required, yes". Can you help us on what you are saying there?

- A. Indeed krysha was required. It was impossible to keep hold of the company without krysha. So we required both political and physical krysha protection.
- Q. Thank you. Could you put away that -- well, sorry, keep

the volume. If you turn to the next tab, I think it is, you will find the transcript of Day 18. Can the witness be helped to find the transcript of Day 18, please. I'd like you to turn to page 39.

At this point in your evidence you're giving evidence about a document which you will be given in a moment: it's at H(F)1/60. Now, you may remember being taken by Mr Rabinowitz to this letter. It's a letter which contains details sent to Mr Curtis in 1994 of the turnover and net profits of one of your trading companies called BMP Trading GmbH. Do you see that?

A. Yes. Yes.

Q. There isn't a Russian version of this but if you look at the numbered lines just below halfway down the page, item 5 says:

"Turnover in 1993 -- \$350 [million]."

And item 6 says:

"Net profits in 1993 -- 10 [million]."

Do you see those figures?

Now, you were asked in particular about the figure for \$10 million net profits in 1993. Those were the profits of which company?

A. These were the profits of this company. We had several companies that were engaged in trading operations. This

profit refers to this company.

Q. Right. And what was the aggregate profit at that time, ie 1993, of the total of the trading companies?

A. I can't give you an exact figure but in the region of \$40 million, perhaps a bit less.

Q. Thank you.

Could you please now turn to the transcript for Day 19 and turn to page 45. Now, what you're being asked about at this stage is the ownership of shares in Sibneft in the year 2000. Now, at that stage 12 per cent of Sibneft was owned by the general public and you say here that you and only you owned the rest, the other 88 per cent.

And you then clarify, if you look at page 45, why some documents refer to "A group of shareholders". Do you see your answer about that? At about a quarter of the way down 46, you say:

"Answer: I have never said that I was the only shareholder."

Then my Lady asks:

"In Sibneft or in these aluminium assets?"

"Answer: I mean in Sibneft. For a variety of reasons, mainly for reasons of security, I did not want to be the only shareholder of Sibneft and so that everyone knows I was the only shareholder in Sibneft...

"And that's why we often spoke about management, management control, as long as we didn't mention just my name."

Now, can you tell us: what were the reasons of security that you refer to in that answer as the explanation of why you referred to the control by management?

A. I can give you a longer answer or -- may I? May I say a few words?

Q. Of course.

A. Just to give the context and the history of the matter.

When I started to do business, when cooperatives first appeared and when I started to make more or less serious money, at that time, for those times, then of course at that time I wanted to show everyone that life is different, it's new kind of life, we are earning this money, we wanted to pay taxes and live honestly.

And while I was thinking about that, a person, I think his surname was Darasov, he declared that he had earned 3 million rubles that he had paid all the taxes. He was a member of the Communist Party, he paid party contributions, he did everything completely honestly and above board. You can't imagine what happened in the country: people were saying that he should be put in custody, to prison, this is unbearable, this is

shameful, nobody has the right to earn so much; and in the end he left for the UK.

And I remember that very well and I decided that I was not going to stick my neck out. The next person who decided to declare his earnings, his shares, and that he was such an open person, was Mr Khodorkovsky. Well, at that time I had the desire to declare everything and to show everything and to make it all obvious, but then I decided it won't lead to anything good; it would only create problems for myself.

So I decided: sit quietly and do business and don't stick your neck out and tell everybody everything belongs to me, et cetera; that would only cause problems for myself. Therefore I never told these stories or declared all these things to anyone.

- Q. And from what date, approximately, did you have this policy of not being publicly seen as the sole owner of Sibneft?
- A. If I remember correctly, this story I told you about happened in '89 and that happened prior to Sibneft. So I learnt my lesson on the example of that guy before Sibneft.
- Q. In your public statements what did you say about who owned the rest of the shares apart from you yourself?
- A. Well, first of all, I never made any public statements;

at least I tried never to make any public statements. I know I don't do it well: I become very nervous, I forget what it is that I mean to say, I can't really convey my logic and my thought to the journalists. So I decided this is not my thing, I really shouldn't be doing it.

And even when I was asked, and I was being asked when I was running for governor, I think it was the year 2000 when I was asked, rather I was going to say -- I was going to say there was a question -- rather I was asking (sic) about control and I was being asked about ownership and I simply got confused and didn't understand what it is that they were asking me about.

So I never had the intention to deceive anyone.

Q. Could you please take bundle E6, or E7 rather, which is the Le Bourget transcript. We'll look at it in bundle E6. I'd like you to turn to box 470, please E6/01/165. I'd like you to read to yourself the text in box 470 and then I'd like you to look at the transcript of the evidence that you gave about it.

Could you perhaps read the text of box 470 first.

(Pause)

A. Yes.

Q. Now, if, leaving that open, you would like to turn to the transcript for Day 20 and to page 89 of that

transcript. You give evidence about this matter between pages 89 and 91, if you would just like to remind yourself of that. (Pause)

A. Should I read 90 as well?

Q. I think you can read up to the end of page 91, up to the question that my Lady asked you. Perhaps you should read your answer to my Lady's question as well. (Pause)

A. I've read it.

Q. You say in the longest answer on page 91:

"So we always said that I control half of the company and the other half is controlled by the management."

On what other occasions did you say that?

A. If I remember correctly, I gave an interview to Vedomosti newspaper, if I remember correctly.

Q. Could you please take bundle H(A)15/2R.

A. May I add? May I add a few words?

MRS JUSTICE GLOSTER: Yes, you may.

A. Everybody who asked me this question were not interested to know who owned the shares; all they wanted to know, whether Berezovsky was the owner, whether Berezovsky had any influence on the company. That's the only thing they were keen to know. Nobody was bothered to know who in reality was the shareholders; just that all foreign investors were very concerned that Berezovsky might be

a shareholder. This is why all these stories and questions appeared and every time we had to explain to foreign investors that he had nothing to do, he was not an investor, he was not a shareholder and had nothing to do with this business.

MR SUMPTION: Now, could you please take bundle H(A)15 at page 2R H(A)15/2R, which is the Russian version. It's on coloured paper in my bundle. The English version is at 2 H(A)15/2, which, in my bundle, is just before that.

Now, is this the interview with Vedomosti that you were referring to?

A. (Untranslated)

Q. If you look at the top, you'll see that it's described as:

"Interview with Sibneft board member Roman Abramovich published in Vedomosti on 1 December 1999."

Now, you'll see -- if you would like to just cast an eye through this, can you draw our attention to which parts of this interview you had in mind?

A. The journalist is saying:

"Let's talk about your business. What is it that you do in Sibneft?"

And then I'm discussing that.

Q. And then in the English there's a heading or there's a question:

"Can you say something about your stake in Sibneft?"

Starting there, as you've asked us to, where should we read to to get the passage that you had in mind in your last answer?

My Lady, it's page 3 on the English version

H(A)15/3.

MRS JUSTICE GLOSTER: Yes, I'm there. Thank you.

A. Right. If you read seven or eight lines or so, then everything is described.

MR SUMPTION: Thank you.

Could you please, on this same point, be given bundle H(A)23 at page 67 H(A)23/67. 67 is the English version. You'll find a Russian version, I think, immediately -- hang on. 67R is the Russian version H(A)23/67R and the English text is on 67, immediately before that. In the English, this is headed "On the Record" and it's an interview with Mr Shvidler published in Petroleum Intelligence Weekly in November 2000. Do you see that?

Could you please turn to page 70.001R

H(A)23/70/001R. There is a question which is being put to Mr Shvidler:

"Unclear shareholding structures remain a worrying

aspect of many Russian oil companies. Can you reveal who the principal shareholders are in Sibneft?"

It's the very last question that Mr Shvidler is asked. His answer is:

"First, I would like to say that Sibneft is a separate oil company not mixed up with the aluminium interests with our shareholders. As for the list of shareholders, Roman Abramovich controls about a 40% stake, a similar amount is controlled by the company's top management, while the rest is in free float."

Now, can you help us on what Mr Shvidler is referring to there?

A. This is -- what is the date of this? Could you please remind me?

Q. November 2000.

A. This was the main question. The main question was whether Sibneft acquired aluminium assets, that was the big thing; and this is why, if I remember correctly, the whole story was written. And it was important for us to convey that Sibneft as a company has nothing to do, no links with aluminium assets. The market got very excited and worried that we might suddenly start using Sibneft's money and we'd stop being a purely oil company and become some kind of strange conglomerate. This is what it was all devoted to, if I remember correctly.

Q. If you still have the Le Bourget transcript open in front of you, bundle E7, can you turn back to box 470, please E6/01/165.

Now, box 470 is, of course, about Sibneft. Why did you refer at the Le Bourget meeting to your owning only 40 per cent or 44 per cent and to part being "in trust with management"? Why were you saying this to Mr Patarkatsishvili and Mr Berezovsky?

A. We were talking about what should be done for them to receive legal money in the banks and I tried to remember the arrangement which exist -- which people explained to me and which I was trying to explain to them so as to help them in some way to use the arrangements we've discussed before, so they would have a possibility of explaining all of that to the banks.

But here I am referring to my interview, I'm trying to remember what it is that I was explaining to the Vedomosti newspaper, as I've already mentioned that I don't recall these things very well and -- you know, and I really don't retain this information. By the time I arrive wherever I'm going, I already forget what it is that I wanted to say.

Q. Could you please turn to the transcript of Day 19 at page 2.

MRS JUSTICE GLOSTER: Choose your moment for the break,

Mr Sumption.

MR SUMPTION: My Lady, why don't we break now?

MRS JUSTICE GLOSTER: Very well. I'll break for ten minutes.

(11.25 am)

(A short break)

(11.43 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Mr Abramovich, could you take the transcript for Day 19, please, and I'd like you to turn to page 2 in that transcript.

Now, the point that Mr Rabinowitz is asking you about at this stage of your evidence is this: he was suggesting to you that in 1996 you thought that there was a need to distance Mr Berezovsky from Sibneft, and you denied that. You remember that exchange between you and Mr Rabinowitz, do you?

A. Yes.

Q. And in this part of your evidence -- it's at the bottom of page 2 and the top of page 3 -- you say, bottom of page 2:

"Answer: So, for me to understand exactly what you mean, prior to [the 1996] elections I allegedly told Berezovsky that his link or his association with Sibneft was harmful to Sibneft; is that what you mean?"

And Mr Rabinowitz says:

"Question: That is what my question involves saying, yes."

Your answer is:

"Answer: This did not happen, in the files of the case, there is a document, I think it's called letter number 13; may we look at that, if that's possible?"

I want to show you a document and ask if it's the document that you have in mind. Could you please be given bundle G(B)2/3.041. If you turn to flag 41 in that bundle.

MRS JUSTICE GLOSTER: It's on the screen. Is there an English version?

MR SUMPTION: There's an English version at page 7T and the Russian version is 1R.

Mr Abramovich, this is -- if we can have the English version on the screen, since you've got the Russian version in front of you.

MRS JUSTICE GLOSTER: Do we think there's an English version?

MR SUMPTION: There is an English version in my bundle at page 7: that's G(B)2/3.041/7.

Now, is this the document that you had in mind as letter number 13, Mr Abramovich, or is it a different document?

- A. This is what I meant. This is not called letter number 13 but this is appeal number 13. After Mr Berezovsky, it was Mr Viktor Andreyevich Gorodilov who signed that letter, who represented Sibneft, so to speak, that at that point in time Sibneft wanted to distance itself from Mr Berezovsky. This is completely incorrect.
- Q. So what is it about this letter that shows that it was completely incorrect?
- A. That letter -- sorry, I didn't understand the question. What was it in that letter that was showing that it was --
- Q. The transcript, I'm afraid, has mistranscribed my question. My question was: what is it about this letter that shows that the suggestion put to you about distancing Mr Berezovsky from Sibneft was completely incorrect?
- A. I have asked Mr Rabinowitz: did he mean that Sibneft would have problems or me personally, and he said certainly it would be for Sibneft, if I remember correctly. That's what I'm saying. And in that letter the second person, after the appeal of Mr Berezovsky, that was Mr Gorodilov, who did represent Sibneft.
- Q. Could you please, in the transcript of the answers that you've just given, go back to the line on the current

page of the [draft] transcript to line 6. Could the translator please translate the answer that begins, "This is what I meant", and in particular the last sentence says:

"This is completely correct."

If you can just explain what you meant by that.

Madam translator, do you see the answer that begins, "This is what I meant"? Have you stopped the...

Can the whole of that answer beginning "This is what I meant" up to "This is completely correct" be translated to the witness.

MRS JUSTICE GLOSTER: What's the date of this letter?

MR SUMPTION: The date of the letter is -- I think it's June 2000 -- sorry, June 1996, forgive me --  
27 April 1996.

THE INTERPRETER: I have translated [draft] lines from 21 to 25. Is that what you wanted?

MR SUMPTION: I'm sorry. If you look at [draft] line 6, you will see an answer that begins:

"This is what I meant. This is not called letter number 13..."

Do you see that answer?

THE INTERPRETER: Yes, now I've got it.

MR SUMPTION: That is the answer. Please could we have that translated.

What is it that is completely correct?

A. This is completely not what I said. I mean that this letter, after Berezovsky, was signed by Mr Gorodilov and that letter was putting Sibneft at risk because that letter was sent, I remember, to the leader of the Communists, Mr Zyuganov, and he was categorically against. So it doesn't matter, and I'm referring to that letter.

Q. Yes.

A. Therefore, by this letter I want to show that we did not distance from Mr Berezovsky and Sibneft didn't distance from him. Quite on the contrary, we supported him and the company, Sibneft, has provided all the resources for that and Mr Gorodilov signed that letter.

Q. Now, could you please in the same transcript, Day 19, turn on to page 6. At page 6 of this transcript, if you would just like to glance at it, you will see that Mr Rabinowitz is putting it to you that you had failed to identify any krysha, any services by way of krysha provided by Mr Berezovsky to you between 1998 and 2000. Do you see that?

A. Yes, I do.

Q. Can you tell us: what role did Mr Berezovsky play, if any, in the attempted Yuksi merger of 1998?

A. He was going to be a political representative of the

united group and I cannot say that we've discussed that he will be the krysha for the whole group, but this is what was meant.

- Q. Could you please turn in the same transcript to pages 26 and 27. Now, at this point of your evidence you are explaining why Mr Patarkatsishvili and Mr Shvidler were shown as parties on the agreement in relation to the acquisition of the aluminium assets in February 2000. Do you remember being asked questions about that?

A. (Untranslated)

- Q. Now, if you look at the transcript, you will see that at the end of page 27 Mr Rabinowitz asks you:

"Question: ... I have to suggest... that your explanation as to why both Mr Shvidler and Mr Patarkatsishvili signed as a party is simply untrue. Do you understand?"

And you say:

"Answer: I understand that you suggest that this is not true but it is in fact the truth. Once again I'd like to explain: to a Russian person's eyes, everything is clear here, if you look at it through Russian eyes, especially if you know the context."

Mr Rabinowitz then went on to another aspect of the matter.

Can you please help us on what was the context that

you were referring to at the very bottom of page 27?

What was the context that helps you to understand this?

- A. If you understand everything that was going around all this, Badri was a very influential figure. For the aluminium industry there was a certain risk and it was important for us for Badri to be near to us and demonstrate that he's with us.
- Q. And what about Mr Shvidler: what is the context that helps one understand why Mr Shvidler was named as a party?
- A. And Mr Shvidler was negotiating, he was conducting negotiations. Therefore he automatically was a party, becoming a party, party 1, what was called party 1 there.
- Q. Could you, in the same transcript, please turn on to page 67. Towards the end of page 67 you will see you're being asked about the merger agreement with Mr Deripaska and in particular the document which you and Mr Deripaska signed at the beginning of March 2000. You're being asked about whether that contained all the key terms of the merger agreement.

Mr Rabinowitz, at the bottom of page 67, quotes your witness statement:

"Having reached an agreement with Mr Deripaska on all key terms of our merger..."

And he then asks:

"Why did you deny, when I asked you whether you reached agreement with Mr Deripaska on all key terms, why did you deny that that is what had happened at that meeting?"

And this is a reference to the meeting --

A. Sorry, I do apologise, I'm not keeping up. You are speaking very fast, the interpreter is speaking even faster, so I'm not understanding what's going on.

MRS JUSTICE GLOSTER: Okay. Take it more slowly.

MR SUMPTION: I will take it more slowly.

In this part of your evidence you're being asked about the preliminary agreement with Mr Deripaska for the merger of the aluminium assets of each side, and in your witness statement you had said that in that agreement you reached agreement with Mr Deripaska "on all [the] key terms of our merger". And this is in the context of the meeting that you had at your house at Sareevo after the Baltshug Kempinski hotel.

Mr Rabinowitz then says:

"Why did you deny, when I asked you whether you reached agreement with Mr Deripaska on all key terms, why did you deny that that is what had happened at that meeting?"

And if you then look at your answer at the top of

page 68, if you could just read to yourself the answer that begins in the English text:

"Answer: I wanted to continue but then I was cut off..."

Just that answer. (Pause)

Have you read that, Mr Abramovich?

A. Yes, I did.

Q. Now, at the end of that answer, you say:

"... if I have the leave of the court, I can explain what we agreed upon and what we agreed upon later."

Mr Rabinowitz says he'll come back to that. I'm not sure he did, which is why I'm going to ask you now.

What did you agree upon at your house in Sareevo and what did you agree upon later? What did you want to explain when you said that?

A. I wanted to explain that the terms with regard to BrAZ, with regard to Sayansky Aluminium Plant, about the whole structure of Russian Aluminium, was agreed by us later.

So my feeling was that we had a preliminary discussion. We've agreed to only spin out the problem assets, KrAZ, everything around KrAZ, and everything else will be decided later. We'll get the work started and decide the rest later. That was my feeling.

Q. So what was added later was further assets; is that what you are saying?

A. Bratsk Aluminium Plant, we have brought a part, and the other part we bought from Rusal, Sayan Aluminium Plant, from what I can remember, and I think we also were buying power plants, but I do not recall.

And one more thing: and later it happens we were not able to bring in KrAZ or Novokuznetsk Aluminium Plant and we were buying it together.

Q. How much later was that?

A. Bratsk and Sayansky Aluminium Plant were brought in in May, I think we agreed in May. And when we brought NkAZ, Novokuznetsk Aluminium Plant, I do not recall that.

Q. We can find the documents in due course.

Now, Mr Abramovich, could you take the transcript now at Day 20, please, and turn to page 5. At this point you were being asked about the Dorchester Hotel meeting and if you look at page 5, you'll see there's a long answer which begins:

"When we arrived at the Dorchester Hotel..."

Do you see that answer?

A. Sorry, I've missed -- what page was that?

Q. Page 5 on Day 20. There's a long answer in which you describe what happened at the Dorchester Hotel meeting. In English it begins:

"When we arrived at the Dorchester Hotel -- and..."

it was well past midday..."

Would you just like to remind yourself of that answer. (Pause)

A. I have read this.

Q. Now, towards the end of that answer you say it was not a formal meeting because -- and you give various reasons including that Mr Berezovsky was not properly attired.

What was Mr Berezovsky wearing when he joined the meeting?

A. He was in a dressing gown.

Q. Could you turn on in this transcript, please, to page 79. Now, at pages 79 and 80, if you have those open, you will see that you are being asked about Mr Fomichev's proposal in the autumn of 2000 that Mr Berezovsky and Mr Patarkatsishvili should become registered shareholders of Sibneft in order to legalise their receipts.

Now, what was suggested to you was that it was surprising that there were no references in any document to Mr Fomichev having made that proposal. You will see that my Lady asks you that question.

Now, how was this particular proposal by Mr Fomichev made? Did he make it in a document? Did he make it at a meeting? Did he make it on the telephone? How did he make it?

A. If I recall correctly, he arrived to my offices and said he had such a proposal. He didn't have any correspondence in this regard. So there couldn't have been any documents surviving, if I recall correctly.

Q. Is it normal, can you tell us, to document arrangements to legalise the receipt of money? If proposals are made on that subject and you have discussions about it, is it normal to have those discussions in writing or orally?

A. Usually -- it's very unusual for Russian practice to sit down and write down what you are saying. That looks quite strange. I understand that from the perspective, from the point of view of an English lawyer, everything has to be documented. I've seen how -- the way it's happening. I've seen people's notes. If someone said something and then that was documented, to be honest, I've never ever come across this before. This is very unusual for us.

Q. Thank you.

Could you please turn in the transcript for Day 21 to page 13. Now, in this part of your evidence you're being asked about the Le Bourget transcript and if you look at the transcript from pages 13 to 15, you'll see that you're being asked about Mr Patarkatsishvili's interest in the question how much Sibneft was likely to earn in the following year. Do you remember that?

Would you like to --

- A. I do remember. Just could I have the page reference, please, again?
- Q. Yes. If you look at page 13 and read through to yourself until page 15, you will see a number of questions are being asked of you about -- it's a discussion at Le Bourget about how much Sibneft was likely to earn in the next year. If you would just like to remind yourself of that by glancing through it. You don't need to read every detail, but just to remind you of the context. (Pause)
- A. I do remember the context.
- Q. Right. Now, what I want to ask you is this: why were Mr Patarkatsishvili and Mr Berezovsky interested in how much Sibneft was likely to earn in the following year?
- A. That was the year 2001: that was the first year when everything had to be brought within the company and the only way how I could in theory pay out to them would be via dividends. So I would have to get Sibneft dividends and then distribute them. And it can be seen from there, I am explaining that I can do it only twice a year; I cannot pay them the money at their first demand.
- Q. Was the amount of money that you paid to Mr Patarkatsishvili or Mr Berezovsky dependent on or

related to the amount of money made by Sibneft?

A. No.

Q. Could you please turn to page 23 of the same transcript for another aspect of the meeting at Le Bourget. You will see that on page 23 there is a long answer from you in the middle of the page beginning:

"I'd say to [you] that if you read this transcript in full, and in particular with regard to ORT, we had settled everything..."

Do you see that? Could you just read through that answer so that I can ask you to clarify one point.

A. (Untranslated) (Pause)

Yes, I did.

Q. At the end of that answer you explain that you left the meeting with the understanding that you had agreed on everything: you had agreed "the arrangement, how to pay, what to pay and to whom". You say you then went off on your election campaign, Mr Berezovsky went away and Mr Patarkatsishvili went away, and you then say:

"... if I remember correctly... the other one to Las Vegas."

Mr Berezovsky to Aspen and Mr Patarkatsishvili to Las Vegas. And you then say, and we're talking about ORT here:

"So the subject sort of -- the subject went away by

itself until we all met again."

Do you see that?

Now, what was the next occasion after the Le Bourget meeting that you all met again, that you're referring to there?

A. We've met in Megeve.

Q. Now, when you say that "the subject went away by itself until we all met again", did the subject of ORT come up when you met in Megeve?

A. No, we've never revisited it at all. Everything was finished there. There was nothing to discuss there. Moreover, if I recall correctly, the end of October I was already financing the budget difference using my own money, and the budget differential of ORT, that was already financed by me.

Q. Yes. Now, on that point, could you please -- you may need some assistance on this. I'd like you to look at the bolshoi balance on the screen. We know from experience that this is technically possible but you may need some help. If possible, on the actual Excel spreadsheet, so that we can operate it under the software.

I wonder if someone could go up, simply so that we can manipulate the spreadsheet and turn to the right box. What I suggest is that if Daria would just like to

sit down beside you, Mr Abramovich, so that we can get up on screen the right part of the spreadsheet.

Looking at the tabs at the bottom of the sheet, you will see that the left-hand tab or one of the left-hand tabs is headed "2000 total, cash incl[uding], monthly". Can we please have that tab opened and could you please look at line 118 in that tab.

MRS JUSTICE GLOSTER: Hang on, I'm just a bit behind you.

We're looking in the left-hand tab or one of the left-hand tabs?

MR SUMPTION: It's the tab which is labelled at the bottom "2000 total, cash incl[uding], monthly", so if your Ladyship clicks on that.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: And then in the spreadsheet part that will then open up, turn to line 118.

MRS JUSTICE GLOSTER: Right, okay.

MR SUMPTION: And you will need to pull it over to the right so that we can see October, November and December.

MRS JUSTICE GLOSTER: Okay.

MR SUMPTION: Now, Mr Abramovich, if you look at line 118, you will see that there is a heading which says "ORT CASH", and you will see that under "ORT CASH" there is a figure of \$1.6 million in October and another figure of \$2 million in December. Do you see those figures?

A. Yes, I do.

Q. Can you tell us what those figures of \$1.6 million in October and \$2 million in December represent?

A. This is the budget deficit of ORT that I've undertaken myself, starting from October, because Badri was considering that we've closed everything, it was just a bit of drafting, and that would be all. So he put these expenses over to me.

Q. Thank you.

Could you go back to the transcript of Day 21, please, and turn to page 108. Now, if you'd like to remind yourself of the question and answer in the bottom half of page 108 and then along to 109. Just to tell you what the context is, what is being suggested to you here is that in the course of the meeting -- this is about three-quarters of the way down page 109 -- at Le Bourget:

"... Mr Berezovsky... did not once say anything to indicate... that he would be willing to sign an agreement at that stage...?"

And you say that isn't true. Do you see that evidence?

A. Yes.

Q. And Mr Rabinowitz then says:

"Question: Where do you say Mr Berezovsky said

anything that he would be willing to sign an agreement at that time?"

And you say there are references and replicas made by Mr Berezovsky.

I want to ask you, leaving that part of the transcript open, to turn to bundle E7 in the Russian and the rest of us can follow this in bundle E6 in English. Could you please turn to box 394 E6/01/135. Perhaps you should go back a few boxes earlier to see the context. This is at a time when Mr Patarkatsishvili is on the phone to Mr Gorodilov and at 394 Mr Berezovsky says:

"I am willing to do... this..."

Then there's a short interjection by you and Mr Patarkatsishvili continues over the phone to Mr Gorodilov about an option.

Can you help us on what Mr Berezovsky was expressing himself as willing to do in box 394?

- A. That is to do with ORT shares.
- Q. And what was he willing to do about ORT shares?
- A. This is what Badri was explaining, only he wanted for some reason to use the option and it ended up using a different arrangement.
- Q. Could you turn on to box 408, please E6/01/140. Could you remind yourself of the context by reading to

yourself boxes 408 to 411. (Pause)

A. I have read it.

Q. What do you understand to be happening in this part of the conversation?

A. This is Mr Berezovsky and Mr Patarkatsishvili talking between themselves and Badri is saying: I am happy with everything. The whole arrangement that was discussed there and that he was discussing with Mr Gorodilov, he was completely happy with it.

Q. And what is Mr Berezovsky saying about that?

A. And Mr Berezovsky is saying, if we're looking at 411, box 411, he says, "Yes".

Q. Now, could you turn to box 431, please E1/06/149.

Just to get the context of this, if we go back to 428. Perhaps you would read to yourself from box 428 to box 431, please. (Pause)

A. I've read it.

Q. What do you understand is happening here?

A. I'm trying to convince Badri not to get involved, not to link two payments together, and he was trying to convince me so that the money for legalisation for previous deals to be included in the ORT payment, ORT payment.

Q. In box 430 you say:

"(So then) we shall finalise this deal, so that

I could report on it without further ado..."

What was the deal that you were talking about finalising in that box?

A. This is the ORT deal.

Q. And what was Mr Berezovsky doing during this exchange?

A. He was sitting at the table with us, if I recall correctly.

Q. Did he give any indication of his own attitude?

A. He certainly didn't display any negative attitude. He was very much for it. The only thing, he was asking a few questions about the arrangement and that's all.

Q. When you say "the arrangement", which arrangement are referring to?

A. How shall this money that shall be paid? How would that money get into his account? He was only worried about that particular moment, that particular point.

Q. Could you please turn from there to box 449 E6/01/154. Mr Rabinowitz took you to box 449.

My Lady, for your Ladyship's reference, this is at --

MRS JUSTICE GLOSTER: T41/104.

MR SUMPTION: This part of it I think is at Day 21, 108-109.

That's the reference I've got, but I'll check that.

MRS JUSTICE GLOSTER: Oh, right. I've got Day 41. Day 21, it must be. Day 21.

MR SUMPTION: I've got a reference to 108-9, but we'll check that that's correct.

MRS JUSTICE GLOSTER: Oh, right. I've got 104. 108-109, thank you.

MR SUMPTION: Mr Abramovich, you were taken by Mr Rabinowitz to box 449, where you refer to signing so that you can take something to Mr Putin and you gave evidence that you didn't have actually a document with you to sign.

I'd like you to turn back to box 448, which is the box immediately before that, where Mr Patarkatsishvili says:

"Right, it's settled then, no problems. No problems. De facto we don't lose anything, because we are compensating the amount we stand to lose now, so that later... And as for what we'd lost already -- well, it's gone."

Now, what was "settled then", as you understood it? When Mr Patarkatsishvili said, "Right, it's settled then, no problems", what was it that was settled?

- A. At that point in time we were talking about the arrangement. We have finalised everything. I had a clear understanding that we had nothing else to discuss.
- Q. Did Mr Berezovsky give any indication of his attitude to that?

A. No. He was sitting at the table and I had an impression that he was absolutely fine with it, absolutely agreed. So I left with a firm understanding that that was all; everything was closed.

Q. Now, I want to ask you about a different subject although about the same period of time. The transcript reference is Day 21, pages 128 and 129.

Now, what you're being asked about here is the time required to fly from Moscow to the south of France in early December and back again to Moscow. Now, you don't need to look at the details of your answers in order to answer my following questions.

If you are in Moscow and you decide to fly to the south of France, what arrangements, if any, have to be made before you go to the airport? You're going to fly by private jet, let us say, to the south of France: what are you going to do and how long does it take to --

MRS JUSTICE GLOSTER: Well, are we talking about him packing his bag or what are we talking about?

MR SUMPTION: No, I'm not.

In order to get a plane organised to take you to the south of France, what arrangements have to be made and how long do they take?

A. From the moment when I decided that I want to fly out until the moment until I am able to fly out, the very

minimum would be four hours and more likely it would be six hours.

Q. What is happening in that period of four to six hours?

What takes all that time?

A. If it's my own jet, I can tell you exactly: you have to call the crew, you have to fuel up, you have to get the permission, and most importantly you have to agree it with Eurocontrol. This is not a correct understanding: it's like a car, you put keys into the ignition, off you go. No, there are lots of arrangements. The Russian Federation has to let you out from its territory. Everything is quite complicated. It's a lengthy procedure.

Q. And when that's completed, how long does it take to get from your office in Moscow to the airport?

MRS JUSTICE GLOSTER: Just a second. You're putting the question on the assumption that he can only leave his office once all that's completed; I'm not sure that's right.

MR SUMPTION: Your Ladyship is quite right to pick me up on that.

Mr Abramovich, at what stage can you leave your office for the airport? How long after you've started putting these arrangements in train?

A. If you are not completely sure that everything is

prepared and if you have not received confirmation that everything is prepared, then you can spend two hours in the airport and not get anywhere. Basically, the way I do it, usually first I organise everything first and only then I leave the office or I leave my house. So that could add another one and a half to two hours.

Q. That one and a half to two hours, is that the time required to get to the airport or what are you doing in that one and a half to two hours?

A. From my house or from my office, to get to the airport, one has to spend in the journey. If it's not happening at daytime, if it's in the evening, it would be one hour 15 minutes, when there are no traffic jams; and it would be the whole of two hours if it's happening in daytime.

MRS JUSTICE GLOSTER: Can I ask you this way. Say you decide at 8 o'clock in the morning you want to fly from Moscow to Nice: when would be the earliest time that you could actually take off, if your decision is made and communicated to your aircraft at 8 o'clock in the morning? Just roughly.

A. If it were at the same time and the jet was not prepared, the very minimum would be six hours.

MR SUMPTION: Now, if you fly to Nice --

MRS JUSTICE GLOSTER: Sorry, I've just got one more question.

Aren't aircraft kept fuelled up all the time?

I mean, if you've got a private aircraft or a private charter aircraft, aren't they kept fuelled up, just so they are ready if the client rings up?

- A. The technology there is quite complicated. It's to do with safety. Fuel does expand and contract depending on the temperature. So there are some rules and regulations that allow to keep some amount of fuel, but they have to refuel prior to take-off and depending on the length of flight they take a certain amount of fuel on board. The plane cannot land with fuel on board, so they have to burn it off before they actually land. They only have to have the emergency supply on board.

MR SUMPTION: If you're flying to Nice and you intend to go to the Chateau de la Garoupe, how long does it take to get from the airport to the Chateau de la Garoupe, measuring it from the time that the aircraft lands to the time of your arrival at the Chateau de la Garoupe?

- A. It seems to me that at best it would take about 45 minutes, if -- to go through all the formalities.
- Q. And what means of transport do you use to get from the airport to the Chateau de la Garoupe: do you take a car or a helicopter or what?
- A. I don't remember that I've ever flew by helicopter to Chateau de la Garoupe. This is not my estate and to be

able to get a licence to land there, I think you have to register, et cetera, so it's quite a complicated thing. If I fly into my own estate, I have a set-up, registered helipad; and for Chateau de la Garoupe I didn't have such a thing, although in theory a helicopter could have landed there.

So most likely, if to assume that I did go there indeed, especially at the last minute, at the drop of a hat, I probably would have taken the car. And also if we are discussing autumn of year 2000, at that time of year using the helicopter is quite a risky thing; one can hit bad weather and one wouldn't have either a car or a helicopter.

Q. Now, one final question on this point. How long does it take to get from the airport at Moscow, after landing, to Mr Voloshin's house?

A. It really depends what time of day you're travelling. If there are traffic jams, then you could spend the whole of three hours; and if it's happening at nighttime, then it might take an hour, an hour and ten minutes.

Q. Thank you.

Now, could you turn in the transcript of Day 22, please, to page 74. Now, if you just look at the transcript for page 74, Mr Rabinowitz is summarising his

case about the alleged Cap d'Antibes meeting so as to give you a final chance to comment on it. You'll see that about a quarter of the way down page 74.

The first point that Mr Rabinowitz makes is this. Reading from the English text, he says:

"First, we say that you originally admitted this meeting, before seeking to change your case. Do you dispute that?"

And your answer is:

"Answer: No, I do not dispute that. I'm saying that there was a meeting in France, yes."

Do you see that answer in the transcript?

A. Yes.

Q. Now, what meeting in France are you referring to in that answer?

A. That was 6 November.

Q. And what is it that you do not dispute when you gave that answer?

A. I did not dispute that the meeting happened. I'm saying that the meeting happened on 6 November.

Q. Now, could you turn on, please, to page 85, same transcript. Mr Rabinowitz is asking you on page 85 about Mr Putin's role in the ORT transaction. Towards the top, the first question on page 85, Mr Rabinowitz asks you:

"Question: Did President Putin think that you were associated with Mr Berezovsky?"

And your answer is:

"Answer: From what I know, yes, he did.

"Question: Why did President Putin think that you were associated with Mr Berezovsky?"

And you say:

"Answer: Everybody knew that. Everybody knew that I was linked to him. It was an absolutely obvious thing."

What was the nature of the association between you and Mr Berezovsky that everybody knew about?

A. Everyone knew that I financed him, everyone knows that he was my krysha.

Q. Could you turn on to page 104 in the same transcript. About three-quarters of the way down page 104, just before a question from my Lady, you were being asked about changes that you had made to your pleading concerning the place where this meeting in the Alps happened and you're explaining why the pleading originally referred to St Moritz. Do you remember that?

A. Yes, I do.

Q. What you say just before my Lady's question is:

"And I also know that I've never been to St Moritz. So I decided perhaps it must have been St Moritz."

I think something may have gone wrong with the way your answer is transcribed there. Could you explain what you're saying in that particular passage?

- A. Yes, I can. I remembered a meeting. I didn't remember where the meeting happened. My logic was as follows: that was a place where I have never been before, before that meeting or after that meeting. I've only been there once, in the town, and I didn't go to visit the village. Therefore I was thinking: where could it be? I was really tormented trying to remember. And because I remember, I decided that I've never been to St Moritz, I thought: yes, it could have been St Moritz. I've never been to St Moritz before, after or ever.

And I was referring to the trip, there was -- Badri was there, and it would have been unlikely for Badri to be in some average resort, so I thought that most likely that would be St Moritz.

MRS JUSTICE GLOSTER: Had you been to Megeve before?

- A. I've never been in Megeve either before or after. I was only at the helipad. That's why I couldn't understand where the place was. I was speaking out my assumptions and I was really tormented about it.

MRS JUSTICE GLOSTER: You said, I think, Mr Patarkatsishvili wasn't a skier, so it was likely he would have gone to a resort where you could walk and shop as well as ski?

A. Yes.

MR SUMPTION: Could you turn to page 109, please, of the same transcript. You're being asked about the Megeve meeting and in particular about what Mr Berezovsky contributed to that meeting, and you say that Mr Berezovsky did not keep quiet. This is about two-thirds of the way down page 109. In English you say:

"But I can assure you Mr Berezovsky did not keep quiet; it's just that it was not relevant to these proceedings and to what we're discussing now."

Do you remember what Mr Berezovsky did talk about that wasn't relevant to these proceedings? Or do you just remember generally that he said things that weren't relevant?

A. I remember; I am simply not quite sure that we have to talk about it here. This is not what we're discussing now. It's a bit embarrassing for me to discuss our personal affairs.

Q. I see.

MRS JUSTICE GLOSTER: So you remember he was talking about either your or his personal affairs; is that right?

A. (Untranslated)

MR SUMPTION: I'm not going to ask you to be any more explicit about that. But you remember a particular

conversation?

A. Yes. I can tell about a part of that conversation. He arrived from Aspen, he was saying how good it is, that the skiing there is so much better than in Europe and for me to absolutely try Aspen, and that was the least harmful part of our conversation. And the rest it seems to be should not be discussed.

Q. Yes, I quite understand.

Now, could you please turn on finally to page 131 of Day 23. Now, what you're being asked about here by Mr Rabinowitz is why you haven't disclosed any memorandum to your team describing the terms agreed with Mr Patarkatsishvili about the payment of his commission. This is about the commission concerning aluminium and it's about your agreement in 2003 with Mr Patarkatsishvili about how his commission would be paid; that's the subject that's being discussed.

The question that Mr Rabinowitz is asking you is: why have you not disclosed any memoranda, any written memoranda to your team describing what had been agreed about that with Mr Patarkatsishvili?

And the question I want to ask you is this: what is your practice about sending written memoranda to your team?

A. At some point I was -- at some day I was talking about

that. It's very rare that I make notes and I communicate with my team, with people that I work with. I sleep...

THE INTERPRETER: Sorry, the interpreter apologises.

A. People that I eat with three times a day, it's very strange for me to enter into correspondence with them. We never correspond between ourselves; we talk.

MR SUMPTION: Thank you.

MRS JUSTICE GLOSTER: Mr Rabinowitz, you've got no further questions arising out of re-examination?

MR RABINOWITZ: No.

MRS JUSTICE GLOSTER: Mr Abramovich, thank you very much for coming along and giving your evidence. You may be released and talk about the case and talk about your evidence with anyone. Thank you very much.

(The witness withdrew)

MR GILLIS: My Lady will recall that we're now interposing the last of Mr Berezovsky's witnesses, Mr Pompadur.

MRS JUSTICE GLOSTER: Yes. Do you want to call him in the quarter of an hour we've got before lunch or would you rather start again at 1.50?

MR GILLIS: If it would be convenient to start, I'd start, because I think Mr Pompadur is under some time pressure to get away.

MRS JUSTICE GLOSTER: Right. Well, let's start with him.

MR GILLIS: Could Mr Pompadur please be called.

My Lady, Mr Pompadur is giving his evidence in English. He's an American.

MRS JUSTICE GLOSTER: Right. (Pause)

MR GILLIS: My Lady, I do apologise, I thought that he was at the back of the court.

MRS JUSTICE GLOSTER: Don't worry. Is he in the room?

MR GILLIS: Yes, he is. I'm sure he's just coming through.  
(Pause)

MRS JUSTICE GLOSTER: Can there be silence in court and no movement while the witness is being sworn.

MR IRVING POMPADUR (sworn)

Examination-in-chief by MR GILLIS

MRS JUSTICE GLOSTER: Please sit down, Mr Pompadur, if you would like to.

THE WITNESS: Thank you, my Lady.

MR GILLIS: Mr Pompadur, could you please just confirm that you don't have a telephone or electronic device with you?

A. Correct.

Q. Thank you very much indeed.

Could Mr Pompadur please be given bundle D3, open at tab 19.

At page 103 we have the first page of your statement D3/19/103 and then could I ask you to turn to page 109

in that bundle D3/19/109. We have the paginated numbers in the bottom right-hand side.

Is that your signature?

A. Yes, it is.

Q. And could you please confirm that this is your first and your only witness statement in these proceedings?

A. That's correct.

Q. And could I please ask you to look at paragraph 20 in your witness statement D3/19/108.

A. Yes.

Q. You there indicate that at the time of making this statement you've not been able to locate any diaries to see if you can pinpoint the dates of the meeting in June 2001 and their location.

A. Correct.

Q. Could I ask you this: have you subsequently been able to locate any diaries?

A. No.

Q. And could I ask you to confirm that the contents of this, your statement, are true to the best of your knowledge and belief?

A. They are true to the best of my knowledge and belief, yes.

MR GILLIS: Thank you. If you could just wait there,

I think Mr Sumption has some questions for you.

## Cross-examination by MR SUMPTION

MR SUMPTION: Good morning, Mr Pompadur.

You describe yourself as a longstanding personal and professional friend of both Mr Berezovsky and Mr Patarkatsishvili; that's right, isn't it?

A. Correct.

Q. Roughly how often have you met Mr Berezovsky since his departure from Russia in 2000?

A. 40 times.

Q. Right. And have those meetings continued right up to recent times?

A. Yes.

Q. What about Mr Patarkatsishvili: roughly how often have you met him between 2000 and his death in early 2008?

A. I'd say a little bit less, maybe 30 times.

Q. Right. And did those meetings continue right up to shortly before his death?

A. I'm sorry, a little louder?

Q. Did those meetings with Mr Patarkatsishvili continue until right up to shortly before his death?

A. Yes.

Q. Now, your professional dealings with Mr Patarkatsishvili and Mr Berezovsky, as I understand it, were not in any way concerned with oil?

A. Any way concerned with...?

Q. Oil.

A. No.

Q. Or Sibneft?

A. No, correct.

Q. So, so far as those matters arose in conversation, they arose incidentally to the main business?

A. Correct.

Q. Now, when you met Mr Berezovsky or Mr Patarkatsishvili, was it usually for business reasons or did you also meet them on purely social occasions?

A. Both.

Q. Both. Now, when you met them for business reasons, as I understand it, that was generally about your media joint venture in Russia?

A. Correct.

Q. Now --

A. Let me -- I'm sorry, let me... it also had to do with media in Latvia and in Georgia as well.

Q. Understood.

Now, have you discussed with Mr Berezovsky since 2000 his allegation that he was forced by Mr Abramovich to sell out of ORT and Sibneft? Is this a subject that has come up in conversation since 2000?

A. Yes.

Q. Regularly or just very occasionally?

A. I'm not quite sure how you define "occasionally" and "regularly".

Q. Well, give us the answer in your own words.

A. It has come up quite often.

Q. Right.

Now, Mr Voronoff also works for News International, or did. Are you also a friend of Mr Voronoff?

A. Yes.

Q. And have you discussed Mr Berezovsky's complaints about the conduct of Mr Abramovich in relation to ORT and Sibneft with Mr Voronoff?

A. Yes.

Q. Again, over what period and with what degree of frequency, roughly?

A. More frequently and quite often.

Q. Right.

Now, when you have been told so often and have discussed so often Mr Abramovich's alleged role in the sale of ORT and Sibneft, would you agree that it must be rather difficult for you to remember when some particular part of the story was first told to you?

A. Correct.

Q. Now, you've confirmed that you have not been able to find your diary since writing your witness statement. Can you tell us, looking at paragraph 19 of your witness

statement, what it is that enables you to say that it was in June 2001 that you spent that week that you refer to with Mr Berezovsky and Mr Patarkatsishvili?

- A. It was unusual for me to spend that amount of time anywhere and I remember it was an extended period of time and we discussed a number of matters having to do with media and how -- what the effect would be of Mr Berezovsky and Badri leaving Russia on our joint venture.
- Q. Well, I understand that it was unusual for you to spend as long as a week in one place, but what is it that leads you to think that that unusual event occurred in June 2001 rather than at some other point in time?
- A. Because it was tied into my birthday, which is June 25, and I remember I had some difficulty in timing-wise, and that's why it stuck in my memory.
- Q. I mean, I take it that you have a birthday once a year?
- A. At least once a year.
- Q. Now, was Mr Voronoff present through the extended week that you're referring to at paragraph 19?
- A. Yes.
- Q. Now, Mr Voronoff's own evidence is that he has diary records of having spoken to Mr Patarkatsishvili on the phone on several occasions between 6 and 22 June and that he met Mr Patarkatsishvili in person on 30 June.

Are you aware of that evidence that he's given?

A. No, I'm not.

Q. Right. Now, Mr Voronoff does not seem to have any diary record, so far as his evidence suggests, of spending time with Mr Berezovsky at that particular stage in June. But you are sure that whenever this extended week happened, it was on an occasion when Mr Voronoff was present?

A. That's my best recollection.

MR SUMPTION: Thank you very much, Mr Pompadur. I have no other questions to ask you.

MR MALEK: I have no questions.

MRS JUSTICE GLOSTER: Any other questions?

Yes, Mr Gillis.

MR GILLIS: My Lady, I have no re-examination.

MRS JUSTICE GLOSTER: Well, thank you very much indeed, Mr Pompadur, for coming to give your evidence. You may be released.

(The witness withdrew)

MR SUMPTION: My Lady, I'm not going to suggest that we should call Mr Gorodilov at 12.55.

MRS JUSTICE GLOSTER: Well then, I'll sit again at 2 o'clock.

(12.55 pm)

(The short adjournment)

(2.03 pm)

MR SUMPTION: My Lady, I call Mr Gorodilov.

MRS JUSTICE GLOSTER: Yes, very well. Is he giving evidence in English or in Russian?

MR SUMPTION: In Russian.

MR ANDREY GORODILOV (affirmed)

(All answers interpreted unless otherwise indicated)

MRS JUSTICE GLOSTER: Thank you very much. Please sit down if you would like to.

Examination-in-chief by MR SUMPTION

MR SUMPTION: My Lady, could I pass up a list of corrections which I propose to ask the witness to prove. (Handed)

Good afternoon, Mr Gorodilov, I wonder if you could take bundle E2 and turn to flag 4 E2/04/1. You have made three witness statements in this action and this, I think, is the first of them. Can you confirm that?

A. Yes.

Q. And you'll find your signature on page 81 in the Russian text at the end of the flag E2/04/81; is that correct?

A. Yes, this is my signature.

Q. Now, there are, I think, a couple of corrections that you wish to make to this. Have you got a copy with you of the corrections? If not, perhaps a copy could be supplied.

You are being handed a Russian text which the rest

of us have in English. (Handed).

A. Yes, these are the amendments I'd like to make.

Q. Right. Now, I think the first relates to paragraph 22, which is about the precise chronology of the first of the auctions for the 49 per cent, and the second is a very minor correction to paragraph 29, changing the number 49 to 40.

A. Yes, that is correct.

Q. Subject to those two corrections, is your first witness statement true?

A. Yes, it's true.

Q. I'm sorry, I referred to paragraph 22; there's also a correction to paragraph 23, but I think your answer covers both.

A. Indeed, that's true.

Q. Now, your second statement will be found in bundle E4 at flag 5 and perhaps you could be shown that E4/05/52. Is this your second witness statement?

A. Yes, that's so.

Q. And is it your signature that we see on page 86 E4/05/86?

A. Yes, it's my signature.

Q. And is that statement true?

A. Yes, they are.

Q. Finally, Mr Gorodilov, at bundle E8, flag 2 E8/02/14,

is this your third witness statement?

A. Yes, this is my third witness statement.

Q. And on page 24 E8/02/24, is that your signature?

A. Yes, it's my signature.

Q. And is that statement also true?

A. Yes, it is true.

MR SUMPTION: Thank you very much. If you just wait there for questions to be asked in cross-examination.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Gorodilov, and let me apologise in advance if I mispronounce your name.

I shall try my best to get it right.

A. You're pronouncing it completely correctly.

Q. Thank you.

You explain in your witness statement that you first started to work for Mr Abramovich in Moscow in October 1995, when you were 24 years old; is that correct?

A. Yes, that's true.

Q. And prior to that you had been working as an engineer at Noyabrskneftegas, where your father, Viktor Gorodilov, was the general director; correct?

A. I was deputy chief engineer in one of the structural units of Noyabrskneftegas. The unit was actually overhauling drilling rigs. In fact it was a plant.

- Q. And from 1995, when you were 24, until the year 2001, you worked for Mr Abramovich in businesses he controlled; is that correct?
- A. Yes, it's correct.
- Q. So from October 1995 until October 1996 you worked for Mr Abramovich in a general role relating to the acquisition of Sibneft; that is correct, isn't it?
- A. What are the dates? Could you repeat them again, please?
- Q. October 1995 to October 1996.
- A. Yes, it's correct.
- Q. And in October 1996 you were appointed as the head of Sibneft's investment and credit department; is that correct?
- A. Yes, it's correct.
- Q. And then from March 1997 until May 1998 you were the director of Sibneft's Moscow office?
- A. That's true.
- Q. And then from May to July 1998 you were Sibneft vice president and head of Sibneft finance projects department; correct?
- A. Yes, it's correct.
- Q. And then from July 1998 to March 2001 you were the first vice president of Sibneft?
- A. That's also true.

- Q. And then in March 2001 your career took a change when you went into politics; that's right, isn't it?
- A. Yes, I became a public official.
- Q. You became first deputy governor of Chukotka from March 2001 to October 2008?
- A. Yes, it's true.
- Q. And at the time Mr Abramovich was the governor of Chukotka?
- A. Yes, it's true.
- Q. And then from October 2008 onwards you've been a member of the Chukotka Duma?
- A. Yes, I was.
- Q. And during this period Mr Abramovich has also been a member of the Chukotka Duma; is that correct?
- A. Yes.
- Q. And so is this correct: since you were 24 years old, you have never held a job which wasn't either working for or with Mr Abramovich?
- A. As of which date?
- Q. Since you were 24 years old.
- A. From October '95, yes.
- Q. And you are now part of Mr Abramovich's team, a small group of people whom Mr Abramovich absolutely trusts and relies upon; is that correct?
- A. Yes, it's correct.

- Q. And you're also a very close friend of Mr Abramovich; is that right?
- A. Yes, it's true.
- Q. And you are also Mr Abramovich's partner and a co-investor in various businesses with him; is that right?
- A. Yes, it's true.
- Q. And can you, if you can do this briefly, tell the court in relation to what businesses you're a partner of Mr Abramovich?
- A. Highland Gold: it's a gold mining company. I have a small holding also in a company called Evraz or Euraz. Currently I think that's it.
- Q. And since you have started working for or with Mr Abramovich, you have become very wealthy indeed? I don't want to get into a debate as to how wealthy "very wealthy" is, but would you agree that in general terms you have become very wealthy?
- A. I became a wealthy man, let's put it that way.
- Q. Would it be fair to say, Mr Gorodilov, that you must feel a very great deal of loyalty towards Mr Abramovich?
- A. What do you mean by "loyalty"?
- Q. Well, I don't know how else to put it. You feel very close to -- you would like to ensure that his interests do well?

A. I would wish his interests and his businesses to flourish but you can't say that I'd do anything and everything for that.

MRS JUSTICE GLOSTER: But loyalty is a concept you understand; yes?

A. Yes.

MRS JUSTICE GLOSTER: So do you feel loyal to Mr Abramovich?

A. To some extent, yes.

MR RABINOWITZ: You see, I have to suggest, Mr Gorodilov, you cannot really be regarded as an independent witness of the matters about which you are testifying, can you?

A. I think that I tell the truth, I am telling the truth. I was one of the participants of the events on which I'm giving my evidence.

Q. Very well. What I would like to ask you about in particular is the evidence you give about the purchase of Mr Berezovsky and Mr Patarkatsishvili's shares in ORT.

It's your evidence that Mr Abramovich informed you that he would be buying Mr Berezovsky's and Mr Patarkatsishvili's shares in ORT in either late October or early December (sic); that's right, isn't it?

A. Yes, that's true.

Q. And you also say that Mr Abramovich did not inform you as to why he had decided to buy the ORT shares --

MR SUMPTION: Did my learned friend mean to say late October/early November? Because that I think is what was actually in the... Perhaps the question should be reasked if my learned friend did get it wrong.

MR RABINOWITZ: I did get it wrong.

It's your evidence that Mr Abramovich informed you that he would be buying Mr Berezovsky and Mr Patarkatsishvili's shares in ORT in either late October or early November; that's right, isn't it?

A. He told me that he'd agreed to buy end of October or early November.

Q. And you also say that Mr Abramovich did not inform you as to why he had decided to buy the ORT shares? That's at paragraph 47 of your witness statement E2/04/18.

A. He did not inform me.

Q. Can I ask you, please, to go to paragraph 50 of your first witness statement: bundle E2, tab 4, page 19 in the English E2/04/19 and page 60 in the Russian E2/04/60.

A. Page 60, is it, in the Russian text?

Q. I believe so. I'll just check that.

A. Okay, I've got it.

Q. Can I ask you to read paragraph 50 to yourself, please.

(Pause)

A. I've read it.

Q. Thank you.

You say there that you flew to Nice with Mr Abramovich on 6 November 2000, returning that evening, spending the day separately. Can we just be clear about what you say about this trip.

You don't claim in your witness statement to have attended a meeting with either Mr Berezovsky or Mr Patarkatsishvili, do you?

A. I left late at night together with Mr Abramovich, it was around midnight, so I think perhaps the 6th already started. Then I spent the whole day in Nice and in Cap d'Antibes and then we returned again late in the evening; it was already the 7th in Moscow. I was not present at the meeting with Badri and Mr Berezovsky.

Q. Right. Can you listen to the questions, please. We'll get on a lot quicker if you do.

And you also don't claim in your witness statement that Mr Abramovich told you that he was attending a meeting with Mr Berezovsky or Mr Patarkatsishvili?

A. No, no, I do state, I do state that he told me that he was at the meeting with Berezovsky.

Q. Where do you say in your witness statement he told you he was at a meeting with Mr Abramovich (sic) and Mr Berezovsky?

A. Where I'm saying in 50: as far as I know, they had

a meeting -- where, as far as I know, there was a meeting with Berezovsky and possibly Mr Patarkatsishvili. So it's paragraph 50 of my first witness statement.

Q. But you don't say there that you were told by Mr Abramovich; you say you believe there was a meeting.

A. Well, as far as I remember, I saw Roman, Mr Abramovich, leaving for the meeting.

Q. You don't actually remember why you went to France on this trip, do you? You say:

"I cannot now recall..."

A. I recalled -- remembered this trip quite by chance. As we were preparing for these proceedings and preparing our evidence, I remembered that I went to France off-season, in November. It was raining hard. We arrived late at night. I personally wasted a day, a whole day, and basically it was different from what one normally sees in the south of France. And at some point I looked into my passport and saw when it took place, and Roman also checked his passport, and then we realised that it was that year on 6 November.

Q. You say that you arrived -- just hang on one second, please.

MRS JUSTICE GLOSTER: Mr Gillis, I think you should turn your microphones off because it's very easy to pick up

what you're saying.

MR GILLIS: Thank you.

MR RABINOWITZ: You see, in the evidence you have given, you said that you left Moscow after midnight and you say that you arrived in the south of France at night.

A. Yes.

Q. How can it be that you left Moscow at night and you arrive in the south of France at night as well?

A. Well, there's a three-hour time difference and it takes three hours' flight or three and a half hours in the air. So if we took off half past midnight, then by about 1.00 am local time we were in Nice.

Q. Well, that's the morning, isn't it?

A. 1.00 am, morning.

Q. All right.

Now, although you suggest you might have been on hand "so that Mr Abramovich could discuss any details of the structuring of the [ORT] transaction", you don't suggest in your witness statement that Mr Abramovich did in fact ask you for details of the structure of ORT or that he contacted you at all while you were apart.

A. He did not contact me while I was in Nice. I was expecting it to happen, but it did not take place.

Q. You see, Mr Gorodilov, your evidence in this paragraph contains nothing more than a series of suppositions or

reconstructions based on the fact that you have passport stamps suggesting that you went to Nice on 6 November; that's right, isn't it?

A. I don't agree with you.

Q. Now, one of the suppositions, Mr Gorodilov, is that you might have been on hand "so that Mr Abramovich could discuss any details of the structuring of the [ORT] transaction". I just wonder if we can examine that for a moment.

You will obviously be aware of the meeting between Mr Abramovich and Mr Berezovsky and Mr Patarkatsishvili at Le Bourget on 6 December; that's a month later, isn't it? Well, it is.

A. Yes, I did -- I was, rather. I was aware.

Q. Mr Abramovich claims in his evidence that the meeting at Le Bourget was arranged specifically for the purpose of discussing possible structures for a sale of Mr Berezovsky and Mr Patarkatsishvili's interest in ORT to Mr Abramovich; that's right, isn't it? You're aware of that evidence?

A. Yes.

Q. And do you not also say that this was a meeting that had, as one of its main purposes, to discuss possible transaction structures for a sale of Mr Berezovsky and Mr Patarkatsishvili's interests in ORT to Mr Abramovich?

- A. Well, as far as I know, the essence of the meeting was to give answers to questions that were still unresolved. They had to be discussed to finally implement the deal.
- Q. Dealing with structures, that was one of the things that needed to be discussed; that's right, isn't it?
- A. The thing is that structures, the structures were changing in the course of this deal. There were certain structures that had been agreed, but once they were being implemented, problems arose or the other side expressed -- I mean Badri by "the other side" -- expressed wishes. So by that time it was a dragged-out process and the meeting was needed to sort of move the situation forward.
- Q. And your evidence is that you briefed Mr Abramovich in advance about possible scenarios or structures for this meeting; correct?
- A. Yes, I briefed him.
- Q. And you did not attend the meeting at Le Bourget; we know that.
- A. I did not attend it. I did not attend the meeting in Le Bourget.
- Q. And it's never been suggested that you flew to France for this meeting, did you?
- A. I did not fly to France for that meeting. I remained in Moscow.

- Q. And when Mr Abramovich needed input from you at the meeting about scenarios or structures, he telephoned you, didn't he?
- A. On 6 December that's exactly what happened, yes.
- Q. But in light of those facts as to how the matter of your giving assistance on structuring was dealt with at Le Bourget, your supposition or suggestion that you would have flown all the way to Nice with Mr Abramovich just so that you could be nearby just in case he wanted to discuss details of the ORT transaction structure seems somewhat questionable. Do you agree?
- A. I don't agree.
- Q. Now, can I ask you, please, then to look at paragraph 48 of your first witness statement: bundle E2, tab 4, page 18 in the English E2/04/18, page 59 in the Russian E2/04/59.
- A. Sorry, which paragraph?
- Q. 48. Can I ask you to read that to yourself, please.
- (Pause)
- A. I've read it.
- Q. You identify here the people who you say were involved in the structuring of the ORT transaction and on your side you say it was yourself, Ms Popenkova, Ms Panchenko and Mr Gorenichy, who was head of Sibneft's legal department; that's right, isn't it?

- A. Yes, that's right, and these people had different degrees of involvement; they were involved into this process to a different degree.
- Q. And on Mr Berezovsky and Mr Patarkatsishvili's side, you suggest that it was Mr Fomichev and Mr Ivlev, who was a lawyer who acted for Mr Patarkatsishvili and Mr Berezovsky, who were involved; is that right?
- A. Mainly, of course, Ruslan Fomichev was responsible for this deal. But Pavel Ivlev, because he was a tax consultant for Mr Berezovsky and Badri, then of course -- Badri or Ruslan, I can't remember who told me that -- the final structure should be passed by him and he should be in agreement.
- Q. Now, just so that I understand this, it's your case, isn't it, that the contractual documentation for the sale of ORT was drafted by your team, Mr Abramovich's team, including yourself, Mr Gorenichy, Ms Panchenko and Ms Popenkova? Is that correct?
- A. We were preparing draft documents, then I was showing these draft documents to Ruslan Fomichev, who agreed them. If he disagreed with something, he put in amendments, and after that we signed these documents.
- MRS JUSTICE GLOSTER: So you had the responsibility for producing the drafts?
- A. Yes, we performed the back-office function here.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Can you tell us who took primary responsibility within your team for producing those draft documents?

A. What do you mean by "primary"? I was responsible for the deal.

Q. Now, Mr Gorodilov, Mr Abramovich accepted in his evidence that members of his team had, on occasion, engaged in the practice of backdating documents. You were present when he gave that evidence. Do you remember that?

A. Yes, I remember.

Q. And I don't suppose you suggest that Mr Abramovich was wrong about that?

A. I don't know.

Q. You're suggesting you don't know at all about whether members of Mr Abramovich's team were involved in backdating documents; is that your evidence?

A. No, this is not my evidence. Indeed, perhaps we've had occasions when the date of an agreement is a particular date and physically the date was signed two/three/four days later. Yes, I remember such occasions. In particular, in my evidence I'm relating when ORT shares purchase and sale agreements were physically signed. They're dated 25 December: this is the date when we,

from our side, signed these contracts; but Mr Berezovsky and Badri physically, from their side, signed these documents on 29 December.

- Q. Mr Abramovich confirmed that he was aware of the fact that members of his team did backdate documents at the time and what I want to ask you, Mr Gorodilov, is whether you were also aware of that practice.
- A. No. I don't know anything about it being a practice.
- Q. Well, let me put that slightly differently: of this being done within your team at Sibneft.
- A. No. Well, perhaps on some occasions that I don't recall.
- Q. Can I ask you this: have you yourself ever backdated documents, Mr Gorodilov?
- A. Let's determine first: what does it mean to backdate documents? If you mean two or three or four days, do you mean that backdate -- that that constitutes backdating? I can't rule this out.
- Q. You can't tell us whether or not you yourself have personally backdated documents? Let me be more specific: backdated documents which are relevant to the issues in this case, in particular ORT.
- A. To ORT? The sales and purchase agreement was signed on 25 December by us; the other side signed it on 29 December. That's it. I can't remember anything

else.

Q. Let me be clear about that. You're suggesting that that is the only document you're aware of that was backdated in relation to the ORT transaction; is that right? Is that your evidence?

A. I can't remember any other documents where there were any questions about dates.

Q. Very well. Let's just look at some of the documents which you have primary responsibility for producing. Can we begin by going to bundle H(A)26, page 27 in the Russian H(A)26/27 and page 1 in the English H(A)26/1.

Now, this, as you I think will recognise, is the share purchase agreement which I think you and Mr Gorenichy produced for Akmos to acquire Mr Berezovsky's shares in ORT. Can you see that?

A. Yes, I can see that.

Q. And, as you can see, the agreement was dated 25 December but you explain that it was not actually signed by Mr Berezovsky and Mr Patarkatsishvili until 27 December; that's right, isn't it?

A. I said 29 December it was signed by the other side.

Q. Very well. That's fine.

Now, at this time ORT-KB owned 38 per cent of ORT, didn't it?

A. Yes, it is so.

Q. And it's your evidence that the price at which Mr Abramovich agreed to pay for 49 per cent of ORT, which would obviously include this 38 per cent, was \$150 million; that's right, isn't it?

A. Initially the price was 100, then it changed to 150; that's true.

Q. Thank you.

So, just doing the maths, if one was paying \$150 million for 49 per cent of ORT, then for the 38 per cent of ORT that was held through ORT-KB, that would have a value attributed to it of \$116 million; that's right, isn't it?

A. Yes.

Q. Under this agreement, your vehicle company -- Mr Abramovich's vehicle company Akmos Trade was acquiring Mr Berezovsky's near 50 per cent interest in ORT-KB. One sees that, if one needs to, from clause 2.1, but you're familiar with that, I think?

A. Yes.

Q. If I can just ask you to look at the next document in the bundle: that's page 38. Sorry, page 12 in English H(A)26/12, page 38 in Russian H(A)26/38. We have an identical agreement for Mr Patarkatsishvili acquiring his 50 per cent in ORT-KB?

A. Yes.

Q. So, taking these two agreements together, this is how you would be acquiring the 38 per cent interest in ORT held through ORT-KB; correct?

A. Yes.

Q. Okay. Now, the agreements are pretty much identical so we can deal with this just by looking at Mr Berezovsky's agreement, beginning at page 27 for the Russian H(A)26/27 and page 1 in the English H(A)26/1.

If you look at paragraph 2.2 --

A. Yes.

Q. -- it says there that the purchase price for the shares was US\$5 million?

A. Yes, that's true.

Q. And there's an identical provision obviously in Mr Patarkatsishvili's contract, isn't there: again, \$5 million for his shares?

A. Yes.

Q. So that the total price, according to these contracts, that was being paid for these shares was \$10 million; is that right?

A. Yes.

Q. That was obviously not anywhere approaching the true price that you were paying for these shares, was it?

A. These contracts reflect the agreement which was reached

on 6 December at Roman's meeting with Mr Berezovsky and Badri.

- Q. Just repeating my question: the price stated in these contracts was obviously not anywhere near approaching the true price that you were paying for these shares; that's right, isn't it?
- A. In order to answer this question I think I need to explain this history of this deal, from beginning to the end.
- Q. From beginning to end may take a long time but if you can give a short explanation, that would be helpful.
- A. I'll try and be quick.

Initially there was an agreement to pay \$100 million for 49 per cent of ORT shares. Later I met with Ruslan Fomichev, who, after a while, showed me how Badri and Boris had these shares registered officially: partly they were registered for Logovaz on nominal price, 1,100,000, and the others registered through ORT-KB.

Given the fact that we had to pay physical persons, together with Ruslan we agreed a mechanism, a structure that Logovaz shares are transferred on their nominal value and ORT-KB shares are transferred to physical persons and they are sold at 100 million. Given that, the structure was agreed and approved and after mid-November we started to implement it.

In mid-November, when, as far as I remember, Mr Berezovsky decided not to go back to Russia, on 14 November in particular, Badri and Ruslan said that they're happy with everything in this deal, but at the same time they would wish to receive the cash on their accounts in London, on a physical person's account in London. For this to have been done legally, we would have had to receive permission from the Central Bank of Russia in accordance with currency regulation of Russian, legislation on currency regulation.

Then we started to look at the possibility of Mr Berezovsky obtaining such a permission. We concluded that at that point in time it would be rather difficult to get that. I even asked Mr Abramovich to go and try and help us solve this problem.

After that, when Roman said that we won't be able to solve this problem this way, we, together with Ruslan, started to discuss alternative options; for example, to have -- to transmit, to transfer the shares offshore and then to pay through dividends, but for some reason Badri and Ruslan were against that. Then the arrangement with an option arose. Then we discussed a large number of other mechanisms that are disclosed in various documents. And finally, on 6 December, we agreed that the deal in Russia will amount to 10 million.

Badri said that they would be happy with this amount to be paid to them in Russia and the rest of the money, the rest of that amount, as finally we agreed that the payments would be increased by 100 million, so we would increase the usual payments according to the established practice by 100 million in December.

Q. These are then the documents you produced to buy the ORT-KB shares. Can I just then ask you to look at the other document that you produced in order to acquire Mr Berezovsky and Mr Patarkatsishvili's interests from Logovaz. You will find that if you go to H(A)26 at page 49 in the Russian H(A)26/49. In the English it's at B(B)2, page 91 B(B)2.04/91.

A. Yes, I have it.

Q. Unfortunately I don't. Give me one second. (Pause)

I do apologise. B(B)2, page 91. Now, as you see, Mr Gorodilov, this is the share purchase agreement which you and Mr Gorenichy produced for Betas to acquire the remaining 11 per cent of ORT that made up Mr Berezovsky and Mr Patarkatsishvili's 49 per cent from Logovaz.

A. Yes. 11 per cent, yes.

Q. And again, the agreement is dated 25 December. I think your evidence is that it was not actually signed by Mr Frolov on behalf of Logovaz until 28 December 2000. Is that right?

- A. Again, on the 25th our side signed it, although -- no, perhaps -- I think we resigned them. As I've already mentioned earlier, I'm explaining in detail the situation when the contract was physically signed, indeed on 28 December.
- Q. And if you look at the purchase price for these shares at clause 1.1.1, it suggests that you are paying just a nominal purchase price for these 11 per cent of Logovaz; that's correct, isn't it?
- A. Yes, that's true.
- Q. And again, that doesn't really reflect the value of the 11 per cent shares which were being acquired, does it, or indeed the purchase price?
- A. This reflects nominal value of those shares.
- Q. Now, what I want to do next, Mr Gorodilov, is to talk about the steps which you say were required for the sale of Mr Berezovsky's shareholding in ORT-KB to Mr Abramovich's company.
- Can we begin just by looking at paragraph 52 of your first witness statement: it's E2, tab 4, page 20 in the English E2/04/20 and 63 in the Russian E2/04/63.
- Can I ask you just to read paragraph 52 to yourself.
- A. I've read it.
- Q. You explain here that Mr Berezovsky and Mr Patarkatsishvili were not personal shareholders at

this time -- you're talking about October/early November -- and that the shares were held by seven separate legal entities; correct?

A. Yes, that's right.

Q. And at this time neither Mr Berezovsky nor Mr Patarkatsishvili had ever had a personal shareholding in ORT-KB, had they?

A. Personally, no. Perhaps they did it through companies. I don't know who owns these companies.

Q. They didn't have a personal share; that's right, isn't it?

A. There were no shares that were registered in their name.

Q. And in fact not all of the legal entities listed here were wholly owned by Mr Berezovsky and Mr Patarkatsishvili. One of the companies you see here was Consolidated Bank, and it's common ground that Mr Berezovsky and Mr Patarkatsishvili were not the sole shareholders of that company; that's right, isn't it?

A. Yes, that's right, I suppose.

Q. And what you explain is that in order for Mr Berezovsky and Mr Patarkatsishvili to sell their shares to Mr Abramovich, first they would have to acquire them from the companies and then Mr Abramovich's companies would have to acquire the shares from them; correct?

A. Yes, correct.

Q. Thank you.

Now, can you next look at paragraph 58 of your statement: it's at page 22 in the English E2/04/22 and 63 in the Russian E2/04/63.

Just so you have the context of this, you are talking about a notice which was addressed to SBS Bank, which was a minor shareholder in ORT-KB. Do you see that?

A. Yes.

Q. And can we just have a look at this notice: you'll find it at bundle H(A)23, page 60 in the Russian H(A)23/60 and page 61 in the English H(A)23/61.

A. I can see it.

Q. In paragraph 58 you explain why this notice was produced. You say:

"Under the law, this notice is sent if shareholders of a closed joint-stock company are selling their shares to a third party. If the shares are sold between shareholders (inside the company), no notice to other shareholders (and/or) the company itself is required."

So if Mr Berezovsky and Mr Patarkatsishvili were selling their shares in ORT-KB, which was a closed joint stock company, to Mr Abramovich or his vehicles, then a notice of this sort would be required to be sent and this notice had to be sent to SBS because it owned

a small shareholding in the company; is that right?

A. Yes, it's right.

Q. And I can tell you, Mr Gorodilov, that we don't dispute what you say there about the Russian law regarding closed joint stock companies.

And then, just looking further at paragraph 58, you explain towards the end of that paragraph that:

"Because of rules establishing a waiting period of no less than 30 days after notification, we understood that the notice had to be given in advance..."

And then you say that if you did that, you would "have everything ready to close the transaction when the waiting period ended". Okay?

A. Yes, okay.

Q. And your evidence then is that the notice to SBS had to be served because you could not make a transfer of the shares to Mr Abramovich until 30 days after it was served. Correct?

A. Yes, it's correct.

Q. And you say that those involved, including you, understood this requirement, which is why the notice was served.

A. The notice was prepared by ORT-KB, which at that time belonged to or rather was managed by Badri and Ruslan Fomichev. So our team did not make this notice, we did

not prepare the text; in fact Fomichev Ruslan is the author.

Q. Don't put the notice away, but can you just have a look at paragraphs 52 and 53 of your witness statement E2/04/20. You've looked at paragraph 52 before. Just look at 53 as well.

A. I've read it.

Q. You say there that you jointly decided with Mr Fomichev that the shares in ORT-KB should be transferred to the personal names of Mr Berezovsky and Mr Patarkatsishvili and it appears that you say that this happened after you give evidence of your trip to Nice.

So presumably you suggest that this decision which you say was made between you and Mr Fomichev was made after you came back from Nice on 7 November 2000?  
6 November.

A. Where am I saying that?

Q. Well, if you look at the way your witness statement is drawn up, you deal with the trip to Nice, including at paragraph 50, on 6 November; you then tell us at the end of paragraph 50 that you arrived back in Moscow on 7 November; and then you talk about the preparations for this.

Are you saying that it wasn't done when you returned back from Nice on 7 November?

- A. In my witness statement I am writing that the beginning of this deal was early October -- late October/early November and they belonged to -- they did not belong to physical persons; and then I'm saying that Ruslan and I agreed that they should be transferred to physical persons. So we agreed on that prior to 6 November.
- Q. Well, you say "[you] agreed on that prior to 6 November". This must be right: your evidence is that this decision was made after you were informed by Mr Abramovich that he was buying Mr Berezovsky's and Mr Patarkatsishvili's shares; that's right, isn't it?
- A. Can you repeat that, please, again?
- Q. Your evidence as to when this discussion that you say happened with Mr Fomichev occurred was after you had been told by Mr Abramovich that he was buying Mr Berezovsky and Mr Patarkatsishvili's shares? It's difficult to see --
- A. Yes. First Roman told me that he is buying the shares and then he asked me to contact Fomichev. I contacted Fomichev and we sketched the plan of action.
- Q. All right. That tells us that that discussion that you had with Mr Fomichev must have been in late October or early November because that is when you tell us that you were told by Mr Abramovich about this plan to buy the shares; is that right?

- A. Yes, that is right.
- Q. So, at the very earliest, the conversation you say you had with Fomichev in relation to arranging for this was in late October/early November; correct?
- A. Yes, after Roman told me about it.
- Q. And then you say -- this is at paragraph 53 of your statement E2/04/20 -- that you arranged those transfers and they were completed on 9 November. Do you see that in paragraph 53 of your statement?
- A. Yes, we agreed with Ruslan that shares should be re-registered and Ruslan did it and he sent us the documents confirming that this took place and we just looked at whether we were satisfied or not.
- Q. Mr Gorodilov, please listen to my questions. What I said to you was that you arranged those transfers and they were completed on 9 November, according to your evidence. Is that right? You see that at paragraph 53 of your statement.
- A. Together with Ruslan, I organised for the shares to be re-registered to physical persons on 9 November.
- Q. And I think you may already have said this, but you don't suggest that you drafted the agreements by which the shares were transferred, do you?
- A. No, we did not prepare these agreements.
- Q. Now, one of the share purchase agreements that was

produced you can find at bundle H(A)23 between pages 26 and 32 in the Russian H(A)23/26, pages 26T to 32T for the English version H(A)23/26T.

You see that this is the share purchase agreement prepared for the transfer between Consolidated Bank and Mr Berezovsky?

A. Yes, I can see that.

Q. And if you look at paragraph 3.1, you can see that the purchase price that was agreed is said to be 212,990 rubles?

A. Yes, I can see that.

Q. If you go to page 31, you can see that there is a deed of transfer prepared for these shares. Do you see that?

A. Yes.

Q. And also, on page 32, a transfer order. Do you see that?

A. Yes.

Q. And there are a number of these agreements which have been produced and they're all in broadly identical terms. I'm not going to take you through them all. For the transcript, those are at pages 19 to 53.

Each of these share purchase agreements is for the sale and transfer of shares in ORT from the company which owned them to either Mr Berezovsky or Mr Patarkatsishvili; you're aware of that?

A. Yes.

Q. And you've already explained, Mr Gorodilov, that before these transfers neither Mr Berezovsky nor Mr Patarkatsishvili was a personal shareholder in ORT-KB; that's right, isn't it? That was your evidence earlier.

A. Well, at that time when I saw the structure, as of 1 November Berezovsky personally did not own shares in ORT-KB.

Q. And it follows, I think --

THE INTERPRETER: Berezovsky or Badri personally did not, I'm so sorry.

MR RABINOWITZ: It follows, I think, that under the rules of joint stock companies, they could not buy the shares in ORT-KB until the companies which owned them had sent a notice to SBS notifying it of the planned stock sale and offering SBS the right of first refusal? That would follow from what you have already explained.

A. Yes.

MRS JUSTICE GLOSTER: There's an interference with the microphone, I don't know what it is.

SOUND OPERATOR: Mobile phone.

MRS JUSTICE GLOSTER: Somebody has a mobile phone on. Please could you turn it off.

SOUND OPERATOR: It's a mobile phone that's close to

a microphone.

MRS JUSTICE GLOSTER: Thank you. Whoever's got the mobile phone on, it's probably on vibrate or something that is causing it to be difficult.

Have you got a mobile phone on you, Mr Gorodilov?

THE WITNESS: No, I haven't.

MR RABINOWITZ: Neither have I.

Now, Mr Gorodilov, your evidence is that the sale of these shares to -- sorry, let me just go back a step.

In light of what you have told us about the rules on joint stock companies, there would have to have been a notice sent to SBS about the planned stock sale offering SBS the right of first refusal; that's right, isn't it?

A. Yes, that is right.

Q. And, as you've explained, there would have to be a 30-day waiting period after that notice before the transfer could be completed; that's right, isn't it?

A. Yes, yes, yes.

Q. Mr Gorodilov, your evidence is that the sale of these shares to Mr Berezovsky and Mr Patarkatsishvili was completed on 9 November 2000; is that right?

A. Yes.

Q. But if, as you say, you had jointly decided with Mr Fomichev only in late October or early November that

these shares should be transferred to Mr Berezovsky and Mr Patarkatsishvili, then a notice to SBS could not have been served even before that date, could it?

A. But all these deals were being made within the joint stock company of a close type; that's number one. And secondly, Ruslan Fomichev was dealing with these matters. We received share sales and purchase agreements and notices that shares have been registered in the name of physical persons.

Q. Could you just answer my question, please.

My question to you was that: if, as you say, you had jointly decided with Mr Fomichev only in late October or early November that these shares should be transferred to Mr Berezovsky and Mr Patarkatsishvili, then a notice to SBS could not have been served before that date, could it?

A. Once again I shall repeat: the procedure was implemented by Ruslan Fomichev. We didn't really know or care how it was all undertaken from the legal point of view.

MRS JUSTICE GLOSTER: Do you agree that the document or the notice couldn't have been served before late October or early November, which is the question which was put to you?

A. The notice could not have been sent or served but I think it was possible to find a legal construct that

would solve their problem.

MRS JUSTICE GLOSTER: What do you mean by "a legal construct"?

A. I mean, I can't answer this question now. We have to look at the charter in detail; we have to look at the law in detail; we have to look at who were the shareholders in these companies and whether this operation could have been undertaken without violating this provision of the law.

MR RABINOWITZ: Mr Gorodilov, on your own evidence there could not have been a sale without a 30-day notice having been given and on your own evidence there could not have been a 30-day notice given until late October or early November; that's right, is it not?

A. Yes, that's right.

Q. And if that is right, then the 30-day waiting period -- assuming late October was the date when you say you and Mr Fomichev agreed these matters, the earliest that there could have been a transfer completed was at the end of November; that's right, is it not?

A. Once again I will repeat: transfer of shares was something Ruslan Fomichev was dealing with. ORT-KB did not belong to us, therefore all those seven companies that -- where the shares were registered didn't belong to us either. It appears to me that a legal way could

have been found to re-register the shares without violating this provision of the law, but I cannot comment on that now because I do not have the necessary documents.

Q. You see, the reason I'm asking you about this is because you do purport to give evidence about these transfers. But what I suggest to you is that for these transfers from the companies to Mr Patarkatsishvili and Mr Berezovsky to be completed on 9 November, this would mean that the notice to SBS needed to have been served at the latest on 10 October 2000, and that is a very substantial period before you say you and Mr Fomichev even discussed these matters.

A. Can you repeat the question once again, please?

Q. For the transfer from these companies to Mr Patarkatsishvili and Mr Berezovsky to be completed on 9 November, this would mean that the notice to SBS needed to be served at the latest on 10 October, 30 days before the transfer, and that is a good two weeks before you say you were even told by Mr Abramovich that he wanted to acquire these shares and that you say you agreed with Mr Fomichev that something should be done about it.

A. Possibly they used another way to solve this problem, I don't know.

Q. Can I ask you next, please --

A. Perhaps they obtained agreement from SBS. Apart from a notice and a 30-day waiting time, one could just go to SBS and ask them that they don't mind and get some kind of written --

Q. You have no -- sorry.

A. -- notice from them that they relinquish their rights or something like that.

MRS JUSTICE GLOSTER: Some sort of waiver, you mean?

THE INTERPRETER: Waiver.

A. Yes.

MR RABINOWITZ: Now, you have no knowledge about that at all and that is certainly not the way you try and describe it by reference to the documents in your witness statement.

Can I ask you next, please, to go to paragraph 56 of your witness statement: it's at page 22 in the English E2/04/22 and 63 in the Russian E2/04/63. Can I ask you to read paragraph 56 to yourself.

A. Which paragraph should I read?

Q. 56. It's very short.

A. I've read it.

Q. So you are talking there about an agreement on 12 November 2000 by which Mr Patarkatsishvili transferred 4,773.75 ORT-KB shares to Mr Berezovsky; do

you see that?

A. Yes, I can see that.

Q. Can I ask you, please, to go to bundle H(A)23 and look at page 79 in the Russian H(A)23/79. It's at page 89 in the English H(A)23/89. This is the share sale and purchase agreement that you're referring to, I think dated 12 November; is that correct?

A. Yes, it's correct.

Q. Do you know who drafted this agreement?

A. I am not sure; maybe Ruslan or perhaps ourselves.

Q. So you don't really know at all who drafted this agreement; is that fair?

A. Indeed, I don't know which one of them prepared this agreement.

Q. Can I ask you, please, now to go to bundle H(A)23 and turn to page 63 H(A)23/63 and look at pages 63 to 66.

Your Ladyship will find that that is a Russian-language document. We have prepared an English translation of the document which we'll hand up.

MRS JUSTICE GLOSTER: Can the translation be put on Magnum.

Otherwise I've got so many bits of paper.

MR RABINOWITZ: It will be, but just so your Ladyship has it. (Handed)

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: My Lady, I think this is already in the bundle

at H(A)23/66.001T.

MR RABINOWITZ: This may be a draft of that. Just bear with us for this one.

Now, Mr Gorodilov, if you can just look at the document.

A. I've looked at it.

Q. This is a draft of the document that we had just been looking at, at H(A)23, page 79 H(A)23/79, is it not?

A. Yes, that's right.

Q. And at the bottom left-hand corner of the document. Do you see that it has a disclosure reference which ends in the numbers 0031? That is a reference to the system on which disclosure has been made. Do you see that?

A. Yes, I can see that.

Q. Now, on the version that I've just given you from Ringtail, you will see that -- can I just hand you another document which has come off Ringtail which is a draft of that. (Handed)

Perhaps you can confirm that this is a draft of the document that we're looking at?

A. Excuse me, what is it that I need to confirm: that this is a draft of a document which is where?

Q. Which is the document that you were looking at at page 63 to 66 of H(A)23 H(A)23/63.

MRS JUSTICE GLOSTER: Can I have a copy of it, please?

(Handed)

A. Yes.

MR RABINOWITZ: The draft that I've given you on Ringtail is the same --

MRS JUSTICE GLOSTER: This is the Russian I'm meant to be looking at?

MR RABINOWITZ: Your Ladyship needs to have the Russian as well.

Mr Gorodilov, on the document that I've handed you in Russian, at the last page of the document is a report which shows the metadata of the document, the draft that I've handed up to you. Do you have that?

A. Yes, I can see that.

Q. And this shows that the author of the document that you were looking at, or the draft, is someone called Alexander Berezin. Do you see that towards the bottom of the page?

A. Yes, I can see that.

Q. Do you know who Mr Berezin is?

A. No.

Q. If you look higher up on that document, do you see there's a reference to "Company Media Most"?

A. Yes, I can see that.

Q. That's Mr Gusinsky's company, isn't it?

A. Well, it's difficult to understand. It says Media Most;

I suppose it can be interpreted as Mr Gusinsky's company. Maybe it's some other company.

Q. Mr Berezin was the lawyer for Mr Gusinsky and for Media Most; are you aware of that?

A. No, I'm not.

Q. Right. Well, take it from me that he is.

And at this time Mr Gusinsky and Media Most were engaged with their own public battle with President Putin about whether or not they would be forced to sell the television station NTV; you're aware of that, I think?

A. Well, possibly.

Q. Mr Gusinsky and Media Most were not in any way involved in the purchase of ORT by Mr Abramovich, were they?

A. Can you repeat the question again, please?

Q. Mr Gusinsky and Media Most were not in any way involved in the purchase of ORT by Mr Abramovich, were they?

A. I know nothing about it.

Q. And therefore you can't really help us about who did create the document that we were looking at, the 12 November document at pages 63 to 66?

A. Obviously we have to ask Mr Ruslan Fomichev this question.

Q. Well, I'm not sure that asking Mr Fomichev this question will help, not least because he's not here, and because

according to the Ringtail report it was produced by Mr Berezin.

Now, can we then go back to the document we were looking at, at bundle H(A)23, page 60 in Russian H(A)23/60 and page 61 for the English speakers H(A)23/61. It's the notice to ORT-KB.

A. Yes, I have it. I can see it.

Q. And you see that this notice says -- it's a document which says -- sorry, this is the document containing what is said to have been a "Notification of Shareholder of... ORT-KB on Planned Stock Sale"?

A. Yes, that's so.

Q. And on the face of the document you see that it's dated 10 November 2000; correct?

A. Yes, it's correct.

Q. And if one were to believe what was written on this document, one might be led to believe that Mr Berezovsky and Mr Patarkatsishvili were making preparations to sell their shares in ORT-KB to Akmos Trade in November 2000, because this would be thought to be some evidence of that; that's right, isn't it?

A. Why would you have to assume anything if I knew it? Why would...

Q. You see, Mr Gorodilov, you in your witness statement have worked back from documents in order to construct

what you say was the way this transaction proceeded, and one of the documents you've worked back from is this notice. And that's why I suggested to you that if you looked at this notice, you would be led to believe that Mr Berezovsky and Mr Patarkatsishvili were making preparations to sell their shares in ORT-KB to Akmos Trade in November 2000.

A. Why would I be led to believe anything if I know it? And the notice is dated the 10th, whereas the shares were transferred or re-registered to physical persons on the 9th. It's obvious that on the 9th they were re-registered on to physical persons and on the 11th the notice was prepared.

Q. You see, I suggest to you, Mr Gorodilov, nothing is obvious about this documentation.

Can I ask you, please, to look at paragraph 58 of your witness statement E2/04/22.

MRS JUSTICE GLOSTER: Choose your moment, won't you,

Mr Rabinowitz, for the break.

MR RABINOWITZ: Now may be a good moment.

MRS JUSTICE GLOSTER: Very well.

You're not to talk about the case or your evidence to anyone; you understand that, I'm sure.

Very well. Ten minutes.

(3.22 pm)

(A short break)

(3.38 pm)

MR RABINOWITZ: Mr Gorodilov, before we broke I'd asked you to look at paragraph 58 of your witness statement E2/04/22 and it's clear from what you say in paragraph 58 of your witness statement, particularly the first and last sentences, that you are saying that this document was produced by someone in ORT-KB. Correct?

A. Yes.

Q. Right. And then just looking again at the document at H(A)23, page 60 in the Russian H(A)23/60, 61 in the English H(A)23/61, do you see that it says:

"CJSC ORT-KB has received notices from two shareholders of... ORT-KB that own 23,726.25... common registered shares... each."

Do you see that? It's referring to shareholders and it's received notices from shareholders; that's right, isn't it?

A. Yes.

Q. And it says that these shareholders both own just over 23,726 shares each?

A. Yes, that's right.

Q. But you're aware of the fact that on 10 November 2000 Mr Berezovsky and Mr Patarkatsishvili did not own 23,726 shares each in ORT-KB, did they?

- A. Mr Berezovsky owned 18,952 shares and  
Mr Patarkatsishvili owned 28,500 shares of ORT-KB.
- Q. So your answer to my question is: yes, I am right, on  
10 November neither Mr Berezovsky nor  
Mr Patarkatsishvili owned 23,726 shares?
- A. Someone had fewer shares, someone had more shares, but  
they were shareholders of ORT-KB as of the 10th.
- Q. In fact it was only two days later, on 12 November, that  
they equalised their shareholding in ORT-KB so that they  
both came to own 23,726 shares; that's right, isn't it?
- A. Yes, that's right. On 12 November Patarkatsishvili sold  
part of his shareholdings to Berezovsky so that he would  
have the equal number of shares.
- Q. And so one couldn't have a genuine notice sent on  
10 November 2000 which recorded the fact that they each  
had the same number of shares, being 23,726 shares; you  
accept that?
- A. The notice was true, it was genuine. It's simply that  
in the process it was shown that people who were  
responsible for the transfer of shares, that had to do  
it on 9 November, they made an error, and that error was  
corrected on 12 November.
- Q. You could not have, on 10 November, a notice to another  
shareholder saying that ORT-KB had received notices from  
two shareholders, each of whom had 23,726 shares; that

would have been impossible?

A. Could you please repeat the question?

Q. You could not have, on 10 November, a notice to SBS saying that ORT-KB had received notices from two shareholders, namely Mr Berezovsky and Mr Patarkatsishvili, each of whom had 23,726 shares; that would have been impossible?

A. As of 10 November we have a notice saying that each of the two shareholders has 23,726 shares.

Q. Well, it says more than that: it says that ORT-KB has received notices from these two shareholders, who both own that number of shares. And that would have been impossible as at 10 November, Mr Gorodilov.

A. As I'm saying again, in the process, it's quite obvious that there was an error here and I think the error happened due to the fact that there were two different companies, SBS, another company. So a large number of people were dealing with that, with Ruslan or with someone else, and basically they performed their tasks on the 9th, they've given the notice out and then they looked as a result and it turned out that they had an error and they did correct that error on 12 November.

This exactly is saying that everything was happening in accordance and the way it was -- this is the way it was and that's how the documents were drawn up.

Q. Can I ask you, please, to go to bundle H(A)27 and go to page 35, please H(A)27/35. We'll see there a Russian-only document.

My Lady, we have a translation of this which I'll hand up. It obviously will go on to Magnum in due course. (Handed)

What you see at H(A)27, page 35 H(A)27/35, Mr Gorodilov, is a draft of the notice to go to SBS. Do you see that?

A. Yes, I do.

Q. Now, can you see that the document that you are looking at has a Ringtail reference ending in the number 0026?

A. Yes, I can see that.

Q. Now, what I'd like to do, Mr Gorodilov, is to hand up to you the copy of this document which we have been looking at, held on the Ringtail document management system. It has the same reference number. The only reason to hand you this version of the document is because on this version we have metadata, which you can see if you go to the second page of the document.

A. Yes, I can see that.

Q. There are two things, Mr Gorodilov, which are interesting about the metadata. The first is that if you look at the company where this document has been produced, it appears to have been produced by Sibneft

and not by ORT-KB. Do you see that? On the right-hand side, under "Properties", just before it gets to "Related Dates".

A. Yes, I can see that.

Q. And the other thing which is interesting, Mr Gorodilov, is that according to the metadata, this document was first created -- this is the draft of the notification -- on 16 November 2000. Do you see that?

A. Yes, I can see that.

Q. Now, are you able to explain how this is consistent with your evidence, firstly, that the notification was one produced by ORT-KB?

A. Could you please repeat the question?

Q. We see from the metadata that this document, a draft of this document first produced on 16 November, was produced by Sibneft. Your evidence has been that this document was produced by someone in ORT-KB; I think you say it was produced on 10 November. And I'm asking you if you can explain how it is that what we see here from the metadata is consistent with the evidence that you are giving about when this document was produced and by whom.

A. The reason: because it's a draft document, as far as I understand, that is on the computer. So was it received from Sibneft's computer?

- Q. Received -- this is produced on Sibneft's computer, first created on 16 November.
- A. And accordingly, to explain in detail, Sergey Gorenichy could explain in detail. I can only assume -- I only assume that when Sergey saw that error, he thought to send another notice in order for the deal to be more clear, clean in the legal way. This is only my supposition.
- Q. You see, Mr Gorodilov, we have asked Mr Abramovich to search ORT-KB, a company which he accepts was under his control, to see whether any drafts of this document were held by ORT-KB and we have been told that none have been found in ORT-KB. The only drafts of this document that one finds come from Sibneft and appear to have been produced after the date when you say this document was produced by ORT-KB.
- But you say you're unable to offer any explanation for how that could happen at all?
- A. I thought I explained in my previous answer how it could have happened. The ORT-KB notice, it was a package of documents of ORT-KB which is now owned by Mr Abramovich and previously it was owned by Mr Berezovsky and Patarkatsishvili.
- Q. Can we go back again and look at the notice at page 60 in the Russian H(A)23/60 and page 61 H(A)23/61.

MRS JUSTICE GLOSTER: What bundle, please?

MR RABINOWITZ: Sorry, H(A)23. We're looking at the final notice here.

A. Did you say page 60?

Q. It should be page 60, yes, thank you. Page 61 in the English.

You see in the second paragraph, the first line of the second paragraph, it says that:

"... ORT-KB has received notices from two shareholders of CJSC ORT-KB..."

Do you see that?

A. Yes, I see that.

Q. And if this were a genuine document, one might expect to be able to find such notices having been received by ORT-KB from its shareholders to which this responds; correct?

A. One could assume that.

Q. Are you aware that, despite a search having apparently been conducted by Mr Abramovich's solicitors, no such notices from the ORT-KB shareholders have been found to exist?

A. Yes, they were not found to exist, yes.

Q. And can I ask you this: if this were a genuine document, one might expect there to have been a response from SBS-Agro, might one not?

- A. It might have been a response or it might have not been a response. If SBS-Agro within a certain time period does not respond, then accordingly it is assumed that the bank has been duly notified and the deal can go ahead.
- Q. You are aware, I take it, that, again despite Mr Abramovich's solicitors apparently having researched ORT-KB, no response from SBS-Agro responding to this notification has ever been disclosed in this action either?
- A. It's hard for me to comment this. Just to remind you once more: Mr Abramovich did not -- we did not own ORT-KB at that point in time, therefore the package of documents, the way it was passed on to me -- to us, the way it was passed on, this is the way we've got it maintained and one could assume whichever.
- Q. But you will be pleased to hear, Mr Gorodilov, that, unlike in the case of any notices from the shareholders, we do have a draft of a response from SBS-Agro responding to this in the bundles. Can you please go to bundle H(A)23, page 56 in the Russian H(A)23/56.
- Again, my Lady, because it is only in the Russian, we've prepared a translation for this document as well so your Ladyship can follow it. (Handed)
- A. Yes, I can see this.

Q. Okay. And you see that it is a draft, it's apparently also dated 10 November 2000; do you see that? It's supposed to be to ORT-KB from someone at SBS.

A. Yes, I do.

Q. Again, Mr Gorodilov, do you notice the Ringtail number at the bottom left-hand corner ends in the numbers 0009? Do you see that?

A. Yes, I do see that.

MRS JUSTICE GLOSTER: We've got this document.

MR RABINOWITZ: I beg your pardon?

MRS JUSTICE GLOSTER: We've got this document in the bundle anyway, haven't we?

MR RABINOWITZ: What we don't have, my Lady, is the document with the Ringtail --

MRS JUSTICE GLOSTER: We've got the translation.

MR RABINOWITZ: All right.

Can I hand up another copy of the document we've been looking at which is taken from the Ringtail document management system and it has the same 0009 reference number.

A. Yes, I can see that.

MRS JUSTICE GLOSTER: This is H(A)23/56T, is it, in the English?

MR RABINOWITZ: The translation?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It may not matter for the point I'm going to be making, my Lady.

Mr Gorodilov, in front of you you have the Ringtail version of this document but again you can see it has the metadata at the back. Do you see that?

A. Yes, I can see that.

Q. And again, what we see from the metadata, Mr Gorodilov, are two things which are interesting. The first thing is that this draft of a document which is supposed to go from SBS to ORT-KB appears to have been produced by someone in Sibneft. Do you see that?

A. Yes, I can see that.

Q. And the second thing which is interesting about this metadata is that it indicates that the first time this draft was created was on 16 November 2000, although, as you see, the date which someone has inserted in the draft is 10 November 2000. Do you see that?

A. Yes, I can see that.

Q. Are you able to offer any explanation as to why your team at Sibneft were producing notifications which were backdated, were to be backdated, to come from SBS?

A. I think it's quite obvious. If we were leading the transaction then in the computer of the lawyers might contain a draft of the answer. With regard to the date of -- creation date, it says 16th and the agreement --

sorry, the draft shows the 11th, I think we need to ask the lawyers. I wouldn't be able to clarify. Perhaps there was some technology: maybe someone was resaving the file, I'm not sure. I don't know.

Q. Can I ask you -- well, the difficulty about --

A. Maybe the date in the computer was changed, was shifted.

Q. And maybe it is just that this document was first created on 16 November, which is what the metadata appear to indicate.

Now, can I ask you, please, to go back to your witness statement, paragraph 58 again please: page 22 of the English E2/04/22 and page 63 in the Russian E2/04/63. Just focusing on the last sentence of this paragraph, you say:

"Because of rules establishing a waiting period of no less than 30 days after notification, we understood that the notice..."

That's the one we've been looking at.

"... had to be given in advance..."

And so -- and this just goes back to evidence I think we've covered -- a transaction to sell shares could not go ahead unless there was a notice like this one from 30 days before the sale; is that right?

A. You've said quite a bit. What do I have to confirm?

Could you please state it in more detail? What do

I have to confirm?

Q. You could only have a transaction go ahead selling these shares if a notice like this had been served 30 days before that transaction was to conclude?

A. Yes, if there wouldn't be any other agreement achieved in this regard.

Q. And obviously if a sale needed to go ahead very quickly, this 30-day waiting period might present a problem in that regard, particularly if one needed the sale to be concluded in less than 30 days?

A. That was a problem and we needed to go to SBS-Agro and agree with them for them to give a response that they do not mind for that transaction to go ahead and then law would not be breached.

Q. Mr Gorodilov, Mr Abramovich says in his evidence that he had at some point told Mr Putin of the finalisation of an agreement to buy Mr Berezovsky and Mr Patarkatsishvili's shares in ORT before the end of the year. You can take that from me for the moment: that is what he said. And he also says that, as a result, he wanted to make sure that the transfer was completed before the end of the year. Again, take that from me for the moment: it's at paragraph 59 of Mr Abramovich's fourth witness statement E5/11/28.

If Mr Abramovich had in fact only agreed to buy the

shares less than 30 days before the end of December 2000, that would mean, given the 30-day rule, that he would have to wait until a notification was served and for 30 days afterwards; that's right, isn't it?

A. May I repeat once again: if no agreement would have been reached with SBS-Agro.

Q. Then the way you would have to do it, without any side agreement -- and I'm not aware of anyone suggesting there's a side agreement so let's just leave that to one side -- without that sort of agreement, you would have to wait the 30 days until the notification had run its course?

A. 30 days or from the point of receipt of a response from SBS-Agro, ie that response could have arrived earlier.

Q. Right, but no one suggests there was any response from SBS-Agro which arrived at all.

A. Maybe there was some sort of response; we simply do not have it in the case materials.

Q. No, we don't.

The only way around the position, if you have a 30-day notice which has been served closer to the end of the year than would allow you to conclude the transaction by the end of the year, the only way around that problem would be to produce a notice to SBS and

then to backdate it to an earlier date.

A. No. What is the point to backdate and to produce a notice and bring it back to SBS backdated? How can we backdate -- bring it to SBS in a backdated way? And if SBS gives its consent to the deal, it will give its consent in real time.

Q. But what we see happening here, Mr Gorodilov, is not just a notice produced on 10 November which couldn't have been produced on 10 November, but we also see people in Sibneft drafting a potential response from SBS on 16 November, all of which in order to be able to conclude this transaction before the end of December. Do you follow?

A. Sorry, I'm already lost.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm not clear where this is going because Mr Berezovsky had a power of attorney over the SBS interest in ORT, didn't he? So, I mean, Mr Berezovsky could have waived the requirement if he was the guy who held the power of attorney over the shares in ORT held by SBS.

So where is this all going? I mean, I'm not saying he did, but I'm not quite sure --

MR RABINOWITZ: Well, no one says he did. In those circumstances, given what appears to be the position with the documentation, the documentation appears to

have been backdated.

MRS JUSTICE GLOSTER: Yes, but let's assume that the documentation has been backdated, maybe a day, maybe longer than a day; I'm not quite clear what you're suggesting. But it clearly could have been waived, the requirement. I mean, you tell me. But the person who's got the power of attorney over these shares seems to be Mr Berezovsky. So I'm not quite clear where all this is going, but maybe you'll tell me in due course.

MR RABINOWITZ: I'll tell your Ladyship now.

The witnesses, and in particular Mr Abramovich's witnesses, have produced a chronology of how the transaction took place by references to documents and by taking the dates of those documents. Now, our submission is that those dates are not genuine dates; they've all been backdated. The consequence of that is that the evidence that the witnesses give as to how the transaction proceeded and when it proceeded is based on a false premise, namely that the dates in these documents can be relied upon, whereas in fact they have all been backdated.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: Is my learned friend suggesting that the document, for instance this one, was created on some other date than the 16th? Because we find it difficult

to follow how there is any relevant difference between the 10th and the 16th if the issue was whether this was being discussed in November.

MR RABINOWITZ: There's no suggestion that any final document was done on the 16th. That is a draft that one sees on the 16th; one doesn't have a final document at all. So one is actually not assisted at all by the dates on these documents.

MRS JUSTICE GLOSTER: Right. Well, I think what I need to understand is, on the assumption that you're right and some of these documents have been more or less backdated, where that, you say, undermines the factual statements in Mr Gorodilov's witness statement.

MR RABINOWITZ: Mr Gorodilov's witness statement presupposes, as your Ladyship sees -- paragraph 58 E2/04/22 -- that the 10 November document is a document produced on 10 November and he gives evidence which, in a sense, tries to explain how the matter could have proceeded if that was in fact the genuine date.

MRS JUSTICE GLOSTER: He is specifically saying that it anticipates events that had not yet taken place. So in one sense it's all been drafted in anticipation of things that haven't yet --

MR RABINOWITZ: But it purports to be a final document in circumstances where we see a draft of the document being

produced later in time.

MRS JUSTICE GLOSTER: Well, I mean, I see what you're saying but I'm not quite clear where this is getting us on critical issues, that's all.

MR RABINOWITZ: Well, your Ladyship may not regard the timing of the ORT transaction as a critical issue. We will address it --

MRS JUSTICE GLOSTER: Well, I obviously see that it matters in relation to the intimidation claim and the date of the meeting, I can quite see that, but I have yet to understand what dates you're attacking in Mr Gorodilov's witness statement that you say impact on the date of the meeting in Cap d'Antibes or the veracity of your evidence in relation to the threat.

MR RABINOWITZ: My Lady, I don't --

MRS JUSTICE GLOSTER: That's the point I think I'm not picking up on.

MR RABINOWITZ: All right. Well, I don't think I'm going to go into more detail on that now --

MRS JUSTICE GLOSTER: Right, very well. Well, continue with the cross-examination.

MR RABINOWITZ: -- because that really is a matter of submission. My purpose at the moment is just to establish that you cannot rely on the dates in these documents.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Now, in fact, Mr Gorodilov, I want to move on to a different subject and it is this --

A. May I add on the previous subject, please?

Q. Please.

A. There is a register of share movement that I think no one has any doubt that that was in any way tampered with, which shows the steps in share transfer.

Q. That is right and it shows first that there was an equalisation between Mr Berezovsky and Mr Patarkatsishvili on 12 November; correct? And then I think it shows a transfer from them on 29 December.

A. The 28th and the 29th.

Q. Thank you.

Now, can I ask you this. Can you go to paragraph 76 of your first witness statement: bundle E2, tab 4, page 31 in the English E2/04/31 and page 64 in the Russian E2/04/64. Can I ask you, please, just to read subparagraph (b) of paragraph 76 to yourself. It relates to the Logovaz part of the transaction. (Pause)

A. Yes, I have read it.

Q. And can I next just ask you to go to paragraph 78 of your witness statement, over the page E2/04/32.

A. Yes, I have read it.

Q. So what you're saying here is that, after suggesting

that there was an agreement made at Le Bourget:

"In view of this agreement, we drafted the 'Action Plan'."

And you say:

"I think this document was drafted while Mr Abramovich was running for office in Chukotka and [finalised] when he returned to Moscow in late December..."

And just to be clear about this, Mr Abramovich I think headed for Chukotka to run for office on 10 December. Is that right?

A. As far as I know, this is correct.

Q. Yes. Can I ask then that you be given bundle H(A)26, page 110 H(A)26/110. The English translation of this I think is at H(A)103, page 124 H(A)103/124.

So this is your action plan, is it?

A. Yes, it is.

Q. And this was in fact, I think, produced, according to the metadata, on 25 December 2000, last modified on 26 December 2000. Is that right? Does that accord with when you would say that this was actually produced?

I can show you the metadata.

A. I think so. We were preparing the action plan about the arrival of Roman to Chukotka -- sorry, from Chukotka.

Q. From Chukotka. So in fact it was at the end of December

that you were preparing this action plan. It's not around 10 December; it's when he was returning from Chukotka that you produced this plan?

A. Could you please ask the question again?

Q. I'm trying to establish when you say this action plan, or the "Algorithms of actions" in the translation, was produced and I suggest it was at the end of December, 25 and 26 December.

MR SUMPTION: Does your Ladyship have the English translation?

MRS JUSTICE GLOSTER: No, I'm just -- I was going to let the witness give the answer because I haven't got the document. It's the wrong reference, Mr Rabinowitz.

A. The algorithm of action, as far as I recall, I spoke to Roman, Roman was still in Chukotka, and we have agreed that by his arrival we should be prepared for everything and try to close the deal in that year. So therefore I make an assumption that indeed the document was created on the 25th because Roman had to arrive back on 25 December, as far as I recall. I think it was the 25th.

MR RABINOWITZ: Your Ladyship should be looking at H(A)103, page 124 H(A)103/124.

MRS JUSTICE GLOSTER: 124? Oh, you said 24, that's the problem. Hang on. 124. Just a second, let me get it

up.

Right, thank you.

MR RABINOWITZ: This is in fact the first document produced, Mr Gorodilov, that mentions Betas being involved; is that correct, or are you aware of some other document where you might have included Betas in this plan?

A. The fact that the Betas will buy Logovaz's shares, I think we've -- in the first half of November we knew that that will be Betas; and whether there are any documents where this is mentioned, to be honest, I do not know. Maybe.

Q. I can tell you that there are not.

Can I just ask you, please to go to your second witness statement: that's at bundle E4, tab 5. I want you to have a look at paragraphs 30 to 32 on that, if you would. It's page 64 in the English E4/05/64 and 82 in the Russian E4/05/82. Can I ask you to look at those and read those to yourself, please. (Pause)

A. Yes, I have read it.

Q. You see, I have to suggest to you that what you're doing here is disputing Mr Dubov's evidence that Logovaz only agreed to sell its shareholding in the company at par on 24 December and you are trying to dispute this by reference to what you say is the fact that:

"... this price... reflected the par value of

LogoVAZ's shares [which] was already provided for in the reference sheet dated 13 November 2000 and [you say] was never questioned after that time..."

Do you see that?

A. Initially, when the deal was being actioned, we planned that Logovaz shares will be re-registered at par value of 1.1 million rubles -- sorry, at nominal value.

Q. You see, I'm referring to your comment in your witness statement that the reference to Logovaz shares being sold at par value is found in a document dated 13 November and you say it was never questioned after that time.

I want to ask you this: you don't suggest anywhere that you showed this reference sheet to either Mr Berezovsky or Mr Patarkatsishvili or Mr Fomichev or indeed anyone else from Mr Berezovsky's team, do you?

A. I think that Mr Fomichev certainly didn't see that. Perhaps Badri didn't see it. It's quite obvious: you can see by the reference that that was prepared for someone. Internally we wouldn't have made such a reference sheet. Maybe I prepared it for Roman and I have -- won't be able to help you and say who Roman has shown it to.

Q. But when you say it was never questioned after that time, if you never showed anyone, either

Mr Patarkatsishvili or Mr Fomichev or Mr Berezovsky, the sheet, how could they have questioned this?

A. How do you mean the reference sheet was queried or questioned?

MRS JUSTICE GLOSTER: Hang on. Can I look at the reference sheet, please, because the reference at the bottom of Mr Gorodilov's paragraph --

MR RABINOWITZ: Your Ladyship will find it at H(A)103, page 132 in the English H(A)103/132. It's at H(A)23, page 71 in the Russian H(A)23/71.

MR SUMPTION: I'm told that there has been a mistranslation of the witness's answer when he said, according to the transcript in English, that Mr Fomichev certainly did not see it and that Mr Patarkatsishvili may not have seen it. I understand that the actual Russian answer was different. I wonder if that could be explored while the iron is still hot.

MRS JUSTICE GLOSTER: Yes. Mr Rabinowitz, you might want to check the Russian feed overnight.

THE INTERPRETER: The interpreter apologises, I might have misheard.

MRS JUSTICE GLOSTER: Well, can we check it now with what was said previously, please?

MR RABINOWITZ: Can I perhaps just ask it again?

MRS JUSTICE GLOSTER: Well, ask the question again.

- MR RABINOWITZ: You never suggested in your witness statement that you showed this reference sheet to Mr Berezovsky or Mr Patarkatsishvili or Mr Fomichev or indeed anyone else from Mr Berezovsky's team?
- A. As far as I recall, I do not write about this in my witness statement.
- Q. And that is because you never showed this reference sheet to any of those people?
- A. I think it doesn't mean this. That reference was obviously made in mid-November. It was reflecting the deal structure that was approved at that point in time. I think I prepared that reference for Roman in order for Roman to show it to Badri or Berezovsky, I don't know about that, and obviously that Ruslan Fomichev has seen it as well. It can be seen that this is prepared for someone external.
- Q. You see, I suggest to you if you had shown it to anyone, Mr Gorodilov, you would have said so in your witness statement.
- A. Why would that be?
- Q. Because your witness statement is where you set out the relevant evidence and that would have been relevant. But you dispute that, do you?
- A. In my witness statement I was showing the whole chronology of the deal, as I recall, the way it was

happening. And further, in the process we have disclosed all the documents that we could have found for this hearing, that we were able to find.

MR RABINOWITZ: Thank you, Mr Gorodilov.

MRS JUSTICE GLOSTER: Are those all your questions?

MR RABINOWITZ: Those are all my questions.

MRS JUSTICE GLOSTER: Yes, Mr -- has anyone else got any cross-examination?

MR MALEK: No questions, my Lady.

MR ADKIN: No, my Lady.

MRS JUSTICE GLOSTER: No.

MR SUMPTION: I will try and finish this straightaway, rather than leave Mr Gorodilov over until tomorrow.

Re-examination by MR SUMPTION

MR SUMPTION: Mr Gorodilov, I wonder if someone could assist you with scrolling back through the screen transcript of your answers this afternoon. If we could scroll back to [draft] page 91.

MRS JUSTICE GLOSTER: I'm in the hands of the parties as to whether you want to go on tonight, Mr Sumption.

MR SUMPTION: I'm not going to be more than five or ten minutes, so it seems --

MRS JUSTICE GLOSTER: Well, then let's -- you're happy with that, aren't you, Mr Rabinowitz? That means that you'll have Friday clear.

MR RABINOWITZ: Yes.

MR SUMPTION: Mr Gorodilov, you will need the assistance of the interpreter for this purpose. You will see that there is an answer that begins on [draft] page 90, line 20, and continues on [draft] page 91, up to line 10, and I wonder if the interpreter would be kind enough to translate that back to you. Beginning with:

"After that, when Roman said..."

(Pause)

THE INTERPRETER: Until where do I read, sorry?

MR SUMPTION: [Draft] page 91, line 10.

A. There is an error in the figure of 100 million.

Additional payments were 140 million plus commission.

MR SUMPTION: Right. That's what I wanted to clear up.

Thank you very much.

My Lady, I have no other questions.

MRS JUSTICE GLOSTER: Right. Mr Rabinowitz, you've got nothing further arising out of that?

MR RABINOWITZ: No.

MRS JUSTICE GLOSTER: Thank you very much, Mr Gorodilov for coming along to give your evidence. You may be released.

(The witness withdrew)

Discussion re housekeeping

MR SUMPTION: My Lady, can I just say two things very

briefly. First of all, although there is a dispute about its exact date, there is of course a reference to Betas in the Logovaz board meeting dated November 2000, which was a document disclosed by Mr Berezovsky and about which Mr Dubov gave some evidence. The reference to that is H(A)23/196.

The second thing that I wanted to say was that we will not be calling Mr Mamut. In the light of the basis on which my learned friend cross-examined Mr Abramovich, we have concluded that his evidence is no longer of any relevance.

MRS JUSTICE GLOSTER: Right. Very well.

MR SUMPTION: That means that the next witnesses that your Ladyship will be hearing from are Mr Voloshin, Mr Kapkov, and they will be followed immediately by Mr Shvidler.

MRS JUSTICE GLOSTER: So Mr Sponring is going off?

MR SUMPTION: Mr Sponring will come after Mr Shvidler.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: But we may get to Mr Shvidler on Monday.

MRS JUSTICE GLOSTER: Right. And so far as time is concerned, Mr Rabinowitz, you're still comfortable with where we are and your time?

MR RABINOWITZ: Still comfortable, indeed.

MRS JUSTICE GLOSTER: Because if you weren't, I would feel

slightly obliged to sit tomorrow.

MR RABINOWITZ: No, we are still comfortable.

MRS JUSTICE GLOSTER: Very well.

Then I'll adjourn this case until Monday at 10.15,  
10.30? I'm in your -- 10.15?

MR RABINOWITZ: 10.15.

MRS JUSTICE GLOSTER: It's probably easier, 10.15.

Very well.

(4.30 pm)

(The hearing adjourned until  
Monday, 14 November 2011 at 10.15 am)

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Monday, 14 November 2011

(10.15 am)

(Proceedings delayed)

(10.24 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: I call Mr Voloshin.

MR ALEXANDER STALIEVICH VOLOSHIN (affirmed)

MRS JUSTICE GLOSTER: Please sit down, Mr Voloshin.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Good morning, Mr Voloshin. Could you please be given bundles E1, E4 and E8. You have made three witness statements, I think, for this action and you'll find the first of them in bundle E1 at flag 1 E1/01/1. Is this your first witness statement?

A. Yes, it is indeed.

Q. And if you turn to the back of the tab at page 23 of the bundle, is that your signature on the Russian version?

A. Yes, this is my signature.

Q. And if you'd like to turn to paragraph 2, is there a correction that you want to make to the date at the end of paragraph 2?

A. Yes, that is correct. So far as the year where I graduated from the Academy of Foreign Trade is concerned, the year is 1996 (sic). There was a mistake here. It says 1990, I'm sorry, it's 1986, my apologies,

sir.

Q. 1986, fine. With that correction, is that statement true?

A. Yes, definitely.

Q. Would you like to take bundle E4, please, and turn to flag 7 E4/07/115. Is this your second witness statement in this action?

A. Yes, it is indeed.

Q. If you turn to page 147, is that your signature at the end of the Russian version?

A. Yes, this is my signature.

Q. Is that statement also true?

A. Yes, it is indeed.

Q. Finally, Mr Voloshin, your third statement will be found in bundle E8 at flag 15 E8/15/184. Is this your third statement at flag 15?

A. Yes, it is indeed.

Q. And is that your signature at page 190?

A. Yes, it is my signature.

Q. And is that statement also true?

A. Yes, it is indeed.

MR SUMPTION: Thank you. If you'd wait there, Mr Rabinowitz will have questions for you.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Voloshin, can you go, please, to

paragraph 8 of your first witness statement, E1, tab 1, page 4 in the English E1/01/4, page 16 in the Russian E1/01/16. Can I ask you, please, to read what you have said at paragraph 8 to yourself and let me know when you've finished reading it. (Pause)

A. Yes, I have read this.

Q. And you say there, and you are talking here about 1993 or 1994, that you had a consultancy role in relation to AO All Russia Automobile Alliance, that's AVVA, a company headed by Mr Berezovsky, and that you helped with the preparation of the paperwork to set up AVVA.

Can I ask you next, please, to look at your second witness statement, paragraph 5. You'll find that at bundle E4, tab 7, page 117 in the English E4/07/117 and 133 (E4/07/133 in the Russian.

Again, if I can ask you to read paragraph 5 to yourself. Let me know when you've finished reading it.

(Pause)

A. Yes, I have read this.

Q. What you say here is that your consultancy in relation to AVVA:

"... consisted of helping to prepare the paperwork (including the preparation of the prospectus) for and assisting with the public placement of the company's securities ..."

If you helped prepare AVVA's prospectus and assisted with the public placement of its securities, you must have known how AVVA was to operate. That's right, isn't it?

A. I'm not sure I understand your question as to how AVVA was to operate.

Q. Did you understand, when you were preparing the paperwork and helping with the prospectus, how AVVA was to operate as a company? What it was going to do?

A. On the whole, yes. Now, if you mean the purpose, the mission of the company, I can explain what my understanding was at that time.

Q. Well, let me ask you questions and you can answer the questions, and then if you have some comment to make you can make your comment, okay?

In working on the AVVA project I assume you would not suggest that you were involved in any unlawful or fraudulent activity, is that correct?

A. Your understanding is correct.

Q. And it follows that you would not suggest that the AVVA project was a fraudulent pyramid selling scheme, is that correct?

A. No, I am not certainly suggesting that and this is not what I think.

Q. So if anyone were to suggest that AVVA was a fraudulent

pyramid scheme, your evidence would be that they were wrong, is that right?

- A. Well, you know, at a time where this project was being run and it was never completed, it was never finished, but when the securities of AVVA, securities were being placed, there were many things that happened on the securities market that you could describe as a pyramid, a Ponzi scheme.

The project that we were handling, I'm definitely certain that it was not one of those schemes, but at that time there were many articles that were wrote in the media about that and attempts were being made to put that project on a par with other projects. So there was a lot of talk around this and I do not believe that there is any truth to that.

- Q. Thank you very much for that.

Now, Mr Voloshin, I want to move to a different topic, and you accept in your evidence that you met with Mr Berezovsky towards the end of August 2000? That's right, isn't it?

- A. Yes, that is true.

- Q. And Mr Berezovsky's evidence is that this meeting occurred on 23 or 24 August, I don't suppose you're in a position either to confirm or deny those specific dates, are you?

- A. It is true, I do not recall the exact dates but it was late August. That is true.
- Q. Now, before we look at what you say happened at this meeting, can I just identify for you some of the events that had occurred in the summer of 2000 in order to put this meeting into some sort of context. Now, first, in June and July 2000 there was the arrest of Mr Vladimir Gusinsky and the sale of his company Media Most to Gazprom, that's correct, isn't it?
- A. So is your -- I beg your pardon, what is your question? I'm not sure I understood the question.
- Q. I'm just going through with you the events in the summer of 2000 which were a prelude, or which happened before your meeting with Mr Berezovsky. One of those events was that in June and July 2000, Mr Gusinsky, who was the owner of Media Most, was arrested and there was an incident in which he sold his company to Gazprom.
- A. I believe that some events did occur. I'm not sure I can recollect whether the sale and purchase of the shares that you're referring to had already happened by that time, but it is true that he was in custody, he did spend a few days in custody. That is true, yes.
- Q. And Media Most, Mr Gusinsky's company, was the owner of the independent television station NTV, that's right, isn't it?

- A. So far as I can recall, yes, that is true.
- Q. And in that summer of 2000, NTV had adopted an editorial policy which was generally critical of the Putin administration. That's right, isn't it?
- A. I believe that NTV as a TV channel had always had a rather sharp view of all the things that happened around it. It was quite critical or sufficiently critical of the various events that occurred at that time, including to the powers that be, yes, that's true.
- Q. And they were often critical of President Putin and his policies?
- A. Amongst other things, yes.
- Q. Now, Mr Gusinsky was arrested on 13 June 2000. You won't remember the exact date, I suppose, but you will agree, I think, that it was around this time, is that right?
- A. It is true that I do not recollect when that happened but it was some time in the summer, yes.
- Q. Thank you. While Mr Gusinsky was in prison, Mr Lesin, the Acting Minister for Press and Communications, offered to have the criminal charges against Mr Gusinsky dropped in return for Mr Gusinsky selling Media Most to the government-owned company Gazprom. Again, you may not remember the precise details of this but you will, I think, agree that this is broadly correct?

A. I'm not sure that your description is correct. I do not recall that in those days, where Gusinsky was in prison, certain documents were signed. I have no recollection of that in my memory.

Q. Your evidence is that you do not recall that in those days when Gusinsky was in prison certain documents were signed. Is that your evidence?

A. So far as I recollect, some documents were signed but they were signed later on.

Q. Can I just, if I can, ask you to be given bundle O2, tab 8 -- sorry, O2/8, tab 109, which is a judgment of the European Court of Human Rights O2/8.109/1.

I don't seem to have the bundle in court. Perhaps I can just read you a paragraph from the judgment of the European Court of Human Rights which had to consider all the facts here. Paragraph 27 on page 6:

"During the applicant's detention between 13 and 16 June 2000, the Acting Minister for Press and Mass Communications, Mr Lesin, offered to drop the criminal charges against the applicant in connection with the Russian Video case if the applicant sold Media Most to Gazprom, at a price to be determined by Gazprom."

Okay? Does that help your recollection?

A. Yes, I've heard an excerpt from a judgment of the European Court, so what is your question?

- Q. My question to you was, whilst Mr Gusinsky was in prison, Mr Lesin, the Acting Minister for Press and Communication, offered to have the criminal charges dropped in return for Mr Gusinsky agreeing to sell Media Most to the government-owned company Gazprom, and that is right?
- A. The way I see it, it is not the case. This does not flow from the judgment of the European Court that has just been read out.
- Q. I suggest it flows precisely from that.
- Let me ask you this: Mr Lesin was first appointed minister for press in July 1999, do you recollect that?
- A. To be honest, I do not recall when he was first appointed minister but it may well be the case.
- Q. And he was reappointed to the post by President Putin after the 2000 presidential election in May 2000. Do you recollect that?
- A. Yes, I do recollect that.
- Q. Now, the agreement made with Mr Gusinsky contained a protocol called Protocol 6 which provided for the termination of the prosecution of Mr Gusinsky. Again, you may not remember the details but this is generally what happened, is it not?
- A. I'm not sure I understood your question. Would you mind repeating, please?

Q. The agreement made with Mr Gusinsky contained a protocol called Protocol 6 which provided for the termination of the prosecution of Mr Gusinsky. That is broadly what happened, is it not?

A. I do recollect that a lot was written at that time about the existence of a Protocol 6. To be honest, I had never seen that protocol in my life, and nor do I recall anyone asserting that it had been signed by the government or by a representative of the government or at the instruction of the government.

So far as I can recollect, it turned out that Mr Lesin had put his approval under this protocol but he had not been a party to the protocol, and once again I have not seen this protocol and all I can do is make a judgment based on press reports at the time.

MRS JUSTICE GLOSTER: Mr Voloshin, were you involved in the events relating to Gusinsky at all?

A. The events that are being referenced now I had nothing to do with. But in general, I did have numerous meetings with Mr Gusinsky. I had several meetings with him prior to that, maybe even after that, but I did not have any involvement in the events which have just been described here. I had no part in those events.

MRS JUSTICE GLOSTER: That includes his arrest, his subsequent release and the sale of the shares in his

television company?

- A. That is exactly the case, my Lady. And I can clarify that -- I can clarify the situation, the way I see it, if I have your --

MRS JUSTICE GLOSTER: Maybe in due course.

MR RABINOWITZ: But you were part of an administration of which Mr Lesin was also a part, were you not?

- A. Mr Lesin was not a -- was not part of the administration, definitely not at that time. He had worked in the administration many years prior to that but at that time he was in the government and I was head of the presidential administration. These are two different bodies and they do not report one to the other.

Q. But you would have been aware of what was happening with Mr Gusinsky at this time, would you not?

- A. I did learn what had happened, that is true, yes.

Q. And just in terms of what did happen and the Protocol 6, you say there was reporting about this at the time. We have in the judgment of the European Court of Human Rights at paragraph 28 this finding, that:

"While the applicant was in prison, Gazprom asked him to sign an agreement in return for which the applicant was told that all criminal charges against him would be dropped. The agreement between Gazprom and the

applicant was signed on 20 July 2000 ... It included a provision in annex 6 calling, inter alia, for the termination of the applicant's criminal prosecution in relation to Russian Video and for an undertaking regarding his security."

I'm not going to read the whole of annex 6.

Paragraph 29 then explains that:

"Annex 6 was signed by the parties and endorsed by Mr Lesin's signature."

Later, Mr Gusinsky refused to comply with the agreement that he had made in these circumstances because he said it had been signed under duress. Do you recall that?

A. To be honest, I do not recall those nuances.

Q. Right. Again, that is dealt with in the judgment of the European Court at paragraph 72, page 19 02.8/109/19. I'll read you the relevant part which is fairly short.

Paragraph 72:

"The applicant submitted that the facts of the case spoke for themselves. He reiterated that the authorities were motivated by a wish to effectively silence his media and, in particular, its criticisms of the Russian leadership. The applicant drew attention to the fact that when Media Most did not comply with the July agreement, on the ground that it had been

signed under duress, the GPO initiated the Media Most loan investigation."

The GPO is the prosecuting authority, is it not?

A. Yes. The General Prosecutor's Office does -- is directly related with the prosecution of criminal cases, yes.

Q. And I just very briefly want to tell you or show you what was said about what happened to Mr Gusinsky by the European Court of Human Rights. Can I hand up to you a translation of paragraphs, there are just two paragraphs, paragraphs 75 and 76, of the judgment. (Handed). Just so that we can see what the European Court found here, paragraph 75:

"The government did not dispute that the July agreement, in particular Annex 6 to it, linked the termination of the Russian Video investigation with the sale of the applicant's media to Gazprom, a company controlled by the state. The government did not dispute either that Annex 6 was signed by the Acting Minister for Press and Mass Communications. Lastly, the government did not deny that one of the reasons for which Mr Nikolaev closed the proceedings against the applicant on 26 July 2000 was that the applicant had compensated for the harm caused by the alleged fraud by transferring Media Most shares to a company controlled

by the state.

"In the court's opinion, it is not the purpose of such public law matters as criminal proceedings and detention on remand to be used as part of commercial bargaining strategies. The fact that Gazprom asked the applicant to sign the July agreement when he was in prison, that a state minister endorsed such an agreement with his signature and that a state investigating officer later implemented that agreement by dropping the charges strongly suggests that the applicant's prosecution was used to intimidate him."

Now, that's what the European Court found. Can I ask you, please, to go to bundle H(A)22 at page 34 H(A)22/34. This is an article from the Moscow Times, I'm afraid it is only in English but it may be you understand English. I will read you the relevant paragraphs anyway which are short.

In the first paragraph the report says that:

"Press Minister Mikhail Lesin conceded Wednesday [that is the day before the article was written] that 'as a minister' he had made a mistake by putting his signature on a deal selling Vladimir Gusinsky's Media Most to state-controlled Gazprom-Media."

Then in the sixth paragraph, the paragraph beginning "The disputed deal", it says this:

"The disputed deal, known as [protocol] 6 in a document signed by Gusinsky and Gazprom-Media head Alfred Kokh, links the sale of Media Most to criminal charges being dropped against Gusinsky and his freedom to travel abroad."

Now, can I ask you this, is it right that Mr Lesin did not lose his job as a result of entering into this agreement with Mr Gusinsky? He stayed in his position, did he not?

- A. So far as I can recollect, he did stay in his position and I still do believe that he did not enter into a deal, he just endorsed, and that might have been -- that must have been a mistake. He has endorsed the document but this was not a deal, and this does not flow from the documents that have been presented by the way.
- Q. And Mr Lesin remained involved in the Putin government's policy towards the mass media, is that right?
- A. Yes, he remained as part of the government, as a government minister, that's true.
- Q. And part of what he would be responsible for is the government's policy towards the mass media?
- A. Well, the policy is decided upon (sic) the government. What the minister does is submit proposals and ideas as to what they believe that policy should be.
- Q. So he would have remained involved in dealing with the

policy towards the mass media?

A. Well, his ministry, the ministry of which he was head, was directly linked to the working out of that policy, yes.

Q. You can put that bundle to one side. Can you please be given bundle G(B)2/6 and if you can go in it to page 171 in the Russian G(B)2/6.177/171 and page 173 in the English G(B)2/6.177/173. 2/6, tab 177, and then I think it's page 171 in the Russian and 173 in the English.

Now, this goes somewhat later in time but I just want to check this with you. This is an order of the Russian prime minister, is that correct? You can see it's made on 30 January 2001.

A. Yes, it's a government order.

Q. And this is made after Mr Abramovich acquired the ORT shares from Mr Berezovsky, and the order accepts a proposal from the Ministry of Property Relations, approved by the Ministry of Press and Communications, and the second of those ministries was Mr Lesin's ministry, was it not?

A. Yes. Mr Lesin at that time was the minister and there is a direct reference to that in the text.

Q. And it instructs the Ministry of Property Relations to make arrangements for appointing directors of ORT. One

of the directors appointed is Mr Lesin, do you see that?

It's the fourth one down.

A. Yes, I can see his surname here.

Q. So in January 2001, the Russian government approved the appointment of Mr Lesin as a director of ORT. That's right, isn't it?

A. So far as I can recollect, the procedure was a staged one, and this was stage one of the procedure, and the document that you're looking at now is a nomination of candidates to the board of directors. Now, later on, there had to be a separate, a further decision in terms of whom they should be voting for at the general meeting of shareholders. That might be a different decision.

So based on this document alone it is difficult to make final decisions, and it happened quite often in practice where the opinion of the government in terms of who they should be voting for at the general meeting of shareholders, during the voting for the members of the board of directors, did change.

Q. But the point at this stage is that the government approved, certainly as at January 2001, the appointment of Mr Lesin to the board of ORT; things may have changed later but that is the position then, is it not?

A. Yes. If we follow the text, what the government did was nominate a candidate for the board of directors but it

had not yet voted in favour or against that nominee.

Q. Now, you can put that to one side for the moment.

Can you answer this question: the arrest of Mr Gusinsky and his dispute with the government had been very widely publicised in June, July and August 2000.

That's right, isn't it?

A. Well, you know, those were the sort of events that did cause quite a few informational tidal waves, as it were. It was being heatedly debated. And in terms of the question which we are now -- which is now in dispute here, I can recall that Mr Berezovsky, and I think it was two to three months prior to those events, in the summer, that he made a public statement where he said that he was going to ask the General Prosecutor's Office to look into the link between Gusinsky and the Chechen terrorists and to investigate those possible links, and I think he made that statement in February or in March, it was made publicly.

Now, when those summer events took place and Mr Gusinsky was taken into custody, Berezovsky was the only major businessman who did not sign a letter demanding his release. So that was the informational background for all of this, as it were.

Q. Mr Voloshin, can you listen to the question and try to answer the question, please. The question was that the

arrest of Mr Gusinsky and his dispute with the government was very widely publicised in June, July and August 2000; that is right, is it not?

A. Definitely. It was widely covered in the press.

Q. Yes, and so by the time of your meeting with Mr Berezovsky in late August 2000, both of you would have been aware of the fact that Mr Gusinsky had been arrested and of the fact that he had been required to sell Media Most to Gazprom. That's right, is it not?

A. I do not believe that anyone demanded that he sell Media Most to Gazprom in the course of his custody, therefore I would beg to differ and I cannot agree with your statement.

Q. All right. Well, let me break it down. By the time of your meeting with Mr Berezovsky in late August 2000, both of you would have been aware of the fact that Mr Gusinsky had been arrested and imprisoned, is that right?

A. Yes. We also knew that he was subsequently released, a few days after that.

Q. And both of you would have been aware of the fact that he had, whilst in prison, sold Media Most? I don't want to get into the circumstances of that.

A. No, that was not the case. So far as I know, he sold Media Most after that, not during his being in custody.

Q. Well, we've in fact seen from the court -- sorry, the European Court judgment that, certainly by August 2000, he had sold Media Most which is when you met Mr Berezovsky, in August 2000?

A. I think that the sale can be best confirmed by sale documents rather than the judgment of the esteemed European Court. And I think that the documents, with respect to the sale of that media asset, were signed much later, way later than Mr Gusinsky's being in custody.

Q. It's clear what the European Court found, I'm not going to argue with you about that. That says that it was signed on 20 July, the court says it was signed on 20 July 2000.

Now, that is one event which had occurred in the lead-up period to your meeting with Mr Abramovich -- sorry, Mr Berezovsky, the arrest of Mr Gusinsky. The other event which had occurred in that eventful summer, and this was on 12 August 2000, was that the Russian submarine, the Kursk, sank in the Barents Sea, do you remember that?

A. Yes, I do remember that.

Q. It's right, is it not, that the coverage of this incident by both ORT and NTV were critical of the way in which President Putin's administration dealt with the

incident? That is right, is it not?

A. So far as I can recall, the coverage was quite varied. It was a terrible tragedy, and I think everyone agreed that it was a tragedy, and I don't believe that anyone could have said anything other than that. There were some programmes, both in ORT and NTV, what the authorities were doing did draw criticisms, yes, that is true.

Q. And shortly after this, that is to say shortly after the Kursk incident, which occurred on 12 August, and the coverage that it received from ORT and NTV, President Putin publicly expressed his anger about the television coverage of the Kursk incident. That's right, isn't it?

A. To be honest, I do not recall such a public statement on the part of Mr Putin.

Q. All right. Well, perhaps I can get you to go to bundle H(A)21, go to page 101, please H(A)21/101. This is a press report of 25 August and it's obviously a reporting of an incident in the previous days. The first paragraph of this notes:

"Russian President Vladimir Putin has lashed out at the news media over coverage of the submarine Kursk disaster, even accusing the media of trying to destroy the navy."

If you go to the second page of this report --

- A. My apologies, what is this news report? I'm not sure I understand what this source is.
- Q. It's something called the Freedom Forum Online and it's reporting about news --
- A. It's just the first time ever that I hear about that source but, okay, that's all right.
- Q. If you go to the second page, really taking material from other news media, as you can see. They refer to the London Guardian, they refer later on to the London Telegraph.

If you look at the second page, towards the top of the page:

"Putin blamed television reporting, the two Russian journalists said, and then he launched into the strongest attack on the Russian media he has made since becoming president."

Then this is quoting President Putin:

"'They are liars. The television has people who have been destroying the state for ten years. They have been thieving money and buying up absolutely everything,' Putin said, according to Nekhoroshev, a former BBC employee. 'Now they're trying to discredit the country so that the army gets even worse.'"

President Putin directed this anger at the

businessmen who owned the media outlets who criticised him, did he not?

THE INTERPRETER: I'm so sorry, Mr Rabinowitz, could you kindly repeat the last sentence? This is a request from the interpreter, sorry.

MR RABINOWITZ: Don't worry.

President Putin directed his anger at the businessmen who owned the media outlets who had criticised him. That's right, isn't it?

A. Well, I have read this and this is what it says. But I cannot share with you my personal recollection, I cannot comment what it says here because, amongst other things, this is not a very credible source.

Q. All right. Let's go to a different source then. Go to H(A)21 at page 59, if you would H(A)21/59.

Do you consider the Financial Times as a credible source, Mr Voloshin?

A. Quite. Quite.

Q. Good, I'm sure they'll be pleased to hear that.

If you look at the headline:

"World news: Putin hits [out] at media 'oligarchs' over Kursk tragedy."

Just looking down, let me read the first three paragraphs to you:

"President Vladimir Putin of Russia yesterday lashed

out at individuals he claimed had attempted to make political capital out of the Kursk submarine tragedy, in a thinly veiled attack on the country's influential business 'oligarchs'."

Looking to the third paragraph:

"... in a clear attempt to deflect strong criticism of his handling of the crisis, he rounded on the oligarchs who control much of the media that led [to] the criticism of him."

Just going down a couple of paragraphs, you see that President Putin:

"... singled out 'some who have even given a million dollars to the crews' families', in an apparent reference to Boris Berezovsky, the former 'grey cardinal' of the Kremlin who controls the daily newspaper Kommersant, which organised a campaign of voluntary donations to help the grieving families."

President Putin is quoted as saying:

"They would have done better to sell their villas on the Mediterranean coast of France and in Spain."

If you go two paragraphs down, you see there's a reference to the fact that Mr Berezovsky owns a villa on the Cote d'Azur in southern France while Mr Gusinsky has a property in Spain.

So it was clear to everyone, was it not, that the

people who were being attacked by President Putin here were Mr Gusinsky and Mr Berezovsky? Correct?

- A. I think that, since this is what newspapers are writing, there must be a grain of truth to that, particularly when we talk about such a highly esteemed newspaper.

What I can say is that President Putin did have a reason to become so emotional, because he did believe, and I fully agreed with him on that, that Mr Berezovsky was using that tragedy in order to get some political capital for himself, and I'm absolutely certain that this is what President Putin thought and I completely agree with this. This is the way it was.

It was a horrible tragedy and it was not very clear what the grievances on the merits of the case were because 118 people lost their lives and they -- as the investigators found out, they died in one second because a torpedo exploded. When it happened, at that time, people had hopes that some people could be rescued but then it turned out that, unfortunately, there was no hope for that. At that time people did hope that someone could be rescued, there was a major rescue operation and it was widely covered in the world. But President Putin did believe that Mr Berezovsky and his controlled journalists were helping him in that and that he was setting himself the task of making political

capital on that, and I think that he could become quite emotional and that, I believe, does look like this is the way it was.

Q. I don't want to get into the rights and wrongs of the handling of the Kursk crisis, Mr Voloshin, but as you say, President Putin obviously felt very strongly about Mr Berezovsky's coverage of it. That's right, isn't it?

A. No. Mr Berezovsky's role is hereby overstated.

President Putin was much more concerned about the rescue operation with the submarine while there was some hope to rescue people, much more than what Mr Berezovsky was doing about that at that time.

Q. In fact your evidence was that President Putin felt strongly that -- about Mr Berezovsky's, about the coverage in ORT which he felt was wrong at the time?

A. Yes, this is what I have said, and he did believe that Mr Berezovsky was capitalising on this tragedy in order to get some political capital. This is what he thought, this is what he believed, and he believed that the coverage of the Kursk tragedy was not objective, was not impartial.

Q. I think you also explained that that was your view as well?

A. Absolutely. And this is still my position, even as we speak.

Q. Right. Now, we know that the outburst from President Putin occurred on 23 August 2000 because the report in the Financial Times is dated 24 August. We now come to the meeting itself which happened the day after President Putin's outburst, or perhaps a day after that, on 24 or 25 August 2000.

Can I ask you, please, to go back to your first witness statement and look at paragraph 13, E1, tab 1, page 5 in the English E1/01/5, page 17 in the Russian E1/01/7. Can I ask you to read from paragraph 13 to 17 of your witness statement to yourself, please, just remind yourself of what it says. (Pause)

Have you read paragraphs 13 to 17?

A. Yes, I have read those, yes.

Q. And so it's your evidence that you requested this meeting with Mr Berezovsky, that's what you say at paragraph 13. Is that right?

A. Yes, that is true.

Q. And the only thing that you say was raised at that meeting was the situation with ORT, again that's what you say at paragraph 13. Is that right?

A. So far as I can recall, yes.

Q. So I think we can agree that discussing ORT was the main or the only purpose of the meeting, is that right?

A. I think it was the only purpose of the meeting.

Q. And if you look at paragraph 15, what you say there is that:

"... the Government wanted [Mr Berezovsky] to stop using ORT for his own political and financial benefit."

You are suggesting that the message you were delivering to Mr Berezovsky came from the government rather than just you personally, is that right?

A. It was the general position. The word "Government" here is used in the general meaning of the term. It was the position held by the powers that be, and the position of the powers that be was that he had to stop using ORT for his own political and financial benefit. This is exactly what was said.

Q. And when you refer to the powers that be, you would obviously include President Putin in that, would you not?

A. Definitely. Yes, it would be difficult not to include him in that definition. He was president of the country at that time.

Q. And so you would accept then that the message that you gave to Mr Berezovsky at that meeting was one that Mr Berezovsky was intended to understand came from President Putin as well, that's right, isn't it?

A. I think so, yes. I think I made it clear to him that it was our joint position.

Q. And since you were delivering a message to Mr Berezovsky from President Putin, that was obviously something that you would have discussed with President Putin before this meeting. It must follow, mustn't it?

A. Yes, this is quite logical. I -- most probably I did discuss that. I don't recall the exact discussions but that was part of the logic of this process.

Q. Now, Mr Voloshin, you don't explain in your evidence in these paragraphs why you called Mr Berezovsky to this meeting at the specific time you did, that is to say at the end of August 2000. Can you please explain why you say there was, in late August 2000, a concern about the situation with ORT given that, as you say, Mr Berezovsky had been exercising de facto control there for some time?

A. Well, there is an end to everything sooner or later. He did exercise control over the company for a long time, and the situation around the Kursk submarine disaster was so dramatic, and the position of his controlled journalists was so flagrant and the (inaudible) was not consistent with the horrible tragedy, with that tragic situation, it became clear that informal governance of ORT on the part of Berezovsky was something that needed to be put an end to.

Q. I think you're accepting in that answer that what

actually provoked that meeting at this time was the ORT coverage of the Kursk incident, that's right, isn't it?

A. Yes, your understanding is correct.

Q. Can you explain why you don't anywhere in paragraphs 13 to 17 even mention the Kursk incident as being either something which provoked this meeting or as something which was discussed at this meeting?

A. I don't know. I do not refer to that. I think it was quite obvious, it was so obvious that it did not require any additional explanation. I think that this whole story was so clearly linked to the submarine disaster, and there was no doubt in anyone's mind as to one being the consequence of the other.

Q. And does it follow from what you are saying now that, in the course of this meeting, you would have complained to Mr Berezovsky about the way in which ORT had covered the Kursk incident?

A. I do not recollect the -- that being or not being said in the course of our discussion, to be honest. I think that it was quite obvious to both of us, all the things that had happened had become so obvious to us.

Having said that, this is not something that I would rule out. I wouldn't rule that out.

Q. In fact, Mr Voloshin, isn't it obvious that it is one of the things that you would have discussed, given that

that was the very reason why you had called the meeting at this time, namely the way in which ORT had covered this incident?

A. I beg your pardon, what is your question?

Q. My question is this: isn't it obvious that the way in which ORT had covered the Kursk incident would have been what you discussed, or one of the things that you discussed, at this meeting at the end of August with Mr Berezovsky?

A. Truly I do not recall that. Most probably it was discussed. Chances are it was not discussed. We might have discussed that prior to that, over the telephone. It's very difficult for me to recollect.

I had one real and very serious objective in the course of that meeting and that was to explain, to convey to Mr Berezovsky that an end had come to his governance of ORT. That was the end. The end had come, and this is what I conveyed to him, this is what I declared to him, and that was what made this meeting so dramatic.

Q. Well, you say it was a dramatic meeting. Just checking one thing in your answer, what the translator has translated you as saying about whether you discussed Kursk was:

"Most probably it was discussed. Chances are it was

not discussed."

Now, what is your evidence? Most probably it was discussed or that it wasn't discussed?

A. To be honest I do not -- I'm not sure I feel all those fine nuances. I think that the way ORT covered the Kursk tragedy was something that we did discuss. What I'm saying is that chances are we had discussed that prior to that meeting over the telephone, or we may have discussed this question in the course of that meeting. I cannot rule that out.

Q. And you say it was a dramatic meeting, is that right?

A. Yes, it's true, both the first and the second meetings -- the second meeting I'm sure is something that you'll be asking me questions about -- were quite dramatic, but the dramatism was different. For us the drama was that he was using a horrible tragedy to capitalise on this and to do some political public relations campaigns for himself. And for him the tragedy was that his hobby horse would be taken away from him and that he would no longer be able to manage ORT starting from that point in time.

Q. When you say it was a dramatic meeting, presumably emotions were running high at both meetings? Is that your evidence?

A. So far as I can recollect, yes.

MR RABINOWITZ: My Lady, this may be a convenient time.

MRS JUSTICE GLOSTER: Thank you.

Ten minutes' break.

Please don't discuss your evidence with anyone or the case with anyone. Thank you.

(11.31 am)

(A short break)

(11.45 am)

MR RABINOWITZ: Mr Voloshin, we will go back to the first meeting that you had with Mr Berezovsky in a moment.

I just want to go back to an answer that you gave earlier at [draft] page 18, lines 16 to 20. You were talking about a letter which businessmen signed when Mr Gusinsky was arrested and what you said was, in relation to this letter, that:

"... Mr Berezovsky was the only major businessman who did not sign a letter demanding his release."

And they're talking there about Mr Gusinsky's release. Do you remember that answer? Do you remember giving that evidence this morning?

A. Yes.

Q. Mr Abramovich did not sign that letter, did he?

A. To be honest, I do not recall who specifically signed that letter. I remember my feelings about that moment. Mr Berezovsky was not just a major businessman, he was

also a very active public person, he always was present in any more or less important public proceedings. And if he was absent in such a situation, that certainly would draw attention. Whether Mr Berezovsky was present -- be present or absent in such a proceeding, it would not go unnoticed, because he was always quite active in political or public activity.

Q. Let's just go back to your evidence about this first meeting on what was 24 or 25 August. We've talked about Kursk and whether that was mentioned at this meeting. You also say at paragraph 17 of your witness statement that you do not recall having mentioned Mr Gusinsky. Do you see that? Halfway through paragraph 17 you say you do not recall having mentioned Mr Gusinsky.

A. One second, let me read, please.

Yes, this is correct.

Q. Now, we have seen that at the time of your meeting Mr Gusinsky had recently been arrested, put in jail, because of an investigation. And it's right also, we've seen this, that NTV, Mr Gusinsky's channel, was the other major television station that was highly critical in its coverage of the Kursk incident. Would you accept that, whether or not you remember it, it is highly likely that you did mention Mr Gusinsky at some point during this conversation?

A. This is not necessarily that we had to mention him, because the incident with Mr Gusinsky, when he turned out to be in custody, that was -- that happened, as far as I recall, two months earlier. And from that moment on we surely have met with Mr Berezovsky and certainly discussed -- spoke with him over the phone, and we had the opportunity to discuss this situation earlier.

So it's not necessarily the case, it doesn't have to be a fact that we had to discuss this situation during that meeting. That's the way it seems to me.

Q. I'm not saying it necessarily has to be the case that you would discuss Mr Gusinsky, I'm asking whether, in the circumstances in which this meeting took place, it is likely that you would have discussed Mr Gusinsky, given in particular that his channel, NTV, the other independent channel, was also critical of the way the administration had responded to the Kursk tragedy. Do you accept that it is likely that you would have discussed Mr Gusinsky?

A. To be exact, to be completely precise, I do not recall the position of NTV channel at that point in time. I remember well all the drama around ORT around this event, but nothing stayed in my memory with regard to NTV and NTV's coverage of the tragedy, the tragedy with the Kursk submarine. And it doesn't seem to me that it

was something special at NTV during that period of time, at least I do not recall it.

Q. Can I ask you this, Mr Voloshin. Am I right to think that you don't have a clear recollection of this meeting, so that when you say you don't recall, are you saying it's just that you don't have a memory one way or the other, or are you saying that you specifically recall that you didn't mention Mr Gusinsky?

A. As I -- these nuances, I think I've got quite confused in these nuances. I do indeed not recall this meeting well. I had quite a specific task with regard to that meeting. I remember well about this task, this objective, and I have said about that. I have resolved that objection (sic) during that meeting. I announced to Mr Berezovsky what I announced to him, that for him in the future not to give instructions to ORT management with regard to the content of TV programmes, and for the ORT managers to be given the appropriate information from us so that they should not follow Mr Berezovsky's instructions with regard to the content. That was my objective, I recall that well, because that was the objective for that meeting, and naturally I recall the nuances a lot less well. And also I have some memories about the general emotional background about that meeting, and that's quite all right, and I indeed do not

recall the rest of it.

It wasn't such a lengthy meeting. As far as I recall it was, well, give or take, half an hour.

- Q. So if Mr Berezovsky has a clear recollection of Mr Gusinsky being mentioned in this meeting you would not say that he was wrong about that. Is that right?
- A. I would say that he is wrong. I do not recall that that was mentioned at that meeting. It would seem very strange to me that, for some reason, I would have to mention Mr Gusinsky at that meeting. It would seem strange to me.
- Q. You see, Mr Voloshin, I suggest that at this meeting you informed Mr Berezovsky that the president considered that ORT was working against him and that he, the president, wished to have Mr Berezovsky out of ORT so that he could manage it himself. That's right, isn't it?
- A. No, this is not right. I've conveyed my opinion with that regard, and it seems to me my opinion is a lot more credible because I was present in person during that meeting. I remember exactly what was the objective of that meeting and what I was doing there.
- Q. Your recollection may be more credible than my opinion, but Mr Berezovsky was also at that meeting and that is his evidence of what you said. Do you follow?

MRS JUSTICE GLOSTER: Well, what's the question there?

A. Yes, I do follow, and I've heard that Mr Berezovsky said a different thing.

MR RABINOWITZ: You also directed Mr Berezovsky to surrender his shares in ORT. That's right, isn't it?

A. This is completely incorrect. No shares were discussed at that meeting, there wasn't any point in that. The objective of our meeting was to inform Mr Berezovsky that the concert is over, the show is over, and he won't be able to impact the journalists, and he should not do that, and the journalists have the right to be free from his influence.

We implemented this within the next few days over these meetings and nothing else was required. Actually, events speak for themselves. For example, one of preachers of Mr Berezovsky's position at ORT was Mr Dorenko, a very talented journalist, and his show was closed at the end of December after it last has been aired, and nothing else was required. Everything we wanted to do we've done at that point in time, and I've informed Mr Berezovsky about that.

So a week later we basically didn't have any problems. He already was stripped of his influence and, therefore, could not bring that influence back.

Q. Well, you say you told him that the show was over and

that a week later you say he was stripped of his influence. But as long as he held 49 per cent of ORT he was plainly in a position where he could affect the coverage that ORT gave of events in Russia. That is right, is it not?

A. No, I disagree. He had no opportunity to do so with holding 49 per cent. He had no opportunity to impact the position of journalists. Prior to that, it was some informal relationship system between him and the journalists, and that system was destroyed, nothing else was left. Actually he didn't even have 49 per cent because part of the shares was pledged at Vneshekonombank against a loan that the government extended to support ORT.

Q. When you say the show was over, you are saying also --

A. Sorry, the last phrase. The package owned by Mr Berezovsky was partially pledged against the loan that was issued by Vneshekonombank to ORT. As far as I recall, the share package was 6.5 per cent, so in actuality Mr Berezovsky didn't hold 49 per cent of shares but even a smaller package. But even having 49 per cent, he would not be able to impact the journalists. 49 per cent, the block of shares, 49 per cent does not allow to appoint anyone or doesn't allow to control the process.

Q. But what it does allow you to do, Mr Voloshin, is to block anyone else trying to make appointments because it's right, is it not, that for certain decisions within ORT one needed a two-thirds majority? And as long as Mr Berezovsky held the block of shares he did hold, he could block any two-thirds majority being obtained?

A. I do not recall in detail what the ORT charter was saying. A lot of time has passed since then and I don't think I was well aware of it at the time. But there was no need, we didn't have the need to do something radical with ORT. We didn't need it, we haven't got it and we won't have it in the future. And Mr Ernst, who was head of ORT at that point in time, he is continuing to manage it, he is a talented journalist, he is a talented manager. There was no need to replace him or change him and there was no need to do any -- have any majority of voting et cetera.

All that we had to do is to get Mr Ernst rid of the impact of Mr Berezovsky, and that's exactly what has been done, and to give Mr Ernst the freedom to solve all the problems within the team internally, and that was done as well. As I said, one could have seen the results of that in a few days' time without any blocking share packages. Mr Ernst put everything in its place and all the problems had ceased already a week after our

conversation.

Q. So you say you told him that the show was over. How did you express to him that the show was over?

A. Obviously "the show is over" is a figure of speech.

I do not recall the exact words that I used, but I was trying to convey the meaning today several times.

The point was, the meaning was that you should not impact the journalists or the ORT management any longer. And secondly, that the management and the journalists of ORT shall have the same message from us, and that has been done. Not only it has been done, and there were some consequences confirming what I've been saying here and now. Within a week everything was put in its place and this is it. And the point of that meeting was to announce, to inform Mr Berezovsky about that, and that objective was achieved.

MRS JUSTICE GLOSTER: Could I ask you, Mr Voloshin, please, you said a moment ago that you implemented your decision "within the next few days". What did you actually do in order to take steps to ensure that Mr Berezovsky wouldn't be able to impact the journalists?

A. Everything that I've done, it wasn't much. I had a chat with Mr Ernst, that was and still is the director general of that channel. I told him that a decision had been made that Mr Berezovsky should not have any impact

on the journalist team and personally on Mr Ernst, and that was told to Mr Berezovsky himself. And from now on Mr Ernst shall be free from any influence of Mr Berezovsky, and Mr Ernst was delighted to hear that from me.

MRS JUSTICE GLOSTER: And were there any formal steps you took to implement your objectives?

A. Your Ladyship, there was no need to implement any formal steps basically because the impact of Mr Berezovsky was informal. He was calling on the phone Mr Ernst and journalists, and the journalists, he was telling them how to cover this or that event. And these powers, these powers of his to call or not to call, they were not formally documented in any way. So therefore, refusal to do that did not require any formal decisions.

MRS JUSTICE GLOSTER: So there was no mechanism under the ORT charter that you had to go through so as to ensure that Mr Berezovsky's influence was withdrawn?

A. Indeed, there were no such mechanisms.

MR RABINOWITZ: Mr Voloshin, the evidence you've just given about phoning Mr Ernst is not evidence that you have given in the three witness statements you have made, is it?

A. I think I didn't give that.

Q. What you actually said to Mr Berezovsky is he should

clear out of ORT, that's right, isn't it?

A. I do not recall the specific words. I've said that several times. I cannot now vouch for the wording and what exact wording I've used but I think I have described the meaning in quite sufficient detail.

Q. And what you eventually said in anger was to threaten that if Mr Berezovsky did not fall in line he would end up like Gusinsky. That's right, isn't it?

A. No, that is not correct at all, and basically there was no need to do that. There was nothing to discuss with Mr Berezovsky. The point of our meeting was to inform him about the decision that has been taken, and this has been done.

MRS JUSTICE GLOSTER: What was the basis upon which Mr Berezovsky was exerting influence beforehand? Was there some agreement that he should be allowed to do that? What was the position?

A. Your Ladyship, that was a certain situation that came to be. I've inherited it when I've arrived to work at the president's administration, this situation already existed, ORT existed in the way it was, and Mr Berezovsky informally was exerting influence on everything that was done at ORT. If not upon everything, then at least upon the lion's share, at least the political coverage and publicly notable

coverage. That was a fact of life.

It was not formalised in any way. It was a certain tool of influence for him, and that tool of influence has arisen prior to me being involved in all these things. And for some point in time it was tolerated, I can't say that everyone was happy with that but it just was going on, and obviously that awful tragedy with Kursk has pushed us to stop, to cease that impact that came to be.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: And he was able, was he not, to appoint his own people as directors of ORT?

A. Do you mean the board of directors or executive directors?

Q. The board of directors of ORT.

A. Naturally, any shareholder has the right to nominate people into the board of directors and to vote for them at meetings. Yes, this is correct.

Q. And is it not right that in the summer of 2000 Mr Berezovsky appointed his daughter, Yekaterina Berezovsky, as a director?

A. To be honest, I do not recall.

Q. And he appointed the anchor Sergei Dorenko as a director?

A. I do not recall this. I do not recall who was on the

board of directors. To be honest, I do not recall precisely who was in the board of directors on behalf of the state. The board of directors of ORT usually had nothing to do with the content of ORT coverage, and anyone who is involved with that company would know that.

The board of directors would look at some general organisational or financial aspects of the company activity, but it never scrutinised the content of the coverage.

I was more involved with the politics because I worked at the president's administration, and I wasn't much concerned with the composition of the board of directors. I do not recall their composition.

Q. Perhaps I can just refer you to some coverage of this at H(A)19, page 217.001 H(A)19/217.001.

MRS JUSTICE GLOSTER: Mr Rabinowitz, in due course will you show me, please, the charter of ORT so --

MR RABINOWITZ: I can give your Ladyship the reference.

MRS JUSTICE GLOSTER: If you just give me the reference, I can look at it.

MR RABINOWITZ: It's H(A)20, page 240 H(A)20/240.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: So this is, if you are at H(A)19, page 217.001, a report in the Moscow Times of June 21,

2000. The first paragraph says:

"If there was any doubt about who controlled ORT television, Boris Berezovsky made it clear Tuesday when he put his daughter Yekaterina [Berezovsky] and his favourite anchor, Sergei Dorenko, on the board of directors. ORT, the country's largest television station, is 51 per cent state owned, but its ownership structure has always been ambiguous."

Does that help you in terms of whether these people were appointed to the board of ORT?

- A. I didn't know at that point in time that these people were appointed. It wasn't crucial for me. It's impossible to recall what you didn't know. Now I've read this paragraph and this esteemed publication surely wrote it -- written it for a reason, but at that point in time I didn't know that and I wasn't interested in this at that point in time.
- Q. And the people Mr Berezovsky appointed to the board were not replaced until after his shares in ORT were sold. Are you aware of that?
- A. I do not know that. I am not aware of that. I have never followed that.
- Q. I want to turn next to the second of the meetings which took place at the end of August 2000, and that is the further meeting between Mr Berezovsky, President Putin

and yourself in your office in the Kremlin.

Mr Berezovsky said this occurred the day after the previous meeting and I think you accept that that might be right? Is that right?

A. I'm not convinced that it happened the day after the meeting but it definitely happened soon after our first meeting.

Q. You say that at this meeting President Putin told Mr Berezovsky that he wanted Mr Berezovsky to stop his involvement in ORT and to step away from managing the channel. Is that right?

A. Mr Putin, at that meeting, has confirmed that what I said to Mr Berezovsky at our first meeting was correct. The need for the second meeting actually has arisen due to the fact that Mr Berezovsky was so upset that he is stripped of the opportunity to impact ORT that he wanted to hear it personally from the president himself. And he asked me then, "Is it possible to organise such a meeting with the president?" He asked me that during the first meeting. And I told him that I'm not sure that the president would like to meet him but I promised to ask the president.

After that, I had a word with Mr Putin, I've informed him about the meeting that was held, and I told him that such a request has arisen to meet with him, and

to my surprise the president has agreed and said, "Yes, I've got nothing against it. I'll tell him everything I think about the matter. Do organise that meeting". I did organise that meeting, it indeed was held at my offices. It was a very brief meeting, there was not much of substance that was discussed, there was nothing new as compared to the first meeting, nothing new arisen as compared to the first meeting.

- Q. So you say that President Putin was happy to have this meeting because he wanted to tell Mr Berezovsky everything he thought about the matter, and one of the things he would obviously have talked to Mr Berezovsky about at the meeting is the Kursk incident. That's right, isn't it?
- A. To be honest, let us imagine how much can be said within the five minutes considering there are three speakers and each of them would have 1.5 minutes or so, taking into account that everyone is taking part in this conversation.

I do not recall that we have discussed the situation in great detail and in depth. I remember that the meeting was emotional, emotions indeed were flying high, and there was no substantial discussion, no discussion on the merits.

The president did warn, yes, indeed, that

Mr Berezovsky should not impact ORT anymore and that the journalists will be relieved from the need to listen to his instructions, and that was all. Nothing else was discussed at that meeting, if to discount various interjections and emotions.

- Q. Well, given how emotional you tell us President Putin felt about the Kursk incident and Mr Berezovsky's coverage of it, that would have been something that President Putin would have brought up. That's right, isn't it?
- A. Do you know, when people meet up they discuss some things -- it's not necessarily the things that they discuss. The situation was so clear to Mr Berezovsky and Mr Putin and myself, it was extremely clear, and I said, indeed, that it was dramatic at different points for each of the parties, but there was no need to discuss something, to chew over something. The situation was clear and Mr Berezovsky simply was informed about the decision that has been taken. He didn't like that decision one bit and that was his problem.
- Q. You see, I suggest to you it's very likely that the Kursk incident would have been raised by President Putin but you dispute that, do you?
- A. I cannot rule this out. I indeed do not recall the

specific words that were said during the discussion. He might have mentioned that or not. The situation with Kursk was quite clear, was quite obvious for Mr Berezovsky, for myself and for the president. It was obvious for everyone. And it was obvious that Mr Berezovsky, in this dramatic -- in this catastrophic situation where people died, that was a real drama and a real tragedy, he used this situation in a cynical way in order to gain political capital, in order to get engaged in political PR. And it was so obvious it didn't need any qualification and we had nothing to discuss during that meeting.

- Q. Well, in this emotional meeting, do you accept that Mr Gusinsky's name was brought up again?
- A. I do not think that mention of Mr Gusinsky was something that was mentioned at that meeting. He had nothing to do with that meeting and there was no reason to mention him, so I do not think so.
- Q. Can I ask you, please, to go to bundle H(A)21 and turn to page 169 in the English H(A)21/169, 167 in the Russian H(A)21/167.

This, as you probably recognise, Mr Voloshin, is an open letter from Mr Berezovsky published in the Kommersant Daily on 5 September 2000. Just looking at -- it's an open letter to President Putin. Just

looking at the first paragraph:

"Last week, a high-ranking official in your administration issued me an ultimatum: to transfer the stake in ORT -- which I control -- to state management or follow Gusinsky; apparently he meant [to] Butyrka prison. The reason behind this proposal is your displeasure over ORT's coverage of the Kursk submarine accident. 'The president wishes to run ORT himself', your representative [said] to me."

The representative that Mr Berezovsky is referring to here would have been you, Mr Voloshin, that's right, isn't it?

A. I think that he meant -- I think -- I mean

Mr Berezovsky, when he was addressing Mr Putin with this open letter, he meant myself. I think it was too daring to him to mention Putin himself, therefore he mentioned myself. I think that's the way it was.

Q. You'll see that he refers to you having issued an ultimatum to him to transfer the stake in ORT "to state management or follow Gusinsky". And that is exactly what happened at that meeting, Mr Voloshin, that's right, isn't it? You issued him an ultimatum?

A. Certainly this is not the way it was. This is the fantasies of Mr Berezovsky, and the fantasy here is not just about the threats, it's the fantasies about all the

various conversations about shares.

And I would like to draw your attention to the fact that, compared to what he said on other occasions, here it looks like it's discussed that we supposedly wanted to pass the stake into state ownership. In my understanding, to pass something into state ownership this is not to sell.

And there are lots of other things in this open letter. I psychologically understand why Mr Berezovsky did this, but it's quite obvious that in these documents things are not true.

- Q. At no stage, Mr Voloshin, did you or anyone else at the time come out and say that anything that Mr Berezovsky had said in this open letter was not true. That's right, isn't it?
- A. I never publicly commented this open letter, this is true. However, it would have been impossible, we would have had to double the staff of Mr -- of the president's administration to be able to comment on every utterance of Mr Berezovsky, including utterances directed at us. Also he constantly was saying different things, we would never, ever catch up with him to comment on his utterances every time.
- Q. Mr Voloshin, the incident with the Kursk and what happened afterwards was something about which you have

told us both you and President Putin felt very strongly. If what Mr Berezovsky was saying about it through the media was utterly false, as you are suggesting, you would at the time have issued a denial, but you never did, did you?

A. Sorry, the denial of what? I beg your pardon.

Q. That what he was saying here was in fact what had happened?

A. This statement is about the fate of ORT overall.

Mr Berezovsky, over the course of year 2000, I think had about ten utterances with regard to ORT. He was talking about selling these shares to the state, that he wanted to sell them to private investors, that he doesn't want to sell them to the state or to private investors, that he wants to pass them into management -- into the trust management of the state or he doesn't wish to do so.

Then he wanted to create some teletrust and pass the actions -- the shares to be managed by a team of journalists. Then he changed his mind again. And do believe me, we had no need to comment on this every time and we couldn't do so. You have to look at the context, and obviously now we're inside these complicated proceedings.

But if you look at it, in Russia, year 2000 was quite dramatic. Apart from Mr Berezovsky, there were

lots of other things happening in the country. We had were several tragedies, a string of tragedies. We had an explosion at Pushkinskaya Ploshchad metro station, that was in August. Then there was a dreadful Kursk incident when 118 people died with everyone watching, that was a real tragedy.

A bit later, Ostankino TV tower burnt down, and at some point I thought that everything was just crumbling down. At the same time we were adopting new political laws, promoting new economic laws, for example introducing the new tax laws, looking at the budget. We had plenty to do apart from commenting on the nonstop utterances of Mr Berezovsky. Do take my word for it, we simply didn't have time.

Q. Mr Voloshin, you have mentioned utterances that you say Mr Berezovsky had made about the fate of ORT, but what is clear about your evidence here is that none of those utterances relate to a conversation that you were supposed to have had with him, and that makes this utterance, if you want to call it that, very different.

You were in a position where someone had claimed that you had had a conversation with them and made a threat to them. The fact that you had not responded to the other utterances is not possibly a reason why you wouldn't want to respond to this one if what he was

saying here was untrue. That's right, isn't it?

A. I disagree with that. I shall repeat, (a), there was no opportunity to comment Mr Berezovsky's utterances because he was making his comments on a daily basis about this thing or another, and each of these comments could have been commented upon. And then, with regard to me personally, apart from some extreme cases, I avoided any public activity, I'm not a public person at all, I never liked any public comments and statements of any sort so I tried to avoid it. I'm not a public politician.

Q. Mr Voloshin, I'm going to suggest to you that your account of your meeting with President Putin and Mr Berezovsky is not accurate and that what happened at that meeting was this: that Mr Berezovsky tried to explain and justify ORT's coverage to President Putin, do you accept that that is what happened there?

A. I disagree. I have absolutely no certainty that that was the case.

Q. And that President Putin said to Mr Berezovsky that he had to give up his shares in ORT to the state or an entity acceptable to the government and that President Putin himself intended to control ORT.

A. Again, this is not the truth. No shares were discussed at these meetings. May I repeat myself, there was no

need to do that. All objectives that we had have been resolved during these meetings and within the next few days after the end of these meetings. And after that, everything with ORT was to our satisfaction.

- Q. And President Putin confirmed at this meeting that the threat -- that unless Mr Berezovsky did as he said he would go the way of Mr Gusinsky -- sorry, he explained that the threat that he would go the way of Mr Gusinsky had emanated from President Putin, the threat that you had made to him at the previous meeting?
- A. No, there were no threats, that I recall correctly. Why would we need to threaten because we've solved all the objections during these meetings. If one wants to get something from a person, in theory, one could suppose that the person that you wanted to get something from can be threatened. But we didn't need to get anything from Mr Berezovsky, we've resolved all the objectives during the meetings and several days after the meetings. We simply didn't have the subject of our conversation, of our discussion anymore.
- Q. You could only have solved all of your objectives during these meetings if Mr Berezovsky was going to do what you told him to do, which was to stay away from trying to control ORT. You don't solve the objectives simply by having that conversation, or do you say that you do

solve it?

- A. To be precise, perhaps we were exceedingly polite with regard to Mr Berezovsky. We didn't have to meet with him at all, it would have been enough to instruct the ORT management and ORT journalists not to listen to Mr Berezovsky anymore, but then we would have embarrassed us -- embarrassed them, inconvenienced them because he would have continued to call them and they would somehow have to dodge his phone calls. So we wanted to be direct and we wanted to inform Mr Berezovsky himself about that. This is the essence of what happened.
- Q. But what was it that you said which was going to ensure that Mr Berezovsky did as you were telling him to do?
- A. I do beg your pardon, I didn't understand the question.
- Q. Well, on your evidence, you were instructing Mr Berezovsky to stay out of ORT and not get involved. Are you saying that merely telling him this would have been enough? Politely? Or were you identifying what would happen to him if he didn't do as he was told?
- A. No, I didn't tell anything of sorts to him. Let me repeat, everything that was said has been already described by me. There was no need to discuss that with him in detail. Everything that would have happened if he did not follow these -- this advice, and I think he

did start to follow this advice because, strangely enough, he stopped calling to ORT. But even if it were not the case, the journalists would have not been listening to him anyway. This is all that's happened.

And I'll tell you, the journalists were delighted to be rid of this influence. And those that were not happy to be rid of this influence, for example, as in the case with Mr Dorenko that couldn't get rid of this influence, his show was closed, and I think that happened a week or a week and a half after our conversation. This is all.

Q. I want to just move to what you say at paragraph 19 of your witness statement, E1, tab 1, page 7 in the English E1/01/7 and page 19 E1/01/19 in the Russian.

You say there, and you're talking here I think about your first meeting with Mr Berezovsky, you say:

"In view of my friendship by that time with Mr Abramovich, I believe that I probably discussed my meeting with Mr Berezovsky with him..."

Then, if you go to paragraph 23 of this witness statement, you say there that you also discussed the second meeting. You say it's "probable" that you would have discussed your second meeting with Mr Berezovsky with Mr Abramovich.

Now, the meetings that you had with Mr Berezovsky were part of your official business as the head of the

presidential administration, they were not social calls, were they?

A. Do you mean, the meetings with whom?

Q. The two meetings that you had with Mr Berezovsky on --

A. Certainly they were purely business meetings.

Q. And they were part of your official business as the head of the presidential administration, is that right?

A. One could put it this way, although we've discussed, we were talking about stopping some sort of informal impact or influence. This is a nebulous substance, it's very hard to place it whether into a formal or informal function box, but overall I could agree with your definition.

Q. And are you suggesting in your evidence that at this time, in the summer of 2000, it was commonplace for you to keep Mr Abramovich informed about your government business generally?

A. I disagree. I've never stated this.

Q. I think you are saying that it was not commonplace for you to keep Mr Abramovich informed about your government business generally. Is that what you're saying?

A. Yes, you're absolutely correct, there was no practice for me to inform Mr Abramovich about my government business. There wasn't such practice.

Q. Can you explain to us why you spoke to him about these

conversations with Mr Berezovsky then?

- A. I certainly could clarify, and once more I would like to draw your attention that I indeed do not recall these meetings with Mr Abramovich when I spoke about them with him, and in my witness statements I have stated, and I can confirm this now, and it seemed to me quite likely that I did discuss it with him. That follows from the logic of our friendly relationship with Mr Abramovich and this is so indeed.

Why I do not -- why I discussed these meetings with him with a high degree of certainty was because these meetings have touched upon Mr Berezovsky with whom Mr Abramovich had business relationship. And they were quite closely linked in business and, naturally, it had to worry him and I think it's quite logical.

- Q. Are you suggesting that whenever you had a government meeting touching on business to do with Mr Berezovsky, you would tell Mr Abramovich about it?

- A. I didn't have so many business meetings with Mr Berezovsky, and the activity of Mr Berezovsky is highly exaggerated in history. But if this -- if my meeting with Mr Berezovsky in any way would touch upon Mr Abramovich, who was and is my friend, then certainly it would have been logical that I would share this with him later. There was no such governmental secret that

I would discuss with Mr Berezovsky and something that I would not be able to tell Mr Abramovich about later on, if I considered that to be interesting, useful or necessary.

Q. Did you tell Mr Abramovich about these meetings because you wanted him to act as an intermediary with Mr Berezovsky?

A. I beg your pardon, an intermediary? Who had to be an intermediary?

Q. Mr Abramovich, to be an intermediary between the government, you and President Putin, and Mr Berezovsky?

A. Not at all. We have just discussed this in detail, all our meetings with Mr Berezovsky. We didn't need intermediaries in this, we discussed everything directly and even with a deal of emotion.

Q. Well, we've had evidence that on or about 31 August, Mr Abramovich visited Mr Berezovsky in his chateau in France to pass on to him the message that the Kremlin were angry with him. Did you ask Mr Abramovich to pass on that message?

A. I completely do not recall this. I do not recall the fact of such meeting. I don't think I would have even known about this. They communicated between themselves on a regular basis and I didn't track the schedule of their meetings.

Q. Can I ask you next to go to paragraph 29 of your second witness statement. That's in bundle E4, tab 7, page 126 in the English E4/07/126 and 143 in the Russian E4/07/143. Do read it to yourself, if you will.

A. Which point?

Q. Paragraph 29. (Pause)

A. Yes, I have read it.

Q. You explain here that you do not recall having any discussions with Mr Abramovich about the Aeroflot investigation before Mr Glushkov's arrest. You then say:

"After Mr Glushkov's arrest, I remember discussing it with him a few times and Mr Abramovich expressing the view that it was a pity, in light of his medical condition, that Mr Glushkov was held in detention."

And you say that you had this discussion a few times but you don't here identify when you think these discussions were. Presumably, 11 years later, it is difficult to remember exactly when those discussions took place, especially if, as you were, very busy in your job, is that right?

A. I would agree with that. I do indeed not recall the dates of these meetings and discussions.

Q. Now, that was the position in your witness statement until just before the start of the trial. Then on

26 September, that's about a week before the trial, Mr Abramovich served a sixth witness statement, and can I just ask you to look at. That's in bundle E8, behind tab 8. I want you to look at paragraph 13, in the Russian it's at 119 E8/08/119 and in the English at 105 E8/08/105.

Do you see at this point Mr Abramovich suddenly saying, I think this was for the very first time, that he in fact visited you with Mr Krasnenker on the evening of 7 December, do you see that?

A. Yes, indeed, 7 December.

Q. And he says that you discussed the risk of Mr Krasnenker's arrest, and this was on the very day of Mr Glushkov's arrest, yes, 7 December?

A. Yes.

Q. Then what happens is that following this witness statement from Mr Abramovich, four days later, on 30 September, you served a further witness statement. This is your third witness statement, do you remember that?

A. I do not recall the date when I submitted my witness statement.

Q. Okay, take it from me it was four days later. And you exhibited to that witness statement some phone records that had been provided by your former secretary at the

Kremlin. We can see those records if we go to bundle H(A)25 at page 162.007T in the English H(A)25/162.007T and 162.007 in the Russian H(A)25/162.007.

If you could turn to page 007, you see that there is a record of a phone call with Mr Abramovich at 18.19, 6.19, on 7 December. It's the second last entry, do you see that?

MR SUMPTION: My Lady, it's actually 16, I believe.

A. Yes, I do, I do see that.

MRS JUSTICE GLOSTER: Yes, 16, not ...

MR RABINOWITZ: If you go three pages on to .010, 0.10T, again there is a telephone call from Mr Abramovich at 14.12, 2.12, on 8 December. Do you see that?

A. Yes, I can see that. In the first case, indeed, it was 16.19 and the second time it was 14.12.

Q. We obviously can't see from these phone call logs the number which Mr Abramovich telephoned from so one can't really work out from this where Mr Abramovich was telephoning you from, can one?

A. It is indeed, it doesn't follow from these logs where the phone call was placed from.

Q. Can I then ask you, please, to go to your third witness statement. It's at E8, tab 15, I want to look at paragraph 2, and that is at page 189 in the Russian

E8/15/189 and 185 in the English E8/15/185.

You say at paragraph 2 that you:

"... recall speaking to Mr Abramovich shortly after the arrest of Mr Glushkov on 7 December 2000."

And that is a discussion that you don't refer to as having taken place on 7 December in your earlier witness statements.

That's right, isn't it?

A. One second, let me read this.

I think there is no contradiction here.

Q. I'm not suggesting there is.

A. I think we're discussing the same meeting here.

Q. Is what's happened here, Mr Voloshin, that you were shown the phone logs that your secretary produced and from that you have reconstructed that there would have been a meeting with Mr Abramovich following that conversation?

A. No, this is not the case. This is not the case at all. I remember well the meeting itself, and since in my evidence we were discussing these days, I did ask my secretary to reconstruct the schedule of my telephone conversations. And I have seen this conversation; based on the logic of events it was clear that it was during this very conversation we had set up a meeting, and it was quite a dramatic day. I remember about the fact of

that meeting, even without the reminder from my secretary. That was indeed a very dramatic day.

I remember the terrible state of Mr Krasnenker, he was indeed just about -- he was really shaking, because they were on the same case with Mr Glushkov, he worried about his fate and he worried that he might follow the way of Mr Glushkov. It was indeed very dramatic.

I remember that meeting and I actually can, whilst answering that question, I can say that Mr Krasnenker was doing black jokes that Mr Glushkov was imprisoned during some professional holiday, such as the airline employees day, and he was joking that, you know, how could it be, you know, a professional holiday and he was put in prison on the same day.

Q. You see, I asked you earlier about whether or not you could remember, 11 years later, when these discussions took place, and I said that 11 years later it would be difficult to remember exactly when those discussions took place, and you said:

"I would agree with that. I do indeed not recall the dates of these meetings and discussions."

That is why I suggest to you what has happened here is that you have reconstructed back from telephone logs, and perhaps talking to Mr Abramovich, a date on which you now say this meeting took place. That's right, is

it not?

- A. I disagree with you. Indeed many years on it's difficult to recall certain events. But some events, if they are linked with some internal or external dramas or dramatic events, I think it's normal quality of human memory. You remember the most vivid and memorable events, especially if they're linked to some other events. So I have no other doubts, not a slightest doubt, that the meeting happened on that very day. I remember well the state of Mr Krasnenker and I remember the worry of Mr Abramovich who was a close friend of Mr Krasnenker.
- Q. If you remember it so well, why did you not mention this meeting with Mr Krasnenker in paragraph 29 of your second witness statement?
- A. I do beg your pardon, I didn't understand the question. Why did I have to mention it again in that paragraph, in paragraph 29?
- Q. That was your earlier witness statement. It's not mentioning it again, it would be mentioning it when the point first arose.
- A. I mention it since I was asked about it by our lawyers. I don't know, I remember many things, and in my witness statements I've put not -- far from everything that I remember, to be honest.

The way the work was organised was as follows:

I recalled some things myself and I was asked about some things by my lawyers. If I didn't think it material for the case I perhaps would have omitted to mention it. If I thought that something was material or important for the case, I could have written about it. There were many serious and dramatic events that were left outside the framework of my witness statements and I think it's not the only case. There were many other events happening.

- Q. Can I just ask you this: the secretary that you had at the Kremlin who provided you with these phone logs must also have kept for you a record of meetings which you arranged while you were at work. Is that right?
- A. This is a software programme, this is not a desk diary of my secretary. That's a software programme, and I have requested it both for the first issue and the second issue when I started being interested in these dates and I wanted to restore the flow of events but, unfortunately, she didn't have the opportunity with regard to the schedule. It was some other software programme that was not preserved and it was -- it did survive with regard to telephone logs.

But in any case if you mean, and I understand from the context that you mean that that schedule should have

reflected our meeting with Mr Abramovich and Mr Krasnenker, it would have been unlikely for that meeting to be reflected there because that happened at my home and my secretaries never kept a schedule of my home meetings.

Q. Mr Voloshin, I have to suggest to you that you can't really recall that this meeting took place on 7 December some 11 years ago, can you?

A. I disagree. I do indeed recall this meeting well, and if such dramatic events didn't happen on that very day it would be hard for me to recall the date exactly. But since the arrest of Mr Glushkov happened on that day, and that was a serious event, would you agree? And then secondly, that event touched upon Mr Abramovich very closely due to the fact that Mr Krasnenker, who was a close friend of Mr Abramovich, was in the same case and he might have been facing something similar. I have absolutely no doubt, I even recall my emotions that accompanied that meeting.

Q. The fact that he was arrested that day, he was still under arrest two days later, for example, Mr Krasnenker might still have been worried two days later. That's right, isn't it?

A. He could have been still worried, indeed, but unfortunately Mr Glushkov still was in custody for

a long time after that, and of course the situation was dramatic, namely on the first day when suddenly the arrest of Mr Glushkov was suddenly announced. That was the dramatic moment. And obviously, internally, Mr Glushkov had spent several years behind bars, of course internally every day for him was dramatic, I understand that well. But for people outside of that, the external people such as myself, certainly what was memorable, that was the day when that happened.

Q. Why was the arrest of Mr Glushkov a memorable day for you, Mr Voloshin? It would obviously be a memorable day for Mr Glushkov, but why would it be a memorable day for you so that you remember it 11 years later?

A. Firstly, I personally knew Mr Glushkov, I wasn't a close associate of his but I did know him, and if someone who you know is put in prison that affects any normal person, in my opinion. And secondly, Mr Glushkov was involved in quite a publicised Aeroflot case and that was in the public view, it was a publicly important event. Thirdly, it directly touched upon a friend of Mr Abramovich who, in his turn, was my friend and he was worried about this as well. So I had many reasons to remember this event well.

Q. You see earlier, when we were talking about Mr Gusinsky's arrest, you said you couldn't remember

when he was arrested at all. But now with Mr Glushkov you say you've got a clear recollection of the exact day he was arrested, is that your evidence?

- A. Exactly, because Mr Gusinsky, I might have met him once or twice in my life, and with Mr Glushkov I knew him a lot better and we had shared circle of friends. Whereas with Mr Gusinsky I had no shared circle of friends.

I recall the arrest of Mr Gusinsky, I just simply don't recall the date because, on that date, I personally wasn't involved in this in any way. And in the case of Mr Glushkov, that happened with people that I was linked with in close friendship, and on the day of arrest of Mr Gusinsky I didn't meet anyone with regard to arrest of Mr Gusinsky. And on the day of arrest of Mr Glushkov, there was a reason to have a meeting between me and Mr Abramovich and Mr Krasnenker, and this is exactly -- it's logical that I recall this date well.

- Q. Can I just ask you to look at paragraph 6 of your third witness statement, please. You are giving evidence here about a birthday party on the 9th, late in the day on 9 December. You explain that the birthday party was at Mr Mamut's house, and is it right that there were around ten guests? A small party, yes?

- A. Yes, there was such a party.

Q. And you say that Mr Abramovich was there, is that right?

A. Yes, this is the case.

Q. And you were there with your wife, you say?

A. And this is true as well.

Q. And you were President Putin's chief of staff at the time, that's right, isn't it?

A. This is correct.

Q. And Mr Kasyanov, who was there, was the prime minister of the Russian Federation, is that right?

A. As far as I recall, this is true.

Q. The other couple who were there, Mr Valentin Yumashev and Ms Tatyana Dyachenko, Tatyana Dyachenko is President Yeltsin's daughter, correct?

A. Yes, this is correct.

Q. And Mr Yumashev, her husband, was President Yeltsin's son-in-law and his former chief of staff?

A. This is partially true. I think at that point in time he wasn't a son-in-law but he was already an ex-chief of staff.

Q. And would it be fair to say that this was a party attended by people who made up, in part at least, the inner circle of President Putin's advisers?

A. I wouldn't put it in this way. I think there were people not based on the principle of whether they were advisers of Mr Putin or not, there was some other

principle of inviting them. And, as far as I recall, there were people that only saw Putin on TV, for example Mr Golukhov. I'm not quite sure that he met Mr Putin at that point in time, but surely he had seen him on TV many times.

MR RABINOWITZ: My Lady, I'm going to try to finish with this witness if I may, I don't have very much further to go. I'm in your Ladyship's hands.

MRS JUSTICE GLOSTER: How much longer?

MR RABINOWITZ: Five minutes.

MRS JUSTICE GLOSTER: I'll sit for five minutes but if it's longer than that I'll rise.

MR RABINOWITZ: I suppose we have re-examination as well.

MRS JUSTICE GLOSTER: Then I'll rise now.

MR SUMPTION: Not so far.

MRS JUSTICE GLOSTER: Then I'll go on.

MR RABINOWITZ: Mr Voloshin, Mr Berezovsky's evidence is that when he and Mr Patarkatsishvili met with Mr Abramovich in Cap d'Antibes in early December, Mr Abramovich made threats to Mr Berezovsky and Mr Patarkatsishvili and demanded that they sell him their shares in ORT. I'm not going to ask you to comment on that, Mr Voloshin, you weren't there.

At that meeting, however, Mr Berezovsky says that Mr Abramovich told him that he had come to deliver

a message at your request as well as at President Putin's. Do you deny that you did ask Mr Abramovich to go to Mr Berezovsky and tell him that unless he surrendered his shares in ORT, Mr Glushkov would remain in prison and the shares would be expropriated?

- A. It certainly is not true.
- Q. Mr Patarkatsishvili told Mr Berezovsky's lawyers in 2005 that some time after this meeting he had a further personal conversation with you at which you also promised that Mr Glushkov would be released. I'm not going to show you that, but in your witness statement you refer to an interview which Mr Patarkatsishvili gave to Kommersant Daily on 4 July 2001.

I wonder if I can show you that document. H(A)37 at page 4 in the English H(A)37/4 and 4R in the Russian H(A)37/4R. If you go to -- make sure you recognise the document and you know what it is, you can see it's an interview with Kommersant Daily on 4 July 2001. If you go to page 6 of the document, perhaps we can pick it up at page 5, Gevorkian says to Mr Patarkatsishvili:

"In actual fact, they dealt a blow to Glushkov."

Mr Patarkatsishvili says:

"The Kremlin decided to ostracise Berezovsky by pressuring his close associates. That is why they

picked out Nikolai Glushkov, the former deputy director general of Aeroflot and close friend of Berezovsky's and mine. He was arrested December 7, 2000. It became clear some time later that the organisers had failed to attain a resounding effect, and the Aeroflot case began falling to pieces. The charges against Glushkov kept changing at an astonishing pace. One might wonder, why all that fuss if you claim to have reliable evidence, gentlemen."

Then Gevorkian said:

"You mentioned attempts to pressure Berezovsky.

What could the actual motif behind it be?

"Boris Abramovich and I underwent all sorts of pressure, before and after Glushkov's arrest. They tried to bargain the Aeroflot case closure for the shares of ORT television. We agreed to it when Glushkov was arrested. We sold our shares. Alexander Voloshin promised that Glushkov would be released, but he cheated us."

I suggest to you, Mr Voloshin, that what Mr Patarkatsishvili said here, and indeed to his lawyers, was correct, that there was a conversation between you and him after Mr Glushkov's arrest during which you promised that Mr Glushkov would be released, and that is true, is it not?

A. This is untrue for one simple reason, actually two simple reasons. (a), I couldn't promise to anyone that Mr Glushkov would be released because I had nothing to do with it, and I myself sincerely believed that it would be better if people were put behind bars for economic crimes less. So I had nothing to do with this case or any other similar cases, I couldn't promise anything of that sort to anyone.

And secondly, never in my life I met one-to-one or communicated in any way with Mr Patarkatsishvili. I saw him several times in the company of Mr Berezovsky but I never -- we didn't have that sort of relationship that we would meet one to one. I cannot recall a single case of that. And I cannot recall a single telephone conversation. Maybe he might have passed some request via third parties to myself, or maybe he meant something of that sort, but we never communicated with him directly. It's very easy for me to disprove it -- this.

MR RABINOWITZ: Thank you, Mr Voloshin, I don't have any further questions for you.

MRS JUSTICE GLOSTER: Mr Malek?

MR MALEK: No questions, my Lady.

MR ADKIN: No questions, my Lady.

MR SUMPTION: No re-examination.

MRS JUSTICE GLOSTER: Thank you very much indeed,

Mr Voloshin, for coming along to give your evidence.

You may be released. Thank you.

(The witness withdrew)

Very well, I'll sit at 2.10.

(1.05 pm)

(The short adjournment)

(2.10 pm)

MS DAVIES: My Lady, I call Mr Kapkov.

MRS JUSTICE GLOSTER: Yes, very well.

MR SERGEY KAPKOV (affirmed)

MRS JUSTICE GLOSTER: Please sit down if you'd like to.

Examination-in-chief by MS DAVIES

MS DAVIES: Mr Kapkov, could you be given bundle E8 at  
tab 10, please.

You should find there your witness statement in this  
action, do you see that? The Russian version starts at  
page 38 E8/10/38. If you turn forward to page 140, do  
you see your signature?

A. Yes.

Q. There are two corrections you wish to make to that  
statement, there should be a sheet on the table in front  
of you with the corrections in English and in Russian.  
Could you have a look at that.

Firstly at paragraph 4 there's a correction  
underlined in blue. And also then at paragraph 8,

there's a correction to a date, again underlined in blue.

Can you confirm that they're corrections you wish to make to your witness statement?

A. Yes, these are the corrections that I would like to make.

Q. Subject to those corrections, is your witness statement true?

A. Yes, they are.

MS DAVIES: Could you wait there, please. There will be some questions on behalf of Mr Berezovsky.

Cross-examination by MR GILLIS

MR GILLIS: Good afternoon, Mr Kapkov.

A. Good afternoon.

Q. You have indicated in your witness statement that in December 2000 you'd been living in Moscow for just over a year, is that correct?

A. Yes.

Q. And that you were working for a company called UPI which provided campaign advice to a number of Russian politicians. Is that correct?

A. That is correct.

Q. And that you had met Mr Abramovich the year before at the end of 1999, is that correct?

A. Yes, that is true.

- Q. And that in the corrections we see, you say that you were asked to help him to campaign to become a member of the Duma and to organise the Chukotka part of his electoral campaign to run for the governor of Chukotka?
- A. Well, first I worked for Mr Abramovich when he was running for the State Duma, then when the gubernatorial campaign started I was head of his campaign in Chukotka.
- Q. Later on you state that you were formally appointed to assist Mr Abramovich who was then a member of the Duma. Can you recall on what date you were appointed as his assistant?
- A. I believe that it was in the spring 2000, I think I was appointed assistant of the MP for Chukotka, I worked with the local community, local population, and I answered the letters that MP Abramovich received from the local population, from people living in that community.
- Q. So is it correct that you became one of Mr Abramovich's deputies in Chukotka?
- A. No. Under Russian law an MP has the right to have five assistants, five aides, whose salaries are paid by the local budget, by the budget, two working for the Duma and three working in the region for which he was elected, and I worked as his assistant in that region. And I was paid, my salary was paid by the local

government, by the government of the okrug or region of Chukotka, out of the Chukotka budget, out of the coffers of the Chukotka okrug.

Q. Can I just get this clear, are you saying that you did or you did not act as a deputy to Mr Abramovich in Chukotka?

A. In the year 2000, until such time as Roman Abramovich became governor, I was his assistant in the State Duma. And then, when he was elected, I no longer worked for him. And in 2001 I wanted to work for him and he offered me a position of the assistant to the governor in charge of the press relations. And when I started working in Chukotka, I made a career and I became head of the culture, sport, tourism and youth policies department of Chukotka. But by that time, he had already been elected governor of Chukotka.

Q. So you say you were not one of his deputies?

A. You see, the structure of the government of the autonomous okrug of Chukotka is such that a governor has deputies and has heads of department. I was head of the department and member of parliament of the Chukotka Autonomous Okrug or region.

Q. So is this fair, that you were working closely with Mr Abramovich in Chukotka?

A. Yes.

Q. Is it right to say that you could be fairly described as an ally of Mr Abramovich or a close associate of Mr Abramovich? Would you agree with those descriptions?

A. So far as the tasks were concerned that we were in charge of in Chukotka, that was the case. My remit was to develop culture, sports and tourism in the Chukotka Autonomous Okrug.

Q. And more generally, moving from Chukotka, would you describe yourself as being an ally or a close associate of Mr Abramovich?

A. I would agree with this statement within the framework of the Chukotka okrug only. We had a large team of new people who worked there, who developed the region, who lived there, and I lived there at that time as well.

Q. Could I ask that a newspaper, the Moscow News article dated 16 March 2011 be provided. (Handed)

THE INTERPRETER: Excuse me, does the article give a Russian translation?

MR GILLIS: I'm afraid we only have it in the English but there are just one or two passages I would ask you to look at.

This is a Moscow News article dated 16 March 2011 and the headline describes you as an ally of Mr Abramovich, do you see that?

The title indicates:

"Abramovich ally becomes Gorky Park director."

Then if I could take you to the first paragraph, it says:

"Run-down Gorky Park has a new boss and the appointment of Sergey Kapkov as director could add weight to rumours that Roman Abramovich is ready to bankroll planned refurbishment."

Would you disagree with that description of yourself as being an "ally" of Mr Abramovich?

- A. I think that the word "ally" has a broad range of meanings, and if you look at this word from a broad range of perspectives then I would agree with this.
- Q. I'm just trying to understand the nature of your relationship with Mr Abramovich. Could I ask you to look at another newspaper article and, again, I'm afraid this is just in English, and this is a Daily Telegraph article, dated 31 March 2011. (Handed)

Mr Kapkov, if I could again just indicate that this is an article which is headlined:

"Roman Abramovich to help turn Gorky Park into Moscow version of Hyde Park."

If I could take you to the top of the second page, maybe the translator could show you the top of the second page. At the top of that second page, you are quoted as saying:

"'What is there in Hyde Park that we cannot have in Gorky Park?' Sergey Kapkov, the park's general director and a close associate of the oligarch's, told the Gazeta.Ru online."

Again, would you accept that as being an accurate description of your relationship with Mr Abramovich, "a close associate"?

- A. No, this is not a fair characterisation because I worked in Chukotka for three years, I spent three years in the administration of the okrug, then I was elected to the State Duma from the Mardovi(?) and Samara region, not from Chukotka mind you.

And after that, for a second time I was elected to the State Duma, and when the new Mayor of Moscow was appointed he invited me to become head of the Gorky Park, being aware of the -- my track record and my successes in the field of culture in Chukotka.

Throughout all that time, during ten years, my salary was paid in the State Duma, in the administration of the Chukotka okrug, and I had an income from my investment activity during ten years -- for a period of ten years I was a state employee, state official.

- Q. Just sticking with your relationship with Mr Abramovich, is it not the case that he also put you in charge of the National Football Academy which he had set up and which

he was very proud of?

A. Well, because under Russian law an MP, a deputy member of the State Duma, cannot carry on any activity in the National Football Academy. I worked for free, it was volunteering work for me, and my task was to work on the policy of the development of football in the country because I am the vice president of the Russian Football Union, which basically is the Russian football association for all practical purposes.

Q. Putting aside the question of whether you were being paid, is it the case that Mr Abramovich was involved in putting you in charge of the National Football Academy of which he is proud?

A. Well, the National Football Academy was put together by myself, together with my like-minded colleagues and comrades, and the trusteeship council of the academy was indeed headed by Roman Arkadievich Abramovich.

Q. Can I just ask you to go back to the first newspaper article I handed up, the Moscow News, dated 16 March 2001 (sic).

Looking at the third paragraph, that reads in relation to you:

"More recently he has been in charge of Russia's National Football Academy set up and funded by the soccer-loving tycoon."

That's referring to Mr Abramovich. Now, do you accept that Mr Abramovich set up the National Football Academy?

A. I agree with the statement that Mr Abramovich, acting through the National Football Academy, did help the Russian national football association.

Q. And is it the case that you have continued dealings with Mr Abramovich through the National Football Academy?

A. The objective of the National Football Academy was to decide on the strategy for Russian football and for the strategy for developing youth football, and we worked on this together with the Russian Football Union.

Part of the money was provided by Mr Abramovich, part of the money was funded by the local authorities in the various regions, and part of the funds came from other private sponsors.

Q. But my question was whether you continued to have dealings with Mr Abramovich through the National Football Academy. Do you?

A. Once a year I made a presentation to Mr Abramovich, the whole team, a large team of our people came to him and made a presentation of our plans for the next year, how many fields we're going to build for the youngsters and what programmes we would be putting in place for youngsters, and we presented a budget for him, and

a part of this was funded by Mr Abramovich.

Q. Well, Mr Kapkov, you've been described as Mr Abramovich's closest ally in Russian football. Would you agree with that description?

A. I would be prepared to agree with the statement that we shared the same views with Mr Abramovich with respect to the strategy for the development of Russian football.

Q. Can I please just pass up another newspaper article, this time from the Daily Mail, dated 14 January 2010.

(Handed). This is dealing with the position of Mr Hiddink, who was the manager of the Russian national football team. If I can just read to you the third and fourth paragraphs:

"It last night emerged that the agreement came to an end at the turn of the year, and NAS [that's the National Football Academy] boss Sergey Kapkov said he was relaxed about reports that Hiddink was being lined up to take over at Juventus. 'He is free to take any decision', said Abramovich's closest ally in Russian football."

I put to you that's a fair description of the nature of your relationship, in relation to football, that you are closest allies.

A. Roman Arkadievich Abramovich, and this is not a secret, did fund the arrival of Guus Hiddink to Russia, and he

paid his salary, after the president of the Russian Football Union was replaced by someone else, and the new person believed that Hiddink should no longer be working in Russia and that he would be bringing in someone else, and that explains this comment.

Q. So are you agreeing or disagreeing with the suggestion that you can be regarded as Mr Abramovich's closest ally in Russian football?

A. One can consider me as a like-minded person with Mr Roman Abramovich insofar as the development of Russian football is concerned, and when we, together, invited a foreign trainer to become the head trainer of the Russian national team, in that sense, we were like-minded individuals.

Q. You say in your witness statement at paragraph 3 that you're the deputy director of the Moscow city government department of culture. Do you see that?

A. Yes, I can see that.

Q. And it's right, isn't it, that that department appointed you as a director of the project to regenerate Moscow's Gorky Park, is that correct?

A. Yes, I was appointed director of Gorky Park, I was appointed by the director of the culture department of the city of Moscow, and now I am director of the department of culture of the city of Moscow. And

Gorky Park is a cultural establishment of Moscow, it's owned by the government, it's owned by the state, and therefore I, according to the charter of the city, I am appointed by the director of the culture department of the city.

Q. And it's been reported that Mr Abramovich is helping to bankroll the regeneration of Gorky Park, is that correct?

A. Mr Abramovich showed his interest in restoring a cultural monument, an exhibition pavilion called the Hexagon in Gorky Park. All the rest is funded out of the budget of the city of Moscow.

Q. Do you have continuing relationships with Mr Abramovich in relation to the Gorky Park development?

A. Well, over the past month and a half I'm no longer director of Gorky Park. I was appointed deputy director of the department of culture, and I'm now director head of the department of culture of the city of Moscow. Therefore Gorky Park is one of the 917 establishments or agencies that I govern.

Q. So I ask again, do you have a continuing relationship with Mr Abramovich in relation to the Gorky Park development?

A. Well, as of today, at the time of speaking, Park Gorky is funded by the city of Moscow budget.

Roman Abramovich did have an idea to restore a monument, an exhibition pavilion called Hexagon, on the territory of Gorky Park. That idea has not thus far been implemented.

- Q. Mr Kapkov, would you agree with me that your witness statement gives no indication that at the present time you have a continuing relationship with Mr Abramovich and it creates the impression that, from December 2000, really your paths separated?
- A. It's not entirely the case. I think until December 2003 I was head of the culture department of the Chukotka okrug, then I was -- then I had a second baby, a new baby, it was difficult for me to work there and so I came to Roman and I told him that, for family reasons, I can no longer keep up with the speed and I asked for his indulgence, and I ran for -- I stood for the Duma and so I moved, or basically I came back to Moscow.
- Q. I suggest to you, Mr Kapkov, that you had a continuing relationship through Chukotka, you have a continuing relationship with Mr Abramovich now through football, and equally so through the Gorky Park development. Is that correct?
- A. No.
- Q. Would you describe Mr Abramovich as a friend?
- A. I believe that Roman is my friend, yes. I consider him

as a friend.

Q. You socialise with him?

A. From time to time, yes, definitely.

Q. And Mr Kapkov, do you not think it would have been relevant to tell this court of your continuing relationship with Mr Abramovich?

A. I have an ongoing relationship with Mr Abramovich and I'm his friend, and the various stories in the press basically say that if he goes to a football match, because he is a high profile individual and his appearance draws a lot of attention, and when he goes there I'm there as well because I'm vice president of the national football union. And if he goes to an exhibition, a high profile exhibition in Moscow, I'm also present there in my capacity as director of the culture department of the city of Moscow.

It's simply that every time, every time he appears in public means additional work for me because he comes to an exhibition as a member of the public and I in my capacity as director of the department, or if he goes to see a football match, he goes there to root for a team and then I come there in my capacity as head of the football union.

Q. All right, well, let me move on.

As you are aware, the question of Mr Abramovich's

whereabouts in December 2000 is an important issue in these proceedings. You're aware of that, aren't you?

A. Yes.

Q. And it's in relation to that issue that you have given evidence on Mr Abramovich's behalf, so I'd like to go back to December 2000, when you were helping to organise Mr Abramovich's campaign for the governorship of Chukotka. In that role, did you keep diaries of your meetings in connection with the campaign, or was one kept for you?

A. Well, we definitely did have an election campaign plan because in the course of the elections every day is precious, and because this was a very high profile election campaign, and the first election campaign where I was head of the campaign staff, I definitely remember that campaign very well. And also after that campaign I have never done anything remotely related to elections because, after that, I became a government official.

Q. My question was in relation to whether there were any diaries that were being kept.

A. Yes, things were recorded but I have not retained any of those documents.

Q. Did you look for them?

A. Well, I did look for some of the things, but then there were others that I knew that it made no sense to look

for them because we did not retain past electoral campaign plans, for instance, because after the election they make no sense, they're not important, because either the candidate has been elected or they have not been elected. It's either/or.

Q. You said in your witness statement that the campaign was being led by Ms Russova, and that you reported to Ms Russova at a company called UPI which provided campaign advice to a number of Russian politicians, do you recall that?

A. Yes. Yes, that is the case.

Q. Do you know whether UPI still exists?

A. No, due to the tragic death, passing away of Julia Russova, the company was wound up.

Q. So is this right, you have not been able to obtain any documents from UPI in relation to meetings that were taking place in December 2000?

A. I did not even look for those because, first of all, certain things I remembered, and then there were others that I knew that I could no longer locate.

Q. So is this right, there is no documentary evidence that supports your dating of the meetings that you say took place 11 years ago?

A. Well, I have my recollections, I have my memory, and I remember those things because those dates were very

important to me, so there is just me.

Q. So I think you're agreeing with me, then, are you, that there's no documentary evidence?

A. I have no documentary evidence. All I have is, well, my words.

Q. Now, is this right, that during the gubernatorial campaign in relation to Chukotka, that was originally due to start in the first week of December but was delayed, is that correct?

A. Yes.

Q. In the progress of that campaign, is it right that you would have had fairly frequent meetings with Mr Abramovich?

A. Well, I don't know how many times a day I met with Abramovich, it's hard to recall now, but I do know that every day, at least several times a day, I spoke with him on the phone because it was our tradition and it was extremely important for the election campaign.

Q. And you suggest that you have a clear and distinct recollection of each of those meetings, even though they were 11 years ago?

A. Yes.

Q. You say you have a clear recollection of all those meetings, even though they were 11 years ago and even though there are no documents?

- A. Well, first of all, those meetings were extremely important and also we met to discuss business and that's why I remember them all.
- Q. You remember all the meetings? Not just the meeting that you've referred to on 9 December, but you say you recall all of the meetings?
- A. I remember the -- how the election process in Chukotka was structured while I was there and while I was in Moscow. Roman was a very systematic, very focused person, more than any other candidate in my life, and I was greatly impressed by that, and I can tell you how that system worked. I may not recall all the discussions that we had about the elections and how that was structured and the principles of our work with him, the way he explained it to me I remember vividly and I still remember them now.
- Q. You say in your witness statement that you do not remember seeing Mr Abramovich on 8 December but you say you believe he was in Moscow because you were trying to arrange a campaign meeting with him, is that right?
- A. Yes.
- Q. Now, I think you indicated that you've got no documentary evidence to aid your memory, is that correct?
- A. Yes, but I do remember exactly the 9th and the 10th

because, on the 10th, we were leaving for Chukotka and 10 December is my birthday, and it was my first birthday that I celebrated in Moscow and I was quite nervous as to whether I should be leaving or whether I should be celebrating my birthday and seeing friends and booking a restaurant and things like that in Moscow, so I was really on tenterhooks.

Q. Mr Kapkov, I'll come to the 9th in a moment, but can I just ask you about the 8th, because you say you remember trying to arrange meetings with Mr Abramovich on the 8th and I suggest to you that it's unrealistic to suggest that you would have memories 11 years after the event of having tried to arrange a meeting with Mr Abramovich. Do you wish to comment?

A. Yes. Well, as a matter of fact, the way elections, an electoral campaign works is that the early period, which can be 30 to 45 days, you work actually with the press, you give out fliers, booklets, and for the last two weeks you only have personal meetings with -- between the candidate and other people. And the more meetings he has, the more hands he shakes, the better for him.

So I do know exactly that I was in Chukotka until the end of November, then I came back and he was still not coming back, and I went there to tell him that we are way past our schedule, we have to organise meetings

with electorers(?), and the problem was that PR and advertisements are one thing, and personal meetings in such a large region as Chukotka is really the most important thing. So I tried to explain to him that unless he meets with people and presses flesh the chances are we will lose the election.

So I came there and every day I spoke to him, I told him that we need to go -- I had to approve the final specimens of the various hand-out materials. So we had to hop on the plane. Time was for us to hop on the plane.

Q. Mr Kapkov, I'm asking you about on what basis you can possibly suggest that you can date a failed attempt to arrange a meeting as being 8 December. Now, do you wish to reply to that question or not?

A. Well, I do know that on the 9th we did have a meeting, that's for certain, because on the 9th the situation was that I think Mr Abramovich was sick and tired of my telephone calls and so he told me, okay, all right, so tomorrow morning -- we spoke on the 8th -- so tomorrow morning let's have a meeting at my place.

And it was important for me to have a meeting with the candidate and with my official boss, and on the 9th we came to his office, but in the office the bodyguards told me that Roman was not there, so we crossed the

street to Baltshug(?) Hotel to wait -- to have some coffee and wait for Roman to arrive. It was not -- it was only an hour after that that he called Julia and he said, "Where are you? I'm waiting for you." And apparently he was waiting for us at his dacha, at his countryside home outside of Moscow. And we got on the car and went to see him at his place, and that was my first time where I saw him, where I was meeting with Roman at his place.

Q. Well, I've tried asking you about the 8th so I'll ask you about the 9th.

You say that you attended a meeting with Mr Abramovich on the Saturday, the 9th, to discuss last-minute campaign issues. Is that correct?

A. Yes.

Q. And, again, do you say that you can actually recall even now the issues that you were discussing?

A. Yes. As a matter of fact these were standard issues, the number of meetings, the number of flashpoints, the sociological reviews, TV programmes and discussions with the people. And I also remember that we discussed the new anthem, I think that on the 8th the Duma was voting for the new anthem because at that time the country only had the music and had no lyrics of the national anthem, and it was an important period of time for the country

because, at the end of the day, the country did have an anthem, a national anthem with actually the lyrics in it.

Q. I don't think you refer to any of that in your witness statement, do you?

A. I did not know that I had to go into all those details. I just have a vivid recollection of all that, I did not know that I need to drill down to that extent of detail in my witness statement.

Q. Mr Kapkov, would you not agree with me that trying to identify what happened on exact dates 11 years ago, without any documentary evidence to assist memory, is an exceedingly difficult task?

A. Yes. I do not have any documents. Having said that, I do have my memory, and I was a young person at that time. I remember the impression that Roman's house made on me, and I remember how important it was for me to make sure that on the 10th we go back, and that I would be able to gather my friends in Moscow and celebrate my birthday, because we were leaving before the date of election so we needed to celebrate my birthday.

It was a vivid memory, it was my first time, my first year in Moscow where I had friends, where I had company.

Q. Mr Kapkov, I can understand that that may assist you in

remembering that the departure was delayed. I put it to you that it does not assist in dating the meeting.

A. Sorry, when you say dating, which date do you mean?

Q. 9 December.

A. On 9 December, I had a meeting with Roman Abramovich at his home in Sareevo.

Q. Can you be clear it was not on 10 December, the day you left for Chukotka?

A. I'm certain because on 10 December we met on the plane, on board the plane. Roman congratulated me, wished me happy birthday and gave me a present, it was a watch, and that I remember vividly, and then we left. It was a very dear present for me, both in terms of money and in terms of his personal attitude towards me, because at that time we were not friends yet, I was just one of the people who worked in the organisation which was working on his election campaign.

Q. And can you be clear that the meeting did not take place the previous weekend?

A. I am certain about that.

Q. Mr Kapkov, I suggest to you that the reason that you are not willing to admit to any doubt as to when this meeting took place is because of the relationship that you still have with Mr Abramovich and your desire to assist his case.

A. I am not prepared to acknowledge this. This was a very dramatic event in my life, a gubernatorial campaign, because my personal career started when he became governor. I remember I was 25 years old at that time and I remember what impression that election campaign made on me, and also the scale of the things that we were doing in Chukotka, it was a very important and a very responsible thing for me to do. It was the first election campaign that I was charged with from A to Z, to be in charge of.

MR GILLIS: Thank you. I have no further questions.

MR MALEK: No questions, my Lady.

MR ADKIN: No questions, my Lady.

Re-examination by MS DAVIES

MS DAVIES: Mr Kapkov, just one small matter of clarification. You told us that in September 2003 you went to Mr Abramovich and asked for his indulgence and then moved back to Moscow. Did you continue to be an employee of Mr Abramovich after that time?

A. When I was asking for his indulgence I was still his employee, but I got on the party list, and in December I became deputy or a member of the State Duma, so I ceased to be his employee and I became a member of parliament.

Q. And have you been an employee of Mr Abramovich since

December 2003 at any stage?

A. No.

MS DAVIES: Thank you very much, Mr Kapkov.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming along to give your evidence. You may be released.

Thank you.

(The witness withdrew)

MR SUMPTION: My Lady, our next witness will be Mr Shvidler.

Would your Ladyship like to break now --

MRS JUSTICE GLOSTER: Unless you want to take him through his statements in-chief.

MR SUMPTION: I can do that and that might be more sensible.

Why don't we do that.

Mr Shvidler.

MR EUGENE SHVIDLER (affirmed)

MRS JUSTICE GLOSTER: Do sit down, Mr Shvidler, if you would like to.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Shvidler, you have made four witness statements, I believe, for the purposes of this action or this trial. I'm going to ask you to identify each of them.

Would you take first of all bundle E3 at flag 10, please E3/10/1. Is this your third witness statement, the first one prepared for the trial?

A. That's right.

Q. Would you please confirm that your signature appears at the end of it on page 64?

A. Yes.

Q. And is that statement true?

A. It is.

Q. Now, could you please now turn to bundle E4 at flag 10 E4/10/160. Is this your fourth witness statement?

A. That's right.

Q. And is that signed by you on page 198?

A. Yes.

Q. Is that statement true?

A. It is.

Q. Bundle E5 is next. Flag 14, is this your fifth witness statement, Mr Shvidler?

A. It is.

Q. Signed by you on page 179.

A. That's right.

Q. Is that statement true?

A. It's true.

Q. Finally, in bundle E8, would you turn to flag 16, please E8/16/192. Is that your sixth witness statement?

A. Yes.

Q. Signed on page 197 of the bundle?

A. That's right.

Q. And is that statement true?

A. Yes.

MR SUMPTION: Thank you very much, Mr Shvidler.

MRS JUSTICE GLOSTER: Mr Rabinowitz, shall I take the break now?

MR RABINOWITZ: That may be sensible, my Lady. I'm in your hands, I don't mind. We can either start and carry on for a while.

MRS JUSTICE GLOSTER: Why don't we start.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Shvidler, just so you understand the context of the questions which I'm going to be asking you, I should make it clear I'm not going to be asking you questions in relation to matters that we have already questioned Mr Abramovich about unless it appears that you have some separate independent knowledge of questions in issue. I'm also not going to be asking you questions about your belief as to the correctness or otherwise of Mr Abramovich's case or Mr Berezovsky's case. You make clear that you always tend to regard Mr Abramovich's case as more credible. And I'm also not going to ask you questions about your criticism of the evidence of Mr Berezovsky's witnesses. Your counsel has had or will have the opportunity to put these to the witnesses in question and I'm not going to take up the

court time with that. Do you understand?

A. Yes.

Q. All right. You, Mr Shvidler, I think in 1986, graduated from the IM Gubkin Moscow Institute of Oil and Gas with a masters degree in applied mathematics, is that right?

A. That's right.

Q. By 1991 you had obtained an MBA in financial accounting, and another masters in taxation from Fordham University in New York, is that correct?

A. It is correct.

Q. Following that you spent two years in the New York office of Deloitte & Touche?

A. Correct.

Q. And at Deloittes, you were a member of Deloittes international tax group, is that correct?

A. It is correct.

Q. Can you briefly describe the sort of work which you did in the international tax group?

A. It was an entry level job, I was an associate, it was called associate. I didn't bring coffee to senior partners, no, but it was a mostly menial job. I did participate in preparation of individual tax returns for wealthy individuals, international clients, and generally I was assisting others.

Q. And from your education, your work at Deloitte, you

would have gained an understanding of different tax regimes in different jurisdictions, is that right?

A. To the extent I could, yes.

Q. And you would have understood and given advice on different mechanisms for reducing tax exposure of international businesses?

A. In general, yes. Tax regimes were -- tax rules were changing very quickly all over the world, so I wouldn't consider myself to be a specialist.

Q. And you would have learnt about tax minimisation schemes using offshore structures including trusts and the like?

A. Not really, I had nothing to do with that.

Q. You are, I think, a US citizen, is that right?

A. That's right.

Q. And for how long have you been a US citizen?

A. Since 94, so whatever that was.

Q. And as such you're obliged to declare each year your worldwide income, is that right?

A. Correct.

Q. And this includes both earned income, salary and the like, and unearned income from interests, dividends and the like, is that right?

A. Correct.

Q. Can you tell me this: in your annual declarations, have you ever identified yourself as receiving any income

through owning any stake, whether directly or indirectly, of any Runicom company, or Sibneft or Rusal?

A. No.

Q. So if it were to turn out that you did in fact own a stake in the Runicom company, Sibneft or Rusal, then this might amount to an admission of tax evasion, is that right?

A. That's right.

Q. So we can be confident, I suppose, that this is not something you will be confessing to today, is that right?

A. Correct.

Q. Now, Mr Abramovich told the court that you and he had discussed the evidence you were each going to give prior to making your witness statements, and I don't suppose you dispute that?

A. No dispute.

Q. And he also explained that before finalising your witness statements, you discussed the situation so you each knew what each other would be saying in your witness statements, is that right?

A. Not in details.

Q. But in general terms, correct?

A. It's not a yes or no answer.

Q. What sort of answer is it? I'm not asking you for each

specific detail.

You accept that you discuss the evidence that you were both going to give in your witness statements before you made them.

- A. It's more like we discussed the situation, like we're going back in time, so that sort of thing. What he's going to put in his statement, what I'm going to put in my statement, we never discussed that.
- Q. What, so you compared recollections before you made your witness statements, is that right?
- A. You could say so, yes.
- Q. And so you discussed, what, the dates when things happened or what each of you remembered and were going to say about particular events?
- A. Again, not the last caveat, not what we're going to say. That we didn't discuss and we didn't decide. As for dates, I don't remember if we discussed the dates.
- Q. Can you tell us what you do remember discussing?
- A. Particular discussions I don't remember but, in general, that during this time we spend a lot of time together discussing case, yes.
- Q. And it's right, isn't it, that you've been involved in assisting with the conduct of this litigation?
- A. If I understand what that means exactly, I'll answer yes or no.

Q. Well, your counsel had previously told the court that you were someone who had been involved in assisting with the conduct of the litigation, perhaps ensuring that there were witnesses available who would be giving evidence, ensuring that when the counsel team asked for documents they could get it, that sort of thing?

A. Nothing of the above, no.

Q. So when your counsel told the court --

MRS JUSTICE GLOSTER: I don't think it's his counsel, it's Mr Abramovich's counsel.

MR RABINOWITZ: Sorry, absolutely.

When Mr Abramovich's counsel told the court that you were involved in assisting with the conduct of this litigation, can you assist us as to what it is they might have had in mind?

A. I think the main point was that I'm going to be a witness and, again I'm guessing here, I think my recollection would have been relevant, he thought, as to who else was involved in those events. But again, at this point I'm guessing.

Q. Now, you have worked with Mr Abramovich on and off since 1987, is that right?

A. Correct.

Q. And you have also been his friend since around then?

A. Correct.

- Q. And the two of you are very close?
- A. Yes.
- Q. You -- I think one of you says in your evidence that whenever you're in the same city together you have lunch and dinner together every day?
- A. More or less, yes.
- Q. And your evidence I think is that since 1994 your relationship with Mr Abramovich, in addition to being that of a close friend, has been that of a business partner with day-to-day supervision of certain of his business interests, is that right?
- A. Right.
- Q. It's your evidence, isn't it, that since the end of 1999 Mr Abramovich has had no involvement in management of any of his businesses as he has been holding various public offices in Chukotka?
- A. Correct.
- Q. Mr Abramovich told the court that you are much better at finances than he is. Would you agree with that assessment?
- A. If he says so, yes.
- Q. What if he'd said something different and it was the truth?
- A. I wouldn't agree.
- Q. But in this particular case you would agree?

A. Yes.

Q. Thank you. He said that he had never made a big acquisition, apart from real estate, without your advice and your opinion, and you wouldn't disagree with that either I suppose?

A. I agree. I think he meant personal real estate.

Q. Yes. Your evidence I think is that you and Mr Abramovich have had different arrangements for different businesses depending on the nature of the project and your role?

A. Correct.

Q. Mr Abramovich told the court that you had only been partners in terms of each having an equity stake in a business since about 2003 with the Pharmstandard transaction, is that your evidence too?

A. Plus/minus. I think it started in around 2002, this transaction he is talking about.

Q. That's fine, but my question to you was that Mr Abramovich's evidence was that you had only been partners in terms of having an equity stake in a business since about 2003, and he identified the Pharmstandard transaction.

A. That is correct. In general what I'm trying to say, that I think the transaction started in 2002, or our conversation about the pharma industry.

In general the answer is yes, I agree.

Q. Thank you. And can you clarify, then, what was the arrangement between you and Mr Abramovich in relation to the Runicom companies?

A. There was no arrangement. It was his company, I was the one who incorporated it.

Q. You effectively ran the Runicom companies, didn't you?

A. I would say financial part of it, yes, and organisational part; I was not a trader. Traders were different people.

Q. So the financial part of it, yes, and the organisational part of it, yes as well?

A. Correct.

Q. In relation to the other companies that you refer to as the trading companies, and just so that we're clear which companies we are talking about, you identify what you mean in your witness statement: Sibreal, OilImpex, Servet, Branco, Forneft, Petroltrans, Ellipse, CJSC Oil Trading, AOZT Mikom. In relation to those trading companies, what were the arrangements there? Were they other companies where you effectively ran the company?

A. More or less, yes.

Q. But do you say you had absolutely no equity stake in any of those companies?

A. Correct.

- Q. In relation to Sibneft what do you say was the arrangement? Did you run the company there?
- A. From some point onwards, yes.
- Q. But you say that there too, although you ran the company, you never had any interest at all in any Sibneft shares, is that your evidence?
- A. Correct, except for maybe ten shares which every employee had, for some reason I forgot what it was.
- Q. And what do you say was the arrangement between you and Mr Abramovich in relation to Rusal, Mr Shvidler? Do you say there that again you had absolutely no equity interest at all?
- A. Correct.
- Q. So, Mr Shvidler, let's just see if we understand this. Although you are the financial expert and you are the one who has day-to-day supervision of all of these businesses of Mr Abramovich, you had to make do with a salary but no ownership stake in any of Mr Abramovich's major businesses. Is that your evidence?
- A. That is my evidence. On top of that, for a long time, I think about five/six years, Roman basically paid for my lifestyle; not just mine, some other managers as well.
- Q. He basically paid for your lifestyle. This is, what,

not a salary?

- A. I'm trying to say nicely that he paid for vacations. I lived in the house from about '98 which was a gift from Abramovich family, himself and his wife, when our family had no(?) kids. All the vacations, like those boat trips, were paid by him.
- Q. This was as a result of the work you were doing for him, was it?
- A. As a result.
- Q. Did you declare on your tax returns that you were getting these payments from Mr Abramovich?
- A. No, and I didn't have to, being a tax expert as you say.
- Q. It's a most extraordinary story, Mr Shvidler, is it not?
- A. No, it's not. When I was in school -- okay... I'm not going there. I had a case on this at school, what is benefit in kind and what is not, and that was not because it was provided at the workplace. It's like meals at work.
- Q. No, the extraordinary story is not whether you declared this for your tax or not; it's the fact that you, being the financial expert and the one who ran all these businesses, made do with a salary and never got any equity stake at all.
- A. That was the arrangement, not just for me, for the whole group of us. And Roman actually did live the same life,

same lifestyle.

Q. Can you help me with this: what arrangement do you have with Mr Abramovich concerning this litigation?

A. Financially?

Q. Financially.

A. No arrangement at all.

Q. Would you accept that you cannot really be described as an independent witness in this litigation?

A. I would say I am.

MRS JUSTICE GLOSTER: It depends how you define independent, and I think that's a matter for me at the end of the day. I mean, he's obviously a friend and a close associate, over many years, of Mr Abramovich, and he's not denying that.

MR RABINOWITZ: I know he's not denying that.

MRS JUSTICE GLOSTER: Whether one defines independence as equivalent to a witness of integrity et cetera et cetera, that's a matter for me.

A. May I comment on this as well?

MRS JUSTICE GLOSTER: Yes, please do.

A. I thought about it a little bit while Mr Kapkov was answering, and I think the fact that I have some money makes me independent.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: Can I just ask one question.

MRS JUSTICE GLOSTER: Yes, please do.

MR RABINOWITZ: You think the fact that you have some money makes you independent and therefore not someone who, for example, would much prefer Mr Abramovich to succeed in this litigation than Mr Berezovsky?

A. As a matter of preference, you guessed right. As a matter of my independence as to what I'm saying now to the court, I am right.

MRS JUSTICE GLOSTER: Right, shall I take the break? Ten minutes.

MR RABINOWITZ: My Lady, you don't need your headphones.

MRS JUSTICE GLOSTER: No, you're quite right.

(3.19 pm)

(A short break)

(3.36 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Shvidler, just going back to an answer that you gave shortly before we broke, I think you said you were living, I think in 1998, in a house which was a gift from Mr Abramovich. Is that right?

A. From the end of 98, that's right.

Q. Is it right that you were also given a yacht, Le Grand Bleu, by Mr Abramovich?

A. That's right, much later.

Q. So in effect what was happening was that he was making

very substantial distributions to you either of cash or benefits in kind, gifts, and that was in respect of the work that you were doing for him in these companies?

A. Total mischaracterisation.

Q. How would you characterise it then?

A. Gifts.

Q. Gifts?

A. Okay, if the court is interested we can go in detail.

MRS JUSTICE GLOSTER: Well, I'm not sure I'm interested in whether or not, for the purposes of US Revenue law, the benefits he provided you with should be characterised as gifts or not. I don't really want to go into all that.

MR RABINOWITZ: I'm also not interested in that.

You see, Mr Shvidler, what I suggest to you is that what you and Mr -- the nature of the relationship between you and Mr Abramovich really was a sort of partnership where you in effect ran his businesses, that's right, is it not?

A. If you refer to legal partnership then it's not correct. If he considered me as his business partner, associate, colleague, close one, yes. And vice versa.

MRS JUSTICE GLOSTER: Could I be clear. To start with, was your relationship one of employer on his part and employee on yours?

A. Correct.

MRS JUSTICE GLOSTER: Would you have regarded yourself in a junior position to him, as it were?

A. Correct.

MR RABINOWITZ: And at what point did that change then?

A. Unfortunately it never changed.

Q. But you say, if I refer -- in answer to my question as to whether you were in a sort of partnership with him, you said:

"If you refer to legal partnership then it's not correct. If he considered me as his business partner, associate, colleague, close one, yes."

So as a business partner you would say that you could be referred to as his business partner?

A. That's right. We don't have a partnership agreement and never had anything like that. That's what I mean.

Q. Can I ask you just to look at paragraph 12 of your third witness statement, please. That's at bundle E3, which is in front of you, tab 10 on page 3 E3/10/3. It's paragraph 12 we're looking for.

A. Right.

Q. You were talking about Runicom there and you say this, it's about four lines down:

"Valmet promoted itself as an intermediary with the Swiss banks, saying that the banks will deal only with the Swiss, not the Russians. Valmet charged Runicom SA

very high fees. I was not happy about this so, sometime in 1996, one of Mr Michel's colleagues at Valmet, Mr Felix Poole, helped us incorporate a new company, Runicom Limited, in Gibraltar."

Now, this is not entirely accurate, is it, in terms of what happened between yourselves and Valmet?

A. It's absolutely accurate. It could be elaborated upon.

Q. Can I ask you, please, to go to bundle H(C)2 at page 84 H(C)2/84. Now, at H(C)2, page 84, you should see a letter from Mr Patrick Gnos of Valmet sent in February 1996. Do you see that?

A. I see that.

Q. It includes some provisional accounts for Runicom SA for 1995, although, as the letter notes, a great deal of the necessary accounting information was missing.

Can I just ask you to glance at that letter and remind yourself about it. Obviously you're fairly familiar with it?

A. Mm-hm, yes.

Q. You see it says:

"The P&L accounts ... are not complying with any reality ..."

This is just one letter, is it not, in a long line of correspondence by which Valmet sought accounting information from you at this time?

- A. It's a question?
- Q. Well, what's the answer to the question?
- A. No, no, what's the question? Is it --
- Q. This is just one letter, is it not, in a long line of correspondence by which Valmet sought accounting information from you at this time?
- A. That's correct if you delete the word "accounting". All kinds of information, that's right.
- Q. But it had to do with trying to complete your accounts, didn't it?
- A. With the attempt to do that, yes.
- Q. I'm not going to go through all of that, but can I ask you to go to page 124 in this volume H(C)2/124. It's an internal email from Christian Michel to others within Valmet dated 26 (sic) June 1996. It says:

"Shvidler was in our office this afternoon to discuss the future of our relationship. The essence of a long argument is that he expected Valmet to act as a bookkeeper, putting into Swiss GAAP the accounts prepared by Moscow. We told him this function was of no interest to us. Patrick made the point that even if we wanted to, we could not do what he asks if we cannot check independently the information provided by his people, if we do not receive the statements of accounts from the banks, copies of the contracts, etc. We need

background information to answer questions raised by the auditors. Shvidler said that if the auditors have such questions, he will give them himself the information, we do not need to have it. At that point, I showed Shvidler the door. I told him he will have our resignation and that of the Swiss directors delivered to his hotel by tomorrow morning."

Then he says that you were taken aback.

So the dispute between you and Valmet was that you expected them to act as mere bookkeeper, reformatting accounts prepared by you, while Valmet wanted to independently confirm the data that you were providing, that's right, is it not?

A. No, it's not correct.

Q. So you were being secretive and not wishing to give them all the accounting information?

A. Absolutely not correct, and if the court think it's important, it can be much better assisted by Mr Michel's answers to French prosecutor, or maybe it was Swiss and French prosecution or investigation, where Mr Michel describes the relationship with Runicom, Roman, myself in details, and I would say I would agree with the picture he gives.

In essence of it, he says that he sold us a Swiss company where we didn't need it. I'm not sure how

important that issue is.

- Q. Well, whatever Mr Michel may have said, the correspondence produced at the time shows Valmet chasing you for information, and it also shows that by 30 August 1996 Valmet had plainly had enough, and they wrote to Runicom's auditors explaining that they must be given access to all bank accounts, nor even to your major contracts. We can see that letter if we go to page 136T in this volume.

This was the letter from Valmet to Arthur Andersen explaining that they had had enough. Read this to yourself, if you would. (Pause)

- A. Mm-hm.

- Q. What happens next is that on 30 September 1996, Mr Michel also wrote to Mr Abramovich. You'll find that at H(C)3 page 5 H(C)3/5.

- A. Before we go there, do we need to discuss this letter?

- Q. If you have a comment you want to make on it, do please make a comment on it.

- A. Yes, I'm reading the very first paragraph:

"It has become apparent ...", and so on, that there is a difference of opinion between myself and Mr Michel. I don't see the word they had enough or anything dramatic like that. And the facts, by this time, operations of Runicom SA were moved almost completely to

Runicom Limited in Gibraltar, which was a sister company where the same Mr Michel owned 30 per cent of the shares. So they just moved us to a different jurisdiction as a business.

As for the company called Runicom SA, they helped us to move it to Fribourg so it could be liquidated there later, which is what happened basically. So they didn't want to deal with it themselves.

This is a letter to auditors Arthur Andersen which remained auditors of Runicom SA later in Fribourg and which were also auditors of Runicom Limited.

Q. Why don't we see what Mr Michel then writes to Mr Abramovich. If you can go to the next letter which I asked you to go to. It's at bundle H(C)3 at page 5 H(C)3/5.

Do you recall Mr Abramovich's response to this letter?

A. Not necessarily, no.

Q. It would be fair to say that whatever the response was, it wasn't satisfactory, because on 8 October 1996 Mr Michel resigned as a director. You see that if you go to page 17 of this bundle.

You see, Mr Shvidler, the evidence in your witness statement suggesting that it was just a question of fees which led to moving administrators was somewhat

misleading, was it not?

- A. No, it was not, it was the core of the problem, and if you want to go -- if the court is interested, we can go in detail on this letter.

MRS JUSTICE GLOSTER: Just tell me in headline terms what the real problem was.

- A. Money. They wanted to insert themselves as an intermediary where they were not needed basically. And as Mr Felix Poole explained, who was the original gentleman who introduced us, that they sold us the wrong company. And Michel, he agreed with that, that's why they moved us to --

MRS JUSTICE GLOSTER: What, you didn't need a Swiss-domiciled company?

- A. For starters we didn't need that. Then we didn't need their services because we just didn't need them. And I think he explains it in his own letter, in his own evidence to the French investigation, that they couldn't run a Russian company out of Geneva, just couldn't. They didn't have personnel, there was no need for that. The whole business took place in Moscow. So originally they just -- what this is, I think, it's first of all about the thing where Mr Michel says "He showed me the door", I'm sure I would have remembered that, if that happened ever. And we had an okay relationship, not in

those terms that he could show me the door out of his office.

This one looks to me, first of all it was done long after the fact. By this time Runicom moved already.

MRS JUSTICE GLOSTER: What, to Gibraltar?

A. To Gibraltar. And operations --

MRS JUSTICE GLOSTER: Which was a tax-efficient place --

A. That's right.

MRS JUSTICE GLOSTER: -- for you, was it?

A. We needed an offshore company for Russian operations.

It had to be based somewhere. And Gibraltar was much better, much more convenient than Switzerland, and it was of course much cheaper, and we never had any problems, even though it was the same organisation, Valmet, just different people.

MRS JUSTICE GLOSTER: Valmet was running it out of Gibraltar?

A. That's right. It was the same group. I would say they were brother/sister companies because the shareholding was the same more or less.

MRS JUSTICE GLOSTER: What, they didn't have to be quite so hands-on in the actual management of the companies, is that the difference?

A. That's right. Even here, again, that's a difference of opinion. My opinion was they didn't need to do

anything, they were two and a half people literally, two employees and one part-time girl, who were doing stuff for us. We didn't need them.

As for auditors, of course we were communicating directly. Those auditors, Arthur Andersen, were the same auditors as Sibneft had and, again, I think he describes it, Mr Michel, very adequately.

MRS JUSTICE GLOSTER: Right, well no doubt someone will give me the reference to that and I'll go away and read it.

MR SUMPTION: Would your Ladyship like that now?

MRS JUSTICE GLOSTER: Yes, please.

MR SUMPTION: It's bundle H(C)7/63T, is the beginning of the document H(C)7/63T. The operative part of it is 65T to 66T.

MRS JUSTICE GLOSTER: Thank you very much.

MR RABINOWITZ: Now, I want to ask you about something else. You and Mr Abramovich have given the occasional press interview over the years relating to Sibneft ownership in particular, and I just want to ask you about some of those. Can we begin by going to H(A) bundle 10, page 29, please H(A)10/29. This is in fact an interview which Mikhail Khodorkovsky gave, and this appeared in Kommersant on 20 January 1998. This is in the context of the first attempted merger of Yukos and Sibneft, I think it was to be known as Yuksi.

You'll see the opening lines of the interview, after the first paragraph he says -- the question is:

"Are you in the process of signing an agreement for YUKOS and Sibneft to merge with the owners of the Sibneft controlling stake?"

He says:

"Yes.

"That is with ... FNK?"

"We are signing the agreement with Sibneft group, we also call ourselves UKOS group, without listing all the owners, we regard ourselves a single team; and they talk about themselves as of Sibneft group, meaning a team of those people and companies, who jointly own the stake.

"But one of these companies owns a 51% interest and as far as I know it is [FNK] which bought this stake in the auction last May."

It then says:

"Frankly speaking I have not studied it in detail. This is simply not my problem. This is for the lawyers to deal with, and the lawyers confirmed that the people we are negotiating [with] now, including the First Vice President for Finances of Sibneft Mr Shvidler, (who together with me will sign the agreement today) are the people who legally represent the Sibneft controlling stake."

Is it right that you were negotiating the Yuksi merger on behalf of Sibneft?

A. That's right.

Q. If I can ask you then to look at the bottom of the page, to the last question and answer on that page, the question is:

"You said that you did not give a thought to the list of shareholders. But have you discussed this merge[r] with Mr Berezovsky?"

Mr Khodorkovsky says:

"Yes. We have discussed this deal. And with Mr Berezovsky also, though he is not a direct Sibneft shareholder. Five and not two companies are involved in this deal. Two main companies and three supporting ones. Mr Berezovsky indeed is not a Sibneft shareholder, but he is part of the group and obviously will be one of the shareholders of the new company."

That suggests, Mr Shvidler, that Mr Khodorkovsky had been told that Mr Berezovsky did have an indirect shareholding in Sibneft. Isn't that right?

A. No, it's not right.

Q. What do you say he was told which made him think that Mr Berezovsky would be a shareholder in the new company?

A. I could just guess, but I think Roman told him the exact arrangement he had with Mr Berezovsky. I wasn't there.

Mr Khodorkovsky knew what the shareholding companies were, FNK and others.

- Q. But he -- his understanding is that Mr Berezovsky would be a shareholder in the new company.
- A. The way he says it here is -- honestly doesn't make sense in Russian. It says that he was not an owner but he is an owner, or something like this.
- Q. Well, that may be consistent with him having an indirect ownership interest in Sibneft, may it not?
- A. I cannot think clearly what Mr Khodorkovsky thought when he said this, but if you read it again, it doesn't make much sense, what he says in answer to this question.
- Q. Can I ask you -- you can put that away. Can you go next to bundle H(A)15, page 2, please H(A)15/2. I think this is one of the few recorded interviews that Mr Abramovich has given, and it's published -- it's an interview published in Vedomosti on 1 December 1999 and then I think republished on the Sibneft or Gazprom website.

If you go to page 3 of the bundle, just below halfway down the page, Mr Abramovich is asked:

"Can you say something about your stake in Sibneft?"

He says:

"I can, I control at least half of the company."

Then:

"Do you plan to shift Sibneft assets abroad in the near future?"

"I do not plan to. But this does not depend only on me."

"On who else? Who else beside yourself owns the company?"

"The company management."

Can you say to whom in the company's management Mr Abramovich was referring to here?

A. Honestly I don't see what you're reading from even though I know this interview.

Q. All right. If you go, with the hole-punch, about three or four lines above the hole-punch.

A. Ah yes, got it.

Q. Then the precise quote:

"On who else? Who else beside yourself owns the company?"

"The company management."

Is about six lines from the bottom.

A. Yes, I've got it.

Q. So can you tell us to whom in the company's management you say Mr Abramovich is referring to here?

A. Directly, I think he means me as a controller of the arrangement, of the trust, which ultimately votes the shares.

Q. He described you as an owner of the company then?

A. No. Do I describe myself? No. Roman was always a little confused about the definitions.

As for the arrangement, he knew exactly the -- in the end of the day he is the owner, him and his family, they are the owner.

MRS JUSTICE GLOSTER: But was there actually some sort of management trust as one might have under English law?

A. No.

MRS JUSTICE GLOSTER: I mean, there wasn't a document that set out you holding as a management trustee or anything of that sort?

A. Originally it was a Liechtenstein arrangement where there was a stiftung, then anstalt behind -- I mean below it, and then the actual companies which were shareholdings on the register. I was the protector of this top one.

Did we have an arrangement with Roman where he told me how to vote? No.

MRS JUSTICE GLOSTER: No, and how long did that Liechtenstein structure continue?

A. I would say less than a year. We didn't like the arrangement there so we moved the whole thing to Cyprus and there was a Cypriot trust where, again, I was a protector. I'm not giving any secrets away. And some

others were trustees, and the beneficiaries were Roman and his children.

MRS JUSTICE GLOSTER: Yes, I see.

A. But -- that's it.

MR RABINOWITZ: Do you say, you can answer it separately in relation to the Liechtenstein structure and then in relation to the Cypriot structure if you want, do you say that in accordance with the structure only half of Mr Abramovich's shares were held this way or did it hold all of his shares this way?

A. In the end, all of the shares were beneficially owned by him and his family.

Q. In this structure?

A. I don't understand the...

Q. The Cypriot structure, trust structure that was used, was that the way in which all of his shares were held?

A. Yes.

Q. I'd like to ask you about an interview which you gave. Can you go to H(A)20, page 52, please H(A)20/52. This is an interview which you gave to Vedomosti on 11 July 2000 and this was, again, republished on the Gazprom or Sibneft website. It is an interview largely about the acquisition of aluminium companies and the creation of Russian Aluminium by Sibneft shareholders, but I don't want to ask you about this just yet. What

I would like to do, if I may, is ask you to turn to page 56.

If you are at page 56, you will see that the second question on this page says:

"Boris Berezovsky said recently that he did not have any Sibneft shares any longer. Has he really sold them?"

Your response to that is:

"Or given them away. And long ago. We constantly try to convince everyone of this, but nobody believes us."

Now, would you agree, Mr Shvidler, that your answer makes clear your view that, at the least, Mr Berezovsky once owned shares in Sibneft?

A. No. Can I elaborate on this?

Q. Please do.

A. Without trying to be smart, again, I didn't take this "bon sang" course at the time so I didn't know that -- sarcasm doesn't look good in print. If you look at the Russian version, you will see what I was trying to say. I was trying to make sort of a sarcastic joke. So the response was exactly to the question. Recently; I said a long time ago. Sold; and I said gifted. That's what I was trying to say here. If you can now read it differently, I'm sorry.

Q. No, do finish your answer. I didn't mean to interrupt, I thought you were finished.

A. Okay.

Q. Is there anything else you want to say about this?

A. It's ...

Q. You see, I have to suggest to you that that really doesn't explain the fact that what you are saying here appears to suggest that, at the very least, Mr Berezovsky once owned shares in Sibneft. Whether he gave them away recently or long ago, the whole premise of what you are saying is that he did own shares in Sibneft?

A. No, it's my interview and I remember giving this interview and it's not what I'm saying. If I wanted to say it, it was no problem to say it.

In a way it's a little bit of frustration because the journalist came to ask about something else and it was aluminium deal which we were discussing.

Q. But you could have just said, "Mr Berezovsky has never had shares in Sibneft" if that was the true position?

A. I regret I didn't do it much clearer.

Q. Well, I'm sure now that we have this open you do regret not saying that, but what you have said here is consistent only with Mr Berezovsky once having shares, and that is impossible to reconcile with your evidence

in this case.

A. Not correct at all.

Q. Very well. Can I ask you to go to bundle H(A)23 at page 67, please H(A)23/67.

This is another interview of yours republished on the Sibneft website, this one given to the Petroleum Intelligence Weekly and originally published on 13 November 2000. If I can ask you to turn to page 69, at the bottom of the page, we see a question which begins on the last line:

"Unclear shareholding structures remain a worrying aspect of many Russian oil companies. Can you reveal who the principal shareholders are in Sibneft?"

I'm going to ask you, if I may, Mr Shvidler, to keep open page 70 and also put a finger at page 70.001R because -- just keep that open, but you need to see the Russian as well because, as I understand, there's a mistranslation of this passage. We can just look at what your answer is. You say:

"First, I would like to say that Sibneft is a separate oil company not mixed up with the aluminium interests of our shareholders. As for the list of shareholders, [I think what this should say is] Roman Abramovich [owns] about a 40% stake, a similar amount is controlled by the company's top management

[and] the rest is in free float. I would also like to underline that the Chorny brothers ... have never been and are not represented in Sibneft."

Am I right about what this should say, having a look at the Russian version?

- A. I'm trying to recall the original language of the interview. I think it was done in English, I think.
- Q. Well, if you look at page 70.001R, so you're suggesting that the translation goes from the English to the Russian, are you?
- A. They are two different words, you're right, one is "control" one is "own". I'm trying to remember which one was the original.
- Q. All right. But can you just confirm this for me, that in the Russian version it reads:
- "As for the list of shareholders, Roman Abramovich owns about a 40% stake, a similar amount is controlled by the company's top management..."
- A. That's right.
- Q. How do you explain this statement to the press, Mr Shvidler? Is it not your evidence that in fact Mr Abramovich owns more than 80 per cent of the company?
- A. It is my evidence. I think Roman was trying to explain that we have an official position on this. The major concern of his was security, he didn't want to be

singled out as an owner of such a big company, and that was the fact since, I don't know, 86 I would say.

MRS JUSTICE GLOSTER: By this time, 2005, was the structure the Cypriot structure?

A. 2005, yes.

MRS JUSTICE GLOSTER: And --

MR SUMPTION: This is 2000, my Lady. It was republished in 2005. The original interview was 2000.

MRS JUSTICE GLOSTER: Right. I'm sorry, I'm looking at the date at the bottom of the page.

A. Nevertheless --

MRS JUSTICE GLOSTER: 2000, sorry.

A. Still it was a Cypriot structure in 2000.

MRS JUSTICE GLOSTER: It had become a Cypriot structure from the Liechtenstein structure?

A. Yes.

MR RABINOWITZ: By 1999 I think the evidence is.

A. Mm-hm.

MRS JUSTICE GLOSTER: The structure in Cyprus was that the shares in the top companies were owned by trustees, or by Mr Abramovich personally, or what?

A. By the trust itself as an entity, and then Roman and his children, they were beneficiaries of the trust.

MRS JUSTICE GLOSTER: Yes, and were you a protector of that?

A. Yes.

MRS JUSTICE GLOSTER: I see.

MR RABINOWITZ: Can you just explain this about

Mr Abramovich's story in relation to why this was done. Sibneft was a very substantial company, that's right, isn't it?

A. Correct.

Q. Owning a 40 per cent or 44 per cent stake would, in any event, have marked Mr Abramovich out as a very wealthy man, wouldn't it?

A. Wealthy, yes. Security-wise a completely different level, completely. And to understand that, you really have to be in that ambience, and I understand I cannot bring it here adequately.

Q. You see, being a 40 per cent owner of a very substantial company would mark him out as someone who would need security anyway?

A. Again, we're talking about different kinds of security. I'm not talking about security from the thugs on the street. It's not that.

Q. Well, what are you talking about, Mr Shvidler?

A. I'm trying to find an adequate English word for this.

Bad competitors of the same level of magnitude, okay?

Q. Bad competitors of the same level of magnitude.

A. Okay, one of the peer groups if that's -- I understand

I'm not conveying the idea.

MRS JUSTICE GLOSTER: No, I just need to understand precisely what you're saying. Are you making the point that there is a difference between Mr Abramovich being known to be a 40 per cent owner of a particular stake and a 100 per cent owner of a particular stake?

A. Mm-hm. If he's a single owner then there's a single person and a single problem. So in other words -- again I'm trying not to sound dramatic. If somebody wants the asset, he is the only problem.

MRS JUSTICE GLOSTER: Yes, I see.

A. If it's spread, then it's like small fish trying to...

MRS JUSTICE GLOSTER: Are you talking threats of physical violence?

A. Part of it, yes.

MR RABINOWITZ: So you are talking about thugs then?

A. Different kind of thugs, not the street ones.

Q. But a concentration of 40 per cent in the hands of one person would, in any event, mark him out as someone to be targeted?

A. That's correct.

Q. So how then does it make such a difference whether he's shown as the holder or owner of 40 per cent or 80 per cent?

A. If you are known to be a wealthy person or if you drive

a nice car, then the criminal audience which is interested in you, it's one group of people, one --

MRS JUSTICE GLOSTER: What, there's a risk of kidnapping and ransom?

A. Something like that.

MRS JUSTICE GLOSTER: Demands for ransom?

A. If you are known to be an owner of -- single owner of a huge asset, it's a completely different level of security you're looking for.

And -- you want me to elaborate or it's clear?

MRS JUSTICE GLOSTER: Well, are you saying that competitors might find it more difficult to dispose of three or four owners of a particular asset than they would -- or they might think it was in relation to just disposing of one owner, is that --

A. Exactly what I'm trying to say.

MR RABINOWITZ: All right. Can I just perhaps look at one more interview. Can you go, please, to bundle G(C)7/3.09 at page 167 G(C)7/3.09/167.

So you have in front of you, Mr Shvidler, a Sibneft press release of 20 May 2002.

A. Mm-hm.

Q. It reports you announcing that:

"... Sibneft's core shareholders intend to place ...  
1 per cent of the company's shares ..."

And it gives a market value of around \$100 million for this 1 per cent. Do you see that?

A. Mm-hm.

Q. Just pausing there, you would accept mathematically that if 1 per cent of a company is worth \$100 million, then the whole company would be worth at least 100 times that or at least \$10 billion?

A. Mathematically, yes. I'm not sure we're able to achieve the price, but maybe yes.

Q. Okay. And in the third paragraph --

A. That's right, intend to place. We were looking for 100.

Q. Absolutely right. In the third paragraph, you are quoted as saying:

"The core shareholders' decision to reduce their stake has been guided by strong investor demand for more liquidity in the company's stock and more influence for minority shareholders over the management of the company..."

Now, your use of the phrase "core shareholders" suggests that there was more than one main shareholder. Can you explain how you say this is consistent with the evidence you are giving to the court about who owned these shares?

A. I keep repeating the same thing and it's consistent with what I'm trying to say. We are always saying "we",

"us", shareholders, beneficiaries. We never said anything else.

Q. All right. Can I take you to one more interview before I think we may stop for the day and your answer to this one may be the same.

You can put away bundle G(C)7. Can you go to bundle H(A)60 at page 221, please H(A)60/221. This is another interview of yours on Sibneft's website, originally published by Vedomosti on 30 June 2003. You are here in the main discussing another attempted merger with Yukos. If you go to the second page of this interview, page 222, in the middle of the page -- it's not really in the middle, it's about a third of the way down. Question:

"Is it true that Roman Abramovich owns over half of the Sibneft shares and the company managers own the rest?"

Your answer here is:

"On the whole this is true."

So this is no longer saying he owns half, the other half are controlled. Here you say he owns half and the company managers own the rest.

Do you say that this is just another attempt on your part to mislead people as to what the true position was?

A. We never misled anybody, especially intentionally. I'm

trying to see what I said in Russian but I don't think it will make a difference in my answer.

Q. Well, you say you've never misled anybody intentionally. Presumably your objective was to mislead people intentionally because of what you say were your concerns about security?

A. I wouldn't call it misleading though.

Q. If the true position, as you say it, is that Mr Abramovich owned over 80 per cent of the shares, and you were telling everybody that he only owned half of those shares, that was an attempt to, if you are right, mislead people as to how many of the shares he owned?

A. Mislead, it's too strong a word for me. Every one of these interviews was given for a specific purpose. Like the one before that was giving as an answer to the question: are Chorny brothers shareholders of Sibneft now because of the aluminium deal, for example? The whole interview was the answer to that.

This one, the reason for this interview is the super-deal with Yukos, the second merger. It was about everything else. So this was one of the questions, and I repeated the standard line. You cannot call it misleading.

Q. You didn't repeat the standard line because elsewhere we've seen you say Abramovich owns half and the other

half are controlled by management. Somewhere else we've seen you say that Mr Berezovsky used to own shares and has given them away. Here you're saying Abramovich owns half and the company managers own the rest.

A. For an English lawyer all of this looks different. For the purposes of those interviews, it's all the same. That's my statement. I stand behind it.

MRS JUSTICE GLOSTER: Can I ask you this: the trusts that ultimately held the shares in the Cyprus companies, were they discretionary trusts or were there interests in possession, as we call it, that had been appointed to particular beneficiaries? Or don't you know?

A. I don't know this interest in possession. What is it? It was one trust first of all, not many trusts.

MRS JUSTICE GLOSTER: There's one trust with a number of beneficiaries. Did the trustees, with perhaps the assistance of the protector or with the consent of the protector, have power to appoint specific shares to any one of the class of beneficiaries?

A. No, there was not even different -- there were no different classes of beneficiary. There was one beneficiary, Roman, and his children.

MRS JUSTICE GLOSTER: So they were held on trust for -- it's difficult to explain.

A. No, try, and I'll try.

MRS JUSTICE GLOSTER: Did the trustees have a discretion as to whether, for example, they said the income from these particular shares are going to be held on trust for a particular child or for Mr Abramovich?

A. No. As I remember, he had a list of wishes like in case. Something goes for -- a certain amount goes for their education, then when they are a certain age something can be spent differently. That was it. It's for the trustees to make a discretionary ...

So that they could take the dividends, for example, from Sibneft and distribute those to different people?

No, they could not.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

A. Ah, that's what is discretionary trust? No, it was not.

MRS JUSTICE GLOSTER: Right.

Is that a convenient moment, Mr Rabinowitz?

MR RABINOWITZ: That is a convenient moment.

MRS JUSTICE GLOSTER: Mr Shvidler, you know, because you've been sitting here, that you're not to talk about your evidence or the case to anybody, okay?

A. That's right.

MRS JUSTICE GLOSTER: Right, 10.15 tomorrow or 10.30?

MR SUMPTION: Would your Ladyship be assisted by knowing who the next few witnesses were?

MRS JUSTICE GLOSTER: Yes, I would actually. Just a second.

MR SUMPTION: They are thought to be likely to be short.

After Mr Shvidler we will be hearing from Mr Sponring,  
Ms Panchenko, Ms Popenkova, Ms Goncharova and Ms Khudyk.  
I understand there's a question mark about Ms Popenkova  
which we're in the process of resolving, a question mark  
about whether she'll be required.

MRS JUSTICE GLOSTER: I thought Mr Sponring wasn't coming  
but he is now?

MR SUMPTION: He is coming.

MRS JUSTICE GLOSTER: Oh, it's Mamut who isn't coming.

MR SUMPTION: Mamut we have dropped.

MRS JUSTICE GLOSTER: Very well. 10.15 tomorrow.

(4.25 pm)

(The hearing adjourned until  
Tuesday, 15 November 2011 at 10.15 am)

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Tuesday, 15 November 2011

(10.15 am)

MR EUGENE SCHVIDLER (continued)

Cross-examination by MR RABINOWITZ (continued)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Good morning, Mr Shvidler.

A. Good morning.

Q. Mr Shvidler, in the course of your evidence yesterday, you referred to the fact that prior to the Cypriot offshore structure that was used in connection with Mr Abramovich's Sibneft shares, there had been a Liechtenstein arrangement, and you explained that you were the protector on top of that arrangement. And you explained that that arrangement lasted less than a year.

Presumably there would have been documentation relating to the Liechtenstein trust structure, would there?

A. There was documentation definitely.

Q. There would have been a trust deed?

A. I'm sure there was a full package, yes.

Q. A letter of wishes?

A. Most probably, yes.

Q. Correspondence with the trustees?

A. No, I don't think so.

Q. Can you tell us who the trustees were?

- A. I have a question: is it like privileged information or not?
- Q. No, I don't think it would be privileged information but if someone thinks I'm wrong about that they'll tell me.
- A. Okay. Mr Tenenbaum was a trustee, Ms Panchenko was a trustee as well.
- Q. And that would be the case also with the Cyprus trust arrangements, would it?
- A. Yes.
- Q. There would be a trust deed, letter of wishes, correct?
- A. Correct.
- Q. And did you say that the trustees had a discretion about how they exercised their powers in respect of distributions under the trust?
- A. I said exactly the opposite. They did not.
- Q. No discretion at all?
- A. No discretion at all.
- Q. Was this trust arrangement over the whole of Mr Abramovich's holding or only over half of the holding?
- A. Over the whole.
- Q. Over the whole of the holding. Do you know what has happened to these documents, both in relation to the Cypriot trust and the Liechtenstein trust?
- A. Honestly I don't know. Since the company was sold,

I didn't think about it. I don't know.

Q. No one has asked you to look for them?

A. Myself, no.

Q. Did the trust cover just Sibneft or did it also cover Mr Abramovich's Rusal interests?

A. There was a special trust for Sibneft. I don't think Rusal was in there.

Q. And when the Rusal interests were sold, what happened to the proceeds? Did they go into trust?

A. They were used.

Q. They were used, but did they go into a trust or were they just used --

A. To that trust, no, I don't think so.

Q. Can you tell us what did happen with the proceeds?

A. I'm recalling as we speak, though, so it's not that precise. We arranged the funds of hedge funds based on that amount of money, then a piece of it was loaned to somebody. A lot of it was used on football players, a lot, like a big piece.

Q. I'm not going to ask you which ones, presumably some who have never scored a goal, but ...

A. It was before that.

Q. Can you identify the name of the trust? Was the trust given a name, the trust in respect of the Sibneft shares?

A. Sarah Trust, like Abraham's wife.

Q. Okay. Now I want to ask you some questions in relation to Mr Berezovsky and Mr Abramovich's dealings in the mid-1990s and, as I indicated earlier, I'm not going to cover matters that I've already covered with Mr Abramovich but there are some features of your evidence that I do need to ask you about.

Can I begin by asking you, please, to go to paragraph 21 of your third witness statement at E3, tab 10, at page 6 E3/10/6.

Now, at paragraph 21, you say in the third sentence here:

"Through his car trading activities, Mr Berezovsky and Mr Patarkatsishvili also had connections with various people from the Caucasus, including Mr Magomed Ismailov who was known to be one of Mr Berezovsky's partners in LogoVAZ. The Caucasus connection carried connotations of gangsterism..."

You will recall that Mr Abramovich told the court in terms that Mr Ismailov was not a gangster. This is Day 17, page 76. And indeed, as you will recall, we even saw a photo of your wife and child, I think at a child's birthday party, hosted by Mr Ismailov, do you remember that?

A. I do remember that.

Q. So this suggestion or hint in your witness statement of gangster connections on the part of Mr Berezovsky was purely malicious, that's right, isn't it?

A. No, it's not right. Should I illustrate what I was trying to say?

Q. Do you say Mr Ismailov is a gangster?

A. No. Should I --

MRS JUSTICE GLOSTER: Yes, you may elaborate.

A. What I was trying to say here is, if I said that my brother was a boxing champion I don't think he would have messed with me, he would have thought twice. So that's the kind of analogy I was trying to make here.

MR RABINOWITZ: I suggest it goes a little bit further than that because you're not talking about boxing champions here, you're talking about gangsters and you're plainly suggesting that people with links to the Caucasus are people with links to gangsters, Mr Shvidler, and that's not the same as saying your brother is a boxing champion, is it?

A. It's not the same, I give you a different example then. What if I told you that my cousin was John Gotti, and you knew that, then it's closer to this kind of thing.

Q. And if your cousin was a person who had nothing to do with being a gangster but the suggestion that you make is that he was a gangster, again that's going further

than just identifying someone who is a gangster and making it clear that you then need to be respected, which is what you've done here.

A. It's too complex a sentence for me.

Q. All right, well, we've got your evidence on that.

MRS JUSTICE GLOSTER: Could you just explain why you mention Mr Magomed Ismailov here?

A. I was trying to deliver this idea which I was trying to illustrate before. Mr Ismailov I don't think was a gangster, I met him, I knew him, he was my almost immediate neighbour. What I was trying to say, that he was connected to these people which are protecting car business, Logovaz. I'm not saying he was a gangster, I'm saying he knew people.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: Can I then ask you this, I think you agree that during the spring and early summer of 1995 there was regular contact between Mr Abramovich and Mr Berezovsky?

A. Yes.

Q. And you suggest in your evidence, this is at paragraph 46 of your witness statement, page 13 and on to page 14, you say, last sentence on the page at page 13 E3/10/13:

"It is true that there was regular contact between

Mr Abramovich and Mr Berezovsky during this period ..."

And the period you're talking about is the spring and summer of 1995. You say:

"... but I understood this related to politics, not the issue of having Sibneft included in the loans-for-shares programme."

So your suggestion is that it's politics rather than business that they'd have been talking about.

I suggest, Mr Shvidler, that that cannot be right.

Mr Abramovich told the court that certainly in 1994, going into 1995, he was not yet a politician?

A. What I'm trying to say, he is not what you just said.

It's politics as opposed to discussion of loans-for-shares scheme or privatisation programme. That's what I'm trying to say. As for discussing politics being just a privilege of politicians, I would disagree.

Q. What I suggest to you is that you just wanted to give the impression that Mr Berezovsky and Mr Abramovich did not talk business together at this time, that's right, isn't it? So you came up with this suggestion that they would have been talking about politics?

A. Absolutely not correct. What I'm trying to say here is exactly what I said.

Q. Now, moving on to the question of funding for the

loans-for-shares auction, can I ask you to look at paragraph 65 of this statement, you'll find it at page 20 E3/10/20.

So you're talking here about the funding arrangements and you say:

"It was Mr Abramovich who was able to use his personal relationship with Omsk ... and Noyabrskneftegaz management in order to arrange the trade finance."

Then you say:

"Regarding SBS Bank, Mr Abramovich already knew Mr Smolensky, and I had also met him."

Now, you were in court when Mr Abramovich gave his evidence and you'll know that Mr Abramovich's evidence, I suggest contrary to this, is that it was Mr Berezovsky who introduced Mr Abramovich to Mr Smolensky, in other words that Mr Abramovich did not already know Mr Smolensky. Do you remember that?

A. I remember that. I don't see what I said wrong.

I don't say that it was not Mr Berezovsky who introduced Mr Abramovich to Mr Smolensky. I agree with that.

Q. What was the point here of saying Mr Abramovich already knew Mr Smolensky, what point were you trying to make by that?

A. The point -- one of the points is very simple, that introduction is not -- it's important, it's not

everything. Then Mr Aven should take a credit for introducing Mr Berezovsky to Mr Abramovich.

Q. You see the point, I suggest to you, is that you were trying to suggest that Mr Smolensky already knew Mr Abramovich and vice versa in order to minimise the role that Mr Berezovsky had in a successful loans-for-shares auction. That's the truth, isn't it?

A. No, it's not. Here we're talking about funding, when we -- trying to -- we didn't talk about it. The loans-for-shares auction itself, Mr Berezovsky's role was crucial. No dispute about that. Here we're talking about only funding and what I'm saying is that funding was provided or organised by us.

Q. Now, as for the loans-for-shares auction itself, can I ask you, please, to go to paragraph 68, which is just over the page E3/10/21. You explain at paragraph 68, quite fairly, that unlike Mr Berezovsky and indeed Mr Patarkatsishvili you were not present at the auction.

Can I ask you this then, do you say that at the time of the loans-for-shares auction Mr Berezovsky was chairman of NFK?

A. He was called chairman of NFK, yes. He was not chairman of NFK.

Q. Sorry, you say he was called chairman of NFK but he was not chairman of NFK; are you saying he was or he wasn't

chairman?

A. For the purposes. For the purposes of the auction that was his title.

Q. You say for the purposes of the auction that was his title?

A. That's right.

Q. Can I ask you, please, to go to paragraph 49 of this statement, it's at page 14 E3/10/14. You see the second line, you say:

"Mr Berezovsky was on one occasion called Chairman of NFK solely to justify his position on the board of Sibneft."

Now, Mr Berezovsky was appointed to the board of Sibneft some months after the loans-for-shares auction in late September 1996. That's right?

A. Apologies, twice. Not once, twice. And Mr Patarkatsishvili once.

Q. So now you're changing your evidence again, you're saying he was called the chairman or was the chairman on two occasions, one for the purposes of the auction and two for the purposes of justifying his position on the board of Sibneft. Is that now your evidence?

A. My evidence is that he was called chairman of NFK twice. I thought it was once, sorry.

MRS JUSTICE GLOSTER: Why wasn't he appointed the chairman

of NFK?

- A. There was no board. Okay, it was a Russian company, the director is like COO(?), it's not chairman of the board like here.

MRS JUSTICE GLOSTER: But under the constitution of this particular Russian company there didn't have to be a chairman or there didn't have to be a board? You tell me.

- A. There -- yes, you're right, on constitution of this company. There was a general director and a chief accountant, those were the two persons which had to be there by law and they were there.

So general director was Mr Kulakov and Mr Gubinets(?) was chief accountant.

MRS JUSTICE GLOSTER: Presumably the shareholders could, if they agreed, appoint a board with a chairman?

- A. Russian companies were not constituted like this. There was no board of directors. The general director has all the powers except for second signature, so in other words at the bank there had to be two signatures, but otherwise he had -- the COO, which is called director in Russian, has full power.

MRS JUSTICE GLOSTER: So who takes the chair at shareholders' meetings?

- A. The shareholders.

MRS JUSTICE GLOSTER: So the shareholder with the biggest amount of shares.

A. There were not shareholders' meetings as such. Again, the operation and the constitution of those companies was completely different, not to mention that this one was created just for this particular purpose. When the purpose was served, it disappeared. Just for the auction and for holding the shares afterwards.

MRS JUSTICE GLOSTER: But this was a particular sort of Russian company, was it? I mean, are you telling me that even today Russian companies don't have boards of directors with a chairman?

A. Now the situation is different. This is -- I have to -- okay, in Russian, it's OOO, ZAO, OAO.

MRS JUSTICE GLOSTER: Yes, ZAO or OOO, is it? Oh, three you're telling me?

A. OOO did not exist at the time, it was called ZAO I think, but now I'm not 100 per cent sure but I think that's what it was. So it was not OAO. OAO is what is called Plc here.

MRS JUSTICE GLOSTER: So your evidence is relating to a ZAO at that particular --

A. Right, what's called L -- I guess it's the analogue of LLC, LLC here.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: So Mr Shvidler, having said in your witness statement that he was called chairman of NFK solely to justify his position on the board of Sibneft, you've changed your evidence to say that not only was he called chairman of NFK then, but he was also called chairman of NFK in the context of the loans-for-shares auction, but you are careful to say that he was not in fact chairman of NFK.

A. I agree with you.

Q. Can I ask you, please, to go to bundle H(A)07 and turn to page 34 H(A)07/34. Now, you will recognise this, Mr Shvidler, it's an extract from the Eurobond circular in 1997, and your evidence in your fourth witness statement is that you were closely involved in the supervision of the Eurobond documentation. That's right, isn't it?

A. Right.

Q. We see in this Eurobond circular in the passage that has been underlined in the manuscript that Mr Berezovsky was chairman of NFK when it won the right to manage 51 per cent of Sibneft's shares in the loans-for-shares programme. Do you say you allowed a false statement to be submitted in the Eurobond circular?

A. No.

Q. Can you explain why this statement doesn't say he was

called chairman, it says he was chairman of NFK, which appears to be a point you are being very careful to say is not right.

A. For -- nothing to add here. It's a completely true statement.

Q. What is a completely true statement?

A. What it says here.

Q. That he was chairman of NFK?

A. He was chairman of NFK.

Q. But you've just been telling my Lady that he wasn't in fact chairman of NFK, he was just called the chairman of NFK.

A. Right. If you explain me the difference I'll try to comment.

He had to be called something associated with the company. We thought that the best position would be chairman of the company, which has no legal role by the way, in a company of this constitution.

Q. So you're saying he was chairman?

A. He was honorary chairman, if that helps.

MRS JUSTICE GLOSTER: So, as I understand it, you're saying constitutionally that under the memo and arts of the company, or whatever the organisational document was, there was no actual constitutional position of chairman, but he was de facto chairman, called chairman, treated

as chairman for these purposes?

A. He was not a de facto chairman. He needed to be called something.

MRS JUSTICE GLOSTER: Yes, I see.

A. He's a prominent figure, a distinguished gentleman, so what's the best we could call him? Chairman.

MRS JUSTICE GLOSTER: I see.

MR RABINOWITZ: Now, moving on from the events of 1995, I think you support Mr Abramovich's case by denying ever being present during discussions leading to what Mr Berezovsky says was the 1996 agreement?

A. That's right.

Q. You see, I suggest that Mr Berezovsky agreed to distance himself from the ownership of Sibneft at the request of both Mr Abramovich and yourself, you deny that, do you?

A. I deny that, yes.

Q. Can we turn next, please, to the question of payments supposedly made in 1995 to Mr Berezovsky and Mr Patarkatsishvili. I've already asked Mr Abramovich about most of these, but you mention in paragraph 129 of your third witness statement, this is at page 38 E3/10/38, going on to page 39, the payment on 6 December 1995 for \$1 million paid to Atrium Consolidated Ltd. Do you see that?

A. I see that.

- Q. You assert there that Atrium is an offshore subsidiary of Alfa-Bank, but you do not identify any documentary evidence to support this assertion, do you?
- A. The assertion that Atrium is related to Alfa-Bank?
- Q. Yes.
- A. That's the one? I don't have any documents, but to be absolutely sure when the question arised, because I remember the payment very well, it was part of a bigger payment. About a week before we started here, I called Mr Aven specifically to double and triple check what I was saying here. He confirmed the whole thing and he said he was comfortable for me mentioning it here.
- Q. You see, here you don't say by whom the debt was owed or why, do you?
- A. In my statement?
- Q. In your statement.
- A. I think out of the context of 129 it's clear.
- Q. It's also right, is it not, that you had no memory of this payment during the strike-out application. We know that because Mr Mitchard interviewed you for the purpose of the strike-out application and no mention was made of this payment, indeed no mention was made of any pre-1996 payments in Mr Mitchard's witness statement, that's right, is it not?

- A. It's not right at all. I remember the payment very well, it was the first time Mr Aven, whom I knew from before, was shouting at me for somebody else's debt. And I remember it vividly.
- Q. So the only reference to any payments at all made in the context of Mr Mitchard's statement was in respect of payments made in respect of ORT. You're not suggesting this is a payment made in respect of ORT, are you?
- A. It was Mr Berezovsky debt to Alfa-Bank or to Mr Aven or to the group. Was the money used for ORT? I don't know.
- Q. Can I ask you, please, to go to bundle H(A)03 and turn to page 1 H(A)03/1.
- A. Should I add something about Mr Mitchard and strike-out?
- Q. If you think it will help.
- A. I think it will help. The purpose of the application, as I understand it, was a specific purpose and it was not a full statement.
- Q. Well, the purpose of the application was to stop Mr Berezovsky being able to bring his case to trial, and Mr Mitchard was purporting to set out the facts which he said related to the agreements made between Mr Abramovich and Mr Berezovsky. There would be no reason for him in that context not to tell the full truth about what the payments were for, would there?

A. No reason at all. I think what he did was right.

Q. And what he said in that statement, I'm not going to turn it up, was that the agreement was that payments would be made in relation to ORT. He didn't suggest that there would be any other payments that it was agreed Mr Abramovich would make?

A. Whatever the definition of ORT payments were.

Q. What, you're suggesting there should be a wide definition of ORT payments. "Whatever the definition of ORT payments were", what do you mean by that?

A. I mean what Mr Mitchard understood by ORT payments.

Q. What could he have understood other than that these were payments in respect of funding of ORT?

A. I think whatever Mr Berezovsky says was ORT was ORT.

Q. You have the document at H(A)03, page 1 H(A)03/1, this is a document that Mr Berezovsky disclosed in these proceedings. I suggest that it is obvious that it was only when Mr Berezovsky disclosed this document that you came up with this story about a payment to Atrium Consolidated, that's right, isn't it?

A. Wrong suggestion, and I was trying to explain.

Q. I suggest --

A. And I can say even who Mr Lippitt is -- was, if that will help.

Q. Why don't you say who Mr Lippitt is or was?

- A. He was a manager of that account in that bank, that's why his name is mentioned here. And I agree with Mr Berezovsky that he didn't know who Mr Lippitt was, for that reason.
- Q. You see, I suggest that although you claim you have a recollection of this, what is happening is you are simply reconstructing on the basis of a document that Mr Berezovsky has disclosed.
- A. I could have reconstructed the date of the payment but that's about it. I do remember the payment itself.
- Q. I'd like to, if I may, just go back to the Eurobond circular. It is at, again, H(A)07, I think starting at page 34 H(A)07/34. You tell us that you were closely involved in the supervision of this document. That's right, isn't it?
- A. Yes.
- Q. Mr Abramovich has told the court that the description of his education in this document, and I have in particular the reference on page 38 to him having graduated in 1987 from the Moscow Road Engineering Institute was not accurate, but he suggested that he didn't pick up the error because the circular was prepared in English only. Is it true that this circular was prepared in English only?
- A. As far as I remember, yes.

- Q. So unless someone was an English-speaking person they would not have picked up any errors, that would follow, would it not?
- A. No. If somebody was interested in translation, translation would have been provided.
- Q. So Mr Abramovich didn't ask for a translation?
- A. I guess he did not.
- Q. Well, if he had asked for a translation, then his suggested reason as to why he didn't pick up this error would fall away, wouldn't it?
- A. No, he wouldn't be able to pick it up, and I can explain what happened here.
- Q. All right.
- A. In Soviet system, which was the system at the time, you can graduate with a diploma, so to finish the institute or university, or you can graduate with what's called literally unfinished higher education. In this case you get spravka or certificate of unfinished higher education. It's a little bit like bachelor and masters but not exactly.
- So what Roman got here was this certificate of unfinished higher education. In English, I guess, Cleary's, who was writing this circular, memorandum, didn't find a better word.
- Q. Mr Shvidler, Mr Abramovich's evidence about this was

that he spent four years from 1987 in a part-time course at the Moscow Road Engineering Institute. It doesn't seem to have anything to do with certificates of unfinished education.

A. I think it was lost in translation. If we want to go into his education, we can do it in two minutes. He went to school in Ukhta for a year and a half, so there was two courses. Then after army he came to Moscow, went to this school here, whatever we call it, in Russian it was Madi. And after the fourth year he got the certificate and didn't go back to that school. Years later, when he became governor and he needed to finish his higher education, he took another year and graduated, if you follow me. Or I can repeat it again.

Q. Well, I don't want to spend too much time on this.

A. Right, but whatever is written here, it's true and it just got lost somehow.

Q. Well, it must have got lost. I'm not altogether satisfied that it's been found --

A. We can do it again.

Q. But I'm not going to spend time on that.

A. Okay.

Q. You see, I suggest to you that what has happened here -- can I just ask you this. Again, I don't want to spend too long on this, but are you suggesting that

Mr Abramovich was given a translation of this document at the time that it was being finalised?

A. I don't know.

Q. You don't know. When you talked about things being lost in translation, at what point in time? Are you saying it was lost in translation in court?

A. In court.

Q. Or lost in translation before court?

A. In court, definitely.

Q. You see, I suggest to you that that is an inaccuracy that you did not pick up because it suited you to say Mr Abramovich had this degree when in fact he didn't.

But I'm more interested in another point in this circular. Can you go to page 34 H(A)07/34.

A. So I should leave it unanswered, right?

Q. Well, if you want to add to anything you have already said, please do.

A. I want to add it's not true, about his education.

Whatever is written here is true and there was no reason to put it otherwise.

Q. Can you go to page 34, please, Mr Shvidler.

A. Yes.

Q. At page 34, you allowed a statement to go into the offering circular that:

"Mr Berezovsky does not own or control, or any have

any other interest in any shares in Sibneft, directly or indirectly."

That also was simply untrue, wasn't it?

A. It was absolutely true.

Q. I suggest to you that it wasn't. Can you put that away.

I want to move on to another topic, can you please go to bundle H(A)11 at page 101 H(A)11/101. Now, at H(A)11, page 101, you should have an internal note within Andava SA from a Mr William Ferrero to Mr Berezovsky. It's dated 15 July 1998. It records a visit by Mr Ferrero to see you on 9 July 1998, that's six days earlier than the memo.

Can I ask you, please, to read the memo to yourself.

(Pause)

Now, can you just tell me this, presumably you saw this document before you prepared your witness statements for trial, is that right?

A. I honestly don't remember.

Q. All right. Can I ask you to go to another document at page 113 in the same bundle, it's a further memo from Mr Ferrero H(A)11/113.

A. I'm sorry, which --

Q. Page 113. This time it's a memo from Mr Ferrero to Mr Patarkatsishvili dated 14 August 1998, and it records a meeting again with you of just three days earlier. We

can see that, if you look at point 1:

"I have met Eugene Shvidler on 11 August 1998."

Can I ask you to read the first page and a half of the note, down to -- if you go on to the second page, you'll see point 4 is "Auditors", you don't have to read beyond that. If you want to, you can. (Pause)

A. Mm-hm. Yes.

Q. So we see this in the first -- perhaps I can just check this, presumably you would have seen this document before you prepared your witness statements for trial?

A. No.

Q. You cannot remember?

A. I cannot remember.

Q. We see from the first paragraph of the note that you appear to have instructed Mr Ferrero to cause Andava to make a loan to Runicom Limited in the amount of 20 million Swiss Francs?

A. Yes.

Q. That's right, isn't it?

A. Mm-hm.

Q. This arose out of a proposal by Mr Abramovich to Mr Berezovsky that all of the companies owned by both of them should be brought under your financial supervision, is that right?

A. No, it's not right.

- Q. You told Mr Ferrero that you thought Runicom Limited had paid too much to Mr Berezovsky, and so you felt that Mr Berezovsky owed Runicom Limited money and you thought Andava could pay, is that right?
- A. No, it's not right. It would be very strange for me to discuss anything like this with Mr Ferrero whom I don't remember what he looks like, I think I saw him twice.
- Q. As stated in Mr Ferrero's contemporaneous note, your intention was to use the money to purchase shares in Aeroflot, that's right?
- A. Could be, at the request of Badri.
- Q. Well, I don't know about that, but it's clear that he says you wanted to buy shares in Aeroflot --
- A. That's why I'm trying to comment on what you say.
- Q. Can I ask you, please, to go to your witness statement, your third witness statement, at paragraph 149 at page 42 of E3, tab 10 E3/10/42. Can you read, please, paragraphs 149 and 150 to yourself. (Pause)
- A. Just those two?
- Q. Just those two. You make clear here that your meetings with Mr Ferrero, you say, had nothing to do with Sibneft, and that is borne out by the contemporaneous notes we've just seen. You make no reference, in this description of your dealings, to your request for money, do you?

A. No.

Q. Can we turn to your next witness statement, which is your fourth witness statement, E4, tab 10, and I want to look at paragraph 69 which is at page 183, please E4/10/183. Can I ask you, please, to read paragraph 69 to yourself. (Pause)

You see, Mr Shvidler, whereas previously you'd said that your discussions had nothing to do with Sibneft, now in this paragraph you're saying that the proposal was that they render the same, you're talking about Andava, render the same cash management services for Sibneft as they had done for Aeroflot. Would you care to explain why your story has changed in relation to this?

A. My story hasn't changed. It was the sales pitch for the company to do something for us. Did they want to acquire Sibneft as their so-called client? I'm sure they did but that was about it. There was no discussion of Sibneft, or there was no discussion, period.

Q. I'm afraid I don't understand that. In your earlier statement you went out of your way to say the meeting had nothing to do with Sibneft. In your more recent statement you say that this was a proposal that they render cash management services for Sibneft. So whereas previously you said it had nothing to do with Sibneft,

now you're saying it was in connection with Sibneft.

- A. The meeting was connected to Switzerland, the same way it was connected to Sibneft. Again, they wanted to introduce the company, which they did. Were they interested in Sibneft being a client? I'm sure they did. That's it, Sibneft had nothing to do with it, Sibneft itself.
- Q. You say nothing to do with Sibneft or any future business proposal, but it's plain that there was a business proposal being made to you there, and indeed it had to do with Sibneft. That's what you said in your first statement and that's plainly wrong, according to your second statement.
- A. If you start playing with words, you win.
- Q. You see, you also suggest that your request for money, which you didn't mention in your previous statement, so I'm talking about your later statement, you said that the request for money was possibly suggested in a light-hearted way.
- A. That's right.
- Q. We can see from the contemporaneous note that that does not appear to be right, Mr Shvidler. It seemed to be a serious instruction, seriously received and seriously considered.
- MRS JUSTICE GLOSTER: What transfer is this?

MR RABINOWITZ: If my Ladyship goes back to the note.

MRS JUSTICE GLOSTER: Yes, which one?

MR RABINOWITZ: Which one were you talking about here,  
Mr Shvidler?

You say:

"I was not at all interested in their proposed services and I do recall thinking that we had our own financial expertise. It is therefore quite possible that I suggested in a light hearted way that Andava should transfer monies to Runicom Limited..."

In the note there are two references to a transfer, one is the 20 million Swiss francs transfer, and then, if you look at point 2 -- you don't have it anymore -- there's a reference to \$33.8 million of Swiss francs being transferred.

MRS JUSTICE GLOSTER: Swiss francs?

MR RABINOWITZ: CHF.

Which of these transfers do you suggest was made in a light-hearted way?

A. I think I'll explain the situation maybe in two words and all the questions will fall out hopefully.

I visited the company at the request of Mr Berezovsky, or Mr Patarkatsishvili, I'm not sure which one. The company, Andava, and I think Andava and Forus was basically the same group of people, they made

a pitch for us to -- they explained who they are, what they did, and I'm sure what Mr Ferrero is saying here about the presentation is correct.

I told him -- them that we're not interested and instead we can manage this money. That was the light-hearted part.

Another thing was that Badri and Mr Fomichev, they were trying to buy shares of Aeroflot at around that time. So this money could be used for those shares. That's the second part of the story.

And the main part of the story is this, that this group of people, they had business, apparently good life, they didn't want to lose it, and that's what Mr Ferrero is trying to explain here, that if -- he got scared a little bit because he didn't understand what's going on in Moscow, and he was scared, I guess, that all the money would be gone and that's what he's trying to explain in these two memos, referring to auditors, to other shareholders and so on.

Q. Mr Shvidler, while we have these Andava documents open --

A. I don't have it open.

Q. Can he have back -- I'm not sure you need it. Actually can you bring it back, please. H(A)11.

MRS JUSTICE GLOSTER: Page?

MR RABINOWITZ: It's page 113 H(A)11/113.

I want to ask you about something in your witness statement but you may want to refer back to that and that's why you should have it available.

In your fourth witness statement, can you go in your fourth witness statement, E4, tab 10, page 184, at paragraph 73 E4/10/184, you see that you're responding to the suggestion that Mr Abramovich may have caused Mr Glushkov's legal troubles relating to Aeroflot. In connection with this, at paragraph 73, you say the following in the third line:

"My recollection is that Laren Trading, a company controlled by Mr Abramovich, did acquire a small (approximately 2 per cent) shareholding in Aeroflot from Consolidated Bank in late 1997. I recall that Mr Fomichev, who had acquired the interest on behalf of Consolidated Bank at the request of Mr Patarkatsishvili, asked us to buy it from Consolidated Bank because Mr Patarkatsishvili had not provided him funds for the purchase."

Then you go on to say:

"Only much later, I recall in 2001, did we become interested in Aeroflot and acquired a more significant stake by buying shares in the market."

That's not quite right, is it, Mr Shvidler? As

we've seen, already in 1998 you were planning to spend 20 million Swiss francs on shares in Aeroflot?

- A. It's absolutely right, and these two things have nothing to do with each other. In 1997, Mr Abramovich bought the shares for himself and this situation is described here. 20 million was Badri's money, or Badri's and his partners', whoever they were, money. They were trying to buy shares for themselves. They didn't do it, by the way.

In 2001, Mr Abramovich bought -- I mean, I did it for him -- shares from the market, and that's a completely different situation. So this 20 million was a use of their money for themselves.

I don't know if I'm --

MRS JUSTICE GLOSTER: The 20 million Swiss francs?

- A. Yes, potentially, but again it was not done. They understood that they have 20 million or whatever, 33, whatever the number is here, in Andava. They wanted to use the money.

MR RABINOWITZ: Mr Shvidler, one of the things you say here is that Consolidated Bank, Mr Abramovich acquired 2 per cent of shares in Aeroflot from Consolidated Bank in late 1997. Mr Glushkov told the court that Consolidated Bank only had 0.107 per cent of Aeroflot in 1997; that's right, isn't it?

A. That he said so? I guess it's right if --

Q. Or both that he said so and that what he said was right.

A. I don't have a knowledge about that. What I'm saying here, that Consolidated Bank was an agent basically who bought the shares, didn't have the money, and Mr Abramovich paid for it and took the shares.

As for the extra shareholding of Consolidated Bank itself, I have no knowledge.

Q. So you seem to be suggesting here that Mr Abramovich acquired shares from Consolidated Bank, that's to say that Consolidated Bank had 2 per cent and that Mr Abramovich bought its 2 per cent. Consolidated Bank never did have 2 per cent, Mr Shvidler.

A. Again, they did buy the shares, didn't have the money to pay. That's why we took it off their hands.

Q. So you're saying they had 2 per cent of the shares?

A. As an agent for us if you want to be technically correct.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Well, I'm not sure I'm understanding this.

Could you go back, please, Mr Shvidler, to H(A)11, page 113 H(A)11/113, which is Mr Ferrero's memo of 14 August, referring to a meeting with you on 11 August. Do you have that?

A. Yes.

MRS JUSTICE GLOSTER: Mr Ferrero is reporting about a proposal or an instruction that he says you've given him to make a loan of 20 million Swiss francs to Runicom.

A. Mm-hm.

MRS JUSTICE GLOSTER: And I don't quite understand what this was about. Why was money being lent from Andava to Runicom?

A. With a little possibility of being repaid afterwards.

MRS JUSTICE GLOSTER: Yes. What was this all about? Just tell me now.

A. Okay, I was trying to explain.

I couldn't give him instructions, who am I to him?

Where do I start? Mr Ferrero was, as I understand, the main manager of this Andava enterprise, Andava business, which held --

MRS JUSTICE GLOSTER: Yes, he was trying to sell you Andava as a service provider.

A. Right.

MRS JUSTICE GLOSTER: But what I don't understand --

I understand that because you've told me that already.

A. Right.

MRS JUSTICE GLOSTER: What I don't understand is the proposal that he seems to be reporting to

Mr Patarkatsishvili here that Andava is going to be lending 20 million Swiss francs to Runicom.

- A. Okay. When I got back to Moscow, I guess, or on the phone, I'm not sure about that, I explained to Mr Patarkatsishvili that: we're not interested but they have the money which you should use, you, Mr Patarkatsishvili, should use.

At the time they were interested in buying shares in Aeroflot.

MRS JUSTICE GLOSTER: Badri was?

- A. Badri, maybe Mr Berezovsky but Badri.

So I guess he asked how much money that was, and here Mr Ferrero is saying that it was this amount of money.

MRS JUSTICE GLOSTER: So why is it going anywhere near Runicom if Mr Patarkatsishvili wants to buy shares in Aeroflot?

- A. Then -- it's difficult to explain the mechanics.

MRS JUSTICE GLOSTER: Well, have a go.

- A. Right, he would tell me: why don't you buy the shares? Because he didn't have hands, one of the hands was Mr Fomichev who could physically do it, go buy it. It's not like to go buy potatoes in the store, you have to be broker and stuff like that. So Runicom was one of the possibilities. He treated me in the same way more or

less. So he asked me to buy it.

MRS JUSTICE GLOSTER: The shares in Aeroflot?

A. Right.

MRS JUSTICE GLOSTER: Through Runicom, yes, I see.

A. He didn't care through what. So he and Mr Ferrero got scared and he's writing back to Badri that: this is all our money, if you are saying you have to do it we'll do it, but this will destroy our business, and all these people will not be happy, auditors and shareholders --

MRS JUSTICE GLOSTER: Yes, I see all that.

A. I understand it's hard to follow but --

MRS JUSTICE GLOSTER: No, I follow now.

So the proposal was that you, as a nominee, would buy shares for Mr Patarkatsishvili--

A. Not even nominee, as a broker, just hands, that's all.

That's why I'm saying that we'll never repay because we're just --

MRS JUSTICE GLOSTER: I see.

A. The same is true for the situation we discussed like a minute ago, when Obedinyonniy Bank, which was bank presumably with the money, bought the shares of Aeroflot on the same instructions but didn't have funds.

MRS JUSTICE GLOSTER: Yes.

A. So we had to take them off the hands. Years later, I mean three or four years later, when the situation

changed in the market, and also -- I mean, I saw on our balance, or whatever you call it, that we had those shares, this idea came to increase our stake.

MRS JUSTICE GLOSTER: Yes, thank you.

Right. I'll take a ten minute break.

(11.23 am)

(A short break)

(11.43 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Shvidler, I'd like to move on to the 2001 sale of Mr Berezovsky and Mr Patarkatsishvili's interests in Sibneft. You explained fairly in your witness statements that you were not present at the key meeting so there is little which I need to ask you about.

Can I ask you please to go to paragraph 203 of your third witness statement, E3, tab 10, page 58 E3/10/58.

You say at paragraph 203, or what you seem to suggest, is that you thought that the figure of \$1.3 billion was, if anything, an excessive amount to pay Mr Berezovsky and Mr Patarkatsishvili because, so you say, \$1.3 billion was close to 100 per cent of the value of Sibneft market capitalisation as at January 2001. Okay?

Is it seriously your evidence, Mr Shvidler, that the

value of Sibneft in May 2001 can be accurately ascertained simply by scaling up the market price of the 12 per cent or so of Sibneft which was then free-floating?

A. Can we start from the beginning of your statement?

Q. Well, do you want to -- if you need to, in order to answer my question, you can start wherever you like.

A. Right, okay, we'll start from the end.

Yes, I can seriously say so. One of the approaches to valuation would be to take market price of the shares traded. That is to answer the second part of your question.

As for why this whole thing about valuation is even here in this paragraph, it's not because what I was telling Roman at the time. I'm trying to say it now.

Q. Well, I want to ask you about your suggestion that 1.3 billion was close to 100 per cent of the value of the Sibneft market capitalisation and that you can seriously suggest there's a valuation method that you can scale up the market price of 12 per cent or so of Sibneft, which was free-floating, in order to reach that valuation, because I suggest to you that was a ridiculous position for you to adopt. Do you dispute that?

A. I dispute that.

- Q. Would you accept that the 88 per cent of the shares held by Mr Abramovich would have had an enormous premium for a majority control compared to the stock market price for the minority of shares in free-float?
- A. All theoretical conversation. In other words, if there was a willing buyer and a willing seller the price could be anything. What I'm trying to say here is the willing buyers and willing sellers were only with reference to the free-float, and the free-float was what it was and the start price was what it was. So that's the only market indication at the time.
- Q. You were trying to suggest that \$1.3 billion would be a ridiculous figure because it was close to 100 per cent of the value of Sibneft.
- A. Correct.
- Q. Is it not right that just a couple of months later Sibneft decided to distribute dividends totalling some \$612 million?
- A. Timing-wise I'm not sure, but probably, yes.
- Q. Let me show you --
- A. I agree with you, let's save time.
- Q. So on 17 August 2001 Sibneft distribute dividends of \$612 million, and your suggestion, is it, is that the company which can pay out a dividend at that level could be worth only \$1.3 billion a couple of months earlier?

A. That's right. We're talking about the first major dividend out of the whole Russian industry, not just oil industry. Was it sustainable? Who knew? And continue longer.

MRS JUSTICE GLOSTER: I don't understand. When you say:

"We're talking about the first major dividend out of the whole Russian industry, not just oil industry."

You're saying there that this was the first major dividend declared anywhere across Russia?

A. That's right.

MRS JUSTICE GLOSTER: As against any industry?

A. Correct.

MR RABINOWITZ: Not only did it declare a dividend which is approximately half what you say is the value of the company in one year, it's also right, isn't it, that just ten months or so later you were announcing the sale of 1 per cent of the company for \$100 million, giving the company an implied value in excess of \$10 billion?

A. That's right, and I think we covered it yesterday. We were trying to sell it at this price, we wanted to sell at this price. That was our intention. That's one thing.

The second thing is that it was later. And at that time every half a year did count.

Q. You see, Mr Shvidler, I suggest to you that the evidence

that you give at paragraph 203 of your witness statement is a good example of how you're willing to give wholly unrealistic evidence if you think it will help Mr Abramovich to win the case; that is right, isn't it?

A. It's not right at all.

Q. Now, I'd like to ask you next a few questions about Rusal, if I may.

MRS JUSTICE GLOSTER: Just before we leave paragraph 203, the last sentence before the parenthetical:

"US\$1.3 billion ... was close to 100%...", et cetera.

Is that something that entered your mind at the time, that comparison?

A. I don't remember. I think so. I mean, I was -- following(?) capitalisation of Sibneft, I did. To answer you right now, I don't remember.

MRS JUSTICE GLOSTER: I think you said earlier that wasn't something you discussed with Mr Abramovich?

A. Was not or was?

MRS JUSTICE GLOSTER: Well, you tell me?

A. Did we discuss the number? Absolutely we did discuss the number, and it was a staggering number, just in cash terms. I saw an article recently with an illustration, "What could have been bought using this amount of money". You could buy the whole Sberbank, which is the

Russian bank. You could buy, I forgot, 10 per cent of Gazprom. It was the amount which was held by Russian pension fund, 100 per cent of it, and so on. And what that would have been in today's dollars, if this money was invested in different Russian shares.

MRS JUSTICE GLOSTER: But when you discussed with Mr Abramovich your views that you thought the figure was crazy, did you make a comparison at that time with the market cap value as at January 2001, in your discussions with him?

A. I don't think so. The physical amount of money, that was the shock.

MRS JUSTICE GLOSTER: Yes, I see.

A. And that was the key thing.

MRS JUSTICE GLOSTER: Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Now, I want to ask you about Rusal, if I may, Mr Shvidler. Before I do, can I ask you this: do you agree that it is wrong to put one's name to a false document?

A. Yes, I agree with that.

Q. And can we take it that you do not generally execute contracts which contain statements which you know to be untrue?

A. Yes.

Q. Can we just look at some of the contractual documents that you executed, Mr Shvidler. Can you begin, please, by going to bundle H(A)17, and go to page 33 H(A)17/33.

A. Mm-hm.

Q. I don't know, do you prefer the English or the Russian?

A. Russian.

Q. All right, there's a Russian version at page 38

H(A)17/38.

Now, as you see, this is the master agreement of 10 February 2000 in accordance with which the aluminium assets were acquired which were subsequently merged with Mr Deripaska's aluminium assets to form Rusal, correct?

Can you say "yes" rather than nod if you agree.

A. Yes.

Q. Thank you. If you can just look at the end of the Russian version, page 43 H(A)17/43.

A. Mm-hm.

Q. That's before you get to 38T. Can you confirm that it's you who have signed this document?

A. Yes.

Q. And that it's your signature which appears as the second signature under party 1 --

A. That's right.

Q. -- on that page.

Just turning back, still in the Russian version, to page 38, you can see that someone has penned the initials "ES" on the bottom of each page, and can you confirm that those initials and the handwriting is yours?

A. That's right.

Q. Can you confirm that the reason you were initialling each page of this contract was to indicate your agreement to the terms recorded on each page?

A. Correct.

Q. Now, I take it you would have read this contract before you signed it, Mr Shvidler?

A. I did.

Q. You see clauses 4 and 5, which is page 33 in the English H(A)17/33.

A. Yes.

Q. So "Parties 1 shall acquire from parties 2 and 3 all their shares and interests in business of Bratsk of 300 additional units".

Clause 5:

"Party 1 shall acquire from Parties 2, 3, 4 and 5 all their shares and interests in business of KrAZ and other Siberian Complex industries for 250 [conditional units] ..."

So according to this document, Mr Shvidler, party 1

is the purchase of the aluminium assets, that's right,  
isn't it?

A. A small comment.

Q. Sorry?

A. A small comment: in English translation, "party", it's better translated as "side", it says "storona odin, storona dva" and so on. It's "side". It's a subtle difference but still there is a difference.

Q. But can you confirm that party 1, or side 1 if you prefer, is the purchaser of the aluminium assets according to this agreement?

A. That's right.

Q. And parties 2 to 5 are the sellers, are they not?

A. They are.

Q. And if you go back up to the top of page 33, do you see party 1, or side 1, is defined:

"Roman Abramovich, Evgeniy Shvidler,  
Badri Patarkatsishvili and companies represented by them  
(hereinafter, 'Party 1') ..."

So you would agree with this, I take it, that on the face of this document, which you have signed and initialled, you are described as one of the purchasers of the aluminium assets, aren't you, Mr Shvidler?

A. I'm described as a representative of the side which bought the assets, that's correct.

Q. Well, you're described as one of the parties who bought the assets.

A. As a representative. I don't want to argue but it's really a difference.

Q. You see, what the document says on its face, Mr Shvidler, is that you are part of party 1, and party 1 is the group that have bought these assets.

A. Correct.

Q. Is that statement true or is it false?

A. The statement is true.

Q. Okay. So can I then ask you to have a look at paragraph 158 of your third witness statement, page 45 of E3, tab 10 E3/10/45. You see at paragraph 158, you say:

"Mr Patarkatsishvili signed the 10 February agreement along with Mr Abramovich and me. Neither Mr Patarkatsishvili nor I were the actual purchasers."

Can you explain, in light of that, why you say the contract, which suggests that you were the purchaser along with Mr Patarkatsishvili and Mr Abramovich, was true?

A. By definition that it was not false.

Q. That's your answer, is it?

A. No, and now we can go into details, if the court is interested.

MRS JUSTICE GLOSTER: Yes, go on.

A. Okay. Three of us represented the purchasing side. The other gentleman here represented the sellers. Not all of them were actual sellers. I mean, they were sellers but not all of them had the assets. I'm referring to Mr Bosov. This is an agreement between the people sitting round the table. Whatever these people, this group of people wanted to put on paper, they did, and it was true and clear for all the parties, what was going on, and what we wanted to put on paper and perform. And it was -- all that was done in the future.

I don't know if I make myself clear.

MR RABINOWITZ: So you are saying not only were all the people identified as purchasers, purchasers, but not all the people identified as sellers were sellers?

A. All the people identified here had something to do and a lot to do with the situation described in this agreement. So none of this is false. I mean, whatever we wanted to say and whatever we wanted to put on paper is here, and we can go line by line.

Q. So where it says in the contract about Mr Bosov, who you said was not a seller, that he controls about 25 per cent of the shares and interests in the Siberian Complex, are you saying that is false?

A. I didn't say he was not a seller. He was a seller but

he didn't have those assets.

Q. So you're saying he was a seller now?

A. And before as well. He was a seller, he didn't have the assets. His assets were part owned -- he was a partial owner but the assets owned by party 4 -- no -- whatever. By Trans-World Group.

Q. You see, I had thought that you'd said that not all the people who were identified as sellers were sellers, but I think you're now saying that they are all sellers, is that right?

If that's always been your evidence, just say so, I'm not trying to catch you out, Mr Shvidler.

A. That's the impression I have.

Q. I really am not. I had understood that that's what your evidence was.

So all the sellers were sellers, but you're saying that the people identified as purchasers were not all purchasers?

A. The people who were identified as purchasers were not all purchasers. The people who are identified here as sellers are all sellers, but the assets, for example, held by each one of them are not necessarily owned by them.

MRS JUSTICE GLOSTER: Are you saying there's a contractual obligation on anybody identified as a seller to sell,

irrespective of whether they actually own the particular shares?

A. I would say yes.

Can you go to court with this paper? I have no opinion about that.

MRS JUSTICE GLOSTER: Right.

A. But did each one of the present people feel responsible for performing? Yes.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Now, in your witness statement, in your third witness statement, you say that the reason that you wanted Mr Patarkatsishvili to sign a contract was because, you say:

"... it was a signal to the market that this was 'his' deal."

This is at paragraph 158 of your statement E3/10/45.

A. Mm-hm.

Q. So:

"... it was a signal to the market that this was 'his' deal. He was the 'enabler' and everyone needed to know that he was protecting the assets."

When you talk about the market, who are you talking about here?

A. The small group of people present and people around them

who were in immediate vicinity.

Q. Why would it have been necessary for these people to know that Mr Patarkatsishvili was involved with the deal by him signing the contract, Mr Shvidler? All of these people were already well aware that Mr Patarkatsishvili was, if you want to put it this way, your man.

A. Mm-hm.

Q. That's right, isn't it?

A. That's right, and that's exactly why, if he was sitting there and all of a sudden didn't sign or refused to sign, that would be a very bad signal, and would look strange.

Q. You see, I suggest to you there was no need for these people to be told that Mr Patarkatsishvili was your man. Everyone knew that already, did they not?

A. Again, they knew it. I thought the question was why did he actually sign? Everybody present signed.

Q. And why was it necessary for you to sign the contract, Mr Shvidler?

A. Same reason basically. I was the one negotiating with all this -- I mean, I was the one almost done -- who almost done all the talking. So if all of a sudden I said, "And now I'm not signing", that would have been very bad.

Q. As long as Mr Abramovich signed it that wouldn't have

mattered?

A. It would have.

Q. So the signal, you say, you were trying to send to the market by your signing this was to say that this agreement which Mr Abramovich could have signed was one that you agreed with as well?

A. You are mixing up two different situations.

Q. Okay.

A. We're sitting around the table, the document is prepared as we discussed it, and it was prepared right away or almost right away, and all of a sudden I refused to sign, that's one situation. It would have been very bad for people across the table.

If we're talking about the market, wider market, if I didn't sign it, it wouldn't matter. You're right.

Q. But both you and Mr Patarkatsishvili could have signed the contract without being described as buyers under the contract; that would have made it clear that you supported what was contained in the contract, would it not?

A. You might be right, but we have chosen this particular way of putting it on paper.

Q. You've chosen a way which suggests that you and Mr Patarkatsishvili were purchasers, that's right, isn't it?

- A. We've chosen the way which was suitable at the moment.  
And I don't think it was any misunderstanding on anybody's part what we were doing.
- Q. You see, I suggest to you that the reason that you and Mr Patarkatsishvili have signed, or have been described as purchasers in this contract, is that is precisely what the position was. You were partners with Mr Abramovich in this deal, together with Mr Berezovsky, and that is right, is it not?
- A. Mr Berezovsky?
- Q. Correct.
- A. No, it's not correct. Neither Mr Patarkatsishvili nor myself paid anything for those assets. We're talking about buy and sell contract basically. We didn't pay anything, we didn't participate in the deal.
- Q. Let's look at another contract that you have executed, Mr Shvidler. You can put bundle H(A)17 away for the moment. Can you go, please, to bundle H(A)16 and go to page 47T H(A)16/47T. Now, you should have at page 47T an English translation of the preliminary agreement. If you would prefer to look at the Russian version, it's at page 47.
- A. I got it.
- Q. You're okay with that, thank you.

Although this is an agreement, as we can see from

the front page, between Mr Abramovich and Mr Deripaska, if you look at the signature on the Russian version at page 50 --

A. It's my signature.

Q. It's your signature. Can you help the court then with this, Mr Shvidler: why did you execute this preliminary agreement if you were not a party to it?

A. A couple of words on this. It was basically the first time we've met and had a major deal with Mr Deripaska and Mr Bulygin. We never dealt with them. There was no trust between us and I would say they were more suspicious than we were. But the situation had to be resolved very quickly because Roman was trying to explain the assets were in a very bad shape. We sat down for the whole night and part of the day so this is the fruit of these negotiations.

Roman was a member of the Duma, of the Parliament at the time, and when he was about to sign it, I don't remember which one, or maybe both of them, Mr Deripaska and Mr Bulygin, they asked me to sign it, because they thought, as they explained later, that if Roman signs it, it would have been illegal and it would have been a way for us to get out of this agreement. If I'm making it clear.

So in other words, they thought that it could have

been a way out for us, out of this agreement, if we did not -- if we didn't want to perform it. So I signed with no problem.

Q. Sorry, I didn't want to interrupt. Are you finished?

A. Yes.

Q. The agreement is still one which says it's between Mr Abramovich and Mr Deripaska.

A. That's right.

Q. But you're suggesting that it was thought that if someone other than Mr Abramovich signed it, that would in some way prevent an illegality which might otherwise be there, is that right?

A. No, not illegality. That our colleagues were satisfied that my signature was as good as his and it didn't have this negative property of him being a member of the Parliament.

Q. The reason they thought your signature was as good as his is because they understood, did they not, that you were one of his business partners?

A. They could, yes. We didn't discuss that.

Q. You didn't discuss it, but do you think they thought you were one of his business partners?

A. I'm sure they thought I was important, if I was there.

And again, during these negotiations, I think I did majority of the talking on our side.

Q. You see, Mr Bulygin, who drew up this document and has also signed it, says that he assumed you were Mr Abramovich's partner on this merger deal. Are you aware of that?

A. Yes.

Q. For my Ladyship's note, the reference is to Mr Bulygin's evidence at paragraph 13, at E4, tab 1, page 7 E4/01/7.

Mr Bulygin was right about that, wasn't he, Mr Shvidler?

A. No, he --

Q. You were one of the purchasers of the original aluminium assets, and you were one of Mr Abramovich's partners on the merger deal with Mr Deripaska?

A. No, he was not right.

Q. And that is the reason that they were comfortable with you signing rather than Mr Abramovich. That's right, isn't it?

A. No, it's not correct.

Q. Now, just looking at the preliminary agreement which you hopefully still have open, page 16, presumably you read the agreement through before you signed it?

A. Yes.

Q. Can I ask you to look at clause 4.1, Mr Shvidler, it's page 48T.

A. Mm-hm.

Q. And by this clause, both Mr Abramovich and Mr Deripaska warranted that they owned the aluminium assets that would be merged:

"... together with their partners (not including TWG or any other companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of parties 1 and 2 and are not subject to any third party rights, disputes or attachments."

Clause 4.2, just look at that:

"Party 1 ..."

That's you, Mr Abramovich:

"... warrants its and its partners' concerted will to sign the agreement [and you're talking about the agreement to be entered into] on the terms determined herein, and shall be fully liable to Party 2 for any action (omission) by its partners associated with the performance hereof."

How can these clauses be reconciled with your evidence, Mr Shvidler, that Mr Abramovich and Mr Abramovich alone was the party to this contract and therefore the only person who was a partner in relation to the aluminium business?

A. He was party 1, that's for starters, not party 2.

Q. Sorry, I said "the party to" rather than "the party 2".

A. My English, sorry.

Q. Don't worry, but can you answer my question.

A. Yes. Mr Abramovich was the only person who was party 1 and Mr Deripaska was the only person who was party 2.

I think during his evidence he was trying to explain to the court that the assets being sold and brought into this partnership or situation, the company was not registered yet, were not owned solely by Mr Abramovich nor by Mr Deripaska.

On top of that, there were other parties or sides or stakeholders, as Mr Deripaska called them, which had some interest in the situation.

In order to describe all of them, and in order to fulfil the purpose of this agreement, we put these two clauses in the contract, in the agreement.

As an example, I think Roman gave you the example of NkAZ, which is one of the assets being brought into this agreement or into this merger. NkAZ was -- we just had an agreement with NkAZ owners which was not fulfilled at the moment.

Just one example.

Q. All right, but the way that would have been fulfilled, presumably, is that NkAZ, or whatever it is, were going

to be selling the assets to Mr Abramovich, correct?

A. Correct.

Q. And Mr Abramovich would then be putting the assets into the merged entity, correct?

A. Correct.

Q. But it then doesn't make sense, Mr Shvidler, if you look at clause 4.2, for Mr Abramovich to be warranting its partners' concerted will to sign the agreement.

The agreement was a merger agreement, was it not?

A. Sale and purchase, yes.

Q. Right. You see, NkAZ wouldn't be a party to that contract, would they?

A. NkAZ owners, you mean?

Q. Yes.

A. Of course they wouldn't be. That's why they are not mentioned here. What it says here is it's Roman's responsibility to make sure that the deal is not dependent on them. That's basically what it says. Or anybody else. That he takes responsibility on himself to do whatever needs to be done to perform under this agreement.

It's the same Mr Deripaska.

Q. This is talking about it being Mr Abramovich's partners':

"... concerted will to sign the agreement ... on the

terms determined herein ..."

A. Right.

Q. We're not talking about a party who is not going to be a party to the agreement, that is to say the sale and purchase or merger agreement. That is not what clause 4.2 is relating to.

A. Again I'm confused in what you're saying. What I'm trying to say is these two clauses, the whole point 4 actually, describe this exactly situation, that we don't want to know what Mr Deripaska has to do in order to fulfil his part of the agreement. He doesn't want to know what our problems are. The only thing he insisted on, that Trans-World Group is out of the picture as of the date of this agreement. In other words, he doesn't want to see them later holding this deal or participating in the deal in any form or shape.

Q. You see, I suggest to you, Mr Shvidler, that the truth is a lot simpler than that. The partners that you were being referred to at clauses 4.1, 4.2 of the preliminary agreement included the names that we've already seen on the 10 February master agreement, namely yourself and Mr Patarkatsishvili together with Mr Berezovsky.

You deny that, do you?

A. I deny this completely.

Q. You see, I suggest that that is why, within a few days

of signing this preliminary agreement and shortly before executing the formal share purchase and sale agreement of 15 March 2000, you all met up at the Dorchester Hotel. Do you recall who was present on that occasion?

A. Do I recall who was present?

Q. At the Dorchester Hotel meeting.

A. Do I recall who was present at the meeting?

Q. Yes.

A. Yes, I do recall who was present at the meeting.

Q. Who do you say was present?

A. Mr Berezovsky, Mr Patarkatsishvili, Mr Deripaska, Mr Abramovich and myself.

Q. The reason why you all got together at the Dorchester Hotel on 13 March was so that Mr Deripaska could meet with all of his new partners in Rusal, namely yourself, Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili. That's the truth of it, isn't it?

A. I was told not to make jokes, but if Mr Deripaska understood that he is meeting his future partners he would have a heart attack, seriously. So the answer is it's not correct.

Q. Now, you tell us, Mr Shvidler, that you don't recall much about the Dorchester Hotel meeting itself. Can we look at paragraph 177 of your third witness statement, it's page 50 E3/10/50.

You say here, this is just over the page on to page 51, remind yourself of the whole paragraph if you would like:

"All of the conversations, naturally, were in the Russian language. I stayed there throughout. I do not recall much about the meeting itself as it was all about status and not a meeting of substance but I would expect that we discussed in general the impact that the merger would have on the aluminium industry. I believe that there was also an element of Mr Abramovich wanting to show Mr Berezovsky that he had achieved something which might be regarded as historic, namely ending the aluminium wars. Mr Abramovich was not and is not someone who ever brags about his achievements but I believe he was proud to be able to show Mr Berezovsky, who in some ways, was a father like figure for Mr Abramovich, that he continued to be successful."

So you're saying here that you do not recall much about the meeting itself, and you're indicating that you're doing your best to reconstruct what might have happened when you say:

"... I would expect that we discussed in general the impact that the merger would have on the aluminium industry."

Is that right?

A. No, it's not right. What I'm saying, I don't remember much about the meeting. I mean, there was -- I was trying politely to say that there was nothing to remember.

As for the second part, it's my impression, so Roman didn't tell me that he thought Mr Berezovsky, and so on, was his father.

Q. Mr Shvidler, you say here that this isn't reconstruction and it's not a question of you not remembering about the meeting, you're just trying to say politely there was nothing to remember. That's not what you say. You say:

"I stayed there throughout. I do not recall much about the meeting itself ..."

You also say:

"... I would expect that we discussed ..."

Now, if you remembered what it was you did and didn't discuss, that is the way you would have put it.

A. Again, don't blame lawyers, but those are -- some of those words are not my words. "I would have", I never say "I would have", but what I'm trying to say here is exactly what I'm saying now.

The meeting had basically no substance. That's point number 1. Do I remember that Oleg wanted his money back? Of course I do remember it. Do I remember where Mr Berezovsky came from? I do remember that. Do

I remember the plane? Of course I do. I remember --

MRS JUSTICE GLOSTER: What, Mr Patarkatsishvili's plane?

A. That's right.

I do remember what the room looked like, the suite I mean. And what more details can I provide?

Business-wise there was nothing to discuss.

MR RABINOWITZ: You see, Mr Shvidler, I suggest to you that given what you say at paragraph 177 about not recalling much about the meeting, and the way you put it about what you would expect that you discussed, how can you be so emphatic about the matters that you identify at paragraphs 181 and 182 as things that you didn't discuss at the meeting?

A. Should I read them?

Q. Please do. (Pause)

A. I've read it.

Q. You see, just looking at the last line of paragraph 180 you say, about the agreement that was made as to the arrangements in respect of Rusal:

"There was no such discussion or agreement reached at the meeting or in my presence at any other time."

If you were being candid and accurate in your evidence, the most you could say is "I do not recall any such discussion". Wouldn't that have been a fairer way of putting it?

A. No. If I heard anything like that, like what I'm trying to describe here, British law trust or stuff like that, coming out of any of these people present, I would remember it for sure. That's what I'm trying to say here.

Q. I suggest to you that the details of the Rusal merger were discussed at the Dorchester Hotel, indeed Mr Abramovich tells us that on 12 March 2000, Mr Patarkatsishvili had phoned him and called him for the meeting so that Mr Berezovsky could hear from Mr Abramovich directly about the merger.

A. I heard what he was saying, yes -- I mean, what Mr Abramovich was saying.

Q. So the whole purpose, so far as Mr Patarkatsishvili and Mr Abramovich were concerned, was so that Mr Berezovsky could hear about the merger. But your evidence is, is it, that it wasn't discussed?

A. I'm saying that no details were discussed, no negotiations took place, no deal, nothing of that kind. Was the end of aluminium wars mentioned? Yes, it was.

Q. You are saying that no details were discussed. You fly all the way over with Mr Deripaska, because Mr Berezovsky wants to hear about the merger, and your evidence is that they simply didn't discuss any details to do with the merger?

A. Correct, and it wouldn't be the first time I flew with Mr Berezovsky or to see Mr Berezovsky with no substance to this flight at all.

I can give you examples if the court is interested.

Q. You say [in the draft]:

"... it would have been the first time I flew ..."

A. It would not be.

MRS JUSTICE GLOSTER: There was a mistranscription.

MR RABINOWITZ: You see, I suggest that's an extraordinary story that you're telling here.

A. It was extraordinary time, extraordinary people, and from perspective of today and this audience, some of it looks strange.

MRS JUSTICE GLOSTER: Just tell me in your own words why Mr -- and I've read what you said here. Just tell me in your own words, rather than in lawyer's words, why Mr Abramovich would have bothered to have flown back from Moscow to England to involve Mr Berezovsky in the party, as it were, in relation to the Rusal merger?

A. It will sound strange, but he always did, and Badri insisted that Boris wanted to see him. As you know, we were there day before for the whole week, and Mr Berezovsky was there as well, I mean there, here, in London. We were all here, and if he did want to see him, or either one wanted to see each other and thought

it was relevant, why didn't they?

When Mr Berezovsky heard about this merger from Mr Patarkatsishvili, who was told by Mr Abramovich, he decided that the meeting was necessary and Mr Abramovich went along.

MRS JUSTICE GLOSTER: But why was it necessary in relation to Mr Berezovsky's future role or future expectation?

A. Mr Berezovsky liked to be associated with big deals and small deals as well. So what was the motive from his side? I guess that nothing --

MRS JUSTICE GLOSTER: Well, what did you perceive to be the motive at that time?

A. What did I think?

MRS JUSTICE GLOSTER: Yes.

A. I didn't think anything, and it was usual thing, and Roman just asked me to go. It was no problem.

I'll give you an example: Mr Berezovsky asked me to go with him to see Mr Soros -- I'm trying to, I did put(?) it here. It was not the only example. That was in the evening. He said "In the morning we're going to New York to see Mr Soros, you'll stick around, you might help me." I didn't think for a second, I just went with him. What was the purpose for me? Zero.

I mean, the same thing happened. Badri said "Boris is going to see Mr Kuchma," who was the president of

Ukraine, "you come along, stick around." I did. Did I see Mr Kuchma? No, I didn't. Why did I go there? I don't know. Just to be on hand.

That's the kind of relationship we had, yes.

MRS JUSTICE GLOSTER: I see. Thank you.

MR RABINOWITZ: Mr Shvidler, you said in your evidence a moment ago, "It will sound strange", but Mr Abramovich -- I think you were saying he would have bothered to fly back. You say:

"As you know, we were there day before for the whole week, and Mr Berezovsky was there as well, I mean there, here, in London."

You flew back on 12 March, correct?

A. Back?

Q. From London to Moscow.

A. From London to Moscow. Can I take it from you? I will agree.

Q. Mr Berezovsky only arrived in Moscow on 12 March so he wasn't there -- sorry, in London, I'm sorry.

Mr Berezovsky only arrived in London on 12 March and therefore he was not there in the week that you were there with Mr Deripaska's people.

A. That was my understanding. I thought he was -- as I remember from that time, that he was going to this court hearing against Forbes, same Forbes, same hearing,

and that's why he had to spend time there. Did he arrive on that day or we missed each other? I don't know.

Q. You see, I suggest you are just making this up as you go along, Mr Shvidler.

A. (inaudible).

Q. Because the truth is that you did fly to the Dorchester meeting on the 13th in order that Mr Deripaska could meet Mr Berezovsky and Mr Patarkatsishvili who were Mr Abramovich's partners in the Rusal deal. That's right, isn't it?

A. Not right at all.

Q. Now, Mr Berezovsky's case is that, on 13 March 2000, he was at a hearing in the House of Lords, and you've just commented on that, and that he was there in the morning. So he would have come to this meeting from the House of Lords.

The meeting was in Mr Patarkatsishvili's suite at the Dorchester Hotel. That's right, isn't it?

A. I think so, yes.

Q. We've made enquiries and we understand from the Dorchester Hotel that there is no record of Mr Berezovsky having had a room at the hotel on that day.

What is your recollection of how Mr Berezovsky was

attired? Do you say he returned from the House of Lords in a dressing gown?

A. You asked for it. He didn't come to the room from outside, he was in this suite already and he came from the other room, from inside, and he was attired exactly like Roman described him. So he was there already.

Q. I suggest to you that that is simply untrue, Mr Shvidler.

A. It is true and --

MRS JUSTICE GLOSTER: What, with a dressing gown over his shirt and trousers, or a dressing gown with nothing on underneath? What are you saying?

A. Closer to the second one.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Now, you tell us -- I just want to move on to the Rusal sales beginning in September 2003. You tell us that you were not involved with the details of the sale of Mr Abramovich's 50 per cent share of Rusal to Mr Deripaska in September 2003, is that correct?

A. Yes.

Q. And you also tell us that the arrangement was that Mr Deripaska would buy the entire 50 per cent stake in Rusal for more than \$2 billion but that he did not have the cash available to do the purchase in a single transaction, is that right?

A. Correct.

Q. And you tell us therefore that Mr Deripaska formally agreed to buy the first 25 per cent tranche with a right of first refusal for the second tranche, correct?

A. Yes.

Q. We've already seen that Mr Deripaska's recollection of this is rather different. Mr Deripaska's recollection set out in a formal witness statement sworn in court proceedings in England, in February 2008, was that he made an offer for the full 50 per cent of Rusal in 2003 but was told that only 25 per cent was available.

I've explored that with Mr Abramovich, we've looked at the legal documents that were in fact executed around that time which support Mr Deripaska's recollection and which I would suggest are inconsistent with your and Mr Abramovich's version of events.

I don't propose going through all that again with you, particularly as you say you weren't involved in the details of the sale, but can I just ask you this: do you accept that your recollection of these matters now in 2011 may be wrong and that Mr Deripaska's recollection of these matters back in 2008 is more likely to be right?

A. No, both of us remember the same thing, and both of us are saying the same thing.

Q. Can you explain why you say you're saying the same thing as Mr Deripaska then?

A. When he's saying that not the whole -- whatever he's saying -- not the whole stake was available, the reason is because he didn't have money to buy it, otherwise it was available.

Q. I suggest to you that that is not what he was saying but I'm not going to go through that with you.

A. Okay.

MR RABINOWITZ: Thank you very much, Mr Shvidler. No more questions.

MRS JUSTICE GLOSTER: Mr Malek?

MR MALEK: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin?

MR ADKIN: My Lady, no.

MRS JUSTICE GLOSTER: Mr Sumption?

MR SUMPTION: My Lady, I have no re-examination.

May I however draw your Ladyship's attention to the fact that the question of the translation of Mr Abramovich's evidence about his graduation from the engineering institute has been taken up with the translators. At the moment there is a backlog of translation queries which is before them, one of those relates to this question of the certificate of unfinished higher education. That, as the Russian

speakers behind me say, was in fact referred to by Mr Abramovich in his evidence, and we have, about a week ago, invited the translators to verify that from the tape.

MRS JUSTICE GLOSTER: Right. Well, I'll wait and see what submissions are made to me about that.

MR SUMPTION: I don't think it's going to be a matter of critical importance, but the matter having been taken up with this witness and this not being an aspect of things that he would know about, I thought I should tell your Ladyship that.

MRS JUSTICE GLOSTER: Thank you.

Yes, thank you very much indeed, Mr Shvidler.

A. Thank you.

MRS JUSTICE GLOSTER: I have no further questions. Thank you for coming to give your evidence.

(The witness withdrew)

MR SUMPTION: My Lady, I call Mr Sponring.

MRS JUSTICE GLOSTER: Yes.

MR CHRISTIAN SPONRING (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

THE WITNESS: Thank you.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Sponring, you are the first witness to give evidence who has not been specifically asked by my

instructing solicitors whether you have any mobile phones or other electronic apparatus on you so I'm going to ask you now. Do you?

A. No, I don't.

Q. Thank you. Could you please take bundle E1, flag 2 E1/02/27.

A. Thank you.

Q. Is this your first and only witness statement in these proceedings, Mr Sponring?

A. That is correct.

Q. And is that your signature at the end of the statement on page 30 of the bundle?

A. That is right.

Q. Is this statement true?

A. Yes, it is.

MR SUMPTION: Thank you.

Cross-examination by MR GILLIS

MR GILLIS: Mr Sponring, good morning.

A. Good morning, Mr Gillis.

Q. Your statement indicates that you began to work for Mr Abramovich in December 1997, is that right?

A. Correct.

Q. And I think at that time you were aged 25?

A. Correct.

Q. And could I just ask you this: before that, what were

you doing?

A. I worked as a professional chef, well, trained in Austria, and then worked for ten years in the best restaurants in Austria, London and various places.

Q. Now, you're Austrian and I assume you speak German?

A. I do indeed.

Q. And you obviously speak very good English.

A. Thank you.

Q. But you don't have a Russian background, do you?

A. Not at all. Not since I started to work for Mr Abramovich.

Q. And do you speak any Russian?

A. Yes, I do. Very basic but I am able to communicate.

Q. So looking at the position in 2001, what was the standard of your Russian then?

A. Almost non-existing, completely non-Russian.

Q. So would you have difficulty following a conversation between Russians?

A. Yes, of course. I wouldn't understand.

Q. Between 1997 and 2005 or thereabouts, you describe yourself as working for Mr Abramovich as his private personal live-in chef, that's your evidence?

A. That's correct.

Q. And throughout that period of eight years, you say that you constantly travelled with Mr Abramovich and his

family providing your services as a private chef? Is that correct?

A. Correct.

Q. So you went with them, did you, when they stayed in French villas?

A. Yes, I did.

Q. And you went to stay with them on yachts?

A. Only later but also on yachts, yes.

Q. And accompanying them on their skiing holidays?

A. Yes, correct.

Q. Do you recall where they spent the summer in 1998?

A. 1998, it was the Clocher de la Garoupe in Antibes. I was there.

Q. In 1998 you say that, do you?

A. Yes, correct. Must be, because that's the following summer, when I started to work for them in the winter, following summer I was there in south of France.

Q. Are you sure it wasn't on a yacht called the Southern Cross?

A. Not at all. Not at all.

Q. And in the summer of 2000, do you recall where the Abramovich family stayed during the summer?

A. Also in the south of France, in a villa in -- just tell(?) you I don't -- '98 it was at Clocher, '99 it was at a villa in Saint-Jean-Cap-Ferrat.

Q. Can you recall specifically where that was?

A. I would believe it was a villa called Villa Serena, I think. Yes, correct. In Cap Ferrat.

Q. Now, as Mr Abramovich's private personal live-in chef, would it be right to assume that you provided all of your services at Mr Abramovich's homes or at the yachts and the villas and the chalets where he and his family were staying?

A. That is correct. Although there was a period of time when I mainly worked in Moscow, at the Moscow offices, and I didn't -- and really only for Mr Abramovich rather than for his family. If they went somewhere else then there were also different chefs.

Q. Now, you say, and I think this is paragraph 9 of your statement, that you knew Mr Berezovsky and Mr Patarkatsishvili, and you're talking about the position in January 2001. You say --

A. That is correct.

Q. You say you knew them from the previous time that you had -- the previous occasions when they had spent time with Mr Abramovich. Is that correct?

A. That is right.

Q. Now, can you recall when and where you saw them together?

A. Well, definitely at '98, summer, which was the Clocher

de la Garoupe, next to Mr Berezovsky's chateau in Cap d'Antibes. And Mr Badri Patarkatsishvili -- sorry for that -- I definitely saw in the Moscow offices. I wouldn't remember exactly which time it was.

Q. So in relation to Mr Berezovsky, you saw him, is this right, when he came to visit Mr Abramovich at the homes and the yachts and the villas where Mr Abramovich was staying?

A. It wasn't that many times. It was particular in '98, and also I believe in the Moscow house for Mr Abramovich.

Q. And on the occasions you saw Mr Abramovich with Mr Berezovsky and Mr Patarkatsishvili, I think you indicate that from what you saw you regarded their relationship as being a friendly one, is that correct?

A. Yes, a very polite friendly one, as someone would expect.

Q. Thank you. Now, you also indicate in your statement that from 2005 or thereabouts you started to act as project manager and personal assistant for Mr Abramovich, is that correct?

A. That is correct.

Q. Could you identify the sorts of projects that you have been managing for Mr Abramovich?

A. Project, I mean this is obviously a very wide

description, but it can be from several events which appear, or whether it's party arrangements. Anything which involves food obviously would be my responsibility, as well as all staff matters, and everything amongst the houses I'm involved and in charge as well.

Q. You give your address as being in Austria, in your witness statement.

A. That is correct.

Q. Where do you spend most of your working time?

A. Alongside Mr Abramovich.

Q. So you spend a long time travelling with Mr Abramovich?

A. Yes, I do, sir, indeed.

Q. As his project manager and his personal assistant --

MRS JUSTICE GLOSTER: I'm not sure it is personal, it says "personnel assistant", if you look at paragraph 2 of your witness statement.

A. That may be a mistake in my English spelling, could be, I'm not sure.

MRS JUSTICE GLOSTER: If it's personnel assistant, does that mean you're assisting in the arrangements for his staff and his employees, or does it mean you're his personal assistant in the sense of secretary --

A. I would say both of it. This is completely right.

MRS JUSTICE GLOSTER: So you do organise his personnel to

a certain --

A. Yes, I do. Since then, definitely yes.

MR GILLIS: And as his project manager, and assisting

Mr Abramovich in this way, would you accept that you are somebody who is greatly trusted by Mr Abramovich?

A. I would hope so.

Q. And in return you're loyal to him?

A. Yes, I've been working for him for a long time. I would consider myself loyal to him.

Q. In fact I think you've now been working for him for about 14 years, haven't you?

A. That is just about, if December is coming.

Q. Would you agree with this, that you would be concerned to do anything that might imperil your 14-year relationship with Mr Abramovich?

A. No, I wouldn't know what you mean by that but I don't think so.

Q. You would not be concerned to give evidence which would damage his claim in this action, are you suggesting that you would not be concerned to do that?

A. Not at all, I wouldn't be concerned. I have not much to say but I know what I'm giving evidence for and that's what happened.

Q. All right. Now, as his personal assistant, you have been aware of this litigation for some time, have you?

A. That is correct.

Q. And have you read the defence which was pleaded on Mr Abramovich's behalf?

A. Only bits and pieces, parts of it.

Q. So when -- can you recall when you first read the defence that had been served on his behalf?

A. Completely. I read it after I was asked if I remember what happened in 2001, and after that I've read -- I think Mr Abramovich's witness statements I read in full but that's about it.

Q. So did you read the defence before you had signed your witness statement?

A. No, I didn't.

Q. All right. Can I just ask you about the evidence that you have prepared to give in this case. You discussed your evidence regarding the alleged Megeve meeting with Mr Abramovich, that's correct, isn't it?

A. Well, I wouldn't say discussed. We obviously spoke about it, it came out of a conversation coincidentally rather than on purpose.

Q. And did Mr Abramovich discuss with you what he remembered about the Megeve meeting?

A. Well, again, only afterwards I found out that this was different from what I've remembered.

Q. When do you think you first had these discussions?

A. Well, knowing that my witness statement was signed on 29 May this year, it must have been a week before only.

Q. And having had these discussions, would you accept that it is difficult to differentiate between what you actually remember as opposed to what Mr Abramovich may have told you he recalled?

A. Could you repeat your word, what you mentioned, because I didn't really understand what the difference is, or differentiate, what do you mean by that? Sorry for that.

Q. Would you accept, since you discussed what you thought you recalled and what Mr Abramovich thought he recalled, that there is a risk of confusion and that what he recalled infects your memory and what you say you recall infects Mr Abramovich's memory?

A. No, I wouldn't think so and I wouldn't say so at all. It was, I mean, fairly -- almost the same, it's just that the location has been different.

Q. You say the recollection was almost the same, do you?

A. I would believe so. This is what I've read of his side, yes.

Q. All right. And were you in court when Mr Abramovich gave his evidence in relation to the Megeve meeting?

A. Yes, I was in court.

Q. And would you accept that that further increases the

difficulty of differentiating what you actually remember as opposed to what you have heard others saying about the meeting?

A. No, I don't think so at all. Again, I know what I remember, I know what happened there, and that -- it's not changeable, I could say, and that's what happened.

Q. Now, when you first discussed the Megeve meeting with Mr Abramovich, is it your recollection that Mr Abramovich remembered that Mr Berezovsky had attended the meeting?

A. Yes, definitely. I mean, it was more that I refreshed his memory rather the other way around. It was -- coincidentally again, as I mentioned before, it turned out that I have been at the meeting which all other people didn't know or didn't remember about, and I said -- and then I said: well, this happened, and this, we flew from Courcheval to Megeve and (inaudible). So Mr Abramovich was listening but, again, I -- it came even clearer to his mind what actually was.

Q. Mr Sponring, what I suggest to you is that when you first talked to Mr Abramovich about the Megeve meeting he had no recollection of Mr Berezovsky being there. And that's right, isn't it?

A. I wouldn't know such detail.

Q. Well, with respect, you would because you spoke to

Mr Abramovich, as you've indicated, and what I'm putting to you is that when you first began to discuss the Megeve meeting with Mr Abramovich he had no recollection of Mr Berezovsky having attended that meeting.

A. Well, I -- as I said, I didn't know about this. I only said that I was at this meeting or I was at this helicopter flight, described it, where we landed, described how long we stayed there, (inaudible), and it was clear that Mr Abramovich, well, confirmed, "Ah, yes, that's exactly what it was." He was rather surprised that I was there.

Q. So are you willing to accept that what you said prompted a memory --

MRS JUSTICE GLOSTER: Well, that's a matter for me, isn't it, Mr Gillis? I'm not sure that he can speculate on that.

MR GILLIS: All right.

Mr Sponring, is it fair to say that over the eight years that you were constantly travelling with Mr Abramovich and his family you have been to many remarkable and memorable places?

A. Definitely.

Q. In that sense, in a sense, you've almost lived the oligarch's lifestyle of seeing many wonderful and remarkable places?

- A. I have seen incredible places and had fantastic trips with Mr Abramovich, that's correct.
- Q. Do you really suggest that you are able to remember who attended meetings 11 years ago even if they were in memorable settings?
- A. Definitely. I mean, this was a very clear recollection I have, that's the only one I have, and yes, definitely, I can suggest it.
- Q. Mr Sponring, I suggest to you that you may well have a vivid memory of a particular place or an event but still have very great difficulty in remembering who actually attended on those occasions. Would you agree with that?
- A. No, I wouldn't agree with that. Why? I know exactly who was there, and that was at the -- I mean, that's what happened.
- Q. All right. Can I move on to the meeting which you claim you recall in Megeve.
- It's right, is it not, that you had previously been with the Abramovich family in Courcheval on their skiing holiday?
- A. That is correct.
- Q. Can you recall where the Abramovich family stayed in Courcheval?
- A. Are we talking about now in the first year they stayed

there or the second year?

Q. I should have been clear, in 2001.

A. In 2001 it was a villa called, a chalet called Chalet Seban(?).

Q. As their live-in chef, did you live-in at the villa as well?

A. At this particular year I did live in the house as well. I know that Mr Abramovich said I didn't, but I lived in this year because it was -- every year it was different, either there was too much staff, nannies, teachers, whoever travelled, and guests, and then it was always somehow allocated who stayed where.

Q. So you think Mr Abramovich's memory in that respect is wrong?

A. Well, I don't know, but in this respect, that he said I didn't stay in the house, is not right because I stayed in the house.

Q. Now, were you aware -- I'm still in January 2001 -- were you aware whether or not Mr Abramovich had met Mr Patarkatsishvili when he was in Courchevel?

A. No, I was not aware. I was spending a lot of time in the kitchen.

Q. Understandably so.

Can you recall whether Mr Abramovich had any security guards with him in Courchevel?

A. There was rather drivers, but security guards, I wouldn't recall. Drivers, there were two drivers, as well as -- they are considering them security or drivers, but there were -- two gentlemen from the south of France were also in Courchevel.

Q. Would it be usual for Mr Abramovich at that time when he was in Europe to have security guards with him?

A. It depended on the different location. It depended where he went. But in general I think at that time in Europe, no, there wasn't security round him.

Q. Focusing then on the helicopter flight from Courchevel to Megeve, to the best of your recollection, who was on that helicopter flight?

A. Well, Mr Abramovich; his wife Irina; I think one or two kids, I really can't remember that, definitely one of the kids; and myself.

Q. So no one else?

A. No. The pilot, I believe.

Q. Obviously.

When you took off from the heliport in Courchevel, did you know that you were stopping in Megeve?

A. I think I did because even then I was informed before, where are we going, what is happening and I would also pass this information on to -- with flight arrangements

or travel arrangement, when is the car meeting, where, those information, that kind of thing, to Mr Abramovich as well.

MRS JUSTICE GLOSTER: Were you in charge of making the car --

A. No, I wasn't in charge at all of this arrangement. I was just -- I would get a phone call, they would tell me "This and this is happening, we go from there to Megeve and then further to Moscow". Because also I would have been informed that, when I arrive in Moscow, who is going to meet me, who is going to bring me, in Moscow I stayed in a flat in the centre of town so that I -- that, well, those proceedings are all in place.

Q. Had you been told that Mr Abramovich was planning a meeting in Megeve?

A. No, I wouldn't have been told that.

Q. Now, when you got to the Megeve heliport I understand you did not sit at the same table as Mr Abramovich and whoever he was meeting, is that right?

A. That is correct.

Q. And I think you indicate that you sat with Mr Abramovich's family at another table?

A. That is correct.

Q. And I think you've also indicated that at that time you

did not understand Russian conversation?

A. No. I wouldn't have understood the Russian conversation at all, no.

Q. So is this the case, that you are unaware of what was being discussed between Mr Abramovich and whoever he was speaking to?

A. Yes, that's correct. And it was also too far away. I couldn't even hear what they were talking about.

Q. So how far away was he?

A. I would think like Mr Berezovsky sits now to me, in this distance I would say.

Q. But you were able to observe the meeting taking place?

A. Yes, of course, that was the purpose we landed there.

Q. Would Irina Abramovich also have been able to have seen the meeting taking place?

A. Yes, definitely.

Q. And do you know why she is not giving evidence in relation to this meeting?

A. That I don't know.

Q. Could I ask you to look at Mr Abramovich's third witness statement and that's bundle E1 at tab 3. If I could ask you to go to paragraph 271 E1/03/117, and I assume you're familiar with these paragraphs, are you?

A. Well, not entirely but I have certainly read them at one time.

Q. Could I just ask you to read to yourself the first two sentences in paragraph 271?

A. Yes. (Pause)

I've read this.

Q. Can I ask, does that accord with your recollection of the meeting?

A. Well, it here says:

"[We had] a short meeting ..."

I know that I've indicated it must have been up to an hour. Well, that's...

Q. And the second sentence where he indicates that he does not recall Mr Berezovsky saying anything. Does that accord with your recollection of the meeting?

A. Well, I wouldn't know that and I wouldn't have noticed that. How much or who spoke at the meeting, I would not know that.

Q. So you say that you were not even looking across to see who was speaking?

A. I might have been looking across but I was not staring at them and not -- for sure, I wouldn't know who was part and leading the conversation and what was part of the conversation, not at all.

Q. So are you able to assist whether, so far as you are concerned, Mr Berezovsky was saying anything?

A. No, I'm not able to assist on that.

- Q. Now, Mr Sponring, by the time of the Megeve meeting, you'd been working with Mr Abramovich for over three years, is that right?
- A. That is correct.
- Q. And over that time, you must have seen numerous Russian men hugging and embracing each other when they say goodbye, is that correct?
- A. Well, I've seen it, yes, several times.
- Q. And I suggest to you that that would have been, for you, something that would be relatively commonplace, to see Russian men linking arms when they talk or by hugging each other when they greet or when they depart, would you agree?
- A. Well, I wouldn't agree because it doesn't happen all the time. It rather indicates if someone know each other very well or not. It's -- for Mr Abramovich, for example, he doesn't do it to so many people.
- Q. Mr Sponring, what I suggest to you is that at paragraph 11 of your witness statement, when you say that you particularly remember --
- MRS JUSTICE GLOSTER: It's tab 2.
- MR GILLIS: That's tab 2. Where you say that you particularly remember Mr Abramovich and Mr Berezovsky saying goodbye to each other because they hugged each other, I suggest to you that's simply not credible.

- A. I don't know why you think it's not credible but that's definitely what happened there.
- Q. What I would suggest to you is that, having worked for Mr Abramovich for over three years, I suggest hugging and embracing when people leave would not be something that would be memorable at all.
- A. Well, I may remind you that I wasn't there all the time when Mr Abramovich greeted people or said goodbye to people. I was -- again, I was in the kitchen so there was not that I've seen that all the time but definitely, until today, it is not something he will do to a lot of people.
- Q. But having lived in Russia for three years and being with Mr Abramovich, I put to you it would be commonplace.
- A. I've lived in Russia, I travelled back and forth but it's -- yes, even now, I think out of Mr Abramovich's friends, I know them very well, there are two people who would maybe do that, to myself even, and I find it rather extraordinary than something, well, common.
- Q. Mr Sponring, I suggest to you that your evidence as regards Mr Berezovsky's alleged presence at the Megeve heliport is based either on false recollection or misplaced loyalty and that, 11 years after the event, you have no real memory of Mr Berezovsky being there,

because he wasn't.

A. That is completely not correct.

MR GILLIS: Thank you. I have no further questions.

MRS JUSTICE GLOSTER: Well timed, Mr Gillis.

Do you have any re-examination?

MR MALEK: No, my Lady.

MRS JUSTICE GLOSTER: Sorry, any further cross-examination?

MR ADKIN: No.

MRS JUSTICE GLOSTER: Any re-examination?

MR SUMPTION: No, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed ,

Mr Sponring, for coming to give your evidence. You may  
be released.

THE WITNESS: Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Very well. 2.05.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Before the next witness is called, can I just  
give your Ladyship an update on forthcoming witnesses.

Mr Smolensky is a witness who we have decided is too  
marginal to warrant pulling him out of retirement to  
come over here so we will not be calling him. Given

that that is our decision, the appropriate course is I think for us to withdraw his statement rather than seek to rely on it as hearsay evidence.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: So I would invite your Ladyship to treat that as withdrawn.

MRS JUSTICE GLOSTER: Can you just tell me where it is?

MR SUMPTION: It is at E8, flag 11 E8/11/142.

MRS JUSTICE GLOSTER: It's easier if I simply, as it were, cross it out so that I know.

Right.

MR SUMPTION: Secondly, Ms Popenkova gave evidence primarily about the position of PK-Trast. We have been told by my learned friends that they do not need to cross-examine her so the position is that her witness statement goes in as unchallenged evidence.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Thirdly, Mr Deripaska, we are at the moment uncertain whether we will be able to have him here in person, which we would prefer, or --

MRS JUSTICE GLOSTER: Because he's the subject of a hearsay notice?

MR SUMPTION: Well, no -- or else by video-link. Your Ladyship has made a video order in relation to him. If he has to give evidence by video-link, we propose that

that should be done at 2.00 pm on Friday. He's in New York and that therefore allows for the time difference and gives a fixed date.

MRS JUSTICE GLOSTER: Yes. Yes, I see. Right. So is Ms Goncharova unchallenged?

MR SUMPTION: No, it's Ms Popenkova. She is unchallenged.

MRS JUSTICE GLOSTER: She is unchallenged. Right. Thank you.

MR SUMPTION: Ms Davies will be calling the next witness.

MR RABINOWITZ: My Lady, before Ms Davies does call the next witness, there is one other witness whose status, certainly so far as we're concerned, is uncertain and that's Mr Bulygin. As I understand it, we have written to find out whether -- my understanding is Mr Bulygin was at some point ill and we didn't know whether he was coming or not. We've written to find out whether he is coming.

MR SUMPTION: We are trying to find out. I'm not yet in a position to give your Ladyship accurate information.

MS DAVIES: My Lady, then I call Ms Panchenko.

MRS JUSTICE GLOSTER: Right.

MS IRINA PANCHENKO (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MS DAVIES

MS DAVIES: Ms Panchenko, can you be given bundles E2 and

E4, please. If you could take bundle E2 at flag 7 E2/07/160, do you see your second witness statement in these proceedings, which starts in the Russian version at page 202 E2/07/202?

A. Yes, I can see that.

Q. Could you turn to page 240 in the Russian version. Is that your signature?

A. Yes, it is my signature.

Q. I understand there are two corrections you wish to make to this witness statement which should be on a separate sheet of paper, firstly at paragraph 55, and secondly at paragraph 91.

Does my Lady --

MRS JUSTICE GLOSTER: Yes, I've got the corrections.

MS DAVIES: -- have those?

Are those the two corrections you wish to make to your second witness statement, Ms Panchenko?

A. Yes, that is correct.

Q. Then if you could go in bundle E4 to tab 3 E4/03/31, you should find your third witness statement in these proceedings starting in the Russian version at page 36 E4/03/36. Do you have that?

A. Yes, I can, yes.

Q. If you look at page 39 in the Russian version, is that your signature?

A. Yes, this is my signature.

Q. Paragraph 8 of this witness statement clarifies one matter in the English version of your second witness statement, is that correct?

A. Yes.

Q. Subject to those corrections and that clarification, is the evidence in your second and third witness statements true?

A. Yes, they are indeed.

MS DAVIES: Thank you very much. There will be some questions for you, Ms Panchenko.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Ms Panchenko.

Ms Panchenko, you worked for Mr Abramovich since December 1996, that's right, isn't it?

A. Yes, that is correct.

Q. Initially you supervised the accounts of Mr Abramovich's companies, is that correct?

A. Yes.

Q. And this included Runicom SA, the Swiss company, and Runicom Limited, the Gibraltar company?

A. Yes, that is correct.

Q. And you also supervised the accounts of Mr Abramovich's Russian trading companies, is that right?

A. Not right away. In a staged manner, little by little.

Yes, that's correct.

Q. And then in January 1997, you were appointed chief accountant of Sibneft, is that right?

A. Yes.

Q. And you rose to the position of vice president for finance at Sibneft in July 1999?

A. Yes, that is correct.

Q. And then you left Sibneft in March 2001 in order to take up the position of deputy governor of Chukotka for financial and economic issues, you were also head of the department for finance, economy and property relations of Chukotka, is that right?

A. Yes, that is correct.

Q. But you say that you continued to supervise Sibneft and OAO Russkiy Alyuminiy Management, which is not Rusal, until Mr Abramovich sold his interests in them, is that right?

A. Yes, that is correct.

Q. And since the beginning of July 2008, you've been the financial director of Millhouse LLC?

A. Yes, and I still occupy this position, yes.

Q. So is this right: having begun work for Mr Abramovich in December 1996, you've worked for him in a succession of very senior positions for nearly 15 years?

THE INTERPRETER: My apologies, it's the interpreter's

mistake, I said Berezovsky, and Mrs Panchenko corrected me. It is definitely Mr Abramovich.

A. I worked with him for 15 years, that's correct.

THE INTERPRETER: My apologies, my Lady.

MR RABINOWITZ: Mr Abramovich told the court that he trusts and relies upon you, would you agree with that?

A. Yes, I agree with that.

Q. And you are a friend of Mr Abramovich's?

A. Yes, I am indeed.

Q. And you have helped and advised Mr Abramovich in relation to a range of matters over the years, is that right?

A. Yes, that is correct.

Q. And are you a partner with Mr Abramovich in any of his businesses?

A. I think I am. The very same deal with Pharmstandard and Highland Gold.

Q. So you're a partner with him in two companies, is that right, or two ventures? Or are there more?

A. I think it was those two.

Q. Do you not know what ventures you're a partner with Mr Abramovich in?

A. For the time being it's only Highland Gold. I was just trying to recall what happened in the past.

Q. Are you saying that in the past you have been a partner

with him in other ventures?

A. My share was so insignificant. But for the time being, as of the time of speaking, I think it's Highland Gold and Pharmstandard.

Q. You say your share was so insignificant, your share in which companies was so insignificant?

A. Both in Highland Gold and in Pharmstandard.

Q. Are you saying that those are the only companies in which you had a share?

A. Yes, that is the case.

Q. Would it be fair to say that you feel a great sense of loyalty to Mr Abramovich?

A. Yes, I do feel loyalty to him in my capacity as one of his employees.

Q. You are, I think, or have been also a trustee of some of Mr Abramovich's trusts, is that right?

A. Yes. That is correct.

Q. And in relation to which trusts?

Let me be more specific. Were you a trustee in relation to the trust which was set up with regard to Sibneft shares?

A. I am the trustee in one trust.

Q. Well, is that the trust in respect of the shares held in Sibneft or is that another trust?

A. It is the trust that used to have Sibneft shares.

- Q. And was that a trust which was set up above the Cypriot companies? Or was that the trust which was set up above the Liechtenstein companies? Or was it the same trust?
- A. I am the trust -- trustee in a Cyprus trust. There are many different companies from many different jurisdictions there.
- Q. Can you recall whether this trust was a discretionary trust?
- A. Well, for me, this is a rather complex legal concept and if you would care to explain this to me.
- Q. Were you entitled in relation to -- let me try this a different way. Where decisions had to be made about trust assets, were you yourself able to make those decisions or were you told what decisions you had to make?
- A. I think that there were meetings of trustees, and in our capacity as trustee we adopted those decisions ourselves.
- Q. Now, before you made your witness statement, did you discuss the evidence you were going to give with any other witness?
- A. We recollected for a long time the events that occurred ten years ago, so I did spend a considerable amount of time to recollect that and I reviewed documentation and I communicated with those people who took part in those

events.

Q. You say:

"We recollected for a long time the events that occurred ten years ago ..."

With whom did you try and recollect those events?

A. Would you like me to give you a list?

Q. I would like to know of the witnesses who Mr Abramovich is calling, I don't want to know about lawyers involved, but of the witnesses who Mr Abramovich is calling, with whom you say you together recollected -- tried to recollect the events that occurred?

A. With Mr Abramovich himself, with Mr Tenenbaum, with Mr De Cort, Mrs Khudyk, Mr Gorodilov, Mr Shvidler. Someone else there?

Q. I don't know, it's your evidence. I can't tell you who you discussed your evidence with, Ms Panchenko. If those are the only ones, then just say so.

A. I think that Mr Streshinsky was also there.

Q. And did you compare recollections?

A. When you discuss things, everyone has his own view of what happened ten years ago and sometimes they are the same, sometimes there are differences. So everyone has his own evidence.

Q. And what happens when they were different?

A. Everyone decides for themselves. What I do is I record

my recollections.

Q. Now, can I just go back to the question of trustees.

You said you were a trustee and you talked about meetings at which your fellow trustees made decisions.

Can you tell us who else were trustees?

A. Do I have to answer that question?

Q. Well, I'd appreciate it if you would.

MRS JUSTICE GLOSTER: Well, in the absence of any objection from counsel I don't see why she shouldn't answer that question.

MS DAVIES: My Lady, the concern is obviously that many of these arrangements are extremely confidential and I'm sure that's what Ms Panchenko is worried about. It's very difficult also to see how the identity of the trustees for the trust could be relevant to issues in this dispute.

MRS JUSTICE GLOSTER: Well, Ms Davies, as I see it, the relevance of this is to whether, if there are trusts above the shares in the relevant companies, or in certain of the Cypriot companies, what are the beneficial provisions in those trusts? It's whether or not they recognise the possibility of the claimant being potentially a beneficiary.

MS DAVIES: Well, my Lady, if that's the issue, that's of course not affected by who are the trustees of the

trust, which was the question --

MRS JUSTICE GLOSTER: Well, it may or may not be. The problem is we know there are trusts above the various shares through various companies, and in the absence of a trust deed which contemplates the possibility, let us assume, of additional people being added to the beneficiary pool it's a bit difficult for one to make any conclusions about what the ultimate -- well, a bit difficult -- it could be said that in the absence of the trust deeds the court could possibly take the view that there was a potential for an additional beneficiary, whether the claimant or someone else, to be added to the pool.

We've all seen these sort of trust deeds where the protector has power to add beneficiaries or doesn't, or where the beneficiary pool is defined so widely as to include pretty well anyone.

MS DAVIES: My Lady, that, as it were, is a separate issue about the trust deeds which are not in the court bundle. Ms Panchenko is being asked about the identity of the trustees and details about the trusts and obviously feels some difficulty in dealing with matters that are very confidential to Mr Abramovich.

MRS JUSTICE GLOSTER: Are these current trustees or past trustees?

MS DAVIES: Well, I obviously can't answer for Ms Panchenko  
in terms of --

MRS JUSTICE GLOSTER: No. Well, I think the question was  
probably directed at past trustees.

MR RABINOWITZ: It was.

MRS JUSTICE GLOSTER: I think one needs to take it in steps,  
or Mr Rabinowitz may need to take it in steps. If  
there's any problem about confidentiality, the witness  
can simply write down the necessary name and I can make  
an appropriate order to ensure that the name does not  
become public beyond counsel.

MS DAVIES: Well, that may make it easier for Ms Panchenko  
to answer.

MRS JUSTICE GLOSTER: Right.

Mr Rabinowitz, first of all, explain to me what you  
say the relevance of knowing the names of the trustees  
is. Make it clear to me what you say the relevance is  
in relation to the current position where --

MR RABINOWITZ: I'm not interested in the current position.

MRS JUSTICE GLOSTER: -- where I can't see that, speaking  
for myself, you need to know anything about it.

MR RABINOWITZ: I'm not interested in the current position,  
my Lady. My question was: who are the other trustees?

MRS JUSTICE GLOSTER: Then I think you need to identify  
which trusts you are referring to and up to what period

in time.

MR RABINOWITZ: It would be the trusts which sat above the Sibneft holdings.

Now, we know the Sibneft holdings were sold in 2003, I have no idea what happened to the proceeds of that --

MR SUMPTION: 2005.

MRS JUSTICE GLOSTER: 2005.

MR RABINOWITZ: 2005, sorry. But what I'm interested in is the position certainly up to 2001. We know that the Cypriot structure was put in place in 1999.

I'm interested, at least in part, my Lady, because we have other witnesses who may also be trustees and who I may also be able to ask questions of in order to try and ascertain precisely what it is that was in these trust deeds.

Now, it may be that the way to deal with this is to identify, insofar as another trustee is a witness, that could be stated publicly. Insofar as Ms Panchenko has a problem with someone who is not a witness, I don't mind if that's written down and not said publicly.

MRS JUSTICE GLOSTER: Well, let's take it in stages. Ask your question in relation to the trusts above the Cypriot companies in relation to holdings exclusively of Sibneft shares up until 2001.

MR RABINOWITZ: Very well.

Ms Panchenko, in terms of the trusts which sat above the Cypriot companies, which sat above the holdings of Sibneft shares up to 2001, can you say who of the other trustees are or have been witnesses in this case for Mr Abramovich?

A. I was appointed a trustee in March 2001. Prior to that I do not know the structure of the trust.

MRS JUSTICE GLOSTER: And that was a trust which sat above the Sibneft shares?

A. The Cyprus trust.

MRS JUSTICE GLOSTER: Through Cypriot companies.

A. So it was Russia, Cyprus companies, then some other jurisdictions and the Cyprus trust.

MR RABINOWITZ: Well, can you tell us in March 2001 which of the other trustees are witnesses being called by Mr Abramovich?

A. Mr Tenenbaum.

Q. Prior to March 2001 can you tell us who the trustees were, insofar as there are witnesses?

MRS JUSTICE GLOSTER: She said she can't say who the trustees were prior to 2001, I think.

Oh, she said she didn't know about the structure.

A. I do not know.

MR RABINOWITZ: And what was it that prompted your appointment in March 2001 as a trustee? Was there

anything which occurred which led to this?

A. Why I was elected?

Q. In March 2001, did something happen in the period leading up to March 2001 that prompted your appointment as a trustee?

A. I do not have any ideas on this. A new trust was put in place, it was necessary to have a certain number of trustees and one of the candidates was myself. I was one of the candidates.

MRS JUSTICE GLOSTER: Were there any other trustees apart from Mr Tenenbaum in the period up until 2001 that you know the names of?

A. Not from amongst the trustees. I don't know what the structure of the previous trust was.

MRS JUSTICE GLOSTER: Right. But of the trustees, apart from people who are giving evidence on behalf of Mr Abramovich, were there other trustees whose names you know in the period up until 2001?

A. Even the previous trust, in the previous trust?

MRS JUSTICE GLOSTER: No, in the Cyprus trust.

A. The Cyprus trust was established in March 2001.

MRS JUSTICE GLOSTER: Right.

A. And I immediately became the trustee, together with Mr Tenenbaum, as of the time of the establishment, of the setting-up of the trust.

MRS JUSTICE GLOSTER: In 2001, after its establishment,  
apart from Mr Tenenbaum was there another trustee?

A. Yes. There were three trustees in the trust.

MRS JUSTICE GLOSTER: And do you have any issues of  
confidentiality in giving the name of the third trustee?

A. I don't know what his wish is. He has nothing to do  
with these proceedings, so if you tell me that I need to  
do this -- but I'd rather write it down.

MRS JUSTICE GLOSTER: Right. Well, write it down in the  
first instance and show it to me, please.

A. Would that be in Russian?

MRS JUSTICE GLOSTER: I can't read Russian, I'm afraid.

MR RABINOWITZ: It will have to be translated, I suppose.

MRS JUSTICE GLOSTER: Perhaps the translator could write it  
in English for me.

MS DAVIES: You need to be careful because the microphone is  
picking...

(Handed)

MRS JUSTICE GLOSTER: Right, what I'm going to do is I'm  
going to pass it to Ms Davies. It doesn't seem to me  
that there's any objection but, if there is, she can  
take instructions on it. (Handed)

MS DAVIES: My Lady, there's no objection.

MRS JUSTICE GLOSTER: Right. You can pass it back to the  
witness. (Handed)

MR RABINOWITZ: I just want to be clear, does that mean  
I can ask the name?

MRS JUSTICE GLOSTER: Yes.

Could you read out the name, please, Ms Panchenko,  
now? Read out the name, yes. Say the same in open  
court.

MR RABINOWITZ: What is the name you've written down,  
please?

A. Dimitrius Ionidis.

Q. Ms Panchenko, can you tell us about the trust deed. Who  
were the beneficiaries of the trust?

A. Roman Abramovich.

Q. And Mr Abramovich alone?

A. And later on his children.

Q. Can you tell us whether there was a provision in the  
trust deed -- I think it probably follows from what  
you've said. There was a provision in this trust deed,  
was there, which enabled further beneficiaries to be  
added?

A. I apologise, I'm not a lawyer and it was Mr Tenenbaum  
who was much more in charge of this.

So far as I can recall originally, the trust was  
created only to encompass Mr Abramovich and then his  
children were added. Now, whether that was done with  
the agreement of the protector, I cannot tell you with

certainty. I realise that at some point in time Mr Abramovich's children were added.

Q. And who was the protector of the trust, please?

A. It was Mr Shvidler.

Q. And does it follow from your previous answer that beneficiaries could be added either by the trustees alone or with the permission of the protector, Mr Shvidler?

A. I cannot answer this question with certainty. Maybe the children were added in case something happened to Mr Abramovich. I mean, I am not sure about the sequence. In case he disappears, then...

Q. I'm not so much interested in the reasons why they were added, I'm interested in the ability to add beneficiaries, and does it follow from your previous answer that additional beneficiaries could either be added by decision of the trustees alone or with the consent of the protector?

A. I'm not sure that I -- the information that I'm imparting to you is correct because, as a rule, this was handled by Mr Tenenbaum who agreed with me on those things. Now, what the legal procedure was I will not be able, unfortunately, to give you that information with certainty.

Q. Very well. Perhaps we'll ask Mr Tenenbaum.

MRS JUSTICE GLOSTER: When did you cease to be a trustee of the Cypriot trust, or are you still a trustee of the Cypriot trust?

A. Yes, I still am.

MR RABINOWITZ: Does that mean there are still documents relating to this trust which are available?

A. Yes, there are.

Q. Have you been asked to produce these documents for the purpose of this litigation?

MR SUMPTION: My Lady, can I, I hope genuinely to help my learned friend --

MRS JUSTICE GLOSTER: Yes, please do.

MR SUMPTION: -- say something about this.

As a matter of principle the decision was made some time ago that these trust documents were irrelevant. In light of the point that your Ladyship has made in the course of this --

MRS JUSTICE GLOSTER: That was just my impression, Mr Sumption, I haven't heard submissions about the point, it just struck me that it might --

MR SUMPTION: Well obviously my learned friend regards them as relevant. At any rate, I have asked my instructing solicitors to check what the position is about their availability and we will try and ensure that information in some shape or form is available as soon as possible,

ideally before Mr Tenenbaum gives evidence.

MRS JUSTICE GLOSTER: Can I make it clear that it doesn't seem to me, on the basis of my present view, that the current arrangements have any relevance at all. But I can see that it's arguable that what the position was in the period 2000 to 2005 or even earlier might be relevant.

MR SUMPTION: Yes. Well, it's the same trust, as I understand it, and we will look into the position, and bearing in mind that only part of the chronological period is relevant we will ensure that the court is as well informed as it can be.

MRS JUSTICE GLOSTER: Okay. That might also apply in the light of the allegations in the claim in relation to the Liechtenstein trust.

MR SUMPTION: Yes. I will need to check the precise period of time covered by that. The evidence was that it wasn't in existence for very long.

MR RABINOWITZ: The evidence was that it was in existence for a year.

MR SUMPTION: That it was not in existence for very long.

MR RABINOWITZ: I think for a year between 1998 and 1999.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: The only point is if one has one of those sweep-up trusts --

MR SUMPTION: I understand the point and we will, in the light of that point having arisen, make sure that if there are further documents to be disclosed they will be disclosed, and we will make sure that that happens before Mr Tenenbaum gives evidence.

MR RABINOWITZ: Sorry, before we leave documents and disclosure, insofar as there were trusts relating to the Rusal interests as well, we would be grateful if someone could look out for those as well.

MR SUMPTION: My Lady, I quite understand that. My present understanding is that in fact it's the same trust but I will have to check that.

MRS JUSTICE GLOSTER: Well, let's take it in stages. Very well. Thank you.

MR RABINOWITZ: Ms Panchenko, I want to go back to an answer you gave earlier about the people with whom you had jointly sought to establish your recollections, and one of the people you mentioned was a Mr Streshinsky. Is that right?

A. Yes, that is correct.

Q. Now, Mr Streshinsky is a witness who is being called by the family defendants in this litigation.

MS DAVIES: Anisimov defendants.

MR RABINOWITZ: Sorry, the Anisimov defendants, I apologise. Did you meet to discuss recollections with any other

witnesses who were, in a sense, not Abramovich witnesses? Mr Anisimov, for example?

A. I've met here with Mr Anisimov, Mr Anisimov himself, and I spoke with Mr Streshinsky over the phone. I did not have a meeting with him.

Q. I'm not interested in whether you have ever met these people in court, what I'm interested in is the people with whom you discussed your evidence before you made your witness statement.

A. I wrote the witness statement on 30 May and I communicated with Mr Streshinsky I think after that.

Q. But you had no conversation with him before you made your witness statement?

A. Most probably not, not before that. Once again I do not recall the date, the exact date, when I was communicating with him but that did not have any impact on my witness statement, that's for sure.

Q. Because in evidence you gave earlier, this is I think at [draft] page 98, line 22, you mention Mr Streshinsky also being present where the evidence was discussed?

A. Sorry, which page is that?

Q. Well, you won't have it, but on the transcript.

A. Sorry, you asked me whom I was trying to recollect the events that happened ten years ago, and I listed Mr Streshinsky as one of the people with whom I did

discuss that.

Q. Yes, that's at [draft] page 98, line 16 to 18. Sorry, just below that.

So was he a person with whom you sought to discuss recollections before you produced your evidence?

A. I'm not sure that it was prior to 30 May, most probably it was some time in June. I do not recall exactly.

Q. So perhaps between witness statements, because you've produced more than one witness statement, haven't you?

A. One could say that it happened in between.

Q. I think your first --

A. Between the second and the third statement.

Q. That's right, because your second statement is on 30 May and your third statement is on 4 July. Okay.

Now, one matter which you cover at length in your evidence, Ms Panchenko, is the question of payments made to Mr Berezovsky and Mr Patarkatsishvili. You make clear, though, that you had limited personal involvement in the making of these payments, is that right?

A. Well, define limited. I did not make decisions with respect to those payments so it's hard to be more specific. Could you specify your question, please?

Q. Let me ask you this. The one exception that you make to being personally involved or not being personally involved in this relates to payments to the account of

Tiberius Limited and Pennand Limited.

If you go to paragraph 35 of your second witness statement, it's page 212 in the Russian E2/07/212, and page 171 in the English E2/07/171.

A. Yes, I can see that.

Q. You see, the reason I suggested to you that you didn't have personal involvement in payments apart from this one is because you begin paragraph 35 by saying:

"Apart from the payments made to the accounts of Tiberius Limited ... and Pennand Inc ... I believe that all [the] other payments in the Fomichev table were handled by Ms Nickoulina as directed by Mr Shvidler."

Then you go on to deal with Pennand and Tiberius and the payments to them. Okay?

A. Mrs Goncharova was also handling part of those payments.

Q. Now, from paragraph 36 and onwards you explain how, in broad terms, promissory notes were used to effect the payment or the payments to Tiberius and Pennand. Can we just look at what you say about the payments to Tiberius and Pennand at paragraph 39 of this statement which should be just over the page you're on.

You say about these payments:

"... it was agreed that companies identified by Mr Fomichev would purchase promissory notes of Sibneft from the companies we specified for the lowest possible

price (virtually at zero price), with subsequent repurchases for full value by companies associated with the banks with which we worked."

Just turning back to paragraph 36, you identify two documents in the footnotes, footnotes 5 and 6, which support your recollection, and these are the agreements of the 2 October 2000 and 29 September 2000, do you see that?

A. Yes, I can see that.

Q. If I'm going too fast, just tell me too slow down.

A. (Not interpreted) No, it's okay.

Q. Can I ask you to please be given bundle J2/2 and open at tab 18, please J2/2.18/238.

So you recognise this, this is your first --

A. This is my first witness statement.

Q. Correct.

And in this very short statement, you confirmed that you had read a Russian translation of the signed third witness statement of Mr Mitchard QC dated 19 June 2009, and you confirmed that insofar as that statement referred to matters that were within your knowledge and to the best of your knowledge and belief, that that statement contained an accurate account of affairs.

Was that true? Did you read the Russian translation of Mr Mitchard's statement at the time?

A. I -- to be honest, I do not recall if I read the Russian translation, but what Mr Mitchard wrote, he understood that from me, and this is something that I can confirm.

Q. But when it says here that you have read a Russian translation of the statement --

A. Yes, then my apologies, then I did read the Russian translation.

Q. Thank you. In the same bundle, can you please go to tab 11 which is earlier in the bundle where you will find the third witness statement of Mr Mitchard J2/2.11/171. I don't know if there is a Russian version that has been included. Has it?

MS DAVIES: It's in my bundle at page 172R, if that assists J2/2.11/172R.

MR RABINOWITZ: You may want to go to the Russian version of that, I don't seem to have it in my bundle.

At paragraph 9 of that statement, page 173 of the bundle in English, and I have a reference to say it's at 175R for the Russian.

Mr Mitchard says:

"I have personally interviewed Mr Abramovich, Mr Shvidler, Mr Tenenbaum, Ms Goncharova, Mr De Cort, Ms Panchenko and Ms Khudyk. The references below to their evidence are to information I was given during those interviews and subsequently confirmed to me by

them."

Can I then ask you, please, to go in the Russian version to page 187R J2/2.11/187R, in the English version page 182 J2/2.11/182, and to look at paragraph 18, please. You see at paragraph 18 Mr Mitchard is saying that Mr Shvidler had confirmed to him that:

"... credit agreements were also used at one stage in order to fund cashflow payments to ORT as part of the funding agreement referred to above."

Then in footnote 30, it says:

"Mr Shvidler and Ms Panchenko have confirmed to me that Bournemouth and Laren (as well as Runicom Limited) ... were Abramovich group companies. No one I have interviewed has, however, any knowledge of the use of Sibneft promissory notes to equivalent effect."

Just carrying on with the footnote:

"Mr Shvidler and Ms Panchenko confirm that Sibneft actively issued promissory notes for very substantial sums of money in its business activities, which were then traded in the market, in accordance with what had become usual for Russian companies at a time when barter had become normal practice."

Then it's this sentence I'm particularly interested in:

"But they are not aware of the use of promissory notes as an additional means of providing funding for ORT in accordance with Mr Abramovich's agreement with Mr Berezovsky ..."

It appears from this, Ms Panchenko, that you had told Mr Mitchard that you had no knowledge at all about the use of promissory notes in this way, is that right?

- A. At that time I indeed did not know about the use of promissory notes -- I did not know about the use of promissory notes, promissory notes as a mechanism to make settlements between Mr Abramovich and Mr Berezovsky.
- Q. Perhaps we can just see the evidence to which you were responding here. If you go in the same bundle to tab 9, please, which is where you'll find the statement that Mr Marino made on behalf of Mr Berezovsky, and turn to page 83 within tab 9 J2/2.09/83.

Between paragraphs -- do you have the right page?

- A. Yes, in English, yes.
- Q. I'm not sure that there is a Russian version, but between paragraphs 212 and 214 of this statement, Mr Marino specifically alleged in this evidence that Mr Fomichev had discussed with you the use of Pennand and Tiberius to receive funds. And it was also specifically alleged here that the agreement had been

that Sibneft would issue promissory notes which would be sold for less than their commercial value and then bought back by companies controlled by Mr Abramovich at a higher price.

If you look at footnote 131 on page 84, you see -- if you need a translator for this then tell me -- Mr Marino is in fact identifying the documents which support his evidence about how promissory notes were used, and those are in fact the same documents that you have referred to in your witness statement at footnotes 5 and 6 to paragraph 6. Is that right?

A. Could I explain to you how that happened?

MRS JUSTICE GLOSTER: Yes, please do.

MS DAVIES: My Lady, I believe there is a Russian version of this which it's being attempted to hand to the witness which might assist.

MR RABINOWITZ: Thank you very much.

Do have a look at footnote 131, Ms Panchenko.

A. Yes, I can see that.

Q. Those are the same contracts, I think, that you have subsequently referred to in your witness statement, aren't they, footnote 131?

A. Now I do understand that most probably those were the same, the very same contracts. However, at that time, when Mr Mitchard showed me the contracts with the names

of Tiberius and Pennand, and the sale and purchase of promissory notes, they did not say to me that somehow it was related to Mr Berezovsky or with the mutual settlements with Mr Abramovich.

I could perhaps clarify why I now remember this, why -- or it's rather a reconstruction on my part.

- Q. Can we just take this in stages because the first stage is this: having been shown what was being said on behalf of Mr Berezovsky in the witness statement that Mr Marino made, it appears that -- and indeed having been shown the contracts -- it appears that you told Mr Mitchard that you had no knowledge at all about these matters. Is that right? It seems to be the effect of what he says at footnote 30.
- A. I am not sure that I actually read Mr Marino's witness statement, but I did see the promissory note sale and purchase contract, that is true, just by way of example.
- Q. Whether you read it or not, Mr Mitchard must have put to you what it was that Mr Marino was saying had been agreed between yourself and Mr Fomichev in relation to these payments?
- A. I think that Mr Mitchard was asking me whether promissory notes had been used or were being used as a mechanism for mutual settlements between Mr Abramovich and Mr Berezovsky.

When I was reviewing those specific promissory notes on purchase agreements the names of the companies did not mean anything to me, neither Tiberius nor Pennand, or any other companies, Broad... something.

Q. But it goes further than that, Ms Panchenko, because the name Mr Fomichev would have meant something to you, correct?

A. Yes, Mr Fomichev's name was known to me at that time.

Q. And the process of selling Sibneft's promissory notes for near zero and then arranging for them to be bought back at a very much more substantial amount would have meant something to you, correct?

A. It was not cast in stone: buy for this and sell for this, or the whole list. These were bits and pieces of sale and purchase agreements which were very -- it was very hard to collate them between themselves from what was made available.

Q. Do you recall, Ms Panchenko, that at the time this witness statement was made by Mr Mitchard it was Mr Abramovich's case that the only payments he had agreed to make to Mr Berezovsky and Mr Patarkatsishvili related to the funding of the cash requirements of ORT? Shall I show you something to remind you of that?

A. Would you mind showing this to me? Thank you.

Q. In the English version of Mr Mitchard's statement it's

at paragraph 12(b) on page 177 J2/2.11/177. You see he says -- he's disputing Mr Berezovsky's version of what was agreed in 1995, and what he says in fact Mr Abramovich says, that his agreement with Mr Berezovsky was that in exchange for the political assistance:

"... Mr Berezovsky had provided in respect of the creation of Sibneft, Mr Abramovich would fund certain ... cash requirements of ... ORT ..."

Do you see that?

A. Yes, I can see that.

Q. But the promissory notes were not, or certainly not necessarily, to fund the cash requirements of ORT, were they?

A. Most probably that is the case. They were not necessarily needed for that specific purpose.

Q. And you knew, didn't you, that payments had been made to Mr Berezovsky and Mr Patarkatsishvili, or other payments had been made to Mr Berezovsky and Mr Patarkatsishvili, that also did not appear to be payments to ORT; that's right, isn't it?

Shall I give you an example, would that help?

A. To be honest, I did not care about the nature of those relationships. When Paul Mitchard was giving his evidence he was speaking with different people, and

obviously I paid attention to the information which he received from me, and if Mr Abramovich thought that that was the case well, then, this is what he thought.

- Q. You see, other payments that you knew about which had been made to Mr Berezovsky, which couldn't have related to ORT, were the credit card payments with Most Bank that had been paid in early 1999.

Isn't it right that you liaised with Mr Pavel Ivlev in relation to payment of Mr Berezovsky's credit card bills with Most Bank?

- A. I did liaise with Mr Ivlev but I wrote in my statement that I do not recall what the outcome of that was, whether real payments had been actually made. Having reviewed the documents, I recall that there had been discussions at some point in time. You see, I handle finances and there were quite a lot of payment documents that go through my hands, and if I look at the documents then I can tell exactly whether I had seen them or I had not seen them.

Now, once -- immediately after I saw the documents with respect to the individual debt to Most Bank on the part of various individuals, members of Mr Berezovsky's family, I do not recall whether we paid those debts for them or not, I do not remember that, but what I do recall is that, in order to make a payment on behalf of

a Russian citizen, in order to pay his debt, you need a contract. So you need to have some grounds to be able to make that payment, so that individual must have had some relationship with the payor, and you definitely need a contract for that.

Q. I suggest that you were aware in 2009, when Mr Mitchard was making his statement, that there were payments made to Mr Berezovsky which would show that the suggestion that the agreement was only in respect of funding to ORT could not be right. And that is why you were not willing to say at that stage that you were aware of the promissory notes discounting scheme that you had agreed with Mr Fomichev. That's right, isn't it?

A. I'm afraid it was too long, I'm not sure I understood the sequence of your reasoning.

Whether I knew about the payments that were made to Mr Berezovsky by that time? Yes, I did know about that. Whether I paid attention to what Paul Mitchard said about the fact that it was only ORT exclusively? Well, the answer is most probably not because once again I'd like to clarify, if I may, that after the lawyer interviewed several people he then makes one general statement. I was mainly looking at the information that he'd received from me, that was the focus of my attention.

- Q. I thought you had actually made a witness statement in which you confirmed that you had read his statement in a Russian translation.
- A. Yes, that is true, and I know how to read and now I'm much better at that. You need some experience to draw distinctions between "I can" or "I may", but you really need some time to develop a knack for that.
- Q. And when you saw that Mr Mitchard was saying that Mr Abramovich's case was that the agreement simply involved payments of funding for ORT, you would have known that that was incorrect, wouldn't you, given what you knew about payments?
- A. I can only speak as of today. As of today, I know it was not the case, I just did not pay attention, to be honest with you I did not pay attention at that time to the limited nature of this.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Right.

Don't talk to anybody about your evidence.

Right, ten minutes.

(3.15 pm)

(A short break)

(3.33 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Ms Panchenko, I would like to ask you next

some questions about the bolshoi balance. You say in your evidence at paragraph 31 E2/07/170 that the bolshoi balance:

"... contains details of all the payments made to Mr Berezovsky and/or Mr Patarkatsishvili in 2000."

It's the second sentence of paragraph 31. You also say at paragraph 28 that the bolshoi balance was prepared by:

"... employees of Mr Abramovich's companies who were subordinates of yours."

Is that right?

A. Yes, this is correct.

Q. In fact, we had a look at the metadata for the file which shows that the author is "Irina P", which must be you, is that right?

A. Most likely it would be me.

Q. So is the position that you perhaps created the structure of the spreadsheet and then asked the subordinate to enter the relevant data, or did they pass you the relevant data and you entered it?

A. I think that most likely I was trying to create the structure. It's quite an unusual form. It does not correspond with accounting standards, and that form was created only following request from Mr Shvidler, and possibly in order to explain to the employees what they

have to do I could have created the form as I think, and then would fill it with content -- they would fill it with the facts.

Q. Did you look at the bolshoi balance when first assisting Mr Abramovich with the strike-out application?

A. No, I didn't look at it. The Excel spreadsheet that is called "Bolshoi Balance" was found as a result of electronic search for documents and the search was organised by the lawyers in November of last year.

Q. The search was organised in November last year, so that's November 2010 and, what, it was produced -- what, discovered in November of last year?

A. Yes. This Excel spreadsheet, this table was found as a result of electronic search done by the lawyers. We have received it and we started looking at it, and only after having seen in the table the name "FOM", which I think means Fomichev, I saw the names of companies Tiberius and Pennand and only then I put these facts together.

Q. You see, Ms Panchenko, this document was only disclosed in these proceedings on 27 May 2011, just three days before you signed this witness statement. Are you aware of that?

A. I do not know when specifically the document was disclosed, but our discussion, the disclosure of this

document, has taken a fairly long while as far as I recall.

Q. So you say you discussed this document for a fairly long while after it was discovered. Are you able to assist us as to why it was only disclosed it looks like six months after you discovered this document?

A. Why did it take a long while?

Q. Six months.

A. Okay, I can hear that.

To start, we have received electronic information, volume of information, and then after a while the lawyers sent us this document. That took a while as well. That is, first they sent the translation because they're English-speaking lawyers and they had to understand -- it had to be translated for them in English and they had to understand whether it was relevant for the case or not.

And then we received that document, we looked at it, we were trying to recall and to reflect properly whether this is pertinent to the case or not. It contains a lot of information that is not pertinent to the case and it took us quite a fair while and discussion as to whether to present -- in what form to present it, to redact something or not to redact it, and, in the end, we have decided to produce it, to provide it just the way it is

now. And it's quite a lengthy process and one has to take this into account, never mind the holidays, the New Year, et cetera, and work between Moscow and London.

I don't know.

Q. It's fairly obvious, Ms Panchenko, that you spent a lot of time looking at this document for the purposes of preparing your witness statement since your witness statement is full of references to this document.

That's right, isn't it, you spent a lot of time looking at this document for the purposes of your witness statement?

A. For the most part, I looked at the "FOM" table, at the Fomichev table, and I was trying to recollect, and I recollected that this is to do with mutual settlements with Mr Berezovsky and/or Mr Badri. And I was trying to recollect why there was a special table below that is breaking the payments down, including the Tiberius and Pennand promissory notes, 100 million, 207 million. And the reconstruction took some time.

Q. Well, it would have been obvious to you, and indeed to everyone, when you were working on the Fomichev -- on this table for the purpose of your witness statement, that it was a document which needed to be disclosed, Ms Panchenko. That's obvious, isn't it?

A. Whether we knew about the existence of this document,

about the found document, I can assure you we did not. That is, that document indeed was found during the electronic search, and then it was only CD Rom, it was discovered at Natalia Khudyk's computer, he (sic) was working using one Russian disc, and those who know about computers, who deal with the computer without her knowledge, they created another copy on another hard drive. I don't recall the name of it.

And on the result of information search, we saw that that information was preserved, that survives. That is, the lawyers discovered that information has survived. And, for us, I would say that was quite unusual, quite unexpected.

Q. But that was six months before it was disclosed.

A. I don't know when exactly the document was disclosed. I can only take your word for it.

Q. It was disclosed three days before you produced your second witness statement -- three days before you signed your witness statement on 27 May 2011.

You say it was discovered on Ms Khudyk's computer?

A. Yes, this is correct.

Q. And Ms Khudyk would have been using that computer, would she, I take it?

A. This is her computer. You may like -- you would like to ask her. As I understand, she didn't use a hard drive

and she didn't know about the existence of an archive copy of the old documents.

Q. No one had previously searched the archives of her computer prior to November 2010, or can you not help us with that?

A. I am not able to answer that. I understood from Natalia that she worked with a different hard drive and she didn't know about the existence of this archive copy, and that was done without her knowledge within the period when she was on leave by the department that is responsible for IT or computers, for computer support.

Q. We'll come back to the bolshoi balance. Can I first --

MRS JUSTICE GLOSTER: When you're referring to the bolshoi balance, you mean the entire spreadsheets? I mean, there are a number of spreadsheets.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: For 2000 and 2001 or just for 2000?

MR RABINOWITZ: I'm referring to what was disclosed to us as the bolshoi balance that your Ladyship has I think on your computer separately, not part of Magnum.

MRS JUSTICE GLOSTER: Yes, I'm looking at it, but in paragraph 28 of Ms Panchenko's statement E2/07/170 she refers to:

"... a cash flow spreadsheet (the '2000 Bolshoi Balance') ..."

MR RABINOWITZ: I understand that to be the whole of this document.

MRS JUSTICE GLOSTER: Well, I don't understand that, because if you look at the tabs in the bottom of the document it refers to 2001. And what I'm not clear about is whether all the sheets are the bolshoi balance or just --

MR RABINOWITZ: Perhaps I can ask Ms Panchenko what she understands by that.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Ms Panchenko, when you refer to the bolshoi balance, you say:

"... a cash flow spreadsheet ... was prepared by employees of Mr Abramovich's companies who were my subordinates."

You see at paragraph 29 E2/07/170, between paragraphs 29 and 31 you then describe it. In paragraph 31 you refer to that part of it which is called the Fomichev table.

When you are referring to the bolshoi balance, are you referring to the whole of this document? That's to say, more than just what are called the Fomichev tables?

MRS JUSTICE GLOSTER: Perhaps it would be easier if she had the Russian version of the tables up on the screen, of the Excel tables up on the screen.

MR RABINOWITZ: I think we have that up on the screen.

MR SUMPTION: Right. Does she have it in Russian?

A. Yes, thank you very much, I have it.

MRS JUSTICE GLOSTER: If you look at the bottom -- that's in the Russian -- if you look at the bottom I can click any tab and, running along the bottom, starting with "2000 total", then going along to "total" and then we have "2001 total" and then we have "FOM" and then we have "distribution".

Can you just identify for me what 2001 is dealing with and whether I need to look at that.

A. In this file I have looked only at the main -- at the first tab and the total. Usually it's only the total and the "FOM" table, the rest of them are auxiliary, and the year 2001 is not complete, these are some work in progress tables done by employees, ie they're not complete, they do not encompass the whole year, they were ongoing.

The first one -- sorry, I can't operate the screen.

MRS JUSTICE GLOSTER: I don't think you can do it.

If I look at the first one, "2000 total, cash incl., annual", is that of any relevance to payments made to Mr Berezovsky or Mr Patarkatsishvili or their companies?

A. Below that table, if I could scroll down, if someone could help me to the total.

MRS JUSTICE GLOSTER: What, the "ORT cash"?

A. "ORT cash", it's already -- Mr Berezovsky 461, the abbreviation of "BRB" (sic) and "BRBR" (sic), the same part is highlighted in the "FOM" table, this is purely copied in the "FOM" table, these two lines, these two sections.

MRS JUSTICE GLOSTER: So I can work from the "FOM" table, can I, as the total of payments made to Mr Berezovsky or Mr Patarkatsishvili or their companies?

A. Yes, that's correct.

MS DAVIES: My Lady, the transcript just picked up "BRB" when I believe it should be "PRB".

THE INTERPRETER: Sorry, the interpreter apologises because I haven't got the document in front of me and I might have misheard.

MS DAVIES: The two relevant entries are "PRB" and "PRBR" and they came up on the transcript as "BRB" and "BRBR".

MRS JUSTICE GLOSTER: Then for 2001, are any of the spreadsheets relevant so far as payments to Mr Berezovsky or Mr Patarkatsishvili or their companies are concerned?

A. Not in this file, no. I think so, I think they're not relevant. That is, they are the payments for year 2000, and where "Fomichev" is reflecting the total amount of payments made.

MRS JUSTICE GLOSTER: If you could flag up "distribution" in

the bottom tab, after "FOM", are "PRB" or "PRBR" entries there relevant to Mr Berezovsky?

A. I think they are partial -- parts of the total table.

Usually the employees are collating a large file together and I usually only look at the totals, at the totals in the tables.

MRS JUSTICE GLOSTER: Yes. Thank you very much.

MR RABINOWITZ: Can I just follow my Lady's question on that.

There are, are there not, totals in the tables for PRB and PRBR?

MRS JUSTICE GLOSTER: Well, I think you should make it clear, Mr Rabinowitz, which year you're referring to because there are sheets dealing with different years.

MR RABINOWITZ: Doesn't it stop before you get to 2001, Ms Panchenko? Does this stop before it gets to 2001, the table that you're looking at at the moment?

MRS JUSTICE GLOSTER: "FOM" does but we're not looking at "FOM". I was looking at "2001 total".

MR RABINOWITZ: We'll come back to that insofar as I need to ask you questions about it.

MRS JUSTICE GLOSTER: Right. It's just I need to be clear, and if I've got Ms Panchenko here, she's the one who can explain it to me.

MR RABINOWITZ: My Lady, if there's anything else you'd like

Ms Panchenko to explain to you about this it's certainly not for me to tell your Ladyship not to ask questions about it.

MRS JUSTICE GLOSTER: Right. Well, Ms Panchenko, can we have up the "2001 total" tab, please. It's a bit difficult for me to check that the right one is on the screen. Yes, that's the right one on the screen now.

Do any of these payments relate to payments to Mr Berezovsky or Mr Patarkatsishvili in the year 2001?

A. I do apologise, it's hard for me without being able to scroll up or down to view the whole table. I think is --

MS DAVIES: My Lady, perhaps it might help if lines 120 and below were on the screen for Ms Panchenko.

MRS JUSTICE GLOSTER: Yes, lines 120 and below, which refer to PRB and PRBR in relation to 2001. Can we have those there at the bottom?

A. Yes, I think that these payments are relevant to the mutual settlement with Mr Berezovsky, but I beg for your attention that this is only including August, up to August, it does not include the whole year. So, so to speak, one cannot conclude that these are annual payments, payments for the whole year.

MRS JUSTICE GLOSTER: Okay, thank you very much indeed.

Yes, thank you.

MR RABINOWITZ: We will come back to that later, but for the moment can I just ask you this, Ms Panchenko. I want to ask you about the meeting between Mr Patarkatsishvili and Mr Abramovich at Cologne airport which was probably on 29 May 2001. You refer to this at paragraph 91 of your statement, that's page 187 in the English E2/07/187, 229 in the Russian E2/07/229.

As I understand your evidence, it is that you attended part of this meeting to present the payment options to Mr Patarkatsishvili and Mr Abramovich. Is that correct? It seems to be what you say at paragraph 92.

A. Yes, this is correct.

Q. And after you had presented those payment options to Mr Patarkatsishvili and Mr Abramovich, Mr Patarkatsishvili and Mr Abramovich -- I think something went wrong with the channels there.

THE INTERPRETER: Interpreter apologises, switched channels.

MR RABINOWITZ: Shall we take that again?

After you had presented the payment options to Mr Patarkatsishvili and Mr Abramovich, Mr Patarkatsishvili and Mr Abramovich then carried on their discussion in private. That's right, isn't it?

A. Yes, this is correct. I wasn't present for the whole of the meeting.

- Q. So after they had that private discussion Mr Abramovich told you how much it was agreed should be paid, and also what had been agreed in terms of the payment mechanics, is that right?
- A. They returned together. Ruslan Fomichev and myself were there and it was discussed, it was told to us that, yes, it will be done, and the mechanism was the only mechanism. The whole question was whether we pay in cash or whether we ought to buy securities and pay their remuneration in securities. And they returned together and told us about the decision, that the payment will be made in cash, and the first payment -- and it has to be started ASAP, basically tomorrow, almost tomorrow.
- Q. You don't, I think, claim to have a very good recollection of this meeting. You say:
- "I do not remember all the details of the meeting."
- Is that right?
- A. I remember why I was present there, why I was present in that meeting. I remember that Mr Fomichev and I, having discussed between ourselves, we needed the decision, we ourselves could not decide anything else other than receive confirmation from the principals. I recall that we were not in the territory, ie were flying en route somewhere, I remember that was Germany. Therefore in the first witness statement Mr Berezovsky said it was

Munich Airport. For me, since we didn't leave the airport and go to town, and it was a business lounge for private flights where one could hold negotiations, for me it wasn't of high importance what city it was because we didn't leave and see the city.

I remember it was somewhere en route to another country.

- Q. That's very well, Ms Panchenko, but other than those details -- that there was this meeting, where you were on your way to, who was there -- you don't have a very clear recollection of all the details of the meeting. That's right, isn't it?
- A. Depending on which details, do you mean?
- Q. Well, let me be very clear. You say -- one of the things you say you do recall is that Mr Patarkatsishvili was very happy, and I suggest to you that you don't actually have any clear recollection of that at all.
- A. Mr Badri was quite a character, an unusual figure, and I didn't have much communication with him, and I would rather, probably, remember if he were not happy.
- Q. When you say here you have a recollection of him being happy, is this your conclusion from the fact that you don't remember him being not happy?
- MRS JUSTICE GLOSTER: I think --
- A. It's quite difficult to judge the emotions of another

person, but the fact that everyone parted on friendly terms, and we all understood that we have to continue work, and parties have come to an understanding that everything was quite friendly, that was for sure.

MR RABINOWITZ: You see, I suggest to you that the evidence that you give at paragraph 93, where you say Mr Patarkatsishvili was happy, is not really a recollection at all and this is just you trying to assist Mr Abramovich's case, is it not?

A. I am relaying my feelings and then I'm afraid this is your call.

Q. Now, at paragraph 49 of your witness statement, Ms Panchenko, you're dealing with aluminium assets. You'll find this at page 216 in the Russian E2/07/216, page 175 in the English E2/07/175. You are dealing here with aluminium assets, and you say here that at some point you received:

"... instructions from Mr Abramovich to prepare the necessary documentation to pay Mr Patarkatsishvili his commission for [assisting in the aluminium acquisitions]."

Now, we've looked at these commission agreements already with Mr Abramovich, Ms Panchenko, and I wasn't proposing to go through them once again with you. Presumably you don't dispute Mr Abramovich's evidence

that those were produced, I think he said on  
15 March 2000?

A. No. My feeling is that they were produced  
in February 2000. Yes, February 2000.

Q. So when Mr Abramovich said that he has a clear  
recollection of them being produced in -- sorry, you're  
quite right, in February 2000. I think Mr Abramovich's  
evidence was that they were produced on  
15 February 2000, and that's your evidence as well, is  
it? That's to say after the master agreement was  
concluded?

A. I do not recall the exact date, I indeed have no  
recollection of the exact date, it's not linked to  
anything, but the fact that that was produced  
immediately after concluding the main agreement, ie on  
14 February, we have known the final price in the  
additional agreement. And if to look at the commission,  
the formula of calculating the commission was produced  
by me and Natalie Khudyk, my employee, at my  
instruction.

So basically then you can work it back to the date.

Q. So at the time you produced these agreements, you knew  
the final price of the acquisition of these aluminium  
assets, is that right?

A. Yes, I did know the final price. The final price was in

the memorandum of 14 February, in the appendix.

Q. Can you explain why you say these commission agreements were produced in a way which suggested that the final price was not known at the time these agreements were drawn up?

A. Even to make a bank transfer on that commission agreement, one cannot just write down: I, Mr So-and-so, or a company, I owe to a private individual \$115 million.

Basically not a single bank would execute such a bank transfer. There was a specific deal.

Mr Abramovich explained to me that this is commission under the deal, and I called my employee Natalie Khudyk and we attempted to put that in writing, the subject of their agreement. And the objective was to pay, pay commission under these contracts, under these agreements.

Q. But those commission agreements, Ms Panchenko, contained provisions which were intended to give the impression, and did give the impression, that at the time those agreements were made you didn't know what the final price for the aluminium assets would be. That's right, isn't it?

A. There are such provisions in the agreements. I cannot say, for sure, whether I've met with Badri. That was

the subject of my agreement with him, these complicated provisions. I think it's at the 4th -- sorry, I haven't got the document in front of me, I think it's the 4th and the 5th where he was -- he had to compensate the losses, if these are the ones you mean, the provisions you mean.

That was agreed with Badri but it was simply complicating the formula of the commission agreement.

Q. Why would you do that? Why was it necessary to do any of that given that you actually knew what the price was?

A. It wasn't for us, it was for him. He wanted it.

Q. Now, you tell us that you do not recall being told by Mr Abramovich or Mr Shvidler about the meeting at the Dorchester Hotel on 13 March 2000. Is that right?

A. I do not recall that meeting, only within the framework of this agreement. Now I know about it.

Q. I think it's common ground that you were not present at the Dorchester Hotel meeting yourself, that's right, isn't it?

A. Yes, that's correct. I was not present there.

Q. So you're not in a position to give any evidence really as to what happened at the Dorchester Hotel meeting, are you, Ms Panchenko?

A. No, I cannot give any evidence about the Dorchester meeting.

Q. At paragraph 63 of your witness statement E2/07/179, you say that it has been pointed out to you that some of the agreements under which the share transfers took place for the purposes of the merger with Mr Deripaska were governed by English law. And you tell us that you did not pay attention to applicable law, and that this was not the kind of provision that you would normally pay attention to. You say that this is the sort of matter you normally left to Mr Tenenbaum.

Can I just ask you to confirm this, Ms Panchenko. It's right, isn't it, that in the autumn of 1999, both you and Mr Tenenbaum travelled to Cyprus to discuss matters regarding the creation of an offshore structure and indeed trusts to hold Mr Abramovich's ownership interests in Sibneft?

A. Yes, this is correct. In autumn of 1999 we went to Cyprus with Mr Tenenbaum.

Q. You say:

"... we went to Cyprus with Mr Tenenbaum."

Who went to Cyprus with Mr Tenenbaum?

A. It was myself and Mr Tenenbaum.

Q. Right. We can see from documents that have been disclosed that shortly after that trip, in the autumn of 1999, the Sibneft shareholding was restructured so it was held by six offshore Cypriot companies, do you

recall that, Ms Panchenko?

A. Yes, I remember that. I remember that there were  
Cyprriot companies.

Q. We've also seen from the documents that the  
restructuring was carried out by way of a number of  
contracts, I think there were 12, with six offshore  
Cyprriot companies, each of which was expressly governed  
by English law. Is that something that you recall being  
involved with, Ms Panchenko?

A. I was involved with this because a decision was made in  
the capacity -- because a decision was made to transfer  
shares into Cyprriot companies. Whether I paid any  
attention to English law? To be honest, I did not.

Q. Is that something that Mr Tenenbaum would have been more  
closely involved with than yourself?

A. Yes, Mr Tenenbaum dealt with lawyers more. Whether he  
dealt with this specifically, you could ask him perhaps.

Q. Now, it's common ground that two matters that were  
agreed at the Dorchester Hotel meeting were that  
Mr Abramovich would buy a plane for Mr Patarkatsishvili  
and that he would also arrange for the discharge of the  
\$16 million or so debt that Mr Berezovsky owed to  
Mr Deripaska.

Just on this, can I ask you, please, to go back to  
the bolshoi balance and, in particular, the "FOM" table.

If someone could get it onscreen for you.

A. Okay.

Q. On this table, if you have it, under the month of June we can see towards the bottom of the table that a payment of \$25 million appears to have been made. Do you see that?

A. Yes, I can see this.

Q. And if you look across to the left-hand column you can see that this is identified as "program F-ev". Would that be programme Fomichev, Ms Panchenko?

A. I could only make a guess, a supposition. That looks like -- the first letter looks like an F, and that's the first letter of the Fomichev name, and the two final letters of the same name. And I would not be able to assert this.

Q. But you see that it is -- that payment is coded as "PRB(A1)".

MRS JUSTICE GLOSTER: What line are you on, please?

MR RABINOWITZ: Your Ladyship sees -- does your Ladyship have June, going down, June at the top, if your Ladyship goes down to below --

MRS JUSTICE GLOSTER: I see, I've got it.

MR RABINOWITZ: I'm told it's cell 21. I'm looking at it in hard copy.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Do you see that it's coded as "PRB(Al)",  
Ms Panchenko?

A. Yes, I can see that.

Q. So it would appear that the payment had something to do  
with aluminium, is that right?

A. Maybe. All these payments that were not clear to me,  
all the abbreviations, I usually discussed with  
Mr Shvidler and he was abbreviating this. I would not  
be able to clarify what these letters would mean.  
I could only hazard a guess that it was for the plane  
but I cannot confirm this.

Q. Would you accept that it is at least reasonably likely  
that where it says "Al", that is because it's to do with  
aluminium?

A. One could make such a supposition.

Q. And I think you have accepted that it's certainly  
possible that this payment was related to the plane for  
Mr Patarkatsishvili, is that right?

A. That could have had a relation to payment for the plane  
but I cannot assert with 100 per cent certainty having  
seen this information. This information is not  
sufficient.

Q. I follow.

I can tell you that it would appear from documents  
that have been disclosed that this did indeed relate to

the acquisition by Mr Patarkatsishvili, through a company called Bili SA, of a plane from a company called TAG Aviation. I'm not going to take you through the documents relating to that, but you can, I think, see from the Fomichev table that we were looking at, if you go to the box at the bottom right-hand corner, cell R42, you see a reference there to a Bili plane?

A. Mm-hm.

Q. And that may assist on that.

Now, whilst we have this open, Ms Panchenko, do you see that on the Fomichev table there's another payment here that has a reference to "Al", aluminium, against it, and that's the entry for May 2000.

If you go down just before the green line representing the balance for PRB, so it's in cell number 17 below "May". Do you see that, \$16,271,000, or 16.2 million?

A. Yes, I can see that.

Q. You tell us in your evidence that this payment was to discharge a debt owed by a Mr Berezovsky to Mr Deripaska. That's right, isn't it?

A. Yes, this is correct.

Q. And if we follow -- if you follow that line to the extreme left-hand side, do you see that it says "Payments set off against Al", do you see that,

Ms Panchenko?

Let me see it, cell A17. Can we get someone to scroll across? We need to get to A rather than C, to the left.

A. Yes, to the left. It starts from C on my screen, if someone could possibly scroll it to the left, if you could, please.

MAGNUM OPERATOR: It starts from C on ours also.

MR RABINOWITZ: That's because we need to scroll it across.

A. Okay.

Q. "Payments set off against A1".

A. Yes, I can see the Russian letters A1 and, as far as I recall, I looked at the table and it's quite likely the first sheet where mutual settlements with Mr Deripaska are discussed one can see the same amount. But he will not pay us that amount under the deal towards the mutual settlements.

Q. You're suggesting that the set-off here was a set-off in respect of amounts that Mr Deripaska would pay you?

A. Yes, that is correct.

Q. Can I suggest to you, Ms Panchenko, that this may be a payment that you're setting off against amounts that you would otherwise be paying to Mr Berezovsky?

A. Sorry, I did not understand the question, I beg your pardon.

Q. Isn't the Fomichev table intended to represent payments to and from, or at least to, Mr Berezovsky and Mr Patarkatsishvili?

A. Yes, this is the mutual settlement with them, settlements with them.

Q. And where you have the 16.271 item, which you say is going to be set off against A1, isn't that in fact a reference to the fact that you are going to set off against what you would otherwise pay Mr Berezovsky the sum of \$16 million that you had paid to Mr Deripaska?

A. Mr Deripaska owed us money under a deal. Mr Deripaska paid less under the deal and this is the amount that was the shortfall because these expenses were pertaining to Mr Berezovsky, therefore they got into this table.

So, as one can see from these proceedings, Mr Berezovsky owed Mr Deripaska and, therefore, Mr Deripaska got his -- the money he was owed, he got the money he was owed back, the money that was owed to him by Mr Berezovsky.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Very well. Do you want to start tomorrow at 10.15?

MR RABINOWITZ: I'm very happy to start at 10.15.

MRS JUSTICE GLOSTER: Is that all right for you, Mr Sumption?

MR SUMPTION: Entirely.

MRS JUSTICE GLOSTER: Ms Panchenko, do you understand you mustn't talk about the case or your evidence with anybody, do you understand that?

A. Yes, I do.

MRS JUSTICE GLOSTER: Very well. 10.15.

(4.20 pm)

(The hearing adjourned until  
Wednesday, 16 November 2011 at 10.15 am)

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Wednesday, 16 November 2011

(10.15 am)

MR SUMPTION: My Lady, can I give your Ladyship an update on Mr Bulygin's position that your Ladyship asked for.

Mr Bulygin is having significant surgery next week and is not in a position to travel in advance of the surgery. After the operation, he will need a period of recuperation. His present view is that he should be able to give evidence in person on 15 December. That, of course, is not written in stone and if it turns out to involve wasting considerable time waiting for him before we get on to the next stage of the trial, we will obviously have to review the possibility of putting in his evidence as a hearsay statement in the light of his state of health. But that's the present position.

MRS JUSTICE GLOSTER: Right. So basically playing it by ear?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well.

MS IRENA PANCHENKO (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Good morning, Ms Panchenko.

A. Good morning.

Q. Can I ask you, please, to go back to the bolshoi balance again. If it can be opened for you, I want to look at

the "FOM" tab. Can I just ask you to help me with this, please, the first green row, row 19, gives the sub-total for payments described as "PRB", is that right?

A. Yes, yes, I can see that.

Q. And then the second green row, row 24, gives the sub-total for payments described as "PRBR", do you see that?

A. Yes, I can see that.

Q. If I can ask you then to look at the bottom right of the table, it's in cell R31, do you see the total appears to be made up of three sub-totals: "PRB", "PRBR" plus "EL"?

A. Are you speaking about the 490 million amount?

Q. 490 million, yes. Do you see the reference to "EL" there?

A. Yes, I can see that.

Q. Can you explain, please, what EL is?

A. Unfortunately, I cannot assist you in this. All the acronyms, the abbreviations, were provided to me by Mr Shvidler and I have no ideas about that.

Q. Are you able to explain why the "EL" sub-total has been apparently removed from this "FOM" tab?

A. What I can see is that "FOM" only repeats the two sub-totals, subsections from the "Total" table, on the first page of this file.

Q. But it does look as if at some stage there was included

in this something for EL, that's why one gets the total "PRB + PRBR + EL", correct?

A. I'm afraid I cannot assist you on this because I can see what you can see in this spreadsheet and that's all.

I work with finance, there are thousands of tables and spreadsheets that I handle, and I cannot affirm that it had been taken out, or something had been taken out or withdrawn by some employees.

Q. And can you answer this: would it be reasonable to assume that this was a modification made after you looked at this document in November 2010 or can you not say?

A. This is excluded, this cannot be. So far as I understand, so far as the procedure is concerned, once electronic copies have been found they are handed over to the lawyers and they are what they are and they are in the condition in which they are -- in which they are.

MRS JUSTICE GLOSTER: Is the metadata agreed in relation to this document?

THE INTERPRETER: I'm so sorry, my Lady, I could not hear you, unfortunately.

MRS JUSTICE GLOSTER: Is the metadata agreed in relation to this document?

MR RABINOWITZ: The metadata suggests, I think, that it was produced on 4 July 2000 -- created on 4 July 2000.

There is a curious entry which I think suggests it was last opened or modified in 2011 -- sorry, saved in 2011, but that may well be the lawyers trying to work out what it was. So we're not taking a point on that.

MRS JUSTICE GLOSTER: Fine, okay. Thank you.

MS DAVIES: My Lady, that has been explained in correspondence. The date in 2011 is when it was opened by Skadden.

MRS JUSTICE GLOSTER: Yes, okay. Metadata can be confusing and is not necessarily always telling the story as one might think it, that's all. As long as there's no dispute about what the document shows.

MR RABINOWITZ: No.

Now, Ms Panchenko, I want to just briefly deal with the Rusal sales with you.

MRS JUSTICE GLOSTER: Sorry, just before you leave the document, is Bili a shortening for Mr Patarkatsishvili?

It's a question for you.

MR RABINOWITZ: Do you know the answer to that?

MRS JUSTICE GLOSTER: If you look at the box in row R at line 42, it says "Bili (Plane)".

MR RABINOWITZ: My Lady --

A. I am afraid I do not know exactly what company that was but yesterday I think it was explained that it was Mr Badri's company and it had something to do with air

planes. There may well be some documents on that.

Mr Rabinowitz yesterday I think mentioned there were some documents to that effect but I cannot affirm this with certainty.

MR RABINOWITZ: My Lady, I can tell you that Bili is short for Badri --

MRS JUSTICE GLOSTER: Patarkatsishvili?

MR RABINOWITZ: Well, I think it's got his wife and children's names in it. But Bili SA is a company which was obviously used by Mr Patarkatsishvili for the purposes of acquiring the plane, and there are documents to that effect.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Again, just back to the Rusal sales, and you tell us in your witness statement, I think this is at paragraph 111 --

MRS JUSTICE GLOSTER: Just remind me which bundle, please?

MR RABINOWITZ: Sorry, it's E2, tab 7, paragraph 111. Your Ladyship will find at page 194 in the English E2/07/194. Ms Panchenko, you'll find it at 235 in the Russian E2/07/235.

You explain at paragraph 111 that you don't recall the details of the first Rusal sale agreement in September 2003, and your evidence in effect involves going through the documents and commenting on the

documents. Is that right?

A. Yes, that is correct.

Q. Since I have been through that with Mr Abramovich, and can go through it again with Mr Tenenbaum who I think you say was more directly involved with this, I'm not proposing to ask you detailed questions about it.

You do say at paragraph 119 though, at page 196 of the English E2/07/196, 219 of the Russian E2/07/219, that you are:

"... not aware that Mr Abramovich or anyone in his team consulted Mr Berezovsky or Mr Patarkatsishvili over these transactions."

That's common ground. And you say:

"As [you] have already indicated, as far as [you were] aware there was no agreement requiring him to do so."

Of course, we've already established that you were not in fact at the Dorchester Hotel meeting on 13 March 2000, were you, Ms Panchenko?

A. That is correct. I did not attend, I was not in attendance.

Q. And as far as you recall, you were not told by Mr Abramovich or Mr Shvidler about the Dorchester Hotel meeting, were you? That's what you tell us at paragraph 59 of your witness statement.

A. That is correct, yes.

Q. Very well. What I want then to do is to move on to the second Rusal sale which took place the following year. Again, as I understand it, although you were part of a working group involved with this, you say that the legal issues were primarily dealt with by Mr De Cort and by Mr Tenenbaum, is that right?

A. Yes, mainly. So far as legal matters are concerned, I did take part in the parties' discussions, but all the legal matters were being handled by Mr De Cort and Mr Tenenbaum.

Q. Well, I've been through the parties' discussions with Mr Abramovich and I'm not going to go through them again with you.

Can I just ask you about this. Can you please go to bundle H(A)76, page 57 in the English H(A)76/57 or 51 in the Russian H(A)76/51.

You should see there a draft letter which we can see from the following pages was drafted by lawyers in order for it to be sent by Mr Streshinsky, I think it is, "IS", do you see that?

A. Yes, I can see that.

Q. We know that this letter was sent via email by Mr Streshinsky to Ms Khudyk on 17 June 2004. That's Mr Streshinsky's evidence at paragraph 86. I'm not

asking you to turn to that up.

But just looking at this letter, Ms Panchenko, we can see that Mr Streshinsky wrote to Ms Khudyk:

"Dear Sirs,

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find below an alternative structure."

This suggests, does it not, that there had been a telephone conversation at around this time and that someone had said that because of representations previously made to banks, the structure of the transaction would have to change? Do you see that?

A. Yes, I can see that.

Q. I wonder if you can help us with this, Ms Panchenko, was it you with whom the telephone conversation had taken place?

A. I do not recall exactly that the telephone conversation had taken place but, having reviewed these documents, I do believe that most probably that was me.

Q. And can you tell us what it was you had said about representations previously made to banks then?

A. I believe that -- and again I'm reconstructing on the basis of documents -- I believe that 16 June I met most probably or maybe spoke over the phone with Mr Streshinsky and I explained that I had been

instructed by Mr Abramovich to make a payment to Badri in a specific amount, and this is a financial liability, it's a financial obligation. In the morning of the 17th, Ivan Streshinsky, so far as I can judge from the document, sent his understanding of the structure of the transaction. And after I read it, together with Mrs Khudyk -- I cannot tell you now, I think I read it or maybe I read it -- most probably I called, I called Mr Streshinsky on the phone and I told him that he had misunderstood all our conversations, we only had financial obligations.

After that conversation with me, as one of the arguments, because I was the financial director of Rusal, or Russkiy Alyuminiy Management later on, I said even if we had wanted to give them a helping hand, the outside world, all the banks -- including the banks, do know after all that we do own 25 per cent.

- Q. Well, you say that in the conversation you said to Mr Streshinsky that he had misunderstood the position, and the reason you're saying that is because Mr Streshinsky was proceeding on the basis that Mr Patarkatsishvili and indeed Mr Berezovsky had a beneficial interest in these shares. Is that right?
- A. I really do not know what Mr Streshinsky proceeded on. At that time he was Mr Anisimov's employee and I was

explaining our side's position.

Q. But so far as Mr Streshinsky is recorded as saying anything, it is not that you told him he had misunderstood the position but rather that you had told him that, as a result of representations you had previously made to banks, the structure of the transaction needed to change. That's what he records in the first part of this letter, Ms Panchenko.

A. I beg to differ. I disagree with your statement. The reference to the banks, most probably, was just one of the arguments.

Q. You beg to differ, but I would suggest it's clear from this that that's certainly how Mr Streshinsky understood you. Would you accept that at least?

A. Well, I read this phrase the way everyone reads this phrase and I can only see what this sentence says.

Q. Very well. Can we just look at what else Mr Streshinsky is saying in this letter, following the conversation with you, you think. Look at part 1 of this:

"BP ..."

Presumably that's Badri Patarkatsishvili, is it?

A. Well, these two letters are most likely the initials, Badri Patarkatsishvili.

Q. "... and B (a company with B as the sole shareholder)..."

That would be Mr Berezovsky, would it not?

- A. Well, the way I understand it, on a review of the documents, this company most probably was Mr Badri's company, the way I understand it.
- Q. If "BP" is Mr Patarkatsishvili, then "B" must be someone other than Mr Patarkatsishvili, B being the sole shareholder of a company, B.
- A. Well, the way I understand it, it's not the way it is, because Mr Anisimov's party, be it an individual or be it a company with Badri as the beneficiary, my understanding is that it means the same thing. Because I have never seen any documents that would say that this was Mr Berezovsky.
- Q. Well, Ms Panchenko, it looks as if BP and B are two different people because it says:

"BP (an individual) and B (a company with B as the sole shareholder) ..."

But can I ask you this: look at point 1, just below that then, what Mr Streshinsky is envisaging, following this conversation with you, is that there would be a document in which:

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000..."

And the 10 February agreement is the master agreement by which the aluminium assets were originally

acquired, the 15 March agreement is obviously the agreement that was made with Mr Deripaska.

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery and also in the establishment and capitalisation of R Holding [and that would be a reference to Rusal Holding] and at the time of the establishment of R Holding, M undertook to pay to BP and B the amounts equal to those received as income on 25% of shares in [Rusal Holdings], including dividends payable on such 25% of shares [and/or] amounts/assets received from any sale of ... 25% of shares ..."

The point which is being stressed here is that it was:

"... solely a right in personam rather than a trust or a right in rem -- a lawyer's comments."

Now, that appears to be what Mr Streshinsky has taken away from a conversation that you say he had with you. Is that right?

- A. Well, I can only conclude that, if this is what Mr Streshinsky wrote down, this is the way he understood it. But I do recall that, in the course of our

conversation, I made it very clear I understood that we only have financial liabilities, financial obligations vis-a-vis Badri that we have to make a payment, and this is related to this whole aluminium deal, and because we discussed with him that the whole amount could not be -- I mean 450 million was in excess of the amount of the compensation that had -- we discussed in principle that the balance would most probably be paid and described or called a dividend because there was no other way in which they could receive those funds otherwise.

- Q. You see, what it appears Mr Streshinsky has understood you to be saying in this conversation is that: whatever you do, do not create a document which suggests these people have an in personam, a right in the shares themselves, 25 per cent of the shares, because that would be inconsistent with representations made to banks, but there should be an acknowledgement that they should be treated effectively as if they were in the same financial position as if they had a right in those 25 per cent of the shares, both to dividends in relation to those shares and indeed to any proceeds of the sale of those shares.

I suggest to you that that can only have been because of what you said to Mr Streshinsky.

- A. It's really very long and I'm not sure what specifically

question I'm expected to answer.

I can only reaffirm again that Mr Streshinsky could have only understood from me, and that was the case, in actual fact, that we had \$585 million worth of financial obligations vis-a-vis Badri and that was with respect to the role that he had played in the acquisition of the aluminium assets.

- Q. Well, just on that 585 million worth of financial obligations, Ms Panchenko, we know because we talked about it yesterday that the commission agreements, assuming for the moment that these were genuine agreements, provided only that Mr Patarkatsishvili would get \$115 million, did they not?
- A. The commission contract executed in February 2000 did provide for about \$115 million worth of compensation.
- Q. And that certainly doesn't get you to what you say were 585 million worth of financial obligations. It's about \$470 million out, is it not?
- A. Yes, it's a different amount, but that was Mr Abramovich's personal matter and it was a question of his relationships, it was a question of his money, and I do not have any comments that I could make on my own on this.
- Q. Well, I've already suggested to Mr Abramovich that the suggestion that, following commission agreements of

\$115 million, he agreed to pay commission of \$585 million was simply untrue, but I have to suggest the same point to you, Ms Panchenko. Do you want to comment on that?

A. No, I have no comment. There is nothing for me to comment on.

MR RABINOWITZ: Thank you, Ms Panchenko. I've got no further questions.

MRS JUSTICE GLOSTER: Yes.

Cross-examination by MR MALEK

MR MALEK: My Lady, I've got one question arising out of what we've just heard.

Ms Panchenko, could you please turn to F1, tab 2 at page 87. Sorry, it's F1, tab 2, at page 77 F1/02/77, and I'd like you to look at paragraph 87.

Now, unfortunately we do not have the Russian text but you will see above in English an extract from the document that you've just been looking at with Mr Rabinowitz.

Do you have the passage in front of you? It's at H(A), volume 76, at page 57 H(A)/76/57.

MRS JUSTICE GLOSTER: Whose witness statement are we looking at?

MR MALEK: Mr Streshinsky's, my Lady.

I wonder, since we do not have the Russian text,

whether somebody could give Ms Panchenko a translation of paragraph 87 which starts "My reference to BP". If we're looking at the numbering, it's F1/02, page 77, and you should have paragraph 87.

What I've requested is a translation to Ms Panchenko of paragraph 87.

THE INTERPRETER: My Lady, what Ms Panchenko is saying to the other interpreter is that she would like to see the Russian text of the previous document to which paragraph 87 is making reference.

A. I was shown a document in Russian, it used to be in Russian, and then it was taken away. So I'd like to have sight of this again -- thank you very much, I now have it.

MRS JUSTICE GLOSTER: Good.

(Pause)

A. Right.

MR MALEK: My question, Ms Panchenko, is this,

Mr Streshinsky in the penultimate sentence says:

"The reference to the 'sole shareholder B', of Company B in my email is a typographical error."

Do you see that?

A. Yes, I can see that.

Q. And it was suggested to you by Mr Rabinowitz that the reference to "sole shareholder B" was Mr Berezovsky, do

you recall that?

A. Yes, I recall what Mr Rabinowitz said.

Q. Was there any discussion in your conversation to Mr Berezovsky in this document that you were looking at a moment ago?

THE INTERPRETER: I'm so sorry, Mr Malek, could you kindly repeat your question. This is the interpreter speaking. My apologies.

MR MALEK: My question is, in the telephone conversation that we've just been discussing, or rather you've been discussing with Mr Rabinowitz, was there any reference to Mr Berezovsky, as far as you can recall?

A. No, he was never referenced, he was never mentioned.

Q. And do you have any observation on whether or not the reference to the sole shareholder of B was in fact a typographical error?

A. I have no ideas about that, no observations. My understanding was that Mr Anisimov and Mr Streshinsky, who was his employee, represented Badri, and at that time, or now for that matter, I did not have any other understanding of that.

MR MALEK: I've no further questions.

MRS JUSTICE GLOSTER: Yes, thank you.

MR ADKIN: No questions, my Lady.

MRS JUSTICE GLOSTER: Ms Davies?

## Re-examination by MS DAVIES

MS DAVIES: My Lady, just one matter for which it would be useful for you to have the transcript from yesterday afternoon, Day 26, which I understand is available in Russian.

Put the other files away. If you could turn to page 120 in the transcript from yesterday afternoon, Day 26. Just to explain the context, Ms Panchenko, this was in the course of your cross-examination by Mr Rabinowitz when he was asking you about the contracts by which the promissory notes were sold to Pennand and Tiberius.

MR RABINOWITZ: I hesitate to rise but we don't have a copy of the Russian language transcript. I wonder if we could be given a copy.

MRS JUSTICE GLOSTER: Can the page be given, please?

MS DAVIES: I'm just trying to ascertain whether we have a Russian copy. It's page 120 in the English transcript.

MR RABINOWITZ: I follow, but if it's going to be a point which depends on the Russian --

MS DAVIES: No, this doesn't.

MRS JUSTICE GLOSTER: Well, we can always come back to it if necessary.

MS DAVIES: You were being asked about the contracts by which the promissory notes were sold to Pennand and

Tiberius and what had been said in Mr Mitchard's third witness statement on that issue following conversations with you; you recall that exchange, those exchanges you had?

A. (Untranslated).

Q. If you look at the bottom of page 120, you see a question from Mr Rabinowitz starting.

"Those are the same contracts ..."

And he's there referring to contracts referred to by Mr Marino in his witness statement. Do you see that question:

"Those are the same contracts, I think, that you've subsequently referred to in your witness statement ..."

Can you find that on page 120, Ms Panchenko?

A. Yes, I can see that.

Q. If you read on in your answer, you say:

"Now I do understand that most probably those were the same, the very same contracts. However, at that time, when Mr Mitchard showed me the contracts with the names of Tiberius and Pennand, and the sale and purchase of promissory notes, they did not say to me that somehow it was related to Mr Berezovsky or with the mutual settlements with Mr Abramovich.

"I could perhaps clarify why I now remember this, why -- or it's rather a reconstruction on my part."

And then Mr Rabinowitz went off on another issue.

Could you please explain why you now remember this or why it's a reconstruction on your part?

- A. When the so-called bolshoi balance document was found, in the Fomichev table I found the names of those companies and -- because, based on the reconstruction of -- from that table, it was clear that those were payments to Mr Berezovsky.

Then in line number 8 of the "FOM" table, I saw the names of those companies, so I collated, I compared those two facts and only then did I establish that these two were somehow related.

- Q. Roughly how many companies in total did you use for the purposes of making payments using promissory notes over the years?

- A. On the whole, totally, with -- in terms of all the mutual settlements, or with Mr Berezovsky only?

- Q. In total, whole.

- A. Very many really and, unfortunately -- I don't know really. Well, very many, very many.

MS DAVIES: Thank you very much, Ms Panchenko.

My Lady, there is one other matter arising out of the cross-examination which isn't a matter for re-examination. If I could just raise it very quickly in relation to the "FOM" schedule.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: My learned friend put a series of questions to Ms Panchenko based on the premise that some information had been removed from the "FOM" schedule, and indeed at one point suggested it had been removed since the document had been harvested in November. It's not entirely clear to us on what basis those questions were put.

Two points I would just like to make in relation to that. Firstly, the totals in line 31, if my Lady looks at them, are in each case a total of the figures that one sees at lines 19 and 24. And secondly, the metadata that came to light last week for the clean form of this document, and the form of the document that was disclosed with the clean metadata, is an identical -- produces a "FOM" schedule that is in identical terms to the "FOM" schedule that we have on the screen.

So we would -- if that line is to be pursued, we would like it clarified in terms of on what basis it is suggested material has been removed.

MR RABINOWITZ: I thought I was very clear about this.

MRS JUSTICE GLOSTER: I thought you had made it clear, that you're not suggesting there's been any tinkering about.

MR RABINOWITZ: It was a question -- I have to say, we don't have the date for the last modification of the

"FOM" schedule so that is outstanding. But the point -- in fact I put it on the basis of a question because your Ladyship sees -- I think it's line 31, I don't have the cells here -- there is a reference to "+ EL", your Ladyship sees, it's "PRB + PRBR + EL". One doesn't find "EL" in the table, and that was the basis of the question, to ask whether this had been removed, because it's neither apparent to us what EL is or whether it did originally exist here.

Now, it wasn't an assumption made, it was a question arising from the fact that there is an "EL" here but you don't find it in the "FOM" table, and I'm sorry if I wasn't clear in my question.

MRS JUSTICE GLOSTER: What, you don't find it in the --

MR RABINOWITZ: I think there is a reference to EL somewhere else but not in the "FOM" table, and as I understood what was being said, the figures here were figures dealing with the "FOM" table, the totals that one was getting on this page.

MRS JUSTICE GLOSTER: But if you look, for example, in R, "Total PRB + PRBR + EL", the totals that then follow after that are just adding the columns, vertical columns, in U and V, aren't they?

MR RABINOWITZ: You get -- that still leaves unexplained what the reference to EL is though, or whether there was

an amount for EL and what has become of it and whether it was part of this "FOM" table.

MRS JUSTICE GLOSTER: Well, EL has got to be some sort of product, hasn't it, of columns U and V?

MR RABINOWITZ: Well, I can only say I don't know, my Lady.

MRS JUSTICE GLOSTER: Where is EL elsewhere in these various spreadsheets?

MR RABINOWITZ: If your Ladyship goes to the "payments" tab.

MRS JUSTICE GLOSTER: "Payments", not "summary payments".

MR RABINOWITZ: "Payments". And if your Ladyship goes to row 43, there's a total of 26,892,802 for EL. Then it pops up again on the -- I don't know whether your Ladyship has that?

MRS JUSTICE GLOSTER: Yes, I've got "EL" in line 43.

MR RABINOWITZ: Then one sees it again on the "FOM" table --

MRS JUSTICE GLOSTER: In cell C.

MR RABINOWITZ: Indeed. And your Ladyship sees a total going across with two figures for it.

MRS JUSTICE GLOSTER: Yes, so your question to Ms Panchenko is what is EL?

MR RABINOWITZ: What is EL? Was it part of the "FOM" table? Why don't we see a figure for EL on the "FOM" table? It really was a question because we do not know.

MRS JUSTICE GLOSTER: That's got nothing to do with later annotations to the document, has it?

MR RABINOWITZ: Well, I don't know because it may have been that there was something for EL on the "FOM" table and the cell was removed.

MRS JUSTICE GLOSTER: Yes, but if you look at the "FOM" table, the description for "+ EL total" is looking -- it's just adding up 273 and 27 million, isn't it?

I mean, I haven't done the arithmetic, but that's what I'm assuming, and likewise it's adding up 354 plus 382.

MR RABINOWITZ: I think what we will do, my Lady, rather than take up time now, is do the maths and see if it is just the total of those figures, or whether --

MRS JUSTICE GLOSTER: Yes, or maybe it's -- I don't know.

But Ms Panchenko, having now looked at the reference to EL in the payment schedule, can you shed any light on what EL is referring to?

A. I'm afraid I have no recollection with respect to this. I just explained that the acronyms were provided by Mr Shvidler and, I'm so sorry, I cannot be of any assistance on this.

MR RABINOWITZ: Can I put a specific question so that your Ladyship knows what we think it might be?

MRS JUSTICE GLOSTER: Yes.

Further cross-examination by MR RABINOWITZ

MR RABINOWITZ: Might this has been a reference to election

expenses?

A. Is this a question for me?

MRS JUSTICE GLOSTER: Yes, it is.

A. I don't know.

MRS JUSTICE GLOSTER: Right, you can't help us.

Mr Rabinowitz, if it is important, Mr Shvidler is around and no doubt he can be asked.

MR RABINOWITZ: Indeed, or perhaps someone could just write us and tell us what they say it is and we can see on the basis of that whether we think anyone needs to be recalled to deal with it. I'd hoped Ms Panchenko would deal with it.

MRS JUSTICE GLOSTER: Yes, Ms Davies, can we deal with it on that basis?

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: Very well. I have no further questions.

Thank you very much indeed, Ms Panchenko, for coming along to give your evidence.

A. Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Ms Davies will call the next witness.

Sorry, I've got my witnesses in the wrong order.

I call Ms Goncharova.

MS MARINA GONCHAROVA (affirmed)

MRS JUSTICE GLOSTER: Please sit down, Ms Goncharova.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Ms Goncharova, you've made two witness statements for use in this trial and I'd like you to be given, please, bundles E2 and E4. E2, flag 5 should be your first statement, is that right E2/05/87?

A. Yes, that is correct.

Q. And have you got in front of you, or can you be given, a list of corrections that you wish to make to that statement?

Does your Ladyship have this?

MRS JUSTICE GLOSTER: No. (Handed)

Thanks very much.

MR SUMPTION: Now, are these corrections and additions that you wish to make to your first statement?

A. Yes, that is correct.

Q. Subject to those corrections and additions, is your first statement true?

A. Yes, they are.

Q. Could I please ask you, in bundle E4, to turn to flag 2 E4/02/16. Is this your second statement, Ms Goncharova? You find your signature I think --

A. Yes, that is correct.

Q. Is that your signature on page 28 of the Russian

version?

A. Yes, this is my signature.

Q. And is that statement also true?

A. Yes, certainly.

MR SUMPTION: Thank you very much. If you would wait, some questions will be asked of you.

Cross-examination by MR GILLIS

MR GILLIS: Good morning, Ms Goncharova.

A. Good morning.

Q. I understand you have worked with Mr Abramovich since 1988, is that correct?

A. Yes, that is correct.

Q. And from May 1991 until May 1993 you worked as an accountant for Mr Abramovich's company AVK, is that correct?

A. Yes, that is correct.

Q. And then from 1997 until 2006 you worked for Sibneft?

A. Yes, not for Sibneft though but for the Moscow branch. Sibneft was in Omsk and the rep office, the Moscow branch of the company, was in Moscow.

Q. I think you describe that at paragraph 6, that you were in charge of the Moscow office?

A. Yes, that is correct.

Q. If I could ask you to look at paragraph 12 of your witness statement, which we have in the Russian at E2,

tab 5 at page 100 E2/05/100 and in the English at page 90 E2/05/90, do you have paragraph 12?

A. Yes, I can see that.

Q. You say there that:

"Mr Abramovich passed ... invoices to [you], and not directly to the accountants in the Russian trading companies [and that that was] for a number of reasons."

Can you see that?

A. Yes, I can see that.

Q. And the first reason you give is that Mr Abramovich and you had been working together for a long time and you were his trusted person who reported directly to him, is that correct?

A. Yes. That is so.

Q. And would it be fair to assume that, 15 years later, the trust which Mr Abramovich has in you has not diminished?

A. Well, I believe that that question should be asked to Mr Abramovich, not of me. I don't think it has diminished.

Q. And would you say that Mr Abramovich has treated you well over the years?

A. I think so, yes.

Q. And I think you've indicated you're now the deputy general director of Millhouse LLC, is that correct?

A. Yes, that is correct.

Q. And would you say that you are loyal to Mr Abramovich?

A. I think it would be wrong to say that I'm disloyal.

I do work together with Mr Abramovich, I've worked with him since 1988. We have enjoyed a proper relationship and I think that, yes, I'm loyal.

Q. Thank you. Could I ask you now to look at paragraph 8 of your first witness statement which we have in the English at page 89 and in the Russian at 99. You explain there in the first sentence that you have been asked to comment on payments that you say you arranged for Mr Abramovich's companies to make to third parties between 1995 and 2000. Do you see that?

A. Yes, that is correct.

Q. And then if I can ask you to look at paragraph 19 --

MRS JUSTICE GLOSTER: That's in the new, isn't it?

MR GILLIS: This is one of the paragraphs that's been corrected, yes, my Lady.

Is this correct, you originally said that you dealt with these payments from late -- sorry, you have the correction, do you? In the original version you said that you had dealt with these payments from late 1995 until early 2000, but by the corrections and the additions you've now changed that so that it reads from early 1995 until late 2000. Is that correct?

A. No, this is not correct. The first time we met with

Paul in 2009, my evidence said the same thing, that I had been handling those payments from early 1995 until late 2000 and here, in the course of translation, maybe some mistake was made. And when I signed my statement, I did not pay attention to that and it was only later that I actually saw this.

- Q. But I'll come to the specific dates in a moment, but just to clarify, the change that you have made to paragraph 19 is to change from late 1995 to early 1995. Do you agree you've made that change?
- A. Yes, the correct date is early 1995 and the major part -- maybe not until the end of the year 2000, but the major part of 2000, maybe until October, I would say. After that, Mr (sic) Panchenko started handling those payments.
- Q. You've changed the witness statement, that's correct, isn't it? You say it's justified but just at this stage you've changed the witness statement?
- A. I did not make changes to my witness statement. Let me reiterate that. In 2009, when I was meeting with Paul and I was giving him my first evidence, that what clearly said that I had been handling those payments since early 1995.
- Q. All right. Can we just look at the payments you say you've made and we'll come back to the question of dates

in a little while.

At paragraph 20 of your witness statement you indicated initially that you -- and we have this at page 93 E2/05/93 in the English and page 103 E2/05/103 in the Russian. At paragraph 20 you said that you kept lists of the payments approved and made. Is that correct?

A. Yes, that is correct.

Q. And in your latest corrections and additions, you've now added that these were kept in a bound notebook. Is that correct?

A. That is correct. That was the way it was originally. So when Skadden lawyers asked me how this was being done, I explained to them in a very detailed manner that Roman Arkadievich gave me the documents with all the details and they were stored in the accounting department of the trading companies, and I made entries in the ledgers that on such and such date I made such and such payments.

Q. When do you say you first remembered you kept these lists in bound notebooks?

THE INTERPRETER: I'm so sorry, Mr Gillis, could you kindly repeat that?

MR GILLIS: When you do you say you first remembered that you kept these lists in bound notebooks?

- A. I did not recall that. I had always had them in that form and I could not but remember that.
- Q. Is there any good reason why you did not refer to this when you first made your statement in these proceedings for the trial on 30 May 2011?
- A. There were no reasons for that. As I mentioned, I don't know why the lawyers did not record what I had been telling them, but from the very start this is something that I had been mentioning to them, that this was the way it was. All the documents were kept, the records were kept in the trading companies that were making those payments, and I had a ledger, a book, where I recorded all those items.
- Q. When you saw that your statement made no reference to these notebooks, why did you not correct it if you say that you had told the lawyers that that is how it was done?
- A. Well, I did not believe it was a material -- it was of material importance.
- Q. You didn't regard it as material how records were kept in relation to the payments that were being made to Mr Berezovsky?
- A. Well, let me reiterate if I may, the records were kept by the account departments of the trading companies, and for my purposes and for those of Mr Abramovich I was --

I had a book, a ledger, where I recorded the dates and the amounts in terms of the payments that we had made to people or we had handed over in the form of hard cash.

Q. All right. Now, you say -- and we're still looking at paragraph 20 E2/05/93.

MRS JUSTICE GLOSTER: In the corrected version?

MR GILLIS: In the corrected version. You say you kept the lists as manuscripts, and then you go on to say:

"... I did not use a computer at work during this period."

And again you've now added "for these purposes". Do you see that?

A. Yes.

Q. So can you help me with this: were you instructed not to use a computer to record these payments? Or was that your own decision?

A. It was my own decision because it was not my main job and main principal work. Of course I did use computers throughout the time. Because Roman Arkadievich did not know how long those payments were going to continue and how important it was, I decided that at a certain point in time, when Roman asks me about that, I will simply show him that book and I will show him those payments. I did not enter that into any computers, nor did I create any spreadsheets or tables.

- Q. But we can see from what you say in paragraph 19 that these payments became very substantial indeed, is that correct?
- A. For me, they had even originally been quite substantial but, as time went by, I sort of got used to that.
- Q. And yet, despite the fact that they were substantial payments, are you really saying that you by yourself and without any instruction from anybody else decided that you would not make computer records of these payments?
- A. Absolutely, that is correct.
- Q. Can you explain to me again what you say was the justification for not making computer records of these payments which were running to many, many millions of dollars?
- A. My Lady, no one asked me to keep those records. Roman Arkadievich told me what the objective of the payment was and I had passed it on to the trading companies for payment. If I had been told originally that this is something that needed to be done then I would have certainly created a table and I would have been keeping records in a table.
- Q. But would it not have been standard form to keep computer records of the payments that you were instructing the accountants of the trading companies to make so that you could explain to Mr Abramovich exactly

what the payments were?

- A. Yes, of course, it was recorded because there were several, more than one trading companies, and, of course, it did go to the accounting department because those payments were --

MRS JUSTICE GLOSTER: Slow down, slow down.

- A. -- made officially, they went through banks, and all the payments obviously were kept in the accounting department and, if need be, in case Roman Arkadievich wanted that or someone asked him about that, at any point in time, that could be seen in the accounting department of the trading company that was actually handling and making the payment.

MR GILLIS: So are you saying that the accountants who were making the payments were keeping computer records?

- A. Yes, of course.

Q. Now, when you passed invoices or requests for payments to the accountants of the Russian companies, did you tell them how they should enter these payments into the companies' accounts?

- A. Of course not, and I could not tell them how to do that. I gave them the payments, including the objective, the purpose of the payment, and they made the payment in the form which was most appropriate to them and more comfortable for them.

Q. You said just a moment ago that Roman told you what were the objects of the payments that were being made. What did he say were the objects of the payments?

A. I did not say "object" because the -- there were different objectives for different payment instructions, and so what Roman Arkadievich gave me were requests for payment, and it said -- and the objective of the payment each time was different.

Q. But when you described the objective of a cash payment, what description were you being given?

MR SUMPTION: My Lady, I think that the word in Russian may have been "addressee", not "object".

THE INTERPRETER: Can I -- my Lady, can I ask for clarification because it may or may not be the case.

MRS JUSTICE GLOSTER: Right.

Can we have the page number, please, Mr Gillis, that you're referring to.

MR GILLIS: I think it's [draft] page 33 at lines 18 to 21.

A. What the objective of the payment is --

MRS JUSTICE GLOSTER: Just a second. Be quiet, please.

MR GILLIS: So the transcript reads at [draft] line 18:

"My Lady, no one asked me to keep those records. Roman [Abramovich] told me what the object of the payment was and I had passed it on to the trading companies for payment."

MRS JUSTICE GLOSTER: Right. Could we have a translation please, Mr Translator, if you've got the audio recording of what was said at page 18. If you haven't, I'll ask Mr Gillis to ask the question again.

THE INTERPRETER: My Lady, with your indulgence, the problem is that this term is a very specific term of art and it may have several different meanings and, with your permission, I would just like to ask a question of the witness to clarify exactly what she meant in Russian, because it's a rather -- it's a rather vague term, it may have several meanings.

MRS JUSTICE GLOSTER: Okay.

THE INTERPRETER: It may mean the person or it may mean an activity that the payment is being made in consideration of, if you see what I mean.

MRS JUSTICE GLOSTER: I think that would be sensible, Mr Gillis.

MR GILLIS: Certainly. I'm content with that.

MRS JUSTICE GLOSTER: If you could ask the question.

THE INTERPRETER: I can ask the question. (Pause)

My Lady, what I have asked the witness is: could you kindly clarify what the word "purpose" or "objective" of the payment means, does this mean a person or does this mean an activity or an action or a thing?

MRS JUSTICE GLOSTER: Thank you.

Yes, give your answer, please.

- A. Well, the purpose, the objective of the payment is that if we made a payment for ORT to a third party because there had been ...

THE INTERPRETER: I'm sorry, this is a very important matter and I'm asking the witness to be very, very slow and very, very precise.

- A. So as a rule, so far as ORT was concerned, we made payments to third parties, ie for instance to VID, it's a television company. We made payments for various TV services and that was called the objective of the payment or the purpose of the payment. Or another example, we made payments to Mosenergo, it's a utility company, for the electricity, for power supply. So that was the objective, the purpose, of making the payment.

MR GILLIS: Can I ask you this: when you say you were making a cash payment to, for instance, Club Logovaz, what do you say was the object of that payment?

- A. Well, you know, I myself did not deal with this. This was something that was handled by the accounting department, by the accountant of the specific trading company. What I only did was that I set them an objective; for instance, today, for Club Logovaz, for ORT or some other entities, we have to pay this or this or this. Or, for instance, I need such and such an

amount of money for such and such specific date.

So that was the bulk of the principal work that I did.

- Q. But did the accountants in the Russian companies never ask you what these payments were in relation to?
- A. No, the accountants for those companies never asked me questions. They knew that these were not my payments, that they come from above. They knew that I was a person of trust of Roman Arkadievich and that I was in charge of the general administration of all the companies, and so they never asked that kind of question. Such questions never arose.
- Q. If you were simply telling the accountants for the Russian companies that they were to make a cash payment to, for instance, the Logovaz Club, do you know how they would have then entered that in the companies' accounts?
- A. I'm afraid I cannot answer that question, I simply do not know. Maybe for some other needs they received those funds, that money in the bank for their needs.
- Q. Now, I think you indicate in your statement that, having passed the invoices, where there were invoices, to the accountants for payment, I'd like to ask what happened then. Did you then take the invoices back when they had been paid?
- A. Yes, I took a copy of the payment instruction and

I filed them in my folder, and also I made a record in the ledger that on such and such date payment was made for, say, Logovaz or ORT. Or we made some cash available at Badri's instruction and made it available to such and such entity or individual.

Q. So are you saying the original invoice would have been left with the accountants from the trading companies?

A. Yes, that is correct.

MR GILLIS: My Lady, I think I'll be about another 15 minutes if that would be a convenient moment?

MRS JUSTICE GLOSTER: Right. I'll take the break.

You're not to speak to anybody about your evidence over the break or about the case, do you understand?

A. Certainly, my Lady.

(11.30 am)

(A short break)

(11.47 am)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Ms Goncharova, in paragraph 20 of your corrected statement, you indicate that after a search conducted by law enforcement agencies in the Sibneft offices in February 1999 you started to get rid of paper records when there was no longer any business need to keep them. Is that correct?

A. Yes, this is correct. The copies that I stored on paper

media, indeed after the search part of the documents -- actually the search in our offices was made only with regard to the case of Boris Abramovich to do with his Atoll company, private enterprise. And part of the documents were found in my office, were of interest to them, and they took them away. And with regard to the other part, I asked Roman Arkadievich whether there is any need to keep these paper for longer and he said "No, I don't need them". So part of the documents were shredded by me and I kept the books for longer than that.

Q. But is this right, that you were in part destroying documents so as to possibly hinder enquiries or investigations into Mr Abramovich's companies? Is that right?

A. Certainly not, no, it just cannot be.

Q. Well, what you say in paragraph 20 of your statement E2/05/93 is it that you refer to the search conducted by the law enforcement agencies in the Sibneft office in February 1999 and some of the documents were taken. Then you say:

"After that I started to get rid of paper records where there was no longer any business [reason]."

Are you saying there was no causal connection between the search and the decision that you

subsequently took to start to destroy documents?

A. Yes, this is indeed so. I did ask Mr Abramovich whether he would ever need these documents or may I shred them, may I destroy them? He said "I do not need these documents." I have shown him the register, the ledger that I kept, and indeed we have decided that, in part, these documents are not required, and these documents are also stored at the accounting departments of the trading companies, I mean the original documents, so I thought that these copies could be deleted from my office.

Q. So when you say that you showed him the register and the ledgers and that Mr Abramovich indicated that they were not required, which register and ledgers are those? Are those the registers and ledgers recording the payments to Mr Berezovsky?

A. Yes, this is correct. I have shown not just the registers but I also brought a folder with copies of payment orders that I have been keeping for myself, showing the purpose, the objective of the payment, and these payment orders. After the search was conducted at Sibneft offices, I started destroying these payment orders because there was no need to keep copies of these documents.

Q. And were you the only person who was destroying

documents or were other people within the organisation destroying documents as well?

- A. I think we have done that together with my secretary that worked for me at the time.
- Q. But what about the documentation that was held by the accountants for the Russian trading companies, were they destroying documents as well?
- A. Certainly not. How could they do that? I was only destroying the copies which were given to me by them. They could not destroy the originals, that was the official accounting, official payment order, and they had to show it on the balance. They could not possibly destroy this.
- Q. Can I ask you this: what would be the purpose of destroying just a copy if the original was still being held?
- A. The point, the only point is to reduce paperwork and reduce amount of paper in my office. I knew very well that in the trading companies they would have the originals showing the purpose of payment and it wasn't the need for me to keep the copies because the same information was also doubled up in my ledger book.
- Q. Ms Goncharova, how would the accountants in the trading companies know the purposes of the payments, because I thought you indicated that you had not given them that

information?

MRS JUSTICE GLOSTER: I'm not sure that's right, Mr Gillis. She's given an explanation as to what she did give them, as to the purpose or objective of the payment.

MR GILLIS: Well, exactly so. I understood that she was indicating that she had indicated who the payee was to be but in a sense nothing further.

MRS JUSTICE GLOSTER: Well, if it's a utility bill, that indicates the purpose of the payment, doesn't it?

MR GILLIS: It does, but then we have the cash payments to Logovaz.

MRS JUSTICE GLOSTER: Right, okay. Well...

MR GILLIS: All right, I'll move on.

At paragraph 20 of your statement E2/05/93, you now give more detail, by way of addition, as to how the records were being kept and the process of destruction. Now, is it right that, as I think you've already indicated, you now explain that the records were kept in bound notebooks, and you say the process of destruction began and then continued through to September -- to 2002 and 2003?

Again, I'd like to ask you, is there any reason why any of this detail was not included in your statement as you originally signed it in May 2011?

A. The question was such a long-winded one I didn't quite

understand. If it's about when I started destroying them, I could clarify on that. But if the question is about why I didn't state it in my witness statement, I didn't think that such details would be required to do with proceedings in this case.

Q. Did you not appreciate that the reason why there was no documentation to prove the payments that had been made may be a significant issue?

A. I beg your pardon, could you please repeat your question?

Q. I was asking you: did you not appreciate, it may not be relevant -- I'll start again.

Did you not appreciate that it may be relevant to explain to the court why there was no documentation evidencing the payments that you say had been made?

A. Your Ladyship, I didn't know that we'll ever come to court with regard to these payments, and I also knew that the trading companies, all the originals of these documents still survived, and I simply cannot explain why I would ever need these folders. I'm not saying that I destroyed them right on the day of hearing or prior to the hearing, I'm just saying that I stopped being involved in this in year 2000. And from then on, I just didn't consider them to be ever necessary or that they would ever be needed in court.

Q. I understand you're saying that. What I'm asking about is why this information was not included in your witness statement when you signed it in May 2011?

A. I could not say. I think that question is more towards the lawyers. But just to say, when I met Paul in June 2009 I stated the very same thing to him, the way things were going. And if the lawyer that was putting together my statement deemed it necessary to put it down this way, perhaps this question should not be directed at me. I simply cannot clarify on this.

Q. Can I take you back to paragraph 20 where you say you kept the notebooks -- so you've explained that you started to get rid of paper where there was no longer any business need to keep them:

"I kept the notebooks of ongoing payments and a summary of annual totals but the older books and boxes of supporting documents were destroyed."

Then:

"Some time around 2002 to 2003, the last of the notebooks was destroyed."

Do you see that in your statement?

A. Mm-hm.

Q. You refer there to a summary of the annual totals, can you see that?

A. Yes, I can see that.

- Q. Can I ask, was that a separate document or was this part of the notebook?
- A. That was part of my notebook. It's simply every time by the year, when I was adding up the total and showing how much we've paid per year to the companies of Boris Abramovich and Badri Shalvovich, to ORT. And you could see that as of '95, 30 million, as of '96, such and such amount has been paid. As a result, in 2002 or 2003 these documents were in my office, no one used them anymore and asked for them any longer. I just thought that I didn't need that, I didn't need them, and was just trying to record the amounts, record the amounts for myself. I've written them down on a piece of paper so as -- if Roman Arkadievich would ever ask me about these amounts. So I did it just in case. And this piece of paper stayed in my office for quite a while. I'm not sure what happened to it but I vividly recall the amounts.
- Q. So, I'm trying to understand, did you destroy that summary at the same time as you destroyed the notebooks?
- A. Not at all. That happened later. When we destroyed the paper I simply wrote down year '95, such and such amount, year '96, such and such amount, year 1997 et cetera, such and such amount. And that somehow stuck in my memory because Roman Arkadievich could have asked

me, put me on the spot any time, "Do you recall, what was it?" And so I've written down these amounts on a piece of paper with regard to payment.

- Q. Ms Goncharova, is that not the very reason why it's surprising that you destroyed this summary? Because is it not the case that at any time Mr Abramovich could have asked you, "What payments have we made"?
- A. I have destroyed them definitely not with this objective. It is very simply the thing that there was no business need for them, and how to store these documents when no one needs them, no one looked in them ever; after I've sent a copy of payment order to Badri Shalvovich, not another person ever paid attention to them.
- Q. When do you say you destroyed this last summary of the total payments?
- A. After -- I don't remember whether it was 2002 or 2003, after these books were destroyed I made a note on a piece of paper in my office, it was just one single piece of paper, totals per year, and that piece of paper was always stored in my desk for quite a while.
- Q. Did you ask Mr Abramovich whether you could destroy that final record before you did so?
- A. No, I did not. I didn't ask him.
- Q. Were you aware that payments were still being made to

Mr Berezovsky and Mr Patarkatsishvili at the time you destroyed that record?

A. Yes, I did know that in year 2001 the payment was still being made and, as of 2001, that information was still being kept in my office.

Q. And were you aware that subsequently Ms Panchenko was handling further payments?

A. Yes, I did. I was aware of it.

Q. But despite that, you say you destroyed the final summary of the payments that you had made?

A. Yes, this is correct. I thought there was no need, there was no business need to keep them for any longer.

Q. The end result is that there is no documentation which records the payments that you made on behalf of Mr Abramovich, is that correct?

A. At this point of time, this is correct. When we were doing that, that was all kept at the trading companies. As trading companies were being wound up and the liquidation balance was passed on to the tax inspectorate, these documents again were liquidated together with the companies and they were not stored anywhere.

Q. Could I move then to what you say are the 1995 payments and ask you to take bundle J2/2, tab 11 J2/2.11/171.

This is the third witness statement of Mr Mitchard of

Skaddens, Mr Abramovich's solicitors. This is dated 19 June 2009. We have the English version starting at page 171 and the Russian version I think starting at page 172R J2/2.11/172R.

Now, I think you've already indicated that you recall speaking to Mr Mitchard in 2009, is that correct?

A. Yes, that's correct, I have met with him.

Q. And could I ask you to look at paragraph 17 in Mr Mitchard's statement which we have in the Russian at 187R J2/2.11/187R, and at page 182 in the English J2/2.11/182.

Do you have paragraph 17?

A. Yes, I can see that.

Q. If you can just read that to yourself.

A. Yes, I have read it.

Q. Is it right that in 2009 your only recollection was of payments in relation to -- I'm sorry, shall I start again?

THE INTERPRETER: Yes, please, sir.

MR GILLIS: Is it right that in 2009 your only recollection was of payments in relation to ORT?

A. Sorry, I remember the payments made to Logovaz Club and personal amounts that we've brought to Mr Berezovsky.

Q. Well, Ms Goncharova, you will agree with me that this paragraph 17 only refers to payment in relation to ORT.

That's correct, isn't it?

A. Yes, indeed, it says so, but it's not the way it was.

Apart from ORT payments there were also cash payments that we were bringing to Logovaz Club for Mr Berezovsky, there were also some requests from Badri Shalvovich, and his drivers were arriving, or else we were sending these sums of money to him, to Ostankino.

Q. Can I ask you to turn back to tab 10 in the bundle that you've got in front of you, J2/2. This is your statement that you signed in June 2009, and we have the English at page 168 J2/2.10/168, and the Russian at page 169R J2/2.10/169R. Now, it's a short statement and, again, could I ask you to read that. (Pause)

A. Yes, I have read it.

Q. Ms Goncharova, again, it only refers to payments in relation to ORT, doesn't it?

A. No, this is not correct.

Q. Well, what other payments does it refer to?

A. It says in the text that her responsibilities included payment of funds. So that would include cash and noncash payments.

Q. It says:

"... was responsible for payments to ORT from about the beginning of 1995. Her recollection is that, in the early days, Mr Abramovich would come to her with

invoices billed to ORT, typically for operational expenses."

It makes no references to other types of payments, does it?

A. No, this is not correct. I remember it was a completely different way. The first payment that Mr Abramovich tasked me with in '95, in February, that was for 5 million in cash, and for us, that was something surreal for us. First, I couldn't believe that this is indeed -- that we have to find 5 million in cash, and then in March, further on, or thereabouts, I think it was end of March, we started payments by bank transfer.

Q. Ms Goncharova, I'm just asking you about the statement that you made in June 2009. And the statement that you made in June 2009, I put to you, makes no reference to any payments other than in relation to ORT. Is that correct?

A. I see it and read it in a different way.

Q. Well, we can see what the words say.

Ms Goncharova, I put to you that it's not just coincidence that your only purported recollection of payment was in relation to ORT.

Can I ask you to go back to Mr Mitchard's statement which we have at tab 11 of that bundle, so for the record that's J2/2 at tab 11, and ask you to look at

paragraph 12(b), which we have at 180R in the Russian J2/2.11/180R, and page 177 in the English J2/2.11/177.

Could I ask you to read paragraph 12(b), which is setting out what it is said Mr Abramovich agreed with Mr Berezovsky.

- A. Yes, I have read it.
- Q. And I put to you that what's being said there is that it was Mr Abramovich's case at that time that the payments that he had agreed to make were in relation to ORT, and I suggest that's why your evidence in 2009 was limited to ORT. Do you agree?
- A. I disagree. If Paul would ask me specifically, if Paul would ask me specific questions I was replying to his questions, and I was telling him the whole truth, just as I am telling the truth now, and I told everything the way it was.
- Q. Ms Goncharova, what I put to you is that just as your evidence in 2009 was tailored to fit Mr Abramovich's then case, your evidence in 2011, and even the corrections you're making today, are tailored to try and fit with Mr Abramovich's case that he now seeks to run. Do you wish to comment?
- A. Yes, certainly.

Your Ladyship, that could not be the truth,

possibly. I do recall that that indeed is what happened, and I can tell more. What was asked of me, I was asked about specific comments -- payments. I have examples, for example, of my memories, how I brought the first amount of money to Logovaz. I remember exactly how I met Mr Patarkatsishvili, how Mr Patarkatsishvili called me, how we discussed specific payments with him, the way it would be made, that he called me, that Boris Abramovich had a secretary -- an assistant, Irina Pozhedaeva, that he had a assistant, Ivan, in Logovaz Club, and I was bringing cash to them. And what the counsel is trying to put to me now, this is not the way it was.

And I can bring more specific examples: there was the first time when I brought \$1 million in the Logovaz Club, I could not give it to Ivan because I didn't know him at all, I didn't know who that was. I was told that an assistant of Boris Abramovich called Ivan will meet me, indeed he meet me. And imagine me with that heavy bag, I'm walking into Logovaz Club, and that was indeed a very heavy bag to carry. And Ivan asked me, "What do you want?" and I said "I've got a bag that I need to pass on to Mr Berezovsky." He said "Okay, let me do it." I said, "No, no, I have to transfer this bag, I have to pass on this bag, namely

specifically to Boris Abramovich."

At that point I've never met him, I didn't know what he looked like, and when he walked into his office he was speaking on the phone, and it looked -- he looked very displeased that we just walked in but we had no other way out, so we didn't walk out with that bag and we stayed, remained in his office, and waited for him to finish his phone conversation. When he finished his phone conversation, he just threw that phone into his assistant, Ivan.

And at some point in time I remember Badri Shalvovich in the club, and I didn't know who he was at that time. At some point, when I was bringing the next million, Badri --

MRS JUSTICE GLOSTER: Sorry, just stopping there. When you say you brought the cash to Mr Berezovsky in the Logovaz Club, was it dollars, rubles, some other currency? American dollars?

A. Yes, in dollars, American dollars.

MRS JUSTICE GLOSTER: Had you gone to the bank to get the cash out?

A. No, it was brought to our offices, the people from Chasprombank were bringing the cash to our offices.

MRS JUSTICE GLOSTER: Did you walk through the streets of Moscow with a million dollars in a bag?

A. Certainly not. Do I look like a mad woman? And I don't think I was one at the time.

I had a car, we had office security, and from our office to Logovaz Club certainly we would bring it by car.

MR GILLIS: Ms Goncharova, you say that you didn't know who Mr Berezovsky was. Is that what you've just said, when you delivered the cash?

A. Yes, indeed, that was the case. I knew that there is such a politician, Mr Berezovsky, but I've never ever met him in my life before and I didn't see him.

Q. Mr Berezovsky by 1995 was very famous in Russia, wasn't he?

A. Yes, that's correct.

Q. Are you saying you really didn't know what he looked like?

A. I knew what he looked like, I knew who he was, but I never ever met him. I never ever saw him in person.

Q. Can we just step back. Can I just take you back to paragraph 8 of your statement, which we have at bundle E2, at tab 5. It's page 90 in the English E2/05/90 and page 99 in the Russian E2/05/99.

At paragraph 8 of your statement we can see that in contrast to the 2009 statement, where you only referred to payments to ORT, you are now saying that payments to

ORT were only one of the types of payment that you were making, and that you were making payments directly to Mr Berezovsky, Mr Patarkatsishvili and to Club Logovaz.

Now, again, can I ask you, why did you make no reference to this at all in your 2009 statement?

A. I think in the text of my statement, it does say that we were paying not just to ORT but we also made other payments.

Q. We've looked at the text of your statement and I suggest to you it gives no indication of that at all, it only refers to ORT. Is there any other reason why you say you made no reference to these other categories of payments when you were asked in 2009?

A. No, there is no reason. It seems to me that I was telling everything and that should have been reflected there somewhere.

Q. Now, we can see from your witness statement that even though you have no written records now, you say that you can recall how much was paid in each of the years from 1995 to 2000.

Given that your initial recollection in 2009 seems to have been payments in relation to ORT, can you indicate how much was paid for ORT bills in each of those years?

A. I certainly can. In '95, as I said in my previous

statement, it said 20-30 million, and then, when I started being prepared to this trial in more detail, I know for sure that in '95 the amount was not 20 to 30 million, it was exactly 30 to 31 million -- 31 million exactly. Because I'm just trying to picture that last piece of paper that I had and I remember the payment, '95, that was round about 31 million, '96, that was 86 -- 85/86 million, and in subsequent years, that was 50 million. Year 2000, there were lots of bank transfers to Obedinyonniy Bank, Consolidated Bank, and the amount that passed through my hands was round about 70/80 million.

Q. That wasn't my question. I was asking you what payments were in relation to ORT in relation to these years, can you recall that?

A. Yes, I can. We've paid in '95, as far as I understand, that was -- in March ORT only started, came into being as a company, and we bought lots of equipment. We bought some optical discs, we bought some software programmes or shows, we've paid some airtime as far as I recall. We were buying a camera for leading journalists, including Mr Dorenko, Mr Pozner, Mr Nevzorov, we always paid some money to him. We also paid for -- I don't think it was linked to Triumph -- we also paid for Triumph Logovaz but I'm not sure whether

it was linked to ORT or not.

Q. Again, Ms Goncharova, that was not an answer to my question.

I am asking you -- you have said that you can recall without documentation the annual payments that were made. I'm asking you, can you tell us from those annual payments how much related to ORT?

A. I cannot say specifically how much related to ORT since I had this general programme and I did not separate these payments out into a pile for ORT, and the one for the club, and the one for Badri Shalvovich. That was all in the general ledger, in the general list. So I cannot say what percentage pertained to ORT, I cannot say for sure.

Q. Ms Goncharova, I suggest that without documentation to remind you of payments being made in cases up to 15 years ago, inevitably your recollection of dates of payments or amounts of payments or the purpose of payments is going to be vague, and that's right, isn't it?

A. I agree to a part. In some extent they could be vague, but otherwise I disagree. I remember that very well.

Q. Can I ask you just about some answers you gave in relation to Mr Berezovsky and the cash that you say you delivered to him. At [draft] page 53 of the transcript,

line 22, you say:

"... I didn't know what he looked like ..."

I'm sorry, if someone could help with the transcript. At [draft] page 53 at line 22, which is referring to taking the cash to Mr Berezovsky's office, you say at line 22:

"At that point I'd never met him, I didn't know what he looked like ..."

Do you see that?

A. Hm-mm.

Q. Then if we can scroll down to [draft] page 55, at line 9 there you say:

"I knew what he looked like ..."

What is your evidence, Ms Goncharova?

A. Your Ladyship, I certainly knew that there was such a politician, Mr Berezovsky, but I've never seen him live, face to face. And the first time when I arrived with that huge sum of money, and for me it was something out of fantasy, I've never seen such amount of money before.

When I arrived to Logovaz Club and saw Boris Abramovich face to face I had such a, so to speak, not a very pleasant impression. I've never seen him face to face. Obviously I've seen him on TV, he was much discussed, there was much about him in the media.

Q. Well, can I ask you specifically then about the \$5 million that you say you delivered in cash, and this is looking at paragraph 9 of your witness statement which we have at page 99 in the Russian E2/05/99 and page 90 in the English E2/05/90.

Now, you will accept, I assume, that in your evidence in 2009 you made no mention of this cash payment, did you?

A. I'm not sure why it's not described, but all my statements were started with a talk about 5 million cash payment. Because, for me, I simply cannot -- that was more impressive for me because that was the first payment, and it was such an amount that I've never ever seen in my life. I couldn't imagine that I would ever see such an amount of money, especially in cash.

Q. Well, Ms Goncharova, I suggest to you that if this incident had ever taken place you would inevitably have told Mr Mitchard about it when you gave your evidence to him in 2009 and he would inevitably have recorded it. Would you disagree with that?

A. I would disagree with this because I was telling Paul, everyone, I always told that episode. That was the first that I remember from that payment programme that was linked, as I learnt later, with Mr Berezovsky. That was the first thing that was imprinted in my memory.

Q. Mr Goncharova, what I suggest to you is that you made no mention of it in 2009 because that was not the case that Mr Abramovich was seeking to run at that time, which was solely in relation to ORT payments. And I suggest to you now that the only reason you are suggesting this event took place is to support Mr Abramovich's changed case.

A. No, your Ladyship, this is not so. All conversations with the counsel, all conversations with our lawyers, started with talking about that amount. I said that we had such payments, that we bought lots of other things, that for Mr Berezovsky's family we have bought cars, we serviced, we brought cash for maintenance of the Logovaz Club. I recall it as vividly as if it were today.

In '96, Yekaterina was bought Volvo car, Galina -- BMW was bought for Galina. I even remember driver Mr Ivanov that would come to me on a monthly basis and I was paying his salary. I remember in 1996 we have paid for Spanish holiday of Mr Berezovsky and his family, and that was round about, as it seems to me now, I think it was about \$140 million. For me, such amounts were quite memorable. And in 1997, in December, we have paid for his cruise, I remember that well as well, because an amount there was also round about \$150,000.

I'm not sure, maybe it was a fantastical sum for me at the time so I really do recall them.

THE INTERPRETER: I do apologise, did the interpreter say million dollars in the previous amount? It might have been a thousand, I might have misspoke.

A. We also rented an apartment for Mr Berezovsky at Ryleev Street and I rented it in my name and we rented it for two years, and Mr Berezovsky used that apartment. And on a monthly basement (sic), Blakewater (sic) company was bringing that cash payment, I recall that as well.

Q. Ms Goncharova, I suggest to you that, absent written records, you cannot be clear about the dates that payments were being made, that's right, isn't it?

A. Specific dates? I do not recall the specific dates, but the fact of these payments being made in such and such a year and in such and such a month, I do recall that. I do not recall all the payments that have been made because there were so many and, in one day, there could be 20 payment orders if not more. But specific large payments, I do recall them very well.

MR GILLIS: Thank you, I have no further questions.

MRS JUSTICE GLOSTER: Thank you. Mr Malek?

MR MALEK: No questions, my Lady.

MR ADKIN: No questions.

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

## Re-examination by MR SUMPTION

MR SUMPTION: Ms Goncharova, I wonder if you could be given some assistance with scrolling back on the transcript.

Could we scroll back, please, to [draft] page 39 of this morning's transcript. I'll refer you to the details of your answers when I need to, but this is basically to enable my Lady to follow the question.

You said at this point in your evidence that you made some cash available on Badri's instructions. Do you remember referring to Badri giving you instructions to make payments? Do you remember giving some evidence about that?

A. Yes, I do. For all payments I communicated only with Badri Shalvovich. Boris Abramovich did not give me instructions. Roman Arkadievich was giving me the papers, and while Roman Arkadievich was not in Moscow Badri Shalvovich called me on a daily basis. And I was informed that this payment is of the primary importance, these payments can wait a bit, but we always communicated in this regard with Badri Shalvovich.

Q. And how did you communicate? Was it in person, by phone, by letter, by fax, how did you do it? With Badri this is.

A. Certainly it was by phone. I have seen Badri twice or thrice, once in the Logovaz Club, again when I was

bringing that payment in, and he helped me with carrying it. I didn't know that was Badri Shalvovich but one could infer by his voice and his accent that that must have been him.

Then he started calling me, and Mr Roman Arkadievich's office, receptionist, has connected me. I didn't know who he was. And I certainly said, "We've met before at the club," and I reminded him about that episode when I was carrying this massive sum of money and the bag was very heavy and he helped me with the bag. And he immediately recalled and we had a laugh on the phone, and then a fax machine was installed in my office and every morning, when I arrived to work, there were some instructions from him. I would go through his instructions and give him a call and then I would approve and agree these instructions with Mr Abramovich.

Q. Thank you. Could we turn to [draft] page 40 of the transcript, please, where at line 6, if the interpreter could assist, just starting before line 6, you're talking here about a search in your offices with regard to the case of Boris Abramovich, that's Mr Berezovsky I think:

"... to do with his [Atoll] company, private enterprise. And part of the documents were found in my office..."

Now, what the [draft] transcript says is "atrial company", what were you saying there, what company is this?

A. The company was called Private Security Enterprise Job Atoll S, they were providing security services to Boris Abramovich, and we also paid their salaries and they would come to me on a monthly basis and they would pay their salaries in cash. They were protecting Boris Abramovich Berezovsky and, as I understand, they protected (sic) private security services for all his summer houses, dachas, Zhukovka, Archangelskoye and Sosny complex. It was called the presidential administration complex, Sosny -- pine trees in English. I don't know who lived there, but Boris Abramovich lived in Archangelskoye and we paid for Sosny and for Zhukovka. I'm not sure who lived there. I think that some summer house was used by the daughter of Boris Abramovich.

Q. Do you know whose company Atoll Security was, who owned that company?

A. No, I do not. I know that Mr Sukalov(?) saw me on a monthly basis, and I would give him the amount that was approved with Badri, and that was going on for many years.

Q. Can you tell us, why was a search being made for

documents concerning Atoll Security?

A. I'm not sure. I think it was such a publicised case in Moscow, lots of compromising documents were confiscated, they found some listening devices in their office, and another thing was confiscated from them, there was a number of documents, maybe something was found that was linked with us, Sibneft. I'm not sure that was linked to but I know that in 1999, yes, we did have a search linked to Atoll company.

Q. Who was investigating the affairs of Atoll?

A. I think that was the General Prosecutor's Office.

Q. Now, I want to ask you about the piece of paper on which you wrote the annual totals of the amounts paid to Mr Berezovsky and Mr Patarkatsishvili. Do you remember giving some evidence about that?

A. Yes, I do.

Q. You described how the last of the notebooks was destroyed, in your witness statement, (inaudible) around 2002 to 2003, but for some time after that you kept a piece of paper with the totals. What I want to ask you is this: what happened to that piece of paper, can you help us on that?

A. I cannot say. I do know indeed that it was in the top drawer of my office desk, and when the whole preparation for the trial started I was trying to find it, I was

trying -- where I recorded this. I unfortunately cannot tell where it disappeared to. Maybe I've accidentally thrown it away together with some documents, maybe something else happened to be on this. I cannot help on this, I'm sorry.

Q. Now, could we scroll down to [draft] page 54, please, of the transcript. There's a long answer from you in which you describe the delivery of the bag with the money in it.

A. Okay.

Q. Now, you tell us -- do ask the interpreter for help if you need it. On [draft] page 54, at line 3, you describe how you're standing there with the bag of money, and when Mr Berezovsky finished his phone conversation he just threw the phone into his assistant, Ivan.

Now, can you tell us what then happened to the bag? What did you do with the bag of money?

A. I've introduced myself to Boris Abramovich, "I'm such and such, I'm from Mr Abramovich, I brought this money to you," and I left. I left the money in the club, I left it in the office.

Q. Now, if you look at the very end of that answer, at [draft] page 54, lines 6 and 7, what you say here is:

"I remember Badri Shalvovich in the club and

I didn't know who he was at that point in time. At some point, when I was bringing the next million, Badri --"

And then you stopped. Would you like to continue with what you were intending to say immediately after that? At some point when you were bringing the next million, what happened?

A. Your Ladyship, I don't know whether you can imagine what \$1 million is, but it was indeed very hard to lift it, very heavy. And when you enter Logovaz Club, there was such a very steep flight of stairs, you had to go to the very top and, indeed, carrying that bag, it was very hard, it was very hard to walk up with such a bag, and it seemed like Badri Shalvovich was saying goodbye to some of his visitors, he saw me, I introduced myself, and he said -- he asked something, I do not recall exactly what he asked me. I said that "I'm going to see assistant, Ivan. I'm so and so," and he did help me to bring that amount of money to Ivan's office.

Q. Now, the 5 million in --

MRS JUSTICE GLOSTER: Sorry, just a second. In your earlier answer, before I interrupted you, when you were being cross-examined, you said:

"At some point, when I was bringing the next million..."

Were you referring to another occasion or the same

occasion?

- A. 5 million was not passed to the club as a lump sum, they were brought several times. I think it was three times 1 million each, and then it was on average 500,000. So on one of these occasions, on one of these trips, these stories that I'm telling about did happen.

MRS JUSTICE GLOSTER: So just to recap, the first time you remember was when Badri helped you, when you brought the first million dollars in cash; that's your evidence, is it?

- A. No, Badri helped me on the second -- no, definitely not on the second, on the third or fourth time, when I arrived at the club on the third or fourth time.

MRS JUSTICE GLOSTER: Okay, there's a translation mix-up here.

On the first occasion you say you took the cash to Logovaz Club, did Badri help you on that occasion or was it on a subsequent occasion?

- A. That happened on the subsequent occasion, but now we're speaking about the amount of 5 million that I was tasked with, to bring on the first occasion. It was not brought to the club as a lump sum, it was broken down into instalments.

MRS JUSTICE GLOSTER: Well, I'm afraid I've confused the position, Mr Sumption --

MR SUMPTION: I think it's now clear.

Ms Goncharova, over what period of time did the various instalments of the 5 million in cash get taken to the Logovaz Club?

A. I think it was between February and March.

Q. And what is it that enables you to recall that it was in February and March? Which year are we talking about?

A. That was 1995, 1995. What enables me to recall is the following: perhaps I recalled it, I remembered it, due to the fact that in January 95 we were moving to our very own new offices, and before that we were renting offices, we were renting buildings. And in 1995, although we had to do it in 1994, end of year 1994, but because the builders did not sign off the property on time we could not move offices in the end of '94, so we were moving straight after the New Year.

Again, it wasn't the whole office taken up and moving in January because the first floor was ready, the first floor was ready in January '95, so part of the employees from one street moved to Bolshaya Kommunisticheskaya Street, and Roman Arkadievich had to come back from holiday in that year, and we really wanted, by the time he comes back, our new offices will be in full flow, would be fully in operation.

So my recollections were linked to that, that in

that year we moved to our very own new offices at Bolshaya Kommunisticheskaya Street, at number 38.

Q. Was that before or after these cash deliveries to the Logovaz Club began that you moved into your new offices?

A. We've moved to our new offices, the main bulk of the employees definitely moved in January. Some people were moved in February but that was not important. But the main part of us started working in the offices in January '95, and Roman Arkadievich came back from his holiday at the end of January and then started somewhere around about February of '95.

Q. What started around about February '95?

A. These first payments that Roman Arkadievich tasked me with bringing to Logovaz Club.

Q. Thank you.

One further point, Ms Goncharova, could we scroll down to [draft] page 61 of the transcript at line 8. Now, you'll need the assistance of the interpreter for this. There was an intervention from the interpreter shortly after this evidence about a possible confusion between thousands and millions. Do you see this at line 8, you refer to a sum of \$140 million in relation to a --

A. Certainly not. Of course it was thousands.

THE INTERPRETER: This is from the interpreter, the

interpreter apologises. I thought I made a slip.

A. One could have bought the whole of Spain for that amount of money.

MR SUMPTION: Well, possibly now.

Thank you very much, Ms Goncharova.

MRS JUSTICE GLOSTER: Thank you very much, Ms Goncharova for coming to give your evidence. You may be released.

(The witness withdrew)

MS DAVIES: My Lady, the next witness is Ms Khudyk.

MRS JUSTICE GLOSTER: Very well.

MS NATALIA KHUDYK (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MS DAVIES

MS DAVIES: Ms Khudyk, could you be given bundle E2, and also we're just handing round one very small correction we wish to make. Bundle E2, tab 6, at page 107 E2/06/107 you see the English version of your third witness statement, the Russian version starts at page 131 E2/06/131.

Do you now have -- there's a sheet indicating a small correction you wish to make to paragraph 29 of that statement. Is that right?

A. Yes, that's right.

Q. And if you could turn to page 155 in the bundle, is that your signature?

A. Yes, that is my signature.

Q. And subject to the correction to paragraph 29, is your statement true?

A. Yes, they are.

MS DAVIES: There will be some questions for you, Ms Khudyk.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Ms Khudyk. You've worked for Mr Abramovich since January 1997, that's right, isn't it?

A. It's not quite right. From February 1997.

Q. Okay. And you still work for Mr Abramovich as head of the planning, finance and accounts department of Millhouse LLC in Moscow, correct?

A. Yes, that's correct.

Q. Now, Mr Abramovich, in his evidence, told the court that he definitely trusts you and you are loyal to Mr Abramovich, is that fair?

A. Yes, certainly. I'm loyal to my employer to the extent that is not contradict my personal beliefs and doesn't force me to do something unlawful.

Q. More than that, you are dependent on him as your employer, is that right?

A. I would disagree here. My qualifications and my work experience are quite called for in the labour force

market so I do not consider myself being dependent.

Q. But you wouldn't want to lose your job with  
Mr Abramovich?

A. Perhaps not.

Q. Now, from the time you started working for Mr Abramovich  
in February 1997 until at least July 2001, you reported  
directly to Ms Panchenko and through her to Mr Shvidler.  
That's right, isn't it?

A. Yes, that's right.

Q. Can I ask you, please, to go to paragraph 69 of your  
third statement, that's the one in E2, tab 6, page 127  
in the English E2/06/127 and 153 in the Russian  
E2/06/153. Do look at paragraph 69 if you would.

A. I can see that.

Q. You say here that in 2006, Mr Fomichev asked you whether  
certain payments from Cherrylane Group Corp and Cremona  
Financial Corp were made on behalf of Mr Abramovich, and  
you say that you knew nothing about these agreements and  
you forwarded them to -- sorry, payments, and you  
forwarded them to Ms Panchenko to deal with. Is that  
right?

A. Yes, this is exactly the way it was.

Q. Then if you look at paragraph 70, you say that:

"Later I found out that these payments had been made  
as part of purchases at a discount and subsequent

settlement of Sibneft promissory notes at face value."

Can you tell us who you found out from, please?

- A. I found it from the case materials that these payments that were transferred -- pardon, that were in the list sent by Mr Fomichev, they pertained to payments by way of promissory notes of certain amounts to Mr Berezovsky and Mr Patarkatsishvili.
- Q. And can you tell us roughly when you found out what you say at paragraph 70?
- A. I found out, I found this out from the lawyers, and I think I found out in early 2011 or perhaps at the end of 2010. Now I cannot be certain.
- Q. Now, Ms Khudyk, you have assisted with the disclosure in relation to this litigation, haven't you?
- A. Certainly.
- Q. And is it right that you assisted Yulia Lebedina in identifying potentially relevant documents from among the documents of non-Russian companies?
- A. And including Yulia Lebedina, she was one of the lawyers who helped us in preparation of disclosure for the documents, but she was far from being the only one. There were also lawyers from Skadden Arps, and I would say for the main part they were Skadden Arps lawyers.
- Q. So Yulia Lebedina is not a lawyer from Skadden Arps, is that right? Is that what you're saying?

A. She is a lawyer at Millhouse.

Q. And I'm not sure that you answered my question: you assisted Yulia Lebedina in identifying potentially relevant documents from among the documents of nonRussian companies, is that right?

A. If Yulia Lebedina asked me specific questions, in particular whether such and such document is pertinent to the case materials, then certainly I would answer and give my comments to her. But to say that Julia only based her actions on my opinion, that would not be correct.

Q. I'm not asking you that, Ms Khudyk, I'm trying to understand the scope of where you gave your assistance to Yulia Lebedina.

Is it right that it was in relation to documents for nonRussian companies?

A. To be honest, I do not quite understand how pertinent is Yulia Lebedina. What does she have to do with this?

With regard to disclosure of documents to do with these proceedings, each of us had a task to recall, to remember, and to see which documents are still there, which documents have survived, and that task was put by me not to Yulia Lebedina, but also because Yulia Lebedina was helping to find documents and from time to time she was asking me some questions, then

certainly I did give her -- did provide answers to her.

Simply perhaps I do not quite understand your question.

Q. I think that's possible. Put Yulia Lebedina to one side, in the nicest possible way. I'm not interested in Yulia Lebedina, I've never met her. I'm interested in what you were doing and where you were providing your assistance, and that is in relation to documents of non-Russian companies and the disclosure of those documents. Is that correct or not?

A. Yes, my assistance was mainly connected to the documents of non-Russian companies.

Q. Can you tell us which those companies were, please?

A. The Roman Arkadievich Abramovich group included, at various points in time, various nonresident companies. In particular there were Runicom companies, then when I joined the group of Roman Arkadievich, when I joined it as an employee, at that point in time I was only concerned with Runicom companies. It was Runicom SA then Runicom Limited, and later on a much greater number of companies has appeared. So, I don't know, would you -- I don't think you would require me to recite a list of these companies. It is a long list.

Q. Well, let's see if we can go further than Runicom SA and Runicom Co. Can you give me any other companies that

you were involved with the disclosure for?

A. Yes, certainly. It would be the Cypriot companies, the Cypriot companies in particular, that held the Sibneft shares. That's MPG, YPL companies, Jimenson company.

Q. You don't have to worry with all the names, we know which the Cypriot companies are.

Any others?

A. NonCypriot companies, certainly Madison company, for example, that was the BVI company and I was a director of that company, and certainly I knew well which documents were pertinent to this specific company in particular and to the case proceedings.

Q. And the documents for all of these companies would have been in English, wouldn't they? These were all companies which were located in jurisdictions where they spoke English?

A. If they were official documents then the answer is yes, the documents would have been in English.

With regard to any internal documents, it would have been completely, entirely possible that the documents could have been in Russian.

Q. And were you helping with the disclosure of documents which were in English in these companies?

A. Yes. In particular there were documents that were in English. To put it this way, to the point, to the

extent that I could provide my assistance with, for example, some legal documents to do with the articles of the company or documents that the company may have, when a company is being registered, I would probably not be able to help with that because I'm not a lawyer.

I cannot interpret a company's articles of association of a BVI company, I would never have undertaken such a task.

Q. But in order to assist in this disclosure exercise you must have been familiar with the legal issues in the case, is that right?

A. I do apologise, I do not quite understand your question that I must have been familiar with some legal issues. I knew the case, the essence of the case, and I imagined that.

Q. That's fine.

And in order to appreciate whether any particular document that you were looking at was relevant to the issues in the case you would have had to understand the document, correct?

A. Yes, certainly.

Q. And these documents would have been in English?

A. Often, yes.

Q. Do you in fact understand English fairly well,

Ms Khudyk?

A. Unfortunately, at the current point in time, this is not so anymore. I have graduated from a school with extensive study of English, and at some point I could indeed say that I spoke English well. But, unfortunately, language skills go without practice and it was a fair while, and I did not use the language, unfortunately. So at this point in time it's not quite the same amount of English.

Q. But it was good enough, whenever you did the disclosure exercise, to be able to read a document and know whether the document was relevant to an issue in the case?

A. No, I'm comparing the level of my English as compared to, say, 2003, round about from 2004, 2005.

To put it this way, my language practices disappeared and I started forgetting the language bit by bit, so when lately I had to provide assistance in disclosure of the documents, so yes, I would say that was quite a hard exercise for me and quite often I had to consult a dictionary, unfortunately.

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR RABINOWITZ: It would be.

MRS JUSTICE GLOSTER: Very well. Two o'clock.

(1.02 pm)

(The short adjournment)

(2.00 pm)

MR RABINOWITZ: Ms Khudyk, before we broke, I had asked you in relation to paragraph 70 of your witness statement E2/06/127 about the Cherrylane Group Corp and Cremona Financial Corp payments and when you had first discovered them and that they related to the discounting of the promissory notes. And you explained at [draft] page 74, line 5, that you had found it from the case materials, I think you said, in 2010 or 2011. You said:

"I found it from the case materials that these payments ... that are in the list sent by Mr Fomichev..."

Then you said they related to the payment of the promissory notes.

I just want to ask you about the list that was sent to you by Mr Fomichev. Can I ask that you be given, please, bundle H(A)93, page 191 H(A)93/191.

Now, you should have that at page 191, it's in English and I hope you will, even if your English is not as good as it once was, be able to follow these emails. You can see it's an exchange between yourself and Mr Fomichev where he says, taking it from the bottom up:

"What is the best way to send a info to you?"

You say:

"It's okay to send it by e-mail. If you prefer fax..."

And you give him the number. He sends something to you, and he says:

"[For your information] call me when you will read it."

And if you just page back, Ms Khudyk, to page 188, 189 and 190, you see a list with Cremona and Cherrylane.

A. Yes, I can see that.

Q. Is this the list that you were referring to in your answer?

A. Most likely, yes, that is the one. The one which was an attachment to this Ruslan Fomichev's message.

Q. Can I just ask you this. It looks as if, looking at the emails on page 191, that you and Mr Fomichev had had a discussion which led to this exchange of emails. Is that right?

A. Yes, your understanding is correct. Mr Fomichev called me on the phone and asked me questions regarding Cremona and Cherrylane payments because the names of those companies did not mean anything to me. I did not even pick it up when I was listening to him speak, I did not understand what he meant, so I asked him to send me some information so that I could review it more attentively.

Q. Are you able to help us as to why, in 2006, you were having this conversation or this exchange with Mr Fomichev?

A. Unfortunately I cannot assist you in this. I do not know what the reason was for Mr Fomichev's calling me in 2006. I was quite surprised myself because by that time I had already not been in communication with Mr Fomichev for a few years, for a long period of time so I was surprised myself.

Q. Very well. You can put away bundle H(A)93.

Now, I'd like to next ask you some questions relating to the arrangements for the payment of the \$1.3 billion to Mr Berezovsky which you deal with at paragraph 25 of your third witness statement. That is, if you don't have it, page 137 in the Russian E2/06/137 and page 112 in the English E2/06/112.

A. Yes, I can see that.

Q. And you explain here at paragraph 25 that at some point Ms Panchenko asked you to arrange the payment of approximately \$1 billion, you say in the second line. Do you see that?

A. Yes, I can see that.

Q. And just looking at the next sentence, you say you found a document dated 14 May 2001 which showed a payment of \$1 billion in dividends. Just pausing there, there is no dispute, I think, that the amount finally agreed upon was 1.3 billion, okay? If you're right about the date of this document, this would suggest, would it not, that

the \$1.3 billion figure was arrived at after 14 May?

A. So far as I know, the 1.3 figure was conveyed to me, was brought to my attention, after the 14 May. That is true.

Q. And if you have a document which is still talking about \$1 billion, that would suggest that the figure of \$1.3 billion would have only been agreed after 14 May 2001?

A. I can only speculate with regard to that. What I do know is that actually it's a reconstruction of my recollections. The metadata of the document shows that I created this document on -- it was created on 14 May 2001, I'm sorry. And in that document I am writing about the amount of \$1 billion, and that means that on 14 May 2001 what had been brought to me, to my attention, was the amount of around \$1 billion give or take a few. It could have been a little bit more, a little bit less than that. At that time I was not aware of the amount of 1.3 billion.

Q. Thank you for that.

If I can ask you then to go to paragraph 27 of your statement E2/06/113, you refer at paragraph 27 of your statement to a document entitled "Payment Schemes", which you created and which you say sets out the various iterations of the scheme for the payment to

Mr Berezovsky and Mr Patarkatsishvili, is that right?

A. Yes, that is correct.

Q. Perhaps we could just very quickly have a look at that document. This is bundle H(A)103 at page 109 H(A)103/109. Now, am I right that the document starts on page 109 and it continues for quite a few pages to page 119 or 120?

A. Yes, that is true. It unfortunately was not formatted properly. The idea had been that there will be one page on each separate page only.

Q. Just going to page 111, this is right, isn't it, this is what you were considering as the way in which the payments were going to get to Devonian Investments Limited, one sees in the box on the right-hand side?

A. This chart does not refer to payments. What I can see here is pay-outs with respect to Devonian, in this chart, are provided for in the form of securities.

Q. Okay. If you go to page 115, this is payments through to Devonian Investments Limited.

A. Yes, I can see that.

Q. So it would be fair to say that, certainly by May 2001, you were aware of the existence of Devonian Investments Limited?

A. At a certain point in time, during the month of May 2001, the name of the company was conveyed to me but

that does not mean that I had known the name of that company right away, immediately after I started creating this document. The document, the file was being adjusted ever since it was created and until the end of May, until the payments themselves, and it was adjusted, corrections were introduced into that file, on numerous occasions.

Q. I'm just not completely clear about the answer.

You say this document was -- you were working on it from time to time, correct? Is that what you're saying?

A. Yes. That is correct. I worked with that document from time to time, depending on the situation and depending on any new information that came, something was either changed or added.

Q. But by the end of May 2001 you were aware of the information which we see on these documents and, in particular, the existence of Devonia Investments Limited. That's right, isn't it?

A. In practical terms, yes. At the end of May, I learned the name Devonia.

Q. And presumably after May 2001 you had no reason to look back at this document because the way in which the payments were going to be routed to Devonia had been decided, is that right?

A. Most likely, from the point of view of making payments,

there was no need for me to go back to this document.

- Q. And when do you think, in the context of this litigation, you first went back and looked at this document?
- A. I believe it was maybe in 2007. I believe that when Paul Mitchard was for the first time asking this question I tried to recollect, and chances are it is quite possible that I may have opened this document then.
- Q. So you think you went back to this document in 2007.
- Ms Khudyk, are you aware --
- A. It is a possibility.
- Q. Okay. Are you aware that this "Payment Schemes" document was not disclosed until 27 May this year, just four days before the deadline for witness statements?
- A. No, I'm not aware of that.
- Q. Well, you can take it from me that that is the position. If you think it is likely, or there's a possibility even, that you went back and saw this document as early as 2007, can you provide any explanation at all, from your point of view, as to why this document was not disclosed until May of this year?
- A. I can only speculate, I can only make assumptions. The thing is that a large, a significant amount of information was received and it was difficult to go

through this information to understand whether or not it is material, whether it is related to the matter at hand or not. But this is just the way I think of this. This is just my view.

Q. Can I just ask you about that view. Are you suggesting that there would have been any doubt at all that a document you produced in May 2001, which showed the way in which payments were being made to Devonia, was a material document in the context of this litigation?

A. No, I do not believe so. As soon as this document was shown to me by the lawyers, and I think it was in the spring this year that they asked me whether or not this is related to the matter or not, I immediately said "Yes, it is related to the matter." And apparently at that time the decision must have been taken, I believe, that it would be disclosed.

Q. But I thought in answer to an earlier question you said that you were aware of this document in 2007?

A. Well, you see, my work -- in the course of my work I deal with a lot of paperwork, lots of documents, and I cannot remember all the documents that I see during a day, let alone many years ago. Chances are that when Paul Mitchard was, for the first time, asking me about this, I was trying to refresh my memory and I was trying to recollect and I went through the documents that were

in the files, in the paper form and also on my computer, and it is possible, it is possible, that I might have seen this file at that point in time. However, I would not be able to tell you that with certainty.

Q. And Mr Mitchard would have been dealing with these issues in the context of the strike-out which was -- well, his witness statement was made in 2009. So are you saying that it's in the period around 2009, at the very latest, you would have been looking at this document to refresh your memory?

A. Yes, it is possible that it was in 2009. It is possible.

Q. And in answer to an earlier question as to the process in which this came to be disclosed, you said:

"As soon as this document was shown to me by the lawyers ... "

You immediately said that it related to the matter.

Which lawyers are you talking about? Was it Mr De Cort or some other lawyer?

A. I cannot recall with certainty. It might have been Andre De Cort, it might have been Skadden Arps solicitors. Unfortunately I'm afraid I cannot recall now.

MRS JUSTICE GLOSTER: One lawyer is very much like another, Mr Rabinowitz.

MR RABINOWITZ: Not if you're a lawyer, my Lady, and certainly not if you're married to one.

Ms Panchenko yesterday explained that the bolshoi balance was discovered in your computer in an archive file in November 2010. Where was this document stored, can you help us with that?

A. Well, you know, as I understood later on from the explanations that were given by the IT service, on the employees' computers there are certain sub-directories that were created for the purpose of archiving documents.

I did not know, I was not aware that this sub-directory had been created because it was -- it was something that had been done by the technical support services and, unfortunately, this sub-directory was not even something that I, in my capacity as a computer user, could see because it required -- in order to gain access to it, it required that a certain password had to be introduced before one could gain access to that archive directory.

So, therefore, at some point in time that archive directory was created, it had been created on my computer, and that document was in that directory.

Q. And when you refer to IT services here, which IT services are you referring to? Is it Millhouse's IT

services?

A. Yes, Millhouse IT services.

Q. Okay. Now, it's right, I think, that in the course of your work setting up the mechanism for the payment of the \$1.3 billion you were in contact with a Mr James Jacobson?

A. No, this is not entirely correct. I was in contact with Mr Fomichev.

Q. All right, let's just see if that's right.

Can I ask you, please, to be given bundle H(A)31 at page 164, please HA(31)/164. This appears to be a fax, Ms Khudyk, from you to Mr James Jacobson. Correct?

A. Yes, that is correct. That is correct.

Q. So when I asked whether, in the course of your work setting up a mechanism for the payment of the 1.3 billion, you were in contact with Mr James Jacobson, why did you say that you were not?

A. Because it was a one-off occurrence, it only happened once I would say, and it was not a two-way street, it was not a bilateral contact.

What happened was that Mr Fomichev, who was indicated to me as the contact person and someone to whom I had sent the documents, told me that "I don't know the first thing about these legal documents, please

send this to our lawyers," and he gave me the details of Mr Jacobson.

So as a matter of fact this is the background behind this fax.

- Q. So you knew Mr Jacobson was a lawyer, is that right?
- A. Yes, Mr Fomichev told me that he was a lawyer.
- Q. And you knew he was dealing with this transaction, correct?
- A. No, I did not know which transaction he was dealing with. I thought that he was a group lawyer, for instance someone who dealt with general legal matters.
- Q. Ms Khudyk, are you seriously suggesting that you did not know Mr Jacobson was dealing with the Devonia transaction that you had been busy dealing with yourself, in that document we looked at earlier where you were tracking through payment options?
- A. Of course I did not know that.
- Q. All right, let's just see if that's correct. Let's first look at the document we have open at H(A)31, page 164 H(A)31/164. You say:

"Dear James. Please find attached the draft of the Minutes of the meeting of the Board of Directors of the Company with regard to the profit distribution."

And you sign it and you give him your email address.

It's obvious that, certainly at this stage, your

English was good enough to write emails and faxes in English and obviously to understand what was said to you when you got them back, correct?

A. Well, quite often, yes. Depending on what the feedback said, what the answer said.

Q. And you address Mr Jacobson as "James" rather than "Mr Jacobson". That suggests, does it not, that you had already had some contact with Mr Jacobson prior to sending this email?

A. Well, you know, I was a young naive person at that time and I thought that it was a respectful form of address, I thought that was part of normal practice, and part of normal practice was to write, in the address line, to write "Dear James". Actually in Russian it's "Esteemed James". But that was the first time that I was writing or communicating with Mr Jacobson.

Q. In answer to an earlier question from me, this is at [draft] page 91, line 10, you said, in relation to Mr Jacobson, that you thought he was a group lawyer. Which group do you say you thought Mr Jacobson belonged to? Are you suggesting he was part of Mr Abramovich's group?

A. No, the group which was represented by Mr Fomichev.

Q. Now, can I ask that you next go to page 254 of the same bundle H(A)31/254. This is the next recorded contact

that we -- sorry, the next contact that we have on the documents. It's an email from you, again to Mr Jacobson, and you have got his email address there, james@stephen-curtis.co.uk, do you see that?

A. Yes, I can see that.

Q. What you say in this email to Mr Jacobson, what you give to Mr Jacobson in this email, is a list of the documents required by the bank to open a safe custody account, and the bank was the Latvian Trade Bank, that's right, isn't it?

A. Yes, the Latvian Trade Bank.

Q. Now, we know that this email has been disclosed by Mr Abramovich from his disclosure, you can see that from the number on the bottom left-hand corner. So presumably this email came from your computer, did it?

A. Well, either from my computer or it was retained in hard copy. So it definitely came from somewhere.

Q. Did you retain copies of all the emails that you had with Mr Jacobson in hard copy?

A. No, I did not retain copies of faxes or emails, practically -- virtually never did I do so. But I do not rule out the possibility that, with respect to that particular email, that particular email for some reason was printed off.

Q. And by the time of this email, you had had

a conversation with Mr Jacobson, that's right, isn't it?

A. To be honest, I do not recollect a conversation with Mr Jacobson.

Q. You're saying you don't recollect any conversation with Mr Jacobson at all?

A. No, I do not recollect any conversations with Mr Jacobson.

Q. You see, if you look at your email to him, Ms Khudyk, just below the list that you have produced to him, points 1 to 9, you then say:

"All above mentioned documents should be certified by solicitor and authorised with the apostile. As I understood from our telephone conversation..."

That suggests, does it not, that you had indeed had a conversation with Mr Jacobson?

A. Yes, I would agree with you. Yes. That assumes that there had been a conversation, but I do not recollect a conversation, and I presume that the conversation was with respect to these documents judging from the fact that I'm saying here that from our telephone conversation I had understood something with respect to copies of passports. Obviously, we had -- most probably we had been discussing copies of documents.

Q. And you could see from the email address, if you didn't get it from his accent, that Mr Jacobson was an

English-based lawyer, or certainly was in England?

- A. From the email address, what you can see is that the company is based in England but that does not necessarily mean that he is an Englishman or based in England. The way I see it, that does not have -- necessarily have to be the case.
- Q. All right. So let's just break that down then, Ms Khudyk. You knew he was a lawyer, correct?
- A. Yes.
- Q. And you knew --
- A. That's what Mr Fomichev had told me.
- Q. And you knew he had an English email address, correct?
- A. Yes, it was given to me by Mr Fomichev.
- Q. But you're saying that it doesn't follow from that that you knew he was an English lawyer or a lawyer based in England, is that right?
- A. Your understanding is correct. I knew that he was working for a company, most probably an English company, and he was a lawyer, judging from what Mr Fomichev had said.
- Q. You see, I suggest to you that you knew full well he was an English lawyer working on this transaction, Ms Khudyk. Do you dispute that?
- A. I do, absolutely. I knew he was a lawyer as Mr Fomichev had told me. I knew that he was related to the group

which Mr Fomichev represented. Now, the specific focus -- purpose of my communication with him related to the documents for this transaction. Now, whether he knew knowledge or information generally with respect to that connection, I never had the slightest idea about that.

Q. Again, let's just see where we are. You knew he was English, you knew he was a lawyer, and you were communicating with him with regard to documents relating to the transaction, correct?

A. Which were related -- which had some bearing on the transaction.

Q. But you're saying you didn't know he was a lawyer working or related -- working on matters related to this transaction?

A. I did not know to what extent he was up to speed on what was going to be done to -- to what extent he was deeply involved in the nuances of the transaction, how much he knew about that. I knew that, for instance, for the purpose of opening a bank account, it had been recommended to me to communicate with him or that person.

Now, for the purposes of obtaining legal documents with respect to the company that was supposed to have become the payee, it had been recommended to me that

I request those documents from him. Therefore, I understood that at a minimum he was the lawyer who knew or who had the constitutional documents of the company that was and supposed to become the payee, the recipient of the payment.

Q. Can I just -- on an earlier answer you gave, where you said, and I was trying to get you to agree that Mr Jacobson was based in England, a lawyer based in England, and you quibbled with that. Can you go back to page 164, please, in the bundle you're in HA(31/164. This is a fax you've seen, I took you to this earlier, from Mr Jacobson to you. Do you see the fax number on the top of the right-hand corner?

A. Yes, you are right, I can see the country code here, yes.

Q. So you did know he was based in England, didn't you?

A. Most likely, yes, but I don't believe that it was -- it had any importance for me.

Q. What I don't understand, Ms Khudyk, is why you are struggling to dispute being aware of any connection between Mr Jacobson and England. Can you comment on why that is?

A. I'm not trying to dispute this. What I'm trying to say is that it was not important to me. I did not attach any importance to this and therefore there was no

imprint of this left in my memory.

- Q. You can put away I think or put to one side bundle H(A)31. Can you go to bundle H(A)33 and open it at page 256, please H(A)33/256.

You see, Ms Khudyk, this is another email we have from you to Mr Jacobson. You will remember, when I first asked you whether you'd had any contact with Mr Jacobson in relation to this transaction, you said that you hadn't. When I said, well, why do you say that you hadn't? When I showed you the first fax, you said it was a one-off, it didn't happen again.

But we're now on the third exchange between yourself and Mr Jacobson, and it's a fax from you or an email from you dated 30 May 2001, and you're attaching for Mr Jacobson, you copy it to Mr Fomichev, documents required by the bank to open an account.

You say:

"Please send the a.m. [which I think is above-mentioned] documents (duly signed and sealed) firstly by fax ... and then the originals by courier to Latvian Trade Bank."

Can I ask you this: this document was not disclosed by Mr Abramovich, Ms Khudyk, it has only emerged because it has been disclosed by Mr Berezovsky. Are you able to assist as to what might have happened to this document

on your computer, explain why it wasn't disclosed?

- A. My Lady, first of all, please allow me to draw your attention to the fact that it was not the only case, what I said was one-off. One-off, what I meant was that he was not a contact person to me in the broad sense of the word. I did not handle all the issues with him related to this payment. I did not mean that there was only one fax and then nothing else. I'm not trying to mislead anyone.

So far as the reason why the document was not disclosed, I really don't know. Maybe it had not been retained. I'm afraid I cannot comment on that.

- Q. Can you go back, please, to page 248 in the same bundle H(A)33/248. You see, here we see that you also faxed the same document to Mr Jacobson, again copying in Mr Fomichev, on 30 May 2001, and you say:

"Dear James."

Later on you say:

"These documents were sent to you by e-mail. As I'm not sure that you'll receive it I made up my mind to duplicate the information by fax."

There were three documents attached to this fax, and indeed to the email, and can we just quickly just identify what they are. If you go to page 249 H(A)33/249, do you see there an agreement with Latvian

Trade Bank for the opening of an account? Do you see that?

A. Yes, I can see that.

Q. If you go to page 253 H(A)33/253, do you see there a request for a bank account form?

A. Yes, I can see that.

Q. Thank you. If you go to page 254, you should see there a sample signature form, correct?

A. Yes, that is correct.

Q. You can put bundle H(A)33 to one side.

Can you please be given bundle H(A)34, opened at page 45 H(A)34/45. Ms Khudyk, this is another fax to you on the very next day from --

MRS JUSTICE GLOSTER: From her.

MR RABINOWITZ: Sorry, from you, to Mr Jacobson the very next day.

You'll see, looking at the line about four lines from the top, that there were six pages including the cover page sent with this fax. Do you see that? Do you see where it says "Pages: 6" at the top, Ms Khudyk, just staying with page 45, do you see that?

Ms Khudyk, you have to say "da" or "yes".

A. Yes. Yes, I can see that.

Q. Thank you. Then if you move to page 50 H(A)34/50, you'll see what the documents were that you had --

sorry, you see a document headed "List of the documents" which were prepared for the transaction, do you see that?

A. Yes, I can see that.

Q. If you then go back to page 45 H(A)/34/45, what we see is that you've attached documents to be signed and sent back to you, and you ask for an address to send the further documents to, do you see that?

A. Yes, I can see that. But my understanding is that I'm asking him for the address where these documents should be sent, not any other documents.

Q. That's fine, I just want to look at the documents you did send.

The first document is, as you see, you've produced a document headed "Devonia Investments Limited" to be signed by Matar Mohd Saeed Ali Al Neyadi, do you see that?

MRS JUSTICE GLOSTER: What page is that?

MR RABINOWITZ: Sorry, page 46 H(A)34/46.

A. (Not interpreted) I see.

I can see that.

Q. Thank you. This document was the acknowledgement by Devonia Investments Limited of a transfer to it of shares in Pex Trade Corporation, correct? That's what it says?

A. Yes, it's a certificate, it's a receipt of shares, a certificate certifying that they have received the shares.

Q. And you have backdated this document back to 14 May 2001, correct?

A. Yes, unfortunately I did that, and I would like to comment if I may.

MRS JUSTICE GLOSTER: Yes, you may.

A. May I just mention that backdating documents was not normal, standard operating procedure in our company. Yes, I did do this and I was not delighted that I had done this, first of all, because I was misleading the bank with which we had a very good business relationship. However, I had no other option, I had no choice. I needed to have a document that would serve as the basis for payment. I could not bring a payment order to the bank for \$1.3 billion and have nothing to support it.

So I did need to have some documents, and I was not thinking that the bank would regard the documents that confirmed the declaration of dividends, the exchange of letters between the companies that existed in different jurisdictions. I mean, it would have been not serious if they had all been dated by the same date, 30th May. And unfortunately the decision that this mechanism was

going to be the one that would be accepted and adopted to make this payment of that amount was made very late, and it was brought to my attention literally on the eve of the date of the first payment, when the first payment had to be made. And, therefore, unfortunately I did backdate the documents.

MR RABINOWITZ: But it's not just the backdating, is it, Ms Khudyk? What you have produced here is a receipt which says:

"Hereby we acknowledge the receipt of the share(s) shown in the schedule hereto in the undertaking called Pex Trade Corporation."

But you're aware that there never was any transfer of shares in connection with this, aren't you?

A. Well, the thing is that in parallel, concurrently with this document, another document was prepared under which Devonian, slightly later than this, was returning the shares and therefore there was no need to actually transfer the shares. A similar receipt said that Devonian had, by that time, returned the shares.

Q. Can we then look at the second document that you sent to Mr Jacobson which is over the page H(A)34/47.

This is the instructions of Devonian Investments Limited to Pex to pay the dividend into its account with Latvian Trade Bank, and this is another document that

you backdated, isn't it, Ms Khudyk?

A. Yes, your understanding is correct.

Q. Now, you didn't backdate the next two documents because they don't have dates. Can we just look at them. At page 48 H(A)34/48, we have a document which purports to be an assignment of the shares in Pex to Devonian, correct?

A. Yes, correct.

Q. But we know again that no shares were actually transferred from Pex to Devonian?

A. Because based on the documentation literally two days later they came back to Pex -- well, not really Pex, to the Abramovich group of companies.

Q. And the next document is an identical document, it's an assignment of another share in Pex to Devonian and, presumably, your answer to the question of whether shares were actually transferred is the same?

A. Yes, the situation was similar here, it was the same situation. The shares based on the documents that were dated a couple of days after that were returned to the Abramovich group of companies and, therefore, there was no physical transfer of shares.

MRS JUSTICE GLOSTER: Who was responsible for thinking up this scheme? Was that you, the details of this, or was it someone else?

A. Well, the scheme itself, my Lady, had been created in May and I was preparing the documents. Whereas, originally, the scheme was something -- the input was something that I received from my boss, Mrs Panchenko. After that, some adjustments were made to the scheme because different options, different possibilities of paying out the distribution, paying the profit was different.

I mean, the basic idea was still the same, unchanged. The amount had to be declared in the form of dividend. Now, in what form it would be paid, ie in cash or as securities, that kept changing, adjustments were made to that.

Now, the documents themselves that needed to be prepared to support that scheme were the documents that I was in charge of. I was preparing those documents. And so -- well, so, that's it.

MRS JUSTICE GLOSTER: But on your side, the Abramovich side of this exercise, who was responsible for thinking up the mechanism for payment? Was it your idea? Was it Ms Panchenko's? Was it Mr Abramovich's? Was it Mr Tenenbaum's? Whose was it?

A. I'm not aware whose idea that originally was. It was my boss, Mrs Panchenko, who brought this idea to my attention.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: Sorry, just to follow that, who is

Ms Panchenko's boss? It's Mr Shvidler, isn't it?

A. I think so, yes.

Q. Now, can you go next, please, to bundle H(A)31 opened at page 122 H(A)31/122. Ms Khudyk, this is, as you see, a signed copy of the payment instruction document dated 22 May 2001.

Just to follow this, you send an unsigned copy, you get a signed copy -- or the copy is then signed. Do you see that?

A. Yes, I can see that.

Q. And do you recall that Mr Jacobson told you that he could not deal with this and that you should deal directly with Dr Jumean in relation to this?

A. No, nothing of the kind has been said to me either by Jacobson nor Mr Fomichev. Mr Fomichev asked me to send the documents that required to be signed to Mr Jacobson, and then what happened afterwards with those documents is beyond my knowledge.

Q. You see, I suggest that you did in fact send the unsigned copy to Dr Jumean, and Dr Jumean returned the signed version to you. That's right, isn't it?

A. No, this is not the way it was.

Q. Let me just show you a document, if I may, in

bundle H(A)34 at page 10 H(A)34/10. So Ms Khudyk, this is a copy of your 31 May 2001 fax to Mr Jacobson, and at the bottom of the page there is a note from Mr Jacobson to Mr Curtis which reads:

"Told Natalia/Ruslan to send directly to Eyhab [and Eyhab is Dr Jumean]. Also told Eyhab to expect documents. However, Ruslan [that's Mr Fomichev] directed that docs should be sent here. Do not know what this relates to in respect of the whole transaction so have not done anything."

Do you see that? That's Mr Jacobson's note.

- A. Yes, I can see that something is written here, and it's rather difficult for me to understand what a handwritten text in a foreign language actually says.
- Q. And that's why I've read it to you and had it translated for you, Ms Khudyk.

Now, what we then see is Mr Curtis's note responding to what Mr Jacobson has said, and that's just above what Mr Jacobson has written. Again I'll read it to you so that it can be translated:

"James -- I have told Ehab we cannot act on this -- he is to refer to his AD [which is Abu Dhabi] lawyers -- he confirms that he has already received these direct from (Sibneft?) and is dealing with Sibneft/Natalia direct -- do not send."

Now, the "Natalia", I suggest, the reference to "Sibneft/Natalia" is a reference to you, is it not?

- A. Well, you know, may I draw attention to the fact that there is a question mark after the word "Sibneft". I'm afraid that the person, the gentleman who was writing this, did not know very clearly from whom he received this, but judging from everything, he received this from Mr Fomichev, from Ruslan, because I was not in contact with Mr Eyhab.
- Q. Were you at the time working at the Sibneft office, Ms Khudyk?
- A. I was not working in Sibneft as a company but I was physically in the offices of Sibneft in Sadovnicheskaya Street.
- Q. And you had moved there from April 2001, correct?
- A. Yes, that is correct, in late April 2001.
- Q. So I suggest to you that this note indicates that you were having direct dealings with Dr Jumean in relation to this. Do you dispute that?
- A. No doubt about it, I never communicated with Dr Jumean.
- Q. And you were plainly in direct contact with Mr Jacobson at Curtis & Co, presumably you accept that?
- A. On a narrow matter related to the signing of the documents, yes, I was in communication with Mr Jacobson.
- Q. You see, I have to suggest to you, Ms Khudyk, that

although you were in direct contact with Mr Jumean, or Dr Jumean, you have produced no documents relating to any contact you have had with Dr Jumean. That's right, isn't it?

A. I had never had any contacts and, therefore, there was nothing to be created.

Q. Just in terms of whether you were at the time either at Sibneft or working for Sibneft, can I just ask you to go back to the document, you have the bundle in front of you, H(A)31 at page 164 H(A)31/164.

We see that your email address is given as a Sibneft email address.

A. Yes, I can see that.

Q. Now, I'm going to move on, although there may be one point I need to come back to on that.

Perhaps I can just ask you this. In your second witness statement at J2/3, tab 31 at page 47, do you have that J2/3.31/47?

A. Yes, I have that.

Q. Do you see in paragraph 13 you say -- this is at page 47:

"Although I cannot recall doing so, it is possible that I did speak to Dr Jumean..."

A. Yes, I can see that.

Q. Now, given that is what you were saying, Ms Khudyk,

in October 2009, how is it that, two years later, when I say to you that you had contact with Dr Jumean, your answer is:

"No doubt about it, I never communicated with Dr Jumean"?

A. I believe that I had never had contact with Dr Jumean. I had spent a lot of time thinking, and I'm trying to recollect the circumstances that obtained at that time, and I came to the conclusion that this had not been the case. I cannot recollect any such contact.

Q. I want to then move on and ask you a few questions related to Rusal, if I may.

As regards the acquisition of the aluminium assets in February 2000 and the subsequent merger in March 2000, your evidence is that, although you assisted with some of the technical work, you do not now recall any of the details, is that right?

A. Yes. I did provide some assistance but I do not recall any major details.

Q. Very well. I won't ask you questions about the contractual documents related to that. I've put those to other witnesses already.

Also though, as regards Rusal, you were involved in some of the payments that were made via Madison and Espat to Blue Waters and Rich Brown in 2002 to 2005,

were you not, Ms Khudyk?

A. Yes, I did take part in some of the payments that went through Madison, Espat, towards Rich Brown and Blue Waters, yes.

Q. As regards the Rich Brown payment, you tell us -- this is at paragraph 56 of your third witness statement, page 149 of the Russian and 123 of the English -- you tell us in relation to the Rich Brown payment that Ms Panchenko did not explain to you the reasons for that payment, is that right?

A. That is absolutely correct.

Q. And indeed Ms Panchenko has told us that she did not know the reason for this payment of -- you're talking here about the \$127.5 million payment to Rich Brown, or the earlier payment of \$50 million to Blue Waters.

Can I take it that, since Ms Panchenko did not know the reason for either of those payments, nor did you, Ms Khudyk?

A. There was no one that I could even ask the question of. If my direct boss does not tell me, then, of course, definitely I do not know that.

Q. And you say that no one explained to you the reasons for either of these payments?

A. No. No one explained to me the reasons why those payments were being made, and so far as those payments

were concerned, on our side, I only dealt with Mrs Panchenko.

Q. Now, we do have, in relation to the \$50 million payment to Blue Waters, an attendance note made by Mr Keeling of Denton Wilde Sapte of a conference call in which you participated.

I wonder if I can just show that to you. You're obviously aware of it because you refer to it at paragraphs 51 and 52 of your statement. Perhaps, rather than looking at it, I can just ask you about that E2/06/122.

You tell us, I think at paragraph 51, that you don't remember that particular conference call. I should have let you just familiarise yourself with what you say at paragraph 51 and then let me ask you that question.

(Pause)

Is that right? You don't remember that particular conference call?

A. Yes, that is correct. I do not recall that, that call.

Q. And then I think you say at paragraph 52, since you don't remember the call, you suggest that it was Mr De Cort who would have explained the structure of the funds because the conversation was among English-speaking persons. Is that right?

A. Yes, this is absolutely right.

Q. In that case, I can ask Mr De Cort about that rather than you.

My Lady, I can try -- I've got a little bit more --

MRS JUSTICE GLOSTER: Why don't we keep going for a bit.

MR RABINOWITZ: Just looking at paragraph 60 of your statement, page 151 of the Russian E2/06/151, 124 of the English E2/06/124, you tell us that you were a member of the working group that was involved in the sale in 2003 of 25 per cent of Rusal to Mr Deripaska, is that right?

A. Yes, this is correct.

Q. But you don't provide any independent details of the first Rusal sale other than information that can be derived from contractual sales documents. Is that because you don't have any clear independent recollection of the first Rusal sale, Ms Khudyk?

A. I'm sorry, I'm not sure I understand. Are you talking about the first sale or the second sale?

Q. At this stage I'm talking about the first sale.

A. Well, it's not that I don't have any recollection at all. The thing is that my role was so insignificant that there is really, really nothing to describe.

Q. On that basis I'm not going to ask you to describe insignificant things. Presumably the person who would have been centrally involved in dealing with the legal

issues that were arising, was that Mr De Cort or Mr Tenenbaum?

A. Well, once again, are we talking -- my apologies, are we talking about 2003 or 2004?

Q. 2003.

A. Well, I believe -- it seems to me that back in 2003 Mr De Cort was not yet dealing with those matters. I am not totally certain, but I believe that at that time there was another lawyer in the group and it was not Mr De Cort and therefore I cannot really tell you.

Q. In terms of the 2004 transaction, would it have been Mr De Cort or Mr Tenenbaum who were involved, or both of them, who were involved in dealing with the legal issues?

A. My Lady, so far as I know, the direct boss of Mr De Cort was Mr Tenenbaum. I communicated with Mr De Cort so really -- now, to what extent Mr De Cort communicated with his boss, I cannot tell you.

MR RABINOWITZ: Thank you very much, Ms Khudyk. I don't have any more questions.

MRS JUSTICE GLOSTER: Very well, thank you.

MR MALEK: No questions, my Lady.

Re-examination by MS DAVIES

MS DAVIES: My Lady, there's one matter by way of re-examination for which Ms Khudyk will require some

assistance with the transcript.

If you could please scroll back to [draft] page 90.

There may have been a translation issue here which is what I just want to clarify, Ms Khudyk. If you can look at [draft] page 90, at line 16, there's a question:

"So when I asked whether, in the course of your work setting up a mechanism for the payment of the 1.3 billion, you were in contact with Mr James Jacobson, why did you say that you were not?"

And your answer:

"Because it was a one-off occurrence ..."

Perhaps the translator could just translate those three lines.

- A. I gave this answer because my main contact, so far as the mechanism, and the implementation of the payment mechanism was concerned with respect to that amount, was Mr Fomichev, whereas Mr Jacobson had been indicated to me by Mr Fomichev for one single, narrow person only to communicate with him with respect to documents only.

And so what I meant was that he was not my contact on the recipient's, on the payee's side, in the broad sense of the word.

- Q. And can you recall over what period of time you understood you were being asked you were in contact with Mr Jacobson when you gave the answer that you did?

A. It was literally maybe one, two weeks in May, not more than that. I'd rather even say one week in May 2001.

MS DAVIES: Thank you very much, Ms Khudyk.

MRS JUSTICE GLOSTER: Thank you very much. I have no questions. Thank you for coming to give your evidence.

(The witness withdrew)

Right, I'll take the break now. Ten minutes.

(3.13 pm)

(A short break)

(3.36 pm)

MRS JUSTICE GLOSTER: Mr Sumption, before you start, it's been brought to my attention -- could this be translated into Russian please. It's been brought to my attention that somebody during the course of this afternoon took a picture in court. That person has been removed from court and the pictures are in the process of being deleted.

Can I remind everybody in court that taking photographs in court is a contempt of court and in some cases is regarded as a serious contempt of court possibly leading to imprisonment. Can I make it absolutely clear that nobody is to take a photograph in court. Thank you very much.

MR SUMPTION: My Lady, I call Mr Grigoriev.

MR ALEXEI GRIGORIEV (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Grigoriev, could you please be given bundles E4 and E8. You have made I think two witness statements for this trial, the first of which is at bundle E4, flag 6 E4/06/89. Is this your first witness statement?

A. Yes, it is.

Q. And if you look at page 112, is that your signature?

A. Yes, it is my signature.

Q. And is that statement true?

A. Yes, I consider this statement to be true.

Q. Now, would you turn to bundle E8, please, flag 12 E8/12/152. Is this your second witness statement?

A. Yes, this is my second witness statement.

Q. And is it your signature that we see on page 166?

A. Yes, this is my signature.

Q. And is that statement also true?

A. Yes, this statement is also true.

MR SUMPTION: Thank you very much. If you wait there, some questions will be asked of you.

Cross-examination by MR COLTON

MR COLTON: Mr Grigoriev, you live in Russia, that's right?

A. Yes, I do live in Russia and I've been born there as

well.

- Q. And as for your background, you graduated from the Moscow Institute for Energy, is that right?
- A. In Russian, the correct expression is Moskovsky Energetichesky Institute, the Moscow Institute for Energy, the Moscow Energy Institute.
- Q. And then you served in the Russian armed forces, is that correct?
- A. Yes, this is correct.
- Q. You then worked in a series of senior positions in SBS Bank, later SBS-Agro, is that correct?
- A. It didn't -- it wasn't called SBS from the start, but if to omit the host of renamings of the banks, then this is correct.
- Q. In 2007, you then became chairman of the management board of Dvizheniye Bank, that's right, isn't it?
- A. Are you saying year 2007? Yes, this is correct.
- Q. And following a merger, you then became chairman of the board of directors of Vostochny Bank, is that also correct?
- A. Yes, this is correct, and I remain in this position as of today.
- Q. And so it's right, is it, that your entire business career has been in Russia?
- A. Yes, this is true. One could even be more specific: all

of my work activity has been spent in banking.

- Q. And your personal ties, your family live in Russia as well, is that correct?
- A. Yes.
- Q. You have no connections to England, is that right?
- A. No, I've visited here only once, even with touristy purposes, as a tourist.
- Q. Thank you. Would you please be given bundle H(C)8 and would you turn in that bundle to page 1 in the Russian H(C)8/1 or 1T in the English version H(C)8/1T. This is a document which is described as a "Record of witness interview", it's dated 5 March 2009, and the witness in question is yourself. Do you see that?
- A. Yes, I do.
- Q. This is a document to which you refer in your second statement as a copy of the official transcript of the interview on that date. Is that correct?
- A. I do not refer to that document. I am simply clarifying, I am explaining what I have read in that document.
- Q. But you accept, I think, that this is the document which records the interview which you had on that date?
- A. Yes, this is a record of witness interview that happened with me on 5 March 2009 to do with the criminal case against Mr Berezovsky that was initiated in Russian

Federation.

- Q. Now, just to understand the process by which this transcript came into existence, we see at page 1, or 1T in the English, at the top, that the interview began at 2.35 pm and was completed by 4.52 pm. Do you see that?
- A. Yes, I do.
- Q. So the interview took a little over two hours, two hours and 17 minutes I think?
- A. I would like to draw the court's attention that this interrogation was made using an audio recording. This is not the formation of a document, this is only done using an audio recording. So I was speaking over two -- two hours and 17 minutes. And then the investigator was taking the notes down on paper in the course of several dates -- days.
- Q. You've mentioned an audio recording. What you don't mention in your witness statement, however, is that you were played this audio recording at the end of your interview on 5 March. But that's correct, isn't it?
- A. There is a document like this, this is correct. But the fact that the audio recording was played to me, that is slightly untrue. In actuality, neither myself nor the investigator were listening to another two hours of the audio recording, but there is such a document and I admit this.

Q. Would you please turn then in the English to 47T H(C)8/47T or in Russian to page 46 H(C)8/46. You will see at the bottom of this page that there are two statements by the investigator followed by a statement by yourself, and it reads:

"Investigator: I understand. In connection with the end of the tape on the audio cassette, the interview of the 5th of March 2009 will now end. The audio recording will be played back to the witness. The time is [4.52]."

Do you see that?

A. Yes, I do. I do see that.

Q. And then it says:

"After the end of the witness interview of Grigoriev, the audio recording on the two audio cassettes of the brand Sony MC30 and the brand TDK MC90 was played back to him. Do you wish to make any declaration?"

And you reply:

"No, I have no declaration."

Do you see that?

A. Yes, I see that.

Q. And you have signed under that statement, do you see that?

A. Yes, this is true.

- Q. If you now turn on in the Russian to page 49 H(C)8/49 and in the English to 49.001T H(C)8/49.001T, would you just read the short paragraph on that page to yourself, please. (Pause)
- A. I have read it.
- Q. So again we see that you have signed to confirm that you listened to the interview record on 5 March, isn't that correct?
- A. Yes, I agree.
- Q. So do you now accept that you did in fact listen to the audio recording at the end of the interview on 5 March?
- A. I would agree that I have signed this document, and if you are interested in the way it really happened in actuality, then you would have to accept that there was no real listening through. The investigator suggested not to do it, or to leave me there for another four hours to wait because he had other business to attend to, and of course I went down the road of his suggestion because, after all, it's the General Prosecutor's Office and one doesn't wish to argue in that place.

And it was quite late in the day, and maybe in four hours he might have forgotten that I was sitting there and he would have come back to the office in the morning. So I decided not to take that risk, and I decided that it would be more acceptable for me to

leave, since such an option was offered to me, and to leave without listening through this audio recording.

However, that does not change the essence of the fact that indeed I did sign this document, and I bear responsibility by way of my signature for the information that was provided by me.

Q. So you preferred to sign a document knowing it to be untrue rather than waiting around for another couple of hours, is that the evidence you're giving today?

A. No, my evidence is that I have heard this audio recording, and the audio recording was made using my own voice, me speaking. It's just the rechecking. It's not that someone is speaking in my place and I then confirmed that that was true. This is indeed the conversation I had with the investigator, it is indeed recorded in the audio recording.

Indeed I could have listened through it and, based on the voice recording, to make some corrections, but to be honest I do not take the information in using my hearing, I'm a visual -- my memory is visual. I like to read the documents in writing and the -- perhaps it wouldn't be very helpful for me to listen to the audio recording at that point in time.

And then again, my own voice recorded -- usually, for example, I don't like hearing myself being recorded,

myself speaking. Sorry, this is a joke, I do apologise.

- Q. You began that answer by saying that you did in fact listen to the audio recording. Just to be clear, on what date do you say you listened to the audio recording?
- A. I didn't say I did listen through it. Perhaps something was incorrectly translated. I am saying that I have signed a document supporting, confirming, that this audio recording was listened to by myself, but in actuality this situation was such that I did not listen to this audio recording.

MRS JUSTICE GLOSTER: I think what he meant was he heard himself speaking, Mr Colton, so I don't think it's worth spending too much time on that particular point.

MR COLTON: Very well. You then went away and came back five days later, is that correct?

- A. According to the summons, I did come back in order to give repeat evidence, and at the same time to sign an interview record in writing.
- Q. So you had five days to consider the evidence which you had given in order to consider whether any of the answers you had given were misleading or inaccurate in any way, is that right?
- A. I had five days, yes, that's true. But I didn't see great pressing need to think over some answers.

Everything is quite clear there without double meaning, and I have provided the correct information in a correct way.

Q. And then, when you returned, you had a further opportunity to review the transcript, is that correct?

A. Yes, that's correct.

Q. In fact, we can see at page 49T H(C)8/49T, or page 48 in the Russian H(C)8/48, that between 5.50 pm and 7.50 pm on the 10th you came back to review the evidence, is that correct?

A. At the same time an additional witness statement was provided and additional interview protocol was drawn up. That wasn't a time for familiarisation. This is a time for the interview, that was interview time, and you do have the materials about that interview as well.

That interview was not done using an audio recording, that was done in a, so to speak, classic way, ie there was a question, then there was a recording of the answer, given an option of that answer, approving, agreeing that answer, and the final agreement.

If you look at it, the text of these interviews, they are quite distinctly different. And if you look at the interview protocol that was used, using the audio recording, if it had some rough bits, there aren't any rough bits, any strange bits in the second interview.

It's all quite succinct and presented in, I would say, a legal language.

Q. Would you please turn to page 3 in the Russian H(C)8/3 or 3T in the English version H(C)8/3T.

MR SUMPTION: The [draft] transcript has come up with "presented in illegal language".

THE INTERPRETER: I do apologise, "in a legal language". This is the interpreter speaking.

MRS JUSTICE GLOSTER: Thank you.

MR COLTON: On page 3 or 3T, towards the bottom, you will see that there is a declaration which you have made that you have been warned of criminal liability for refusing to give evidence or for giving evidence known to be false. Do you see that?

A. I can see it on the second page.

Q. Page 2 H(C)8/2. I'm sorry, thank you.

In 2009, you didn't have a criminal record, did you?

A. Yes, I did not have a criminal record, neither in 2009 nor in 2011. I do not have a criminal record.

Q. And you would not have wanted to get a criminal record for giving false testimony, one imagines. Is that fair?

A. I think so, yes. I have no doubts about that.

Q. If we look in the Russian version only, behind pages 2, 3 and 4, for example, we see that you signed, at the bottom of each page of the transcript, do you see that?

A. Yes, I do. Yes, I do see that.

Q. And again if we turn to page 47 in the Russian H(C)8/47, or 48T in the English H(C)8/48T, you were given the opportunity to comment but had no comments to make. Is that correct?

A. Yes, I had no comments.

Q. Nonetheless, Mr Grigoriev, you will be aware I think that there are some inconsistencies between the evidence which you gave in 2009 to the Russian authorities and the evidence which you are now asking this court to accept as true. You are aware of that?

A. Yes, I am. It's to my great regret I've found these inconsistencies within these proceedings when the materials of this interview were presented because I had no other access and this criminal case was not closed, and within the Russian legislation access to these materials is not possible.

So the only time when I saw these materials was at the point in time when I was signing them and, to my great regret, I have seen that these insignificant details from the points of the matter of this interview. But the details that turned out significant within these proceedings, yes, indeed, there were these inconsistencies and discrepancies, and I do regret profusely, and I would like to inform you, that I have

taken my initiative and tried to get in touch with Mr Lomovtsov, the investigator, with this regard, if he were to consider this information to be important, to make these corrections.

So far it didn't work out and I'm not quite sure that that investigator continues to work on this criminal case. I wasn't given another contact but I do have this intention and, if my Lady may allow me, I could clarify later the reason for why these inconsistencies have arisen, but I do admit that they do exist there and I do regret about that.

MRS JUSTICE GLOSTER: Can you be a bit slower in your evidence, please, because the translator is a bit behind you.

When you speak, can you speak more slowly.

A. I shall do my best.

MR COLTON: Mr Grigoriev, would you please take up page 13 in the Russian H(C)8/13 or 15T in English H(C)8/15T. You'll see towards the top of the page that you are asked if you are acquainted with Hans-Peter Jenni, and you say not. Then you are asked about a series of other individuals, ending with Roman Arkadievich Abramovich, do you see that?

A. Yes, I do see that.

Q. And you respond to that question:

"Just as I said before, sometimes I read the newspapers, but I myself have never seen him or met him."

Do you see that?

A. Yes, I do.

Q. Would you now please look at paragraph 14 of your first witness statement. It's in bundle E4 behind tab 6, at page 106 E4/06/106 in the Russian, or 94 in the English E4/06/94.

A. Yes, I have opened the page.

Q. Perhaps you would just read paragraph 14 to yourself, just to refresh your memory of that. (Pause)

A. I've read it.

Q. Here in paragraph 14 you claim to recall meeting Mr Abramovich for the first time in 1995. Do you see that?

A. Yes, I do see that.

Q. So it is clear, I suggest, that either paragraph 14 of your witness statement, or the evidence which you gave to the Russian prosecutor, which we have just looked at, was untrue. Is that right?

A. I do admit that the interview materials do not correspond to the materials or to the information that I have provided in my witness statements. I do admit this. And I have an explanation to this.

MRS JUSTICE GLOSTER: Right. What's the explanation, please?

A. Thank you very much for that opportunity because it was important for me to say that as well.

There are two points that I would like to draw the court's attention to, the first one is that we have touched upon already, that's the form of interrogation, that was done by audio recording.

And I could assure that over the two and a half hours, over two and a half hours that I have spent in that audio recording I have talked unfortunately a lot more than was finally captured in this interview, in these interrogation or interview materials.

So the investigator was quite selective with regard to the information that he received from me, and on the matters that were of interest to him, you can find more detailed information in that interview. Where the questions were not significant for him, there are certain omissions. That's the first point I was going to make.

And the second point is, it's on the matter of the interview. From the very beginning, the interrogation, the investigator said that he is interested only in one loan received by Runicom company. There were many such loans and he said he won't discuss any other loans apart

from this one, and the information with regard to any other matters was not of interest to him on principle.

If we were to look at the interview materials, it starts from Hans-Peter Jenni. I am asked whether I knew such and such individuals. And Mr Abramovich, as far as I understand, is number five in that list.

If I wanted to say that I did not know him and never met him, perhaps I would give similar information in a similar form as I've done with the previous four gentlemen. But with regard to Mr Abramovich I have started answering this question in a broader manner, and here there is a reference to my previous answers. And my previous answers were as follows, that most likely I do know these people but they don't know me because my meetings with them had a fleeting, insignificant technical nature and it's very likely that they would not remember these meetings.

And within this detailed answer the investigator asked me the question: so did you meet with regard to this loan? And I said no, I had no meetings with regard to that loan, I had no interviews, I had no conversation with regard to these loans.

MRS JUSTICE GLOSTER: Okay.

A. And basically -- and there is a sub-question under these two phrases.

MRS JUSTICE GLOSTER: Right. Well, let's leave it there.

Mr Colton, you go on, please.

MR COLTON: Mr Grigoriev, the first attempt to explain away this inconsistency which you just gave was you said that there was a lack of detail.

I suggest to you, though, that your answer is entirely clear and isn't lacking in detail. You said in terms, "I have never seen him or met him."

That was simply a lie, is that what you're now telling the court?

A. I never met and had no meetings with regard to Runicom loan. In that part of my answer, the answer is complete and it is true.

Q. Do you say that you knew that this statement made here was incorrect but decided to leave it incorrect? Or do you say that you didn't realise that it was incorrect at all?

A. When I was answering, when I was giving my answer, I was answering in more detail, and not all of that information was recorded in this interview, and my fault is that I did not pay attention to this when I was signing this interview. I indeed did focus on other issues that were of a more complicated nature.

MRS JUSTICE GLOSTER: Mr Grigoriev, it may be that you're speaking too close to the microphone.

AUDIO EQUIPMENT OPERATOR: Sorry, it's that his headphones are too high.

If you could just lower the volume of his headphones down a touch on the unit. The volume of his headphones is too high. (Pause)

MRS JUSTICE GLOSTER: Is that better? Okay, let's try.

MR COLTON: Mr Grigoriev, in an answer you gave a moment ago, you said that:

"When I was answering, when I was giving my answer, I was answering in more detail, and not all of that information was recorded in this interview, and my fault is that I did not pay attention to this when I was signing this interview."

Would you please, though, take up your second witness statement, that's in bundle E8.

(Pause to rectify audio problem)

Mr Grigoriev, I was asking you to take up bundle E8, tab 12 at page 164 in the Russian E8/12/164 or 156 in the English E8/12/156 and read to yourself paragraph 7, please.

THE INTERPRETER: Now the witness cannot hear anything.

MRS JUSTICE GLOSTER: Can you hear anything? (Pause)

Right, Mr Colton, start again, put the question again, please.

MR COLTON: Would you read to yourself paragraph 7 on that

page, please. You should have page 164 in the Russian, 156 in the English.

Do you see that?

A. Yes, I have read it.

Q. You see, the evidence which you gave in your second statement is that you took, or you believe it most likely that you took a deliberate decision to leave this error in your interview transcript because you wished to leave as quickly as possible.

A. Yes, I can see that.

Q. Which is different to the evidence you've just given to this court, where you suggested you hadn't actually noticed that there was a problem with the evidence at all. Do you wish to comment on that?

A. Yes, certainly, I would like to comment. What I wanted to say is that I did not notice that error as an error. I perhaps have read it and didn't pay due attention to this. But here, in my witness statement, I'm saying that it's quite possible that even if I did notice and pay attention to this, then it's absolutely definite that I would ask for that to be corrected because that would have caused a significant loss of time and there wasn't much point from the point of the essence of that interrogation. There wasn't much significance. It wasn't a separate issue that they wanted to study during

that interview.

MRS JUSTICE GLOSTER: I think something may be lost in translation.

I'm going to put the question to you, Mr Grigoriev. Are you saying in your witness statement that it's quite possible that, even if you did notice and paid attention to the error, that you would have asked for it to have been corrected, or that you might not have asked for it to be corrected?

A. At that point in time, it seemed to me that this issue had nothing to do with the essence of the interview, with the point of the interview. And just to remind you that I came to draw up the prepared protocol, the prepared interview. It wasn't done during the interview, it was done over several days, and I was suggested -- it was put to me to sign it in the ready format. And if I were to make any corrections, that would lead to a complete redrawing of these materials, a complete redrafting, and that would again cause a significant loss of time.

And certainly, looking at orthographical errors, typos, some separate words, it wouldn't be much point to do that, it would be not rational on my part, and I thought that -- at that point in time I didn't give due attention to this issue because it seemed to me that

it was not significant. It didn't affect the issues that I was interviewed on in the first interview and in the second interview and on which I am giving my evidence.

So my fault is that I did not pay due importance to this. Now I do understand this but then I thought it was a minor issue, a very minor issue. Maybe I was wrong, and I do regret about this, but at that point in time, that seemed to me to be the case.

MRS JUSTICE GLOSTER: Thank you.

MR COLTON: So you are saying, are you, Mr Grigoriev, that you took a decision yourself as to on which issues it was important to tell the truth and on which issues it was all right to leave the investigator with false evidence. Is that your evidence?

A. I make my decisions myself. This is a true statement and what's important or not important for the investigation, that was certainly down to the investigator. And for the matters that were of interest to him -- and he didn't ask simple questions, he didn't ask questions, for example: do you know him? Do you not know him? He was asking detailed questions, he was asking various questions to study the matter that he was interested in, and that question was of an interjectory nature and that can be seen from the materials.

Q. Just to be clear, Mr Grigoriev, you have referred now on more than one occasion to your subsequent interview.

I think you suggested that that subsequent interview was on 10 March 2009, the same time as you were reviewing the transcript, but the interview actually took place on 23 March, isn't that correct?

A. I do not remember the dates. They can be seen from the document.

Q. Well, let me show you then in this same --

MRS JUSTICE GLOSTER: Well, just a second, how much longer are you going to be with this witness?

MR COLTON: A little while, my Lady.

MRS JUSTICE GLOSTER: Right. Then I think I'm going to rise now.

Mr Grigoriev, it's important that you don't speak to anybody about your evidence or the answers you've given this afternoon or about the case. Do you understand that?

THE WITNESS: Yes, I do understand that.

MRS JUSTICE GLOSTER: Okay. 10.15 tomorrow morning.

(4.16 pm)

(The hearing adjourned until.

Thursday, 17 November 2011 at 10.15 am)

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Thursday, 17 November 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Colton.

MR ALEXEI GRIGORIEV (continued)

Cross-examination by MR COLTON (continued)

MR COLTON: Mr Grigoriev, at the end of yesterday, I was dealing with your suggestion that you did not have the opportunity to read the transcript of 5 March 2009 interview when you returned to the General Prosecutor's Office on 10 March 2009 because, you said, you were instead subjected to a second interview. You pointed out that the second interview transcript is also in the bundle.

Would you please take up bundle H(C)8 again. Would you please turn in this bundle to 95 H(C)8/95 in the Russian or 95T in English H(C)8/95T. This is the transcript of the second interview to which you referred. That's right, isn't it?

A. Well, it is the second one in your sequence of documents, the way you count the documents. I must say that I've had more than two meetings with that investigator and, my Lady, I would need your assistance here, if I may, because I've not been able to consult with anyone on this.

Every interview like this is covered by my

obligation not to disclose the contents and the two interviews here have been disclosed within the framework of the French investigation, someone has done that. Disclosure, I do not know to what extent that was done in an appropriate way, but this has been done. Now, the interviews which are not here I believe have not been disclosed, and do I understand correctly that they are still covered by my obligation not to disclose, because the investigation is still going on, the matter has not been closed, the materials have not been forwarded to any court for a hearing yet and, therefore, I really do not know what my line of conduct should be in this respect.

MRS JUSTICE GLOSTER: Okay. These are interviews which you gave in Russia, yes, to the investigating authorities in Russia?

A. Yes, that is correct, and the criminal case was open in Russia, it's a Russian criminal case, not a French criminal case.

MRS JUSTICE GLOSTER: Right. And under Russian law, you think you have obligations of confidentiality in relation to those, do you?

A. Well, maybe even in these materials there are some documents which I have signed which say that I have an obligation not to disclose. I do not know whether it

was scheduled as an exhibit here, but it was part of the investigation.

MRS JUSTICE GLOSTER: Okay. How many more interviews are there which are not covered by the transcripts which we've seen already?

A. Well, I would not be able to give you the exact figure, but on the whole I think it was approximately four interviews, maybe five or maybe three, I may be confused a little bit but I think, I think, I believe there were four interviews.

MRS JUSTICE GLOSTER: Four interviews in total?

A. About four interviews within the -- conducted by this specific investigator. There have been other investigators, but this particular investigator, with him I think I've had about four meetings with that particular investigator.

MRS JUSTICE GLOSTER: Okay. Of which only two are in the documents that you've been taken to?

A. These two interviews I can see bring -- one common feature is that they focused on the Runicom loan. Other interviews focused on other things, they had other objectives.

MRS JUSTICE GLOSTER: Right. Well, until counsel for either side make an application to me for sight of those further transcripts, you can regard yourself as bound by

your obligations under Russian law of confidentiality.

A. Thank you. Thank you very much.

MRS JUSTICE GLOSTER: You understand? So until I make a specific ruling on the application of counsel for either side, you can regard yourself as not under an obligation to disclose what was said in those interviews.

A. I have understood. Thank you very much, my Lady.

MR COLTON: Mr Grigoriev, in your answer yesterday, you said of the second interview:

"At the same time an additional witness statement was provided and additional interview protocol was drawn up."

My Lady, this is Day 27, page 127, lines 11 to 15:

"That wasn't a time for familiarisation. This is a time for the interview, that was interview time, and you do have the materials about that interview ..."

So yesterday, when you were trying to explain that you hadn't read the transcripts, you relied upon the interview for which you said we had the materials.

Do you understand?

MRS JUSTICE GLOSTER: No, I don't understand the question. I think you're going to have to put it more simply or take him to the transcript because it's too difficult for him to understand that.

MR COLTON: Yesterday, Mr Grigoriev, you told us that you didn't have the opportunity on 10 March 2009 to read the transcript of the 5 March meeting. Do you recall that?

A. Well, maybe I misspoke or you misunderstood me. What I was saying was that I had not listened to the tape recording, to the audio recording, that's number one. The minutes itself, the text of the interview, when it was offered to me that I should read it, I did read it but I did not focus on the issues that we discussed, you and I discussed yesterday: have or have not there been those meetings?

What I focused on were the questions that were the basis, the reason for that particular interview, and that was the loan that had been provided by Runicom. Some matters related to the way that loan was recorded and so on and so forth. So those were the details that I focused on and read very attentively before signing off on that.

Now, so far as my acquaintance or lack of acquaintance with those people who were not related to that loan are concerned, well, obviously, I did not pay attention to those, and I'm really sorry now I did not pay attention to them then. And, as I mentioned yesterday, it is my intention now to make adjustments to correct that, and because the materials, the case

materials, have not yet gone to court I do hope that these inaccuracies will not result in any serious consequences, because the way I see it they do not have any -- they did not have any serious importance.

Q. Are you saying, Mr Grigoriev, that you didn't realise in 2009 that Mr Abramovich was in any way connected with Runicom?

A. No. What I meant both then and now is that the signing and the performance of this contract with Runicom was something that Mr Abramovich definitely did not have anything to do with.

It was an absolutely standard operation for the bank. It was one of many similar operations, it was not conspicuous in any way, it was not different. It only became different, it was distinguished in -- within the framework of that criminal case and now within the framework of these hearings. At that point in time it was not distinguishable and it was not conspicuous in any way, it was not different from the many others.

Q. So you did know that Mr Abramovich was connected with Runicom when you denied having met him, is that right?

A. I did know that Runicom, the company, and we knew that it was part of Sibneft group of companies, and Mr Abramovich did have a direct relationship with and a direct link to that group of companies. That I knew.

Q. Could we then move on to another inconsistency in your evidence. Would you please go in H(C)8 to page 13T in English H(C)8/13T or page 11 in Russian H(C)8/11.

Now, the second question on that page, it says:

"Investigator: Then let us go into this in detail. What were the relations between SBS-Agro Bank and the Joint-Stock Company Sibneft in the 1990s? Did SBS-Agro Bank take part in financing the acquisition of shares in Sibneft when that company was formed?"

Do you see that?

A. Yes, I can see this question.

Q. And then you provide an answer:

"The bank took part in this operation."

And you explain about the financing of the operation.

The investigator then asks:

"The client -- whom do you mean? By the word client."

You explain that:

"There were several companies there, organised by Sibneft ... to take part in that auction."

The investigator then asks:

"How could Sibneft itself have been able to form companies to take part in the pledge auction [the loans-for-shares auction]."

And your answer is that you don't remember the names of the companies that had participated.

Then we have this:

"Investigator: These companies, did they represent somebody's interests?

"Witness: Mr Gorodilov discussed this question with us.

"Investigator: Which one?"

And you say:

"Andrei."

Over the page, the investigator clarifies:

"That is, the son."

And you say:

"It was only Andrei with whom we spoke. Just at that time the elder [Gorodilov] came and signed deposit contracts. But again, this was not negotiation, but the execution of contracts."

Do you see that?

- A. Yes, I can see that.
- Q. Would you now please be given bundle E4 at tab 06 again, this is your first witness statement in these proceedings. Paragraph 14 is at page 94 in English E4/06/94 or page 106 in Russian E4/06/106. We looked at paragraph 14 yesterday but you might want to just refresh your memory of it again now. (Pause)

A. Which paragraph is that?

Q. It's paragraph 14. Paragraph 14.

A. Yes, I have read this.

Q. So we see that here and indeed in the following paragraphs you claim that Mr Gorodilov senior, Viktor Gorodilov, was at a meeting devoted to the potential involvement of SBS in the deal. Do you see that?

A. Yes, I can see that.

Q. And if you look on to the end of paragraph 15, we see that you refer there to Mr Abramovich and Mr Viktor Gorodilov deciding or having decided to approach SBS. Do you see that?

A. Yes, I can see that.

Q. If you turn on a couple of pages E4/06/97 you will see paragraph 21 of your statement. In the first line you see there reference to an agreement or having agreed with Mr Abramovich and again Mr Viktor Gorodilov. Do you see that?

A. Yes, I can see that.

Q. So while in the Russian investigation you said very clearly that there was no negotiation with Mr Viktor Gorodilov in respect of the loans-for-shares auction, in these English proceedings you're saying that there was negotiation. Do you wish to comment on that?

A. Yes, I'm happy to -- I'm ready to comment on that. One really needs to have a huge wish to find a disconnect here and I'm sure that you have that wish. Even though I'm following your logic very closely, I did not see any disconnect here. The questions which the investigator was asking were of a purely technical nature, he was not asking about any specific things.

On the whole, he was asking about the interaction during a long period of time. He's not referring to specifically November '95 or -- November '95, but he is in general speaking about the dealings with the group of companies Sibneft. And I am more than happy to confirm that during a protracted period of time of our dealings with that group of companies the main contact person was Andrey Gorodilov, while Viktor Andreyevich Gorodilov did visit the bank several times, at least I can recall two such visits by Viktor Gorodilov. We did have an original, initial meeting and I have a very clear recollection of that and I can explain why.

And then at least there was another -- a further, more technical meeting in order to draft some contracts, some documents. On the whole, other documents that he signed on did not require his visit, but they were signed while he did not visit the bank, but he -- but after that a large number of documents that were signed

by Viktor Andreyevich Gorodilov, they were signed without him actually visiting the bank, but at least two meetings I do remember vividly.

Q. Mr Grigoriev, you began that answer by claiming that you were being asked about the interaction over a long period of time. If you turn back again to the Russian interview which I took you to H(C)8/13T, the section which we went through began with a very specific question about financing the acquisition of shares in Sibneft and went on to ask about the loans-for-shares auction. You were clearly being asked about your dealings with Mr Viktor Gorodilov in late 1995, isn't that the truth?

A. Well, you have just referred to the purchase yourself. The purchase of the shares took over a year, you have just said this yourself. You've pronounced this word yourself.

Q. I must suggest to you, Mr Grigoriev, that the evidence which you gave in the Russian investigation is inconsistent with the evidence which you give now and that it shows on your part a willingness to lie if it suits you. Do you wish to comment on that?

A. Well, I categorically disagree with this, and this only means that there are different forms in which this information is being received, which you are trying to

compare. And these two forms are incomparable. One thing is an investigation in the General Prosecutor's Office and the questions are being asked of you spontaneously, and you're not prepared, and they ask you about things that had happened ten years prior to that or more than that, and you have to answer immediately, right away, and sometimes those questions are not that important for that particular interview.

And then, on the other hand, it's a totally different situation where you can prepare yourself, you can refresh your recollections and you can set out the information that you have in appropriate manner.

You are now comparing these two different approaches. And when you make a selection, you make a selection in favour of the document that was based on this quick unthought-through provision of information as opposed to a thought-through and well-weighed-up provision of information. This is your judgment call and you're free to make it.

MRS JUSTICE GLOSTER: Well, at the end of the day it's my judgment call. I think we've been round this buoy, Mr Colton.

MR COLTON: Yes, my Lady.

Mr Grigoriev, I now want to ask you about SBS's decision to fund NFK's bid in the auction for the right

to manage 51 per cent of Sibneft at the end of 1995.

You are aware, I think, that there were a number of meetings during 1995 between Mr Smolensky, Mr Berezovsky and Mr Patarkatsishvili. Is that right?

- A. Well, I know nothing about meetings with respect to the shares for auctions -- auction that you've just referred to. The meetings were between Mr Berezovsky and Mr Smolensky, they communicated very closely, and they may well have discussed lots of different questions. I usually did not attend those meetings and therefore I don't have any comment on that.

The shares for auctions theme at that time was being widely discussed and debated, and definitely most probably in the course of their meetings they did address that, they did discuss that. And I mean I do not believe that this statement is in contradiction with anything else.

Now, whether Mr Patarkatsishvili took part in that I do not know but, once again, there is nothing that would induce me to say anything to the contrary. No such meetings were held in the bank. One thing that I can assert and I can affirm is that no such meetings have ever been held in the bank.

- Q. So you accept then that there were meetings in 1995 between Mr Berezovsky and Mr Smolensky, is that right?

- A. They did happen regularly, they were meetings of a regular nature, it was a club-type kind of communication. There were both bilateral meetings but then there were other meetings as well, not only with Mr Berezovsky but also with other members of the business community, with other bankers, including such people as Mr Khodorkovsky, Mr Fridman and so on.
- Q. And you believe that Mr Patarkatsishvili also attended some of those meetings, is that correct?
- A. I believe that that is a distinct possibility, this is not inconsistent with my understanding of what was happening at that time.
- Q. Well, not only is it not inconsistent with your understanding, this is exactly what you say in your witness statement.

If you look at paragraph 11 of your first statement, it's in page 93 in English E4/06/93, 105 in Russian E4/06/105, in the last sentence you say:

"I believe that Mr Patarkatsishvili, who I understand to be Mr Berezovsky's right-hand man and who in 1996 became the Chairman of the Board of Directors of Consolidated Bank, also attended some of these meetings."

So that was your belief at the time you wrote this statement, is that right?

A. Well, I think what I'm saying now is approximately the same thing.

Q. When you then go on in paragraph 14 of your statement E4/06/94 to say that:

"... the initial approach to SBS in relation to the Sibneft 1995 auction was made by Mr Abramovich and Mr Viktor ... Gorodilov."

You cannot honestly say that, because you don't know what discussions there had been with Mr Smolensky, isn't that right?

A. No. What I'm saying here is that that meeting was conducted in my presence and I took an active part in that meeting.

Q. That meeting, the meeting to which you refer, may have been in your presence, but the point I'm putting to you is that you do not know that that was the first meeting involving Mr Smolensky and someone asking for SBS's assistance on behalf -- in the 1995 auction. Isn't that correct?

A. Well, I may have not known this. I agree with your logic, I agree with your assumption, but I know this from Mr Smolensky, if this is of any relevance at all. Because at that time we worked very closely with him and we would still communicate quite closely with him. And his view of all the matters that might have been of

interest to me is, in principle, well known to me. I know what his opinion is. Now, whether this additional information is relevant or not I do not know, but I do have information, I do know that that meeting was the very first meeting at which the dynamics, the techniques of that particular transaction that, at the end of the day, was implemented, was being first discussed.

Because that information was being discussed initially, no party was prepared, none of them had come to that meeting with a prepared solution. The solution was -- the decision was worked out at that meeting. It was a very simple solution, a very simple decision, therefore they only needed one meeting to arrive at that.

- Q. So the proposal for SBS's involvement pre-dated the meeting but it was at that meeting that the dynamics or the techniques were discussed, is that the evidence you're giving?
- A. I believe that this meeting was the initial, the first meeting at which that proposal was raised, discussed, and a solution was found which, mind you, was a very simple solution, and later on that solution was actually realised, it was implemented. And I have mentioned that I remember that meeting quite well, but I remember this

as a meeting with Viktor Andreyevich Gorodilov, not a meeting with Mr Abramovich whom, prior to that meeting or immediately after that meeting, I did not even know who he was.

But Viktor Andreyevich Gorodilov, he -- well, actually there is this term red director, which is used in the case materials, and many people believe that this is a derogatory, negative term. To me, this was the person who was the depository of a lot of knowledge of fantastic expertise, who was running a huge enterprise. He had put that enterprise in place, he was managing a town which was a one-company town at that time. This was a man with whom, when you have meetings, you remember those meetings. I have a lot of respect for those kind of people, and that meeting was a meeting with Gorodilov specifically.

And in order to agree on that meeting, he did not need anyone's protection. That person could have walked into any bank, and everyone, any banker, would have had a meeting with him with great pleasure because you could predict what kind of interest you might have there. You did not need anyone's requests or recommendations, you could do it like that, walk into the bank, and any head of the bank, any chief executive, could have had a meeting with that person. And I recall that meeting

very well because that was the only significant meeting with that kind of person, with that specific individual.

MRS JUSTICE GLOSTER: Mr Grigoriev, can you keep your answers a bit shorter please. You've made the point but you've made it about three times.

A. I beg your indulgence. I'm very sorry, my Lady.

MR COLTON: Mr Grigoriev, Mr Abramovich has told this court that Mr Berezovsky introduced him to Mr Smolensky, and that Mr Berezovsky helped Mr Smolensky develop the wish and desire to act in the 1995 Sibneft auction. Were you aware that this was evidence which Mr Abramovich had given?

A. Yes, I do know that.

Q. And so, if Mr Abramovich is telling the truth on this point, then it was Mr Berezovsky who introduced him to Mr Smolensky, and this was not the first meeting; the meeting to which you refer was not the first meeting which raised the issue of involvement in Sibneft.

MR SUMPTION: My Lady, the implication that that was Mr Abramovich's evidence is mistaken and it shouldn't be put to the witness in those terms. It can be put as a suggestion of counsel but not on the basis that that is what Mr Abramovich said.

MRS JUSTICE GLOSTER: Right.

Well, I'm not going to go back to the transcripts,

Mr Colton, to see what Mr Abramovich said. So please put it on the basis that it is your client's case that that was the position.

MR COLTON: My Lady, yes. If later we do seek the transcript reference, it's Day 17, page 100, lines 10 and following.

MRS JUSTICE GLOSTER: Right. Well, there is a limited utility in putting to witness B what witness A has said in certain circumstances. I think it's better you just put the proposition to him and the witness can deal with it on the basis of his own knowledge.

MR COLTON: Yes, my Lady.

Do you accept, Mr Grigoriev, that Mr Berezovsky introduced Mr Abramovich to Mr Smolensky?

A. I think that this was indeed the case. There is no way I can know that with certainty, but I believe that that was the case.

Q. And could you accept that Mr Berezovsky assisted in persuading Mr Smolensky to agree to the involvement of SBS in the 1995 Sibneft auction?

A. Well, if we make the proviso that the format of participation kept changing and originally something much more sophisticated was being thought about, then that might well have been the case. But the way this particular option was realised, that particular option

was raised at that particular meeting and it was not a very sophisticated thing, something that might have required the involvement of Mr Smolensky or Mr Berezovsky. This was a very simple thing, and it was realised in a very simple way and it required the authority of myself or maybe even the authority of my employees only.

Q. So if I've understood you correctly, Mr Grigoriev, your evidence is now that this meeting which you describe in paragraph 14 E4/06/94 was not the first discussion relating to SBS's involvement in the Sibneft auction --

MRS JUSTICE GLOSTER: I don't think he's put it quite like that. I think he said he didn't know but it could have been. I don't think he's giving evidence from his actual knowledge as to whether there was a prior meeting.

Do you know from your own knowledge whether or not there was a prior meeting?

A. I have no knowledge of that.

MR COLTON: I shall move on to another point then.

Would you please read to yourself paragraph 23 of your first witness statement. It's at page 98 in English E4/06/98 and 110 in Russian E4/06/110.

(Pause)

A. Yes, I can see that.

Q. Now, you're here responding to the evidence of Dr Dubov which, for my Lady's note only, is at paragraphs 66 to 72 of Mr Dubov's first statement D1/12/275. And Dr Dubov's evidence, and I don't think you dispute this in your witness statement, is that Dr Dubov attended SBS with the Logovaz seal towards the end of 1995 having been told by Mr Patarkatsishvili that a guarantee from Logovaz might be required.

Now, I know we'll have a disagreement perhaps on the nature or the purpose of that guarantee, but I don't think you dispute that part of the events at least, is that right?

A. Well, I will just try to reiterate what I attempted to set out in my witness statement. I do not recall ever having seen Mr Dubov or Mrs Nosova. To be honest, I do not recall that. Having said that, it may well be that such meetings have taken place, I just do not recall those.

So far as Mr Dubov's witness statement is concerned, to the effect that he came to the office with a seal it is a possibility, but I never discussed that with him and I never met with him. Once again, as an assumption, as an assumption, as to why he went there with a seal, if he did go there with a seal, what I can only say is that it might have been related to the ORT loan which

was being processed in December '95, and some serious money in December had been provided by the bank, and in that sense the bank did need some security, did need some additional guarantees because that particular loan was not processed properly in terms of credit risks.

So far as the Sibneft loan was concerned, there was no credit risk, we did not need any security, we did not need any additional guarantees, much less from Logovaz whose financial capabilities were not big ones so far as I was concerned. I did not know what Logovaz guarantee was worth in '95, and I was not -- I did not know whether or not they were actually capable of providing a security or a guarantee to the extent of \$100 million. I do have serious questions about that.

Q. Now, in fairness to you, Mr Grigoriev, Dr Dubov doesn't specifically say that you were at the meeting which he recalls attending. He says it could have been you or it could have been Mr Raskazov, another senior employee of the bank. So I'm not suggesting to you that you were necessarily at the meeting.

But you accept that a guarantee of an amount close to \$100 million in favour of SBS by Logovaz might have been prepared, you can't dispute that I think?

MRS JUSTICE GLOSTER: I don't think he accepts it. I think you must put your questions a bit more specifically,

Mr Colton.

MR COLTON: My Lady, I'm reading from his witness statement.

It's in paragraph 23, in the fourth line:

"I can only comment that such guarantee might have been prepared ..."

MRS JUSTICE GLOSTER: "... might have been prepared ..."

Anyway put the question again.

MR COLTON: From your witness statement, Mr Grigoriev, you accept I think that a guarantee for an amount close to \$100 million in favour of SBS by Logovaz might have been prepared, is that right?

A. Well, this was up to Logovaz, and within Logovaz any kind of activity may have been conducted and that was probably something that I had no knowledge of. But what I do know is that neither with respect to the Ministry of Finance loan, nor unfortunately with respect to ORT loan, no guarantees were provided to the bank. And so far as I understand, we are now speaking about a properly legally processed document with the signatures, with all the seals attached, ie those documents that would have been properly recorded.

And I can tell you with certainty, and responsibly, that no such documents were ever received by the bank. The ORT loan in terms of the amount, when we're talking about \$100 million, the final payable by ORT with

respect to the bank by the time when it matured was about \$55 million. So we were talking serious liabilities and then a serious guarantee.

So even in terms of the timeline and in terms of the amounts there is some crossover here. So it is possible that that kind of security was being discussed, but that was discussed with respect to the ORT loan because, for the Sibneft loan, there was simply no need for that.

Q. You say in your witness statement, and you've said again now, that the ORT loan was only in the region of about \$55 million. Is that right?

A. In February, March 1997 I believe that loan was repaid and the total outstanding amount at that time was about \$55 million. But in December 1995, that outstanding amount was probably about 20 million, maybe a little bit less than that.

Q. Because in fact the first tranche of the loan was only made in December '95, is that right?

A. That is correct.

Q. And as for this loan, you've explained in paragraph 13 of your first witness statement, which is at page 94 E4/06/94, or 106 in Russian E4/06/106, that this was a political project rather than a matter of business. That's in the opening few lines, do you see that?

A. Yes.

- Q. And that being so, I suggest it was extremely unlikely that there would have been discussion of a guarantee in the order of \$100 million in support of such political project at a time in particular when the first tranche of \$20 million or less was being paid.
- A. I'm not sure I got the gist of your question. Could you kindly repeat?
- Q. You have accepted that the ORT loan was a political project rather than a business matter. As such, I suggest to you that it is extremely unlikely that there would have been discussion of a \$100 million guarantee to support it. That is what I'm asking you to comment upon.
- A. Well, if I understood you correctly, the question is whether or not a \$100 million guarantee, and you are focusing on that particular amount, could it be discussed at that time with respect to the ORT loan?

Once again, I believe that that is not very likely, and I do not recall any discussion of such a guarantee with respect to either the ORT or the Sibneft loan, as I have already mentioned.

I'm simply responding to what Mr Dubov has said who has alleged that he was sitting there, with a seal there, and was prepared to record that guarantee. But the ORT loan guarantee was never recorded even though

I did believe that it was a difficult loan, a complicated and rather risky loan, and we were all delighted when that loan was repaid in early 1997.

- Q. Do you recall that the bid in the Sibneft loans-for-shares auction in December 1995 by NFK was for \$100.3 million?
- A. Yes, I know that the transaction was executed to that -- rather, the transaction was performed to that amount, to the extent of that amount.
- Q. And do you recall also that there had been a \$3 million deposit paid in advance?
- A. Yes, that was one of the terms and conditions of that particular auction, but we refused to make that money available because it was not refundable. And if the company lost the bid, lost the auction, the money would not have been refunded, from what I understand, and therefore the company had to find and raise that money on its own, and we did not assist the company in that.
- Q. SBS did assist in the remaining \$97.3 million even if it had in fact received the money from elsewhere in advance, is that right?
- A. SBS was acting at the instruction of a client of the bank. The group of companies placed a deposit to the relevant amount. We recorded security documents whereby those deposits became pledged -- they were pledged as

collateral under the Ministry of Finance, under the Ministry of Finance loan which was provided to the extent of the same amount.

Q. I suggest to you, Mr Grigoriev, that if there was a guarantee being discussed for close to \$100 million, it is much more likely to have been in relation to the Sibneft auction than any ORT loan. Do you wish to comment on that?

A. Yes, I would like to comment. If I have money to that amount, what kind of guarantee do I need? And also, excuse me, there's a rhetorical question but I would like to ask it anyway. To what amount could Logovaz provide a guarantee at all? Are you saying it was solvable, it was credible to the amount of \$100 million? I don't think so.

If they had had such money themselves then why are we altogether collecting \$5 million in order to pay ORT salaries? Because chances were that people would go off on a New Year's vacation without receiving their salaries. Now, if they did have that possibility available to them, why didn't they avail themselves of that possibility? I believe that Logovaz did not have that ability to provide guarantees to the extent of \$100 million. They simply were not able to do that.

MR COLTON: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much, Mr Colton.

Mr Malek?

MR MALEK: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin.

MR ADKIN: No questions, my Lady.

MRS JUSTICE GLOSTER: Mr Sumption.

MR SUMPTION: No re-examination.

MRS JUSTICE GLOSTER: Thank you very much indeed,

Mr Grigoriev, for coming along to give your evidence.

(The witness withdrew)

I propose to start the next witness before the  
break.

MR SUMPTION: Before the break.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: My Lady, before we do that, the next witness  
is Mr Tenenbaum but before he takes the stand can I just  
raise with your Ladyship the question of the trust deeds  
which arose in the course of Mr Shvidler's evidence.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Your Ladyship raised with me the possibility  
that the trust deeds might permit the addition of  
further beneficiaries. Can I, in the hope of defusing  
this situation, say what the situation is and how we  
propose it should be dealt with.

There were two successive trusts, there was

a Liechtenstein trust which was operative between 1999 and 2001, and there was a Cyprus trust which was operative from 1 March 2001 and still is. The beneficiaries under the Liechtenstein trust were Mr Abramovich and, on his death, his children.

The foundation, essentially the equivalent of the trustees, had a power to add relatives of Mr Abramovich to the beneficiaries with the consent of the protector, Mr Shvidler. There was also a power to alter the whole of the regulations which could, in principle, have been used to alter the beneficiaries but only with the consent of Mr Abramovich himself.

MRS JUSTICE GLOSTER: So, theoretically, it was one of those trusts where they could have put in anybody but only with the consent of the protector?

MR SUMPTION: Well, no, it would have to be a relative if they added beneficiaries.

MRS JUSTICE GLOSTER: Oh, I see.

MR SUMPTION: But they could have altered the whole regulations, thereby reframing the provisions about extra beneficiaries with the consent of Mr Abramovich. So by that route it could have been done.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: The position in relation to Cyprus is very slightly different. The beneficiaries there were

Mr Abramovich and, after his death, his children. The trustees had a power, in very common form, to add anybody as a beneficiary with the consent of the protector who was, again, Mr Shvidler. The position in relation to that trust is that Sibneft was among the assets but Rusal was not. That may well make the point that there were possibilities under both of those deeds for adding beneficiaries, which I think was the point that was of interest to your Ladyship when this last came up.

What we have done about this, and as your Ladyship will appreciate, this is extremely sensitive --

MRS JUSTICE GLOSTER: I can appreciate that.

MR SUMPTION: -- not just for personal reasons but for the security implications.

MRS JUSTICE GLOSTER: Well, certainly the Cyprus trust provisions are. The Liechtenstein I question, but I can see that in relation --

MR SUMPTION: That may well be right.

We are also slightly concerned because, and I'm certainly not levelling accusations against anyone at the moment, but documents from our disclosure have, as I understand it, been offered for sale in Moscow, which is a source of some concern for us and we would not like to see this category of documents joining those which

have been treated in that way.

Now, what we have done --

MRS JUSTICE GLOSTER: Well, I can't deal with that unless a specific application is made to me from either side.

MR SUMPTION: No, I am only explaining to your Ladyship why this is a matter of sensitivity.

At any rate, what we have done, we have supplied to Mr Rabinowitz for his eyes only the Cyprus deed, and we will, as soon as it arrives, which we expect to be some time today, supply him, for his eyes only, with the Liechtenstein deed so as to verify what I have just told your Ladyship.

We hope that that will be enough, but at any rate we don't accept that the matter can be relevant to any greater extent, and if my learned friend wishes to make further use of them, then it will need to be the subject of an application. But we hope that that will effectively defuse the matter.

MRS JUSTICE GLOSTER: Yes, thank you.

Mr Rabinowitz, I'll wait, and if you wish to make an application for anything further I will entertain it, obviously.

MR RABINOWITZ: I'm grateful for that, my Lady. And indeed what my learned friend says reflects upon the conversation we had, save for this, I think my learned

friend was content for me to show it also to my  
solicitor, Mr Hastings.

MR SUMPTION: That has, as I understand it, been agreed  
also.

MRS JUSTICE GLOSTER: Very well. If you want to take it  
further, Mr Rabinowitz --

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Right, then I will take the break now.  
Ten minutes.

(11.13 am)

(A short break)

(11.29 am)

MR SUMPTION: I call Mr Tenenbaum. He will be giving his  
evidence in English.

MR EUGENE TENENBAUM (affirmed)

MRS JUSTICE GLOSTER: Do sit down, Mr Tenenbaum.

THE WITNESS: Thank you.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Tenenbaum, could I ask that you be given  
bundles E3, E4 and E8. In bundle E3, would you turn to  
flag 11 E3/11/71.

A. I have.

Q. Now, you made three witness statements for the purposes  
of this trial, I think five altogether, and this is the  
third witness statement, the first for the purpose of

the trial. Is that right?

A. Yes.

Q. It's your signature that we see on the last page,  
page 113 of the bundle?

A. It is my signature.

Q. Now, there are some corrections which you wish to make  
to this which I think you probably have in front of you  
on a separate piece of paper. Is that right?

Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I have two copies, thank you.

MR SUMPTION: Are those corrections you wish to make to your  
third witness statement, the first for the purpose of  
the trial?

A. Yes, it's true.

Q. Subject to those corrections, is this witness statement  
true?

A. Yes, it is.

Q. Now, could I ask you to turn, please, to bundle E4 at  
flag 9 E4/09/155.

A. Yes.

Q. Is this your fourth witness statement?

A. Yes.

Q. And is that signed by you on the final page, page 158 of  
the bundle?

A. Yes, it is.

Q. Is that also true?

A. Yes, it is.

Q. Could we please now turn to bundle E8 at flag 1  
E8/01/1. Is this your fifth witness statement?

A. Yes, it is.

Q. Signed by you on page 12 of the bundle?

A. Yes, it is.

Q. Is that true?

A. Yes, it is.

MR SUMPTION: Thank you very much.

Cross-examination by MR RABINOWITZ

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, your evidence is that in --  
this is what you say E8/01/10:

"In Russia management is key and every significant  
appointee at Sibneft from its creation in 1995 was  
Mr Abramovich's."

Is that right?

A. Yes, I believe so.

Q. And the result, you say, in your evidence, is that:

"People loyal to him were embedded deeply across the  
organisation..."

Is that correct?

A. Yes, it is.

Q. And you were appointed to Sibneft in 1998 as head of

corporate finance, correct?

A. Correct.

Q. This would have been a significant appointment for Sibneft, I suppose, so you would have been appointed by Mr Abramovich?

A. Correct, with Mr Shvidler.

Q. And you explain that it followed several meetings with Mr Abramovich and Mr Shvidler, and you also say this E3/11/78, that having met Mr Abramovich and Mr Shvidler you agreed to join Sibneft because of your "belief in Mr Abramovich's business acumen and personal integrity."

Did you not feel the same way about Mr Shvidler?

A. On the contrary, Mr Shvidler was the one that hired me so I felt that way as well, of course, about him.

Q. Prior to joining Sibneft, you were a director of Salomon Brothers in London?

A. Correct.

Q. In 1997, when you were part of the team working on the offering circular for Sibneft's Eurobond issue, you tell us you were a relatively senior vice president at Salomon, is that right?

A. I was a vice president, yes.

Q. A relatively senior vice president?

A. I was made director when I left the following year, yes,

so I was senior.

Q. You also tell us that you had been given to understand that you had a promising future within the ranks of the company, is that right?

A. Correct.

Q. Can one therefore assume that you were offered a very attractive remuneration package in order to move to Sibneft?

A. Correct.

Q. Were you offered any shares or interest in shares in Sibneft?

A. No, I wasn't.

Q. You continue to work for Mr Abramovich today as managing director of MHC Services, is that right?

A. Correct.

Q. And you're also a director of Chelsea Football Club Limited?

A. Correct.

Q. You have now been working for Mr Abramovich's company for well over ten years?

A. Yes. More than that even.

Q. And you're a member of the team of people that Mr Abramovich trusts and relies upon, aren't you?

A. I hope so. Yes. Sorry.

Q. And you are in fact a close friend of Mr Abramovich's?

- A. I think so, yes.
- Q. And Mr Abramovich tells us that you work together, relax together and generally spend time together, is that right?
- A. Relax? Yes. He's not very relaxed, but yes, we spend time together.
- Q. All right. He also told the court that you assisted him in the preparation of his witness statements in these proceedings.
- A. I primarily helped Roman in this process, yes.
- Q. Can you tell us how you helped Mr Abramovich in that process?
- A. Well, I coordinated with the lawyers, with Skadden, to ensure that a lot of the witnesses were on time and -- because they were in Russia, but primarily I was helping Roman understand the issues in this case.
- Q. Well, I put to you that Mr Abramovich told the court that you assisted him in the preparation of his witness statement in these proceedings.
- A. Preparation of the witness statement itself?
- Q. I think his witness statements.
- A. Okay.
- Q. And that's right, isn't it? Because the answer you gave --
- A. Yes, okay, fine, yes, I assisted him, correct.

- Q. -- seemed to relate to coordinating when other witnesses would be at various places, but it obviously went beyond that?
- A. Sorry, sorry, I helped Roman understand the issues in the case, yes.
- Q. Ms Panchenko tells us that you were one of a group of people who got together before producing witness statements to see if you could together recollect events, is that right?
- A. That is correct, yes.
- Q. Now, could I ask you, please, to go to paragraph 8 of your third witness statement, that's bundle E3, tab 11, you'll find it at page 73 E3/11/73. This is where you set out your commentary on the Sibneft Eurobond issue in 1997. You've explained that at this time you were working for Salomon Brothers, correct?
- A. Correct.
- Q. You also tell us that although you were relatively senior you didn't have overall responsibility for the offering. Overall responsibility for the offering was the role of Mr Cormack Lynch, an oil and gas expert?
- A. Correct, because it was an oil and gas deal.
- Q. Nonetheless, you did participate at some of the meetings at which the drafting of the offering circular was discussed, correct?

A. On the key issues, yes.

Q. And you discussed key due diligence issues with Mr Lynch?

A. Primarily with respect to the ownership.

Q. Yes, indeed.

In your witness statement at paragraph 9 you refer to, and indeed cite, page 16 of the offering circular, which we can look at in a moment. But just to clarify this, your evidence is that this statement reflected the understanding of Cleary Gottlieb, the lawyers who performed due diligence on the question of share ownership?

A. Correct.

Q. And the statement would also have reflected your understanding, is that right?

A. At that time, after their work, yes.

Q. And then let us look at the statement, and we can take it from paragraph 9 of your witness statement E3/11/73. It's the first two sentences which I'd like to focus on. These say that the companies owning 97 per cent of Sibneft, FNK, Firma Sins, Refine Oil and Runicom:

... 'are all privately held companies and have close connections with the current management of Sibneft. As such, more than 97% of the Company is

currently controlled by the Company's managers and a small group of private Russian investors.'"

Can you help me with this, please, who was the small group of private Russian investors?

- A. I understand that it was the management of the trading company, so we couldn't explain that it was the management of Sibneft so we had to explain it in such a form that it was employees of the trading companies, but were all connected to Mr Abramovich.
- Q. Can you be a little more specific. Who do you say were the individuals making up that small group of Russian investors?
- A. They were individuals that worked for the trading companies that were alongside Sibneft. Again, this was I guess 14 years ago, I don't remember the names.
- Q. You don't remember the names?
- A. No, but they were employees, I remember that it wasn't -- they were employees of those trading companies, my understanding.
- Q. If you go, Mr Tenenbaum, to paragraph 16 of your witness statement E3/11/77.

You say:

"I was aware of who the major shareholders were as a result of the work done in the Offering Circular ..."

- A. Correct.

- Q. So who were the major shareholders?
- A. They were the managers -- well, primarily they were the managers of Sibneft at that time and the employees of the trading companies. But at that stage you could only see the four companies, and I think that what Cleary's did was went up all the way to who the registered shareholders were in Russia, but I'm reconstructing right now.
- Q. Are you seriously saying that you do not know now, cannot remember now who were the major shareholders of Sibneft?
- A. The major shareholders were the four companies, those were the shareholders. But in a Russian context, those companies were controlled by employees of the trading companies. So they were individuals in those trading companies. The names I don't remember, unfortunately.
- Q. Now, just going to paragraph 20 of your statement, that's at page 79 E3/11/79, you say at paragraph 20 that after you joined Sibneft you:
- "... explained to investors, when asked ... that the management were the main shareholders and that they controlled Sibneft."
- A. Correct.
- Q. And you worked in Sibneft until September 2001 when you moved to work for Millhouse, now MHC Services Limited,

in London?

A. Correct.

Q. So these were statements, we can assume, that you made on occasions between 1998 and 2001?

A. There were statements that I made until 1999 when I found out that Mr Abramovich was the only shareholder. Until then, I didn't know that.

Q. You're saying that, until 1999, you did not know that Mr Abramovich was the only shareholder. Wasn't that something --

A. No, I -- I thought it was the management.

Q. Wasn't that something that you would have wanted to find out when you joined the company?

A. I did, and I was told that it was the management.

Q. So it took a year, do you say, before --

A. It took, yes, about a year, when we set up the trust.

Q. And that was the first time that you say you were told the truth?

A. No, when I understood that he was the only shareholder. Again, in Russia, you don't ask those kind of questions. You assume that things are what they are, and then when I found out, I found out.

Q. Mr Tenenbaum, you tell us that you had left a relatively senior position at Salomon Brothers, correct?

A. Correct.

- Q. And that you were happy to join Mr Abramovich and Mr Shvidler because you trusted in their integrity.
- A. Correct.
- Q. But you felt unable, is this your evidence, to ask them who owned Sibneft at that time?
- A. At that time, the only interest I had was whether Mr Berezovsky was a shareholder. And I understood that the management controlled the company, and that was important for me, because the management that I met was Mr Shvidler, Mr Oiff, Mr Gorodilov, Ms Panchenko, and at that time it wasn't explained to me who the actual shareholders were but I understood it to be the management of Sibneft.
- Q. You were appointed head of corporate finance for Sibneft?
- A. Correct.
- Q. And you say you had no interest in knowing who in fact the owners of the company were?
- A. I'm not saying I had no interest. I had an interest, the interest that I asked. I was explained that it was the management. And when I got to know Mr Abramovich much more I understood the security reasons why he was saying those things. And in '99, when I think he had more confidence in me, I understood the full ownership structure of the company when I became the trustee.

Q. So you're suggesting that this person, whose integrity so attracted you that you wanted to join the company, in fact misled you when you first joined as to who the owners of the company were?

A. That's not correct, it's not misleading, because the management did control the company and did control the shares.

MRS JUSTICE GLOSTER: Are you making a distinction between ownership and control?

A. Correct, and that was very important for investors as well.

MR RABINOWITZ: All right. Are you suggesting that you didn't ask who owned the shares?

A. Well, during the due diligence on the Eurobond I knew who the registered shareholders were. Again, this is 13 years ago. Mr Abramovich was the founder of all those companies that were above the four companies, but at a certain point in time his employees became registered holders of those, controlled those shares. So I knew that he was the main shareholder, but the management was also involved in controlling those shares.

Q. And you didn't bother to ask who the other shareholders were? And I'm using that in reference to owners rather than controlling.

A. Again in the '97 due diligence it was seen who the registered shareholders were, so I understood that. It was the management of the company, so I saw that.

But in 1999, when we did the trust, Mr Abramovich was the only beneficial shareholder of all those structures.

Q. Can I just ask you this, when you use the word "control" in those answers, are you in fact talking about who the registered owners of the shares were? Is that what you're suggesting?

A. Well, the control point -- when the trust was set up, the management of the company were the trustees and the protector. So, to me, they controlled. So when we told the market that the management and Mr Abramovich controlled the full, let's say, 90 per cent block, that was what we communicated to the market place, and that was important that we communicated the full transparency of what was happening.

Q. I'll come back to that.

Can I just ask you this. You deal in your evidence with some valuation issues relating to Russian companies and, as you are aware, both companies -- both parties have filed a considerable amount of expert valuation evidence in relation to the valuation of Sibneft and Rusal. You, of course, are being called as a witness of

fact and are not called to give independent expert opinion and, in general, I won't be asking you about your opinion. But there are some matters that you deal with in your witness statement relating to valuation that I do want to ask you about.

Now, you produced a fifth witness statement dated 21 August 2011. It's in bundle E8, tab 1 E8/01/1. That was one day before Mr Bezant, who is Mr Abramovich's expert, produced a report served by Mr Abramovich. That report was served on 22 August, you're aware of that?

A. Yes.

Q. Mr Bezant refers to your witness statement in his report of 22 August. If you want to have a look at that, can you go to bundle G(C), volume 20/2, page 107  
G(C)20/2.01/107

A. Which clause?

Q. If you look at paragraph 8.49, for example, you'll see that he refers to your witness statement, your fifth witness statement, which was served one day before this report. So presumably you had discussed your evidence with Mr Bezant before he served his report, and indeed before you served your witness statement, is that right?

A. No, that's not correct. I didn't discuss with Mr Bezant.

Q. Can you explain how it is that he was able to refer to your fifth witness statement the day before -- which was just produced the day before when he served his report?

A. Well, I gave my witness statement to Skadden and they coordinated with him. I was not allowed to speak to him.

Q. Can you turn, please, in your fifth witness statement to paragraph 25, it's at page 8. So E8, tab 1 E8/01/8.

A. Which clause, sir?

Q. Paragraph 25. You say here:

"For the reasons that I have set out above (predominantly the medium and long-term risk), no Russian businessman would have relied upon or used the DCF approach adopted by Mr Allen. His use of 'comparable multiples' also indicates some ignorance of the market as it stood. Mr Allen treats emerging market and Western companies as comparators, but completely disregards Russian market [comparators]."

So you rely upon what you describe as Mr Allen's complete disregard of Russian market comparators and use of emerging market and western companies as comparators as indicating ignorance on his part. Do you see that?

A. Yes, I do.

Q. Can you go to bundle G(C)2/01. It's G(C)2.

MRS JUSTICE GLOSTER: What page, please?

MR RABINOWITZ: I'm going to go to page 94 of the bundle  
G(C)2/01.00/94.

Mr Tenenbaum, just so you know, you can see this on  
the opening page, page 1, this is Mr Allen's report of  
25 July 2011.

A. Mm-hm.

Q. Now, if you're at page 94 of the bundle, about halfway  
down the page, do you see the heading "Comparable  
Trading Multiples"? Just above paragraph 7.2.20.

A. Mm-hm.

Q. You see that Mr Allen explains the comparable companies  
he has identified for the purposes of cross-checking his  
DCF valuation, do you see that?

A. I don't see his multiples.

Q. You need to go over the page.

A. I don't see his comparable multiples.

Q. I said his comparable companies.

If you go over the page, you see he explains that  
he's looked at comparable companies in Russia and other  
emerging markets.

A. Mm-hm.

MRS JUSTICE GLOSTER: Would you give me the paragraph  
number, please?

MR RABINOWITZ: If your Ladyship looks at paragraph 7.2.22,  
at the top of page 95 G(C)2/01.00/95. Do you see

that, Mr Allen says:

"I ... identified comparable companies with Sibneft based on geographic location, under the following categories ... Russian oil and gas companies ... Oil and gas companies in Russian [sic] and other Emerging Markets ..."

Do you see that?

A. Well, in 7.2.22 he takes capital IQ, which has multiples ranging from -- over 150 times, so I don't see how he's looking at comparables.

Q. Well, let's go over to page 99 --

A. Where in Russia at that time it was two times.

Q. Go to page 99 if you would G(C)2/01.00/99.

A. 99?

Q. Page 99. Do you see the figure 16 at page 99, below paragraph 7.2.37?

A. Yes.

Q. You see that the red triangle shows the implied EBITDA multiple for Sibneft using the valuation from the discounted cashflow method.

A. But I don't agree with that, so...

Q. Right, but I'm just dealing with this, Mr Tenenbaum.

A. Okay, fine, that's fine.

Q. Do you see the grey squares in this figure?

A. Yes, I do.

- Q. Those represent Russian market comparators, do they not?
- A. Correct.
- Q. Comparators which you say were completely disregarded?
- A. Well, because Mr Allen used a -- I think he used many other companies in his analysis, so the average became very high, even if he used the Russian.
- Q. Well, he didn't ignore them.
- A. Well, you don't ignore them, but if you have, you know, 100 companies and only four of them are Russian then the average becomes very high, as you can see. 6 -- 4.7 multiple for emerging markets, EBITDA(?) of 4.7, Russia, at that time, the comparables for us was about 1.5 so that's a major, major difference.
- Q. Well, your evidence was that he completely disregarded this. Can you also look on the graph --
- A. Sorry, can I just comment, he disregarded it in his conclusions.
- Q. Okay. But look at the graph, page 99 G(C)2/01.00/99.
- A. I am.
- Q. That marks the -- by reference to the blue circles -- companies which are from emerging markets. The group which we've seen includes Russian companies as well. And there is no comparison with western companies here, is there?
- A. This is an emerging market comparison. But Russia was

an emerging emerging market.

- Q. So when you in your evidence suggested that he treats emerging markets and western companies as comparators, that was wrong?
- A. No, it's not wrong, because he is treating them as comparators, and he should be looking at Russian comparators primarily, because Russia at that time was very unique. Even today, Russia is the cheapest trading emerging market in the world. So it's interesting to look at other emerging markets, but if you're looking at a Russian valuation you must look at Russian companies.
- Q. Can I ask you, please, to go to paragraph 22 of your fifth witness statement, so that's the one at E8, you'll find it at page 7 of that bundle E8/01/7. You say here:

"Absent individual buyers' considerations, in my opinion the price at which the free float of Sibneft shares traded in June 2001 is a reasonable indicator of its value then."

By "its value" you're obviously meaning Sibneft's value?

- A. Correct.
- Q. Now, I made the point to Mr Shvidler when he gave evidence that there were a number of reasons why the price of free-floating Sibneft shares was not a useful

indicator of the value of the shares in which Mr Berezovsky and Mr Patarkatsishvili had an interest, and that included that scaling up the share price, which suggests a value for the company of only a little over \$1 billion, which I suggest is a ridiculous proposition, when this company was able to pay a dividend of \$612 million just a few months later. Do you want to comment on that?

- A. Yes, please. I think the whole approach is a little bit skewed because I think taking hindsight valuation approach is very misleading. At that moment in time, that was the value of the company in Russia. And to look at value even in a year's time and compare it at that time is completely misleading.

So when you look at multiple analysis and the other analysis of value in Sibneft at that time, that was what the market was prepared to pay, and we were trading, compared to other companies like Yukos, Tatneft, Surgut, we were in line with those companies. So that was the value that the market placed on our company.

When you say that when the company paid 600 million next year, that was next year, Mr --

- Q. It was in fact just a few months later, wasn't it?

A. Yes.

- Q. So one isn't applying hindsight there, the company was

obviously in a position where it was preparing to pay a dividend of half of what you say was its total value.

- A. Correct, but it was paying most of its net earnings. And if you look at valuations at that time, they were about one and a half times earnings. So when it was paying out all of its earnings in dividends, it was actually valuing itself at one and a half times of that dividend.

So in fact 600 million in dividends was valuing the company at 1 billion, because the market was valuing the company at that time based on those multiples, so you cannot say that it's a ridiculous value, that's actually a market value. The market was placing its value on the company at that time.

- Q. Well, we'll have to disagree about that.

I also suggest to you -- to Mr Shvidler, and I'll suggest the same thing to you, that the foolishness of this proposition was also shown by the fact that just a year later Mr Shvidler was announcing the sale of 1 per cent of the company for \$100 million which gave an implied value for the company of \$10 billion. But you say that that also is to be ignored in valuing Sibneft?

- A. As I said, first of all, that transaction happened at \$6 billion valuation. The 10 billion, I don't know where that's coming from. The actual transaction that

happened, implied value was 6 billion, but again that was much later. And in Russia every month counted, and you cannot just look at it today, looking at that time, and say that that company was undervalued. You cannot say that. It's impossible to say that.

- Q. You say it was much later. It was just a year later.
- A. And a year in Russia is a lifetime, because a year before that Sibneft was worth \$600 million.
- Q. You see, Mr Tenenbaum, just as with Mr Shvidler, I suggest that your statement at paragraph 22 E8/01/7 is a good example of how you're willing to give wholly unrealistic evidence if you think it will help Mr Abramovich to win this case. That's true, isn't it?
- A. I disagree with you 100 per cent. And if my Lady would like I can explain more if it's interesting.

It's a very interesting subject to understand how companies were valued in Russia at that time, and hindsight valuation, what Mr Allen is using and Mr Rabinowitz is using, is completely inappropriate because at that time that was an incredible amount of money. And dependent who was on the table at that time, there was nobody at that time that could actually afford to pay that kind of money.

So you cannot just look at it today at that time and say that company was undervalued. It is really

back-seat valuation.

If I ask you right now, Mr Rabinowitz, what is the right company to buy today, I don't think you can tell me because the market knows what the value of the companies are today. You don't know what is undervalued or overvalued because today investors know and place value on the company.

MRS JUSTICE GLOSTER: What about the other point that Mr Rabinowitz made to Mr Shvidler, I don't know whether you were in court.

A. Which one?

MRS JUSTICE GLOSTER: The point that you couldn't actually get anything from a market cap because that was based on the relatively few shares that were trading, and what one was looking at here in reality was a huge majority interest.

A. I'll come down a bit, I'll breathe.

You can manipulate a share price in a short term depending on liquidity, you can manipulate the share price of Exxon at the end of the day, but over a long term you cannot manipulate a share price. So even though it was illiquid relative, let's say, to Lukoil, the investors that bought Sibneft shares were investing lower amounts, smaller tickets, let's say, as opposed to the investors that were investing in Lukoil or Exxon for

example.

But the value that they placed on that stock was what it was worth. They wouldn't invest, let's say, \$100 million in a block of shares in Sibneft because they couldn't sell it, but they could invest a million dollars, and it would still reflect the value of Sibneft at that time, because if you compare Sibneft to Lukoil or to Surgut or to Tatneft or to others, they were in comparison. Because you would have an investor who was interested in Sibneft, if it was cheap he would buy it and the price would go up.

You cannot say just because it was illiquid that it wasn't reflecting market. On the contrary, it's just certain investors wouldn't invest. Like Fidelity, for example, wouldn't invest in Sibneft because they would need, let's say, a ticket of \$10 million to buy. But a small hedge fund who saw value would invest and would see value, and the price of Sibneft would reflect their view of what Sibneft was worth.

So you cannot say that liquidity affects value. It affects short-term, potentially, size of investments that somebody will make, but it doesn't affect value at all, I disagree completely. And in fact --

MRS JUSTICE GLOSTER: Okay, I think you've given me --

A. Okay, I'm sorry.

MR RABINOWITZ: Can I just pick up on that, I'm sorry, my Lady. Your Ladyship may have had enough of this but there's one thing arising from it.

Are you seriously suggesting, Mr Tenenbaum, it sounds like you are, that you can extrapolate up from the value of a stake within a 12 per cent free float in order to ascertain a value for a 44 per cent or a majority or a substantial majority block?

A. I would even say you have a discount at 44 per cent at that time, because if you're selling large minority blocks, and that's statistics, you actually approach -- you get a discount on the block. And 12 per cent at that time had a representation of the minority value of the company. And again, from history, my Lady, you have premiums of maybe 20 to 30 per cent when companies buy other companies, but historically 90 per cent of those investments don't pan out because you overpay.

Because what does it mean to pay for control? You think you can run the company better so you overpay a little bit than what the company is valued at but at the end it doesn't come out because you're not going to be managing the company better than the current management is managing.

MRS JUSTICE GLOSTER: I see.

MR RABINOWITZ: Sorry, Mr Tenenbaum, are you suggesting that

the notion of a premium for control is a delusion and that there should be no premium for control?

- A. I think 80 to 90 per cent of mergers and acquisitions show that they don't bring value. When you buy a company at a premium you're assuming that you can manage it at a better return, and what history has shown is you don't because you usually buy at a market that is high, because you can raise money on the market, and therefore you overpay than what the market is trading at, and in reality you don't realise that return for your investors.

So usually when companies buy majority of other companies they pay, let's say, 30 per cent premium. If you look at historically, that premium is never realised to shareholders because they overpay.

So your --

MRS JUSTICE GLOSTER: We've got the point.

A. Okay, sorry.

MR RABINOWITZ: Mr Tenenbaum, can I ask you, please, to go to paragraphs 63 and 64 of your third witness statement at E3, tab 11, page 96 E3/11/96. Can you ask you to read paragraphs 63 and 64 to yourself, please. (Pause)

Just 63 and 64. (Pause)

A. Okay.

Q. What you seem to be saying here is that you concluded at

that time that the \$1.3 billion payment was to disassociate Mr Berezovsky from Sibneft. That's what you seem to say at paragraph 64, correct?

A. At the time of the payment, yes, that's what I -- that's what I assumed, yes.

Q. All right. Let's look, if we can, at evidence you have previously given. Can you go, please, to bundle J2/3 and go to tab 32, and page 55 J2/3.32/55. Look at what you were saying at paragraph 24.

A. Mm-hm.

Q. "I also knew about the payment of US\$1.3 billion connected with a settlement with [Mr Berezovsky], which I understood from Mr Abramovich to have been to compensate Mr Berezovsky for the fact that he was no longer getting the originally-anticipated payments to help fund ORT."

Now, has your memory improved over time in relation to this point, Mr Tenenbaum?

A. No, because what I'm saying in my third witness statement is that at the time of the payment, this is talking about 2003, and at some point in time that's what Mr Abramovich explained to me. But at that time he did not explain it to me when the payment was made in 2000. Yes, 2000. So it was three years -- it was between 2000 and 2003 that Mr Abramovich had, I guess,

communicated that point to me, so it's nothing -- it's nothing to do with memory, it's just the time of dates.

Q. Sorry, can we just understand that.

You say in paragraph 64 that you "ultimately concluded" that this was the reason for the payment. That's what you say at paragraph 64.

A. Where is it?

Q. Paragraph 64, page 96 of E3, tab 11 E3/11/96.

What is the date of that "ultimately" that you have there, because it doesn't seem to be that that would have stopped before 2003?

A. No, that's my ultimate understanding. What I'm saying here is what Mr Abramovich told me.

So my ultimate understanding was that it was to finish association with Sibneft, but on paragraph 24 I talk about what Mr Abramovich told me. It's my understanding eventually of what the payment was for.

Q. So your evidence is that, two years later, Mr Abramovich told you a story about why he made this payment in 2003, but that subsequently, after that, you came to a different conclusion. Is that right?

A. That's not what I'm saying.

Q. All right. What are you saying?

A. What I'm saying is that I'm not saying it happened two years later or it happened before that. That's what

Mr Abramovich told me at 2003 was my reference point, so I don't know whether he's told me that when the payment was -- after it was made or at 2003.

- Q. But it hadn't changed by 2003, seems to be the implication of paragraph 24.
- A. What he told me?
- Q. Well, your understanding.
- A. No. What he told me was this, and my understanding was that it was to disassociate ourselves from Mr Berezovsky. So, to me, these statements are consistent. This is what Mr Abramovich told me, and my ultimate understanding was that he stopped associating with Sibneft. To me it's consistent.
- Q. And when do you say Mr Abramovich told you that the \$1.3 billion payment was to compensate Mr Berezovsky for the fact that he was not getting payments to help fund ORT? When do you say that would have been?
- A. It was before 2003, between 2000 and 2003. I cannot remember the date.
- Q. You see, Mr Tenenbaum, I suggest that this inconsistency, and I suggest there is an inconsistency in your statement, reveals the fact that you are not telling the truth about this.
- A. I disagree with you. It's consistent to me because I wrote this.

Q. Can I move on then to consider with you your evidence in relation to Rusal. Now, you tell us in your third witness statement that you were involved in the acquisition of the aluminium assets by Mr Abramovich in early 2000 although you say you recall being on the periphery of those transactions.

A. Correct.

Q. And perhaps we can just consider together the nature of your involvement with this transaction.

A. Okay.

Q. You say, looking at paragraph 34 of your third witness statement, it's page 84 E3/11/84.

If you're there, you say here that you recall Mr Shvidler calling you into meetings a few times to explain particular points relating to the aluminium acquisitions. Is that right?

A. That's my recollection, yes.

Q. And you say that, again, still at paragraph 34, although you cannot recall precisely what was discussed, you can remember the general topics of discussion and that they included the overall transaction structure, correct?

A. It was primarily to do with share transfers, that was what people were concerned with.

Q. Well, you say "overall transaction structure". We know that the aluminium acquisitions were structured offshore

using four offshore companies, and you would have known that presumably?

A. Yes.

Q. And you would have known also that those four offshore companies included two BVI companies, a Gibraltar company and a Panamanian company?

A. I would have known at that time? No, I don't remember.

Q. And you would have known also that there were, in all, ten contracts?

A. Again, this is now, looking at it, I don't know if I saw those contracts. I can't recall seeing those contracts.

Q. Well, you think you were dealing with overall transaction structure and you didn't see the contracts?

A. My involvement was primarily to assist Mr Shvidler in areas that he wanted me to assist him with. I had a team that was dealing with it, that were much more capable of doing the actual documentation and the administration of it. I was not doing that.

Q. But if you were dealing with the overall transaction structure, surely you would have not only known that there was a use of offshore companies but also that those contracts were all expressly subject to English law?

A. I would have seen it at that time, yes.

Q. But you say now that you cannot recall the detail of

those discussions other than that they were about the overall transaction structure, and I think that reflects something you've repeated now.

Then you also say, still at paragraph 34 E3/11/84, that you recall attending some meetings with Mr Shvidler where Mr Chernoi and Mr Bosov were present. Correct?

A. Correct.

Q. And Mr Chernoi and Mr Bosov were, of course, two of the four sellers of the aluminium assets, weren't they, Mr Tenenbaum?

A. They were in the agreement of February 10th, I think, yes.

Q. So these meetings with them, which you attended with Mr Shvidler, were presumably part of the negotiations which led up to the ultimate sale and purchase of the aluminium assets in mid-February 2000, it would seem logical, would it not?

A. It's not a correct misrepresentation -- mis -- representation that I was participating in the meetings. Mr Shvidler would call me, I would come in, he would ask me a question, and I would leave. I never was participating in those discussions, those were not discussions that I would participate in.

Q. So are you saying that when you say in your evidence you recall attending some meetings, what you're saying is

you walked in, gave an answer and walked out?

A. Well, if you read what I say, I say:

"... Shvidler calling me into meetings a few times ..."

I went in, he asked me a question, if I had an answer I answered, if not I left. I researched it, I came back, and I gave him an answer and I left.

MRS JUSTICE GLOSTER: What sort of points were you being asked to assist with?

A. I think the primary issue was because the shares were under -- problematic shares, they were issuing -- I think they were concerned how to ensure that title was clean. I'm just reconstructing that, looking at the documents, because there weren't any other substantive issues that were in those agreements, reading them right now. The only issue that I can see myself participating in is -- with my staff, was to look at the share transfer issues, to make sure that the shares were clean, or as clean as we could get them.

MR RABINOWITZ: What were the problems -- what was problematic about the shares which made this an issue in which your assistance was sought?

A. Again, I can't remember what exactly we were doing, particularly to these shares, but some of them were in bankruptcy proceedings so there were certain legal

issues that Mr Shvidler would ask me and that I would have to go and research with my staff.

But I can -- I would like to say that I was not in those meetings negotiating with those individuals.

Q. Okay, so that's the position in February 2000. Let's just look then at the position in relation to March 2000, turning to the formation of Rusal.

You tell us at paragraph 35 of your witness statement that you were told at some point, and this must be in early March 2000, about the merger discussions that had taken place between Mr Abramovich and Mr Deripaska at the White House, followed by the Kempinski Hotel, and the meeting in Mr Abramovich's dacha in Sareevo Village, correct?

A. I probably was told that by Mr Shvidler.

Q. You also tell us, this is at paragraph 38 of your statement E3/11/85, that you were involved in some of the meetings in London attended by Ms Panchenko, Mr Hauser, his partner Mr White, and Mr Deripaska's man, Mr Mishakov, during the period 10 to 12 March 2000, is that right?

A. Again this is a reconstruction, I don't really remember those meetings.

Q. Well, Ms Panchenko says that you were at these meetings. You don't dispute that, do you?

- A. Well, as I say, I probably was.
- Q. Okay. You also tell us that, having returned to Moscow on 12 March 2000, you also have some recollection of meetings with representatives of Mr Deripaska at the Sibneft building during the week of 12 March 2000.
- A. Yes, I remember it was long nights in the Sibneft building. We were downstairs, and I think the full night we were drafting documents. My team was drafting, I was there helping in whichever way I can.
- Q. And these discussions would have taken place, what, in the days immediately prior to the execution of this share purchase and sale agreement. That is right, I think, given what you've just said and given that we know the document was executed on 15 March 2000?
- A. Correct.
- Q. So these discussions in Moscow, which you were involved in with Mr Deripaska's representatives, would have been to do with the finalisation of the 15 March 2000 agreement?
- A. It's logical to assume, I guess.
- Q. And you also say in relation to these discussions that you recall some discussion with Mr Mishakov over the share transfer issues?
- A. What stays in my mind is the discussions and meeting with Mishakov, yes.

- Q. Now, you say that although you were clearly involved in the 15 March 2000 agreement, because it was in English, and dealt with shareholder arrangements, you were not responsible for the details of the agreement and that you delegated those to Mr Osipov and Mr Schneider, correct?
- A. Correct.
- Q. Can you just tell us who Mr Osipov and Mr Schneider are?
- A. Mr Osipov worked in my department, he was very -- you know, he was my right-hand man and I delegated a lot of things to him, that's my style of management, I delegate. And Mr Schneider was a lawyer that we used for consulting reasons. He was an outside lawyer that we sometimes used.
- Q. Presumably, I think it reflects in the answer that you've just given, you delegated this task of dealing with the detail of the transaction to them because you regarded them as people you could trust?
- A. I could trust and they could do it much better than I can. I could deal with some of the issues of the shareholder agreement which I thought we were going to be doing, which potentially required my input, but they were much smarter than I was in dealing with the things that they were dealing with, and I was really helping them at that time.

- Q. And so while they would have been involved in the detailed work of getting the agreement set down in writing, it was you who was overseeing their work, was it not, that was your principal task?
- A. My principal task was responsibility to Mr Shvidler, and Mr Shvidler asked me to make sure it happened and -- the people that were really doing it was Mr Osipov and Ms Khudyk, and they were the real sort of brains behind getting it done. I was just there to make sure that things worked efficiently and to make sure that things happened on time, because there was such a time constraint.
- Q. So you were, as I suggested, overseeing their work, correct?
- A. I was responsible ultimately, yes.
- Q. And you were also reporting back to Mr Shvidler, presumably both with information and for instructions, correct?
- A. Correct, if there were any issues.
- Q. Now, I don't think you suggest in your evidence that Mr Osipov or Mr Schneider didn't properly carry out their task, or that you in your oversight role allowed anything to go wrong with the recording of the 15 March 2000 agreement, do you, Mr Tenenbaum?
- A. In the time that we had, which were a few days, no

diligence, doing it overnight, we did the best we could. And if you look at these documents, I would call them a hybrid between Russian documents and English documents because there was a semblance of representation of warranties but there weren't any. There was a semblance of a shareholders agreement but there wasn't, clearly, because we didn't have time. And the primary focus was really the share transfer which then I left to Mr Osipov and Ms Khudyk, who were much more competent dealing with those issues so I relied on them, and I took their competent that they would do it right -- the right job.

Ultimately I was responsible, of course, for it, but the provisions there are very broad and very general and, in my experience of negotiating contracts, you sit down and you negotiate and you flash out issues and you identify due diligence points. But in this instance there wasn't that, so it was a very, very rough and ready agreement. And so my involvement actually was very limited.

Q. Now, you tell us in your evidence, Mr Tenenbaum, that you are in general terms a cautious man and are known to be so, is what you say. Is that right?

A. I think so, yes.

Q. And although that is evidence that you give in the context of talking about the position in 2004,

presumably that is also true of the position in 2000,  
that you were still then a cautious man?

A. The 2004 refers to, I'm sorry?

Q. Well, you don't need to know why you were saying that in  
2004 --

A. Ah, I'm cautious from my birth, yes.

Q. All right.

You also tell us, this is paragraph 46 of your third  
witness statement E3/11/89, that the 15 March  
agreement was signed by Mr Deripaska of GSA (Cyprus)  
Limited and Mr Andrey Tschirikov for Runicom Limited,  
and that you initialled each page of the 15 March  
agreement, is that correct?

A. Correct.

Q. And you say, this is again at paragraph 46 of your  
statement, that you signed each page because you were  
the senior person there and spoke fluent English. Yes?

A. Correct.

Q. And, as we have just heard, you also had overseen the  
preparation of the 15 March 2000 agreement, correct?

A. Correct.

Q. And indeed you'd been involved in discussions with  
Mr Deripaska's representatives both in Moscow and in  
London during the previous ten days, correct?

A. It appears so, yes.

- Q. Just so that we're not at cross-purposes, the 15 March 2000 agreement was the agreement pursuant to which it was agreed to pool various offshore companies and the underlying aluminium assets and ultimately to form Rusal, correct?
- A. It was the first stage, yes.
- Q. And it was one of the principal agreements that ultimately led to the formation of Rusal?
- A. Correct.
- Q. Given what you say about you being a cautious man, I take it that before initialling each page of this document, you would have ensured that you were at least generally familiar with what the agreement provided for?
- A. I was looking at risk factors, and so from a risk factor point of view I was happy with it, I wasn't necessarily reading every word because every word was broad, so I was focusing on the risk factors.
- Q. Can we just please have a look at the agreement. Can you go, please, to bundle H(A)18, page 124 H(A)18/124?
- So this is the share purchase and sale agreement which you -- we see you initial each page and, as you can see, it's the contract under which Mr Deripaska's company, GSA (Cyprus) Limited, acquired 50 per cent of the shares in the four companies that had been used by Mr Abramovich's side to purchase interest in the

aluminium assets at KrAZ, Bratsk and Achinsk. You'll have to forgive my pronunciation.

Can I ask you please to go to page 138 where you'll see schedule 1 H(A)18/138.

A. Yes.

Q. You see there's a reference there to the companies, and under that one has listed Runicom Fort Limited, Galinton Associated Limited, Palmtex Limited SA and Dilcor International Limited. Those were the companies that had been used by Mr Abramovich to purchase -- or Mr Abramovich's side, to purchase interests in the aluminium assets in February 2000, that's correct, isn't it?

A. Yes.

Q. And just if you look then at page 124 of the document H(A)18/124, you will see that the contract says:

"'Companies' [as defined] means those companies more particularly described in Schedule 1, Part I."

So that's the four companies that we've just seen, correct?

A. Correct.

Q. Can I then just ask you to go to clause 2.7, page 127 H(A)18/127, and just read it:

"The Vendor acknowledges and confirms that the Transfer Price has been calculated on the basis of the

Companies being the beneficial owners of the Securities as at the Transfer Date..."

Then it goes on with some detail.

The transfer price we know was, certainly at this stage, \$400 million. That's right, isn't it?

A. Yes.

Q. And that was calculated on the basis of the companies, which are here referred to, having the interests set out and referred to at paragraph 2.7. Take that from me.

A. Okay.

Q. Now, again, there is no dispute that Runicom Limited, the vendor company in this contract, is an Abramovich-controlled entity?

A. Correct.

Q. Can I ask you, please, to look at clause 2.1 at page 126 H(A)18/126. 2.1 says this:

"Subject to the terms and conditions of this Agreement, including but not limited to Clause 2.8, the Vendor [and that's obviously Runicom Limited] shall sell the Shares to the Purchaser [that's Mr Deripaska's company] on its behalf and on behalf of the Other Selling Shareholders with full title guarantee, and the Purchaser shall [pay the purchaser price]."

So you see there a reference to the sale being on behalf both of Runicom Limited and on behalf of the

other selling shareholders?

A. Right.

Q. Then if I can ask you just to go back a page to page 125

H(A)18/125, do you see the definition of "Other Selling Shareholders"?

A. Yes.

Q. "'Other Selling Shareholders' [are defined to mean] those other persons who together with the Vendor are the legal and beneficial owners ... of the shares (both in registered and bearer form) of the Companies..."

A. I see that, yes.

Q. Then just one final provision if I can ask you about, can you go to clause 6.1.1, you'll find that at page 131

H(A)18/131. "The Vendor", that's Runicom Limited -- sorry, are you there?

A. Yes.

Q. "The Vendor represents and warrants to [Mr Deripaska's company] that as at the Completion Date:

"The Vendor and the Other Selling Shareholders are together the legal and beneficial owners of 100 per cent of the shares [in] the Companies ..."

And we know the companies are the four companies listed in schedule 1, Okay?

A. Mm-hm.

Q. So it would appear that Runicom Limited did not own the

companies outright but only with the unidentified other selling shareholders, do you agree?

A. No, it's not correct. You can interpret it that way but that was what the other side drafted.

Q. Sorry, Mr Tenenbaum --

A. Can I explain?

Q. Do you agree that that is what the provision suggests?

A. Well --

Q. You can say that someone else drafted it but do you agree that that is what the provision suggests?

A. Can you repeat that again, please, sir?

Q. It would appear that Runicom Limited did not own the companies outright but only with these unidentified other selling shareholders?

A. Well, I need to explain then because I can't agree or disagree then.

Q. All right.

MRS JUSTICE GLOSTER: Right, explain.

A. The other companies, the four companies that owned the assets were bearer companies. Runicom was a registered company of which Mr Abramovich was the owner. So the other side would need a warranty from Mr Abramovich if I were to confirm that he was the only owner because these are bearer companies. You cannot confirm with the four days that we had to -- or two/three days that we

had to draft these documents to completely fulfil their obligations to confirm that there was only one shareholder. So this is a very broad and encompassing provision on their side which takes into account that there is no personal guarantees in this and there's really no representation of warranties in this document. So in a sense, this is a provision from the other side to capture any issues with respect to the bearer company shares and no ability to do any diligence on those shares.

MR RABINOWITZ: And it's a provision in a contract to which you agreed?

A. Correct.

Q. And it suggests, does it not, that certainly so far as the other side were concerned, there was at the very least a possibility of other selling shareholders?

A. As I said, we never -- I never discussed that with the other lawyers with the other side. We were drafting these documents over the last three/four days. This was not an issue that I focused on because there was a very broad provision which they asked for and I agreed. There was no risk to us. If I was to challenge this provision and to try to explain there's only one shareholder, I wouldn't be able to actually guarantee it because these are bearer company shares and they would

not be able to do any diligence on those companies. So I would have to have Mr Abramovich give a warranty and a guarantee and I did not want to do that, so I agreed with this broad provision.

Q. Is it not more likely, Mr Tenenbaum, that the reason that this contract provided for the possibility of other selling shareholders reflected the fact that in the preliminary agreement -- you know what I mean when I refer to the preliminary agreement?

A. Yes, yes.

Q. -- that referred to Mr Abramovich as having partners?

A. Again, I understood that there was a party and the partners were to do with the companies. Again, at that stage I didn't understand that point but I saw the party's definition and, to me, it made sense that it was the companies that were together with our companies coming into the venture.

Q. I'm not going to ask you about that.

Why did you not want Mr Abramovich to give a guarantee of his sole ownership?

A. There was no need for it. They didn't ask for it.

Q. I thought you were saying that this was the alternative to doing that?

A. That was in my -- my reconstruction of this alternative. I didn't do that because there was no need for it.

Q. Very well. We have your evidence about that then.

So that's the share purchase and sale agreement with which you were involved.

Then there were some other agreements that also related to the formation of Rusal, weren't there, which you mention in your witness statement? Can you go to paragraph 47 of your witness statement E3/11/89. One of the other agreements that you mentioned to do with the formation of Rusal here is the amended and restated share purchase and sale agreement dated 15 May 2000?

A. Yes.

Q. And that is again an agreement in relation to which you say you had some involvement, that's right, isn't it? Although again I think you say that was primarily limited to overseeing the work of Mr Osipov and Mr Schneider?

A. Correct.

Q. Just before I move off the last agreement that we're talking about, it would have been very easy to prove ownership of bearer share companies, would it not? You could have just produced the bearer shares?

A. But how can you prove who is the owner of those bearer shares?

Q. You establish that they're in your possession.

A. I suppose so, yes, but how could you give a warranty on

that?

Q. Okay. Now, that's then the amended and restated share purchase and sale agreement. You also tell us that, as with the previous 15 March 2000 agreement, you again initialled each page of the amended and restated share purchase and sale agreement, correct?

A. Correct. Yes.

Q. And again, you being a naturally cautious person and known by all to be so, you would have ensured that you were broadly familiar and comfortable with the detail of what was contained in this contract?

A. You can say that, yes.

Q. And in addition to that agreement which you initialled, there were also two protocols to the share purchase and sale agreement of 15 May 2000 which you also initialled, correct?

A. Correct.

Q. Again, can we take it, you being a cautious person, that you would have ensured that you were broadly familiar and comfortable with those agreements before you initialled them?

A. I didn't see any issues in those agreements, so yes.

Q. And can we just look at paragraph 50 of your witness statement, please E3/11/90. You also say here that you can recall providing general advice about what

investors would expect if Rusal was later listed on an international stock exchange. Is that right?

A. Yes.

Q. And you say that because of your involvement at that stage, that may be why you recall the names of the four BVI companies: David Worldwide, Kadex, Valeford and Foreshore which, together with Dilcor and Galinton, owned the entire share capital of Rusal in December 2000, is that correct?

A. That's correct, yes.

Q. You also tell us -- and this is still in paragraph 50 -- that you can also recall that the six BVI companies which owned Rusal all had bearer shares which you advised would not be suitable if Rusal was ever listed, correct?

A. Yes. I explained it to Mr Shvidler that that wasn't the right strategy to take if you were going to list the company.

Q. And still at paragraph 50, you also tell us that, although you had not been closely involved in the registration of Rusal on 25 December 2000, you were involved in the negotiations which eventually led to the signing of the Rusal shareholders agreement on 9 February 2001, is that right?

A. That's the only document or the only sort of

participation or involvement that I recollect with any significance because it required my input, direct input.

Q. We'll come back to that, Mr Tenenbaum.

A. Mm-hm.

Q. Going forward in time, if you look at paragraph 79 of your third witness statement, that's at page 102 E3/11/102, you also tell us that you were also aware of the establishment and subsequent registration on 7 May 2003 of Rusal Holdings Limited, correct?

A. Yes. My recollection is that I think I spoke either to Mr Shvidler or actually he asked me to go to see -- to present to the board because I thought that the BVI -- even the registered form wasn't acceptable for an international listing. But my advice wasn't followed, as the BVI -- bearer companies weren't followed so... That's why I remember that, because I either -- I don't remember whether I actually went to the board meeting but I recommended to Mr Shvidler that it shouldn't be a BVI company.

MRS JUSTICE GLOSTER: What, because that wasn't acceptable on an international placing?

A. You couldn't list it, no.

MR RABINOWITZ: And this is right, isn't it, you were also aware that there was an internal restructuring of the Rusal group ownership later in 2003 although you say

that you are not now familiar with the details, is that right?

- A. My understanding that after May 2003 the structure -- the holdings were restructured to put it into a registered form, because Mr Deripaska wanted to do a listing, eventual(?) listing, but again I didn't understand how they could do that with a BVI company, but I'm just reconstructing now. I think the primary driver for them was tax as opposed to listing, which eventually they did many years later without our involvement.
- Q. Just to be clear, Mr Tenenbaum, your evidence is that you were aware that there was this internal restructuring of the Rusal group ownership in 2003 --
- A. Yes, I just --
- Q. -- although you are not now able to recollect the details?
- A. Correct, I was just not participating in the restructuring itself, but I knew that it would be restructured, yes.
- Q. Okay. Now, in addition to all of this, you also had some involvement, did you not, in both the first and second Rusal sales, and let us just see if we can be clear about what you say your involvement was in those transactions.

So far as concerns the first Rusal sale, that's the one in September 2003, you say that although you were not significantly involved in this transaction, you did provide some valuation guidance about it?

- A. My recollection, I may have -- Mr Shvidler may have asked me to help him to get some analysis done and I would have done that.
- Q. And so far as concerns the second Rusal sale in 2004, as I understand your evidence, you acknowledge that you were involved in this, and indeed you say that you were a conduit between the lawyers and Mr Abramovich and Mr Shvidler, but you say that you recall very little of the matters referred to regarding the documentation because they were largely technical and did not call for any particular expertise. Is that right?
- A. It's correct, but if I can comment, I mean, I only remember the warranties that we were asked to give and Mr Shvidler -- and Mr Abramovich had to sign, and that's why I was asked, maybe by Ms Panchenko, maybe by Mr Shvidler, to assist in that. But I was already living in London dealing with Chelsea so I wasn't necessarily dealing -- on that particular point I remember assisting, yes.
- Q. Very well.
- A. Because it had to do with Mr Abramovich signing so they

asked me to help.

- Q. Now, I want next to ask you a few questions relating to the Curtis notes, Mr Tenenbaum, by which I mean the notes apparently taken by Mr Curtis of a meeting which you are recorded as having attended and which you will find the notes for at bundle H(A)59, page 110.001 H(A)59/110.001. We also have a typed-up version of those at 110.005 H(A)59/110.005.

Now, I'm not going to ask you to read them just yet but it is worth having them available.

- A. Mm-hm.

- Q. Perhaps we can begin by just seeing what is common ground between us in relation to these notes. You accept, I think, that you visited Mr Patarkatsishvili in Georgia in the summer of 2003, you say on 25 August 2003, is that right?

- A. Correct.

- Q. And we also now know that Mr Curtis was also in Georgia at that time -- perhaps I can just show you this. If you go to bundle H(A)62, page 234.003 H(A)62/234.003, this is an extract from Mr Curtis's diary and you can see, if you look on the left-hand column, 21 August, that he flew out to Georgia on that day. It looks like he flew from Ibiza on Mr Berezovsky's plane, do you see that?

A. I see it.

Q. You can then see from the entry on 22 August H(A)62/234.002 that Mr Fomichev, certainly according to Mr Curtis's diary, also appears to have been in Georgia at that time, you see the reference to Ruslan?

A. Yes.

Q. And indeed Mr Curtis's diary keeper has made a note:

"Meeting Ruslan ..."

That's Mr Fomichev.

And I think it says "Padre" but it presumably is Badri, that would be Mr Patarkatsishvili. Do you see that?

A. Yes, I do.

Q. That was going to be on 22 August. You can see from this that Mr Curtis was due to stay in Georgia over that weekend and to fly back on 26 August again on Mr Berezovsky's plane. Do you see that?

A. I don't see the 26th.

Yes, I see.

Q. All right. In fact, if you go over the page again to H(A)62/234.005, we in fact have a ticket stub from Mr Curtis's boarding ticket for the BA flight from Pisa to London.

A. Mm-hm.

Q. As you can see, it appears that Mr Berezovsky's plane

was going to take him to Pisa. Okay? Your evidence, tell me if this is right, is that you recall meeting an English or perhaps an American person at Mr Patarkatsishvili's house on 25 August 2003 who you accept could have been Mr Curtis, correct?

A. Yes, it was an English-speaking person, yes.

Q. And that's at paragraph 89 of your witness statement E3/11/105. You also say, and again this is at paragraph 89 of your witness statement, that you recall that Mr Fomichev was present when you were there, correct?

A. Correct.

Q. You explain at paragraph 89 that you had met Mr Fomichev before and that you knew him slightly, correct?

A. I knew how he looked, yes. I never had dealings with him.

Q. And you obviously also knew Mr Patarkatsishvili at that stage, didn't you, Mr Tenenbaum? You'd first met him around the time you joined Sibneft in the late 1990s?

A. I met him later when I joined, but yes, I knew who he was of course.

Q. You can put bundle 62 away -- I think someone has taken it away for you, very efficient.

Can we then just look at the handwritten notes from Mr Curtis, they're at 001 of H(A)59 H(A)59/110.001.

Now, you can see at page 001 that someone has put a post-it note on the handwritten notes in the middle of the page and that says:

"Bardrey [that's Mr Patarkatsishvili], Ruslan [that's obviously Mr Fomichev] + Abramovich's man meeting notes (vitally important)."

I don't think there's any doubt that the reference to "Abramovich's man" is a reference to you, Mr Tenenbaum. And I say that because if you look at the card at the top left-hand corner, the top left-hand side, you can see that someone has written your name "Eugene Tenenbaum" there, do you see that?

A. I see it, yes.

Q. And the fact that Mr Curtis -- never mind that.

So I think we can agree that there was a meeting or a gathering, if you prefer, in Georgia on 25 August 2003 at which you were present, Mr Patarkatsishvili was present, Mr Fomichev was present and that certainly it's likely that it was Mr Curtis who was present?

A. Looks like, yes.

Q. This is right, isn't it, while you had already known Mr Patarkatsishvili for a while, and indeed you had known Mr Fomichev, you had not previously met with Mr Curtis?

A. No, never met him.

Q. Therefore to the extent that the Curtis notes suggest that the four of you were in Georgia, I'm not getting into what you discussed at the moment yet, that appears to be accurate, doesn't it, Mr Tenenbaum?

A. That we were there? Yes, it's accurate.

Q. And so the only real dispute is really whether a conversation that Mr Curtis has recorded as taking place on these cards really did take place. Is that right?

A. Correct. A serious dispute.

Q. Now, Mr Tenenbaum, you have also dealt with this meeting with Mr Curtis in Georgia in your second witness statement in these proceedings?

A. Yes.

Q. And I wonder if we can just turn that up?

MRS JUSTICE GLOSTER: Just before we go there, where do I see the June date on the handwritten notes?

MR RABINOWITZ: You don't see a June date, my Lady. There is no date saying that this meeting was in June written on the notes. Someone who has put this file together has put "June 2003" there. But I think it's common ground that this meeting would have been in August.

MRS JUSTICE GLOSTER: Because of the travel documents --

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: -- of Mr Curtis.

MR SUMPTION: And indeed Mr Tenenbaum's own travel documents.

MRS JUSTICE GLOSTER: Yes, absolutely.

MR RABINOWITZ: Now, can I ask you, Mr Tenenbaum, please, to go to your second witness statement in these proceedings. Do keep your third witness statement available. That's at bundle J2/3, and you should go to tab 32, please J2/3.32/49.

A. Yes.

Q. You should have there a copy of your second witness statement. You'll see it's dated 28 October 2009.

Just to put this into context, Mr Tenenbaum, this was the witness statement that you swore in support of Mr Abramovich's application to strike out Mr Berezovsky's case. Do you remember that?

A. Correct.

Q. And you made this statement after the Curtis notes had been produced in the context of that application?

A. Correct.

Q. And can I ask you, please, to go to paragraph 15 of this statement which you'll find at page 53 J2/3.32/53.

Now, you say at paragraph 15:

"When I read what are said to be Mr Curtis's notes of a meeting that I am supposed to have attended, not in August but in early June that year, frankly I was

stunned. At no time did I take part in any such discussion. As I have mentioned, barring [a] short tour of the house, I spent my time outside where I had some food and the usual small talk with some of the guests."

You then go on in paragraphs 16 to 22 J2/3.32/53 of the statement to make four points in addition to the fact that you have no recollection of the discussion as to why you think it unlikely that there was such a discussion. Do read, if you would like, paragraphs 16 to 22, you're probably familiar with them, but perhaps I can just summarise for you what are the four points that you make.

You say first that, given your experience and involvement in the Rusal transaction, you had no expertise nor any great familiarity with the subject matter of the conversation. That's the first ground you give and that you will see at paragraphs 16 to 19.

A. Yes, I do.

Q. You say, secondly, and this is at paragraph 20 J2/3.32/54, that you would not discuss Mr Abramovich's private affairs in front of people you had not met before.

A. Correct.

Q. And then the third reason you give, this is at paragraph 21 J2/3.32/54, you say that you do not

understand the context in which this meeting is meant to have taken place.

A. Correct.

Q. And fourth, this is at paragraph 22 J2/3.32/54, you say there would have been a language barrier, correct?

A. Correct.

Q. And perhaps we can just consider each of these points in a little further detail.

A. Okay.

Q. Can we start with your first point, that the conversation regarding Sibneft and Rusal was not your area of expertise and you didn't have any great familiarity with that.

A. Can we read what I said, please? Which sections are you referring to?

Q. Paragraphs 16 to 19 J2/3.32/53.

A. I know but which particular points are you saying? I'd just like to make sure that I'm getting the language right.

Q. Read paragraphs 16 to 19 which I've tried to summarise for you as suggesting you were saying you did not have any expertise nor any great familiarity with the Rusal transaction which was the subject matter of the discussion.

A. What I say is:

"I [didn't perform a] direct role in relation to the acquisition or establishment..."

Q. Indeed, that is what you say.

A. Correct so I never had a role with -- at the level of Mr Patarkatsishvili, that is correct. And what else --

Q. Let's just look at what your role was. You say there that you didn't have any direct role and you give this as a reason why this conversation could not have taken place.

A. Correct.

Q. Now, to be fair to you, Mr Tenenbaum, you've rowed back slightly from that in your third witness statement.

That's right, isn't it?

A. No, I haven't.

Q. All right. Well, let's just have a look at that. If you go to paragraph 95 of your third witness statement, that's at page 107, bundle E3 E3/11/107.

A. Yes.

Q. You see, whereas previously you'd said:

"I have not performed any direct role in relation to the acquisition or establishment of either Rusal or Sibneft."

What you're now saying is:

"As noted above, I did not perform any role in relation to the acquisition or establishment of Sibneft,

and my role in relation to Rusal was very limited."

A. Correct.

Q. So you now at least accept this, as you indeed have to in light of the evidence we've just looked at, that you did have a role in relation to the acquisition or establishment of Rusal, that you were indeed involved in those transactions although you now try to say that it was very limited. Is that right?

A. Can I explain, please? What I meant to say in paragraph 9 --

MRS JUSTICE GLOSTER: Yes, please do.

A. This was in the context of the meeting that I was -- that I had with Mr Patarkatsishvili. So when I say I had no direct role, the one, I guess, word that is potentially missing to make it very clear is that I had no direct senior role because I never met with, for example, Mr Patarkatsishvili when the acquisition was done. So my involvement was not at the high level. My involvement was at the back office so to speak. So when I'm explaining the context of this meeting, I'm saying I had no role in relation to that acquisition.

So it's clear to me that, if I'm supposed to be discussing these kind of issues with Mr Patarkatsishvili, I am certainly not the right person to go to Georgia to discuss these issues with

Mr Patarkatsishvili. That to me is very clear, what I'm saying here.

MR RABINOWITZ: In fact what you say, as is clear from paragraph 95, is that your involvement with Rusal had been limited to some aspects of the shareholders agreements.

A. Correct.

Q. Between Mr Abramovich. But is that right? The shareholders agreement was the one signed in 2001, you weren't just involved in that, Mr Tenenbaum?

A. When I say involvement, I mean when I have some form of input. So when I'm going to be discussing with people issues, I need to have a context of those discussions and the only context of the discussion that I could have had with respect to Rusal was the shareholders agreement because that was the only thing that I was in substance involved in.

Q. Mr Tenenbaum, you say that is the only thing you were in substance involved in, but you've already told us in your evidence that you were called into meetings in relation to the February 2000 meetings; we have seen that you oversaw -- you were involved in the negotiations in respect of the March 2000 agreement with Mr Deripaska; you were involved in indeed the drafting of the agreement, albeit you say in an oversight role in

relation to that. That's all right, isn't it?

A. But for me to have a substantive discussion with somebody at this level of Mr Patarkatsishvili, I have to be knowing -- I have to know what I'm talking about. I'm not just going to go talk about things that I have no direct involvement or knowledge, and when I say involvement, the drafting of these agreements were not by me and they were not substantive issues anyway. The only substantive issue that I was ever involved with respect to Rusal, I was responsible for my team but what I was involved with personally was the shareholder agreement. So if I were to go and discuss Rusal with Mr Patarkatsishvili, I would be the last person that Mr Abramovich would send. He would have sent Ms Panchenko, he would have sent Mr Gorodilov, Mr Davidovich, Mr Shvidler, but not me to discuss what is being reflected in these notes.

Q. Mr Tenenbaum, we have seen that you were in fact involved, you may say that your involvement wasn't central but you were in fact involved in every single stage of the aluminium acquisition and its passing into Rusal. You were involved in the February 2000 discussions, albeit you say in a limited respect, and you were involved in the March 2000 negotiations and you were involved in the signing of both the main agreements

and you were involved in the shareholders agreement. You obviously had a great deal of knowledge about the aluminium interests which had been acquired. That's right, isn't it?

- A. I had certain knowledge, I agree with you, yes.
- Q. And to the extent that you didn't have the sufficient knowledge, are you saying that you couldn't have asked Mr Abramovich to tell you what you needed to know?
- A. With respect to what, I'm sorry?
- Q. Well, with respect to your ability to go and discuss this matter with Mr Patarkatsishvili?
- A. But, as I say in my statement, I don't understand reading these notes what am I supposed to be discussing there? I really don't understand and we can go through them and I can show you what doesn't make sense at all.
- Q. We will go through them.
- A. Okay.
- Q. But for the moment I'm trying to understand the first of the reasons that you give as to why you say this really just couldn't have been a discussion that you were a party to, and the suggestion you appear to try and make is to say that you really were not involved in Rusal and, therefore, you wouldn't have been the person who was sent for this?
- A. When I'm saying involved, at that level to discuss

things with Mr Patarkatsishvili, that is correct. I'm not the person to discuss issues with Mr Patarkatsishvili, absolutely not.

MR RABINOWITZ: My Lady, this will go on for a while so this may be a convenient moment.

MRS JUSTICE GLOSTER: Yes. Was this the only time you met Mr Patarkatsishvili?

A. That I actually had a meeting with him?

MRS JUSTICE GLOSTER: Yes.

A. The only time.

MR RABINOWITZ: But you had met him previously, I think you already accepted that?

A. I met him in Logovaz when I was dealing with Mr Berezovsky, when we were about to fly to New York to meet with Mr Murdoch. I didn't know Mr Patarkatsishvili. He was a scary person, I'm sorry to say, but I would never deal with Mr Patarkatsishvili or have meetings with him.

Q. But you were one of Mr Abramovich's trusted advisers?

A. With respect to certain issues, yes, of course. Issues that I had competence in. He wouldn't -- he's a very successful person, he doesn't send a person that cannot discuss these issues with somebody at the level of Mr Patarkatsishvili, it's just not -- it's not plausible, to me, to me, sorry.

MRS JUSTICE GLOSTER: And who is Igor at this meeting?

A. A question to me?

MRS JUSTICE GLOSTER: Well, do you know?

A. No, I don't know.

MRS JUSTICE GLOSTER: Mr Rabinowitz, what's your case?

MR RABINOWITZ: My Lady, we're also uncertain as to who Igor is. We can hazard a guess.

MRS JUSTICE GLOSTER: Apart from Mr Curtis's documents and the reference to Eugene Tenenbaum, why is there -- I'm asking you, Mr Rabinowitz, why isn't there a possibility that this was a meeting with Mr Shvidler?

MR RABINOWITZ: Because -- well, your Ladyship says apart from the fact that it says Eugene Tenenbaum on the top of the first card --

MRS JUSTICE GLOSTER: Well, just that's on the top of the note, isn't it?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Or the bottom of the note, bottom of the bit of --

MR RABINOWITZ: And the fact that it appears that these were the four people who were in Georgia in August 2003.

That is what makes it likely that it was Mr Tenenbaum.

MRS JUSTICE GLOSTER: Right. Is there any dispute as to who Igor is?

MR RABINOWITZ: I'm not sure anyone is particularly clear

who he is.

MR SUMPTION: From our side, we haven't the faintest idea.

MRS JUSTICE GLOSTER: Right.

Okay. You're not to speak to anybody about your evidence or the case over lunch, okay?

THE WITNESS: Understood.

MRS JUSTICE GLOSTER: 2.05.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, can I just look next at the second of the points you made at the time of the strike-out application as to why you say he couldn't have had this conversation. Again if you just look at bundle J2/3, which I hope you still have in front of you.

A. Yes.

Q. At page 54, paragraph 20 J2/3.32/54, you say this:

"Second, there was simply --"

Sorry, are you there?

"Second, there was simply no way that I would discuss Mr Abramovich's private affairs with or in front of people I had not met before, such as the English/American person (even if it was Mr Curtis), not

at least because these affairs were not something I had been directly involved [with]."

I'm not going over the second part of that again where you say you haven't been directly involved with it. But just in terms of your point about discussing Mr Abramovich's private affairs, it's right, is it not, that you had, of course, met Mr Fomichev before?

- A. I met him, yes, I knew who he was. I'd never had meetings with him in terms of meetings, I just met him.
- Q. And Mr Patarkatsishvili I think the same?
- A. I met him but never had meetings with him before.
- Q. And if Mr Abramovich had instructed you to go out and discuss these matters with these people, that could have given you no problem at all with following his instructions and having this conversation with them?
- A. It would give me a major problem because I wouldn't want to go by myself at least, because I wouldn't be the right person to go.
- Q. Well, it all depends on what you were going to achieve, Mr Tenenbaum, if the object of the exercise was to go and meet with Mr Patarkatsishvili and Mr Fomichev, with Mr Abramovich saying to you, "Well, go and find out what it is that they want, you can have a discussion, don't commit to anything," there would have been no difficulty at all for you in going and discussing these, even

though they were Mr Abramovich's private affairs, as you put it?

A. I knew why I went there, I explained why I went there, there was a very specific reason why I went there.

Q. Yes, but I'm trying to address the reason you give as to why you say you couldn't have had this conversation which is, as you've said in your witness statement, that you would not have been willing to discuss Mr Abramovich's private affairs in front of these people.

A. Correct, and I can go through the issues in the notes, we can discuss why it doesn't make sense that I would be discussing these issues with these people.

Q. We will go through those issues shortly.

If Mr Abramovich had said to you, "Mr Tenenbaum, you're my head of corporate finance, you certainly understand a fair amount about Rusal from your involvement with that, Mr Patarkatsishvili wants to talk about selling his Rusal interests, please go and talk to him about it." The fact that, as you put it, these were Mr Abramovich's private affairs would not have been an obstacle to you being able to do so, would it?

A. I think it would be because we're talking about selling something that I have no knowledge of him selling. So I wouldn't be the right person to go because I have no

knowledge of that, and I wouldn't be the one to be discussing price et cetera.

I've never done this before, negotiating a -- so why would he send me? He sent me for a very specific purpose.

- Q. Mr Tenenbaum, you were head of corporate finance at Sibneft, correct?
- A. At Sibneft, correct.
- Q. So you would have had a fair amount of experience of the buying and selling of assets and companies and the like?
- A. Acquisitions, yes.
- Q. And if you had been told to go and have a discussion with someone about buying and selling of their 25 per cent interest in a company, you could certainly have had that discussion and not have been concerned about doing so?
- A. I would be very concerned about talking to Mr Patarkatsishvili about it. I wouldn't go to talk -- I didn't want to go actually, I told Mr Abramovich I didn't want to go.
- Q. But you did go, in fact, Mr Tenenbaum. We know that because you accept you were in Georgia.
- A. Yes. I did go, contrary to Mr Shvidler's advice, but yes, I did go.
- Q. Then this point about you not wanting to go really goes

nowhere, does it?

A. I'm sorry?

Q. The point about you not wanting to go, or being nervous about going, goes nowhere. Because whatever the purpose of your trip was, you were in the end willing to go, and you did go?

A. I did go to discuss a very specific issue which I have a strong recollection about, which I had knowledge of and I could actually talk about it. These other issues I couldn't, and I can go through why it doesn't make any sense that I would be talking about these things.

Q. Let's look at the third of the reasons that you gave at the time of the strike-out, if we can. That's at paragraph 21 of your statement J2/3.32/54. You say:

"Thirdly, I do not understand what the context of the 'meeting' is supposed to have been."

A. Correct.

Q. "As I say, I have never been involved in discussions about the acquisition or disposal of Rusal before, nor have been since."

That's not quite correct, is it, Mr Tenenbaum, that you had never been involved in discussions about the acquisition or disposal of Rusal before?

A. No, it is correct. At this level I have never been involved. I was always in the back office. I mean,

I was supporting, I wasn't even actually doing the documents, I was supporting my staff.

So, no, I was not involved in a direct role at this level of Mr Patarkatsishvili.

Q. Well, did you not tell us earlier that you had participated, for example, in the negotiations both in Moscow and in London in March?

A. It wasn't negotiations, it was supporting Ms Panchenko because she didn't speak English very well, and she asked me to be there because she was really able to do -- which was the share transfer points. These were the main points, everything else wasn't key. Because if you look at the documents, there are no key points in there for me to be involved in. I couldn't add value. I'm not saying I'm better or worse, I'm just saying there were better people who could do those things, not me.

The shareholder agreement I accept I did because I could add value, because it was to understand the business, to understand the risks, to understand each side's weaknesses and strengths, and that was my ability to participate, and that's what I did, and I'm negotiating as (sic) Mr Mishakov. That was my role.

Q. And in fact you've rather changed your evidence about this third point.

Can I ask you, please, to look at paragraph 98 of your third witness statement at page 108 E3/11/108. Whereas previously you have been saying you had never been involved in discussions about the acquisition or disposal of Rusal before, nor have been since. If you look at paragraph 98, what you now say is that you had never been involved in discussions with Mr Patarkatsishvili about the acquisition or disposal of Rusal before, nor have you since. And that's rather different, isn't it?

A. No, it's not, it's exactly what I was saying, I never discussed it with Mr Patarkatsishvili. And the second witness statement simply assumes, because it only talks about the meeting in Georgia, so therefore it's clear that I'm talking about my meeting with Mr Patarkatsishvili. This is a much more general witness statement about everything so here I have to be specific, I suppose, and so I was specific --

Q. Well, is your --

A. -- there.

Q. Sorry, Mr Tenenbaum, I really don't want to interrupt you, and if I do, please tell me.

A. No, no, I'm sorry, go ahead.

Q. Is your evidence now that you want us to say that your evidence is that you had never been involved in

discussions about the acquisition or disposal of Rusal before, nor have since; or do you want us to record your evidence now as being that you'd never been involved in discussions with Mr Patarkatsishvili about the acquisition or disposal of Rusal before, nor have you since?

- A. There are two points that I would like to make. First, I have never been involved in direct discussions with Mr Patarkatsishvili. And the second point, what these notes discuss is share transfers, structuring, cashflows, bank accounts. I was never involved with things like that. That is not my expertise. I had people in my department that dealt with that, but the right person, if anybody was here, was Ms Panchenko and Ms Khudyk who deal with those things.

I have no knowledge -- it would be like a mute talking about things, that's not what I do, that's not what I did. If it was to talk about buying an aluminium company, yes, I would be discussing it, but certainly not with Mr Patarkatsishvili.

- Q. Why does the fact that you had never previously been involved in discussion with Mr Patarkatsishvili about acquisition or disposal of Rusal mean that you couldn't have been involved in a discussion with him now, at this point?

- A. Because (a) I would have remembered these notes, if I had discussed these things, and secondly, Mr Patarkatsishvili wouldn't be talking to me. I mean, it is inconceivable for him to talk to me. It just doesn't make any sense to me. And, again, I can go through the notes, we can go line by line, and I can show you why it doesn't make any economic sense to me.
- Q. We know that it was Mr Abramovich who was supposed to go and Mr Abramovich sent you instead?
- A. Correct.
- Q. If Mr Abramovich sent you instead when Mr Patarkatsishvili had asked for Mr Abramovich to come, then you would have been the only person on hand for Mr Patarkatsishvili to talk with about these things.
- A. There were many other people that could have gone. I went specifically with respect to football. Because in July 1st we buy Chelsea, I spend 24 hours a day, seven days a week on Chelsea. That's all I do. That's all I did for the last eight years. I didn't do anything else.

So yes, I went to discuss football because Mr Patarkatsishvili was very excited about -- this I do remember -- he was very excited about Mr Abramovich, the positive reaction he had when he bought it. And, to him, because he couldn't travel anywhere, it was

important to discuss how we did it, because he didn't believe that Roman just bought it because he loved football. He thought he did it for improving his image, and he wanted to do the same thing in Brazil, and that's what we discussed, that's what stayed in my mind.

Q. All right, well, we'll come to that if we may in a moment.

Now, just in terms of what it was that the meeting, sorry, the notes record you as doing. This was in fact only a first discussion meeting, it wasn't a meeting to close the deal, even on the terms of the notes.

A. To close which deal, I'm sorry?

Q. To close a deal to acquire or buy the Rusal shares.

A. The problem is that, in August 25th, I knew that we already sold the shares to Mr Deripaska, so what am I discussing with him? I still don't understand from these notes, what would I be discussing then? Because in August 25th, Mr Abramovich has done a deal with Mr Deripaska.

Q. He's in fact done a deal with Mr Deripaska for only 25 per cent of the shares.

A. Okay.

Q. Isn't it right that the deal that Mr Abramovich does with Mr Deripaska is in September 2003?

A. No, but they started discussing it in the summer.

- Q. But the fact that they were discussing it, and they were discussing 25 per cent, doesn't mean that you couldn't have gone to have a conversation with Mr Patarkatsishvili about the 25 per cent of the shares that Mr Patarkatsishvili and Mr Berezovsky owned?
- A. Again, I couldn't have discussed it because that's not -- first of all, I wasn't involved in the sale of Rusal. First of all, it was 50 per cent that was sold. The deal was -- I knew that that was the deal because when we bought Chelsea, Roman was not involved any longer in those transactions in Russia. We were only looking at Yukos Sibneft, and I participated a little bit in that, but primarily my time was in Chelsea. So I knew that he sold everything, we were out, out of Rusal. I understood that at that time. So when I'm discussing these things with him, I don't really understand what I'm supposed to be discussing with him.
- Q. You say that he'd sold 50 per cent, that's not what the documentation shows in relation to the Rusal transaction, but I'm not going to go through that with you now, Mr Tenenbaum.

Can I just ask you about the fourth reason that you give as to why you say this couldn't have been a genuine note made of a meeting which you attended, and that is the language barrier point. You make this point at

paragraph 22 of the witness statement that you made in the context of the strike-out J2/3.32/54. At paragraph 22, page 54, you said this:

"As I mentioned, I may have had had some exchanges in English with the English/American gentleman by way of polite discussion, but I do not believe that Mr Patarkatsishvili spoke English (I certainly never recollect him speaking English or any occasion where I had met him previously) ..."

Are you sure about that, Mr Tenenbaum, that you do not recall Mr Patarkatsishvili speaking any English?

- A. I've never -- I mean, I met him two/three times in my life. He's never spoken English to me.
- Q. You see, Mr Reuben has given evidence that in late 1999 Mr Patarkatsishvili's English was good enough for him to act as a translator for Mr Anisimov on the course of a plane journey.

For your Ladyship's note, that is Day 15, page 16 at line 19, on to page 17.

And it's not only Mr Reuben who has given evidence of Mr Patarkatsishvili's ability to speak English, Mr Tenenbaum, but all of the English solicitors who interviewed Mr Patarkatsishvili later on in time have testified to him having at least a reasonable grasp of English.

Now, can we be clear, is it your evidence that he could not speak English or that you had not previously spoken with him in English?

A. I've never previously spoken to him in English.

Q. So you're not suggesting that you couldn't at this stage have had a conversation with him in English?

A. It's theoretical because I never spoke to him in English.

Q. Well, that's not what the note records.

Now, even assuming that Mr Patarkatsishvili's English was not fluent in 2003, which I have to say we do not accept for a moment, the fact is that you are fluent in both English and Russian, are you not, Mr Tenenbaum?

A. Yes.

Q. And so is Mr Fomichev?

A. I don't know.

Q. Well, Mr Fomichev claims to be a native Russian speaker with fluent written and spoken English. If Mr Patarkatsishvili's English had been a little rusty, both of you could have translated for Mr Curtis on this occasion if the need arose, couldn't you?

A. In theory, yes.

Q. What you have said in your witness statement, and you've repeated it here, is that you say that the reason you

went to speak to Mr Patarkatsishvili in Georgia was because you wanted to discuss football with him and that all you can remember discussing was the recent Chelsea acquisition. That's what you say at paragraph 90 of your witness statement E3/11/106.

A. Correct. Well, I understand that he wanted to talk to Mr Abramovich about football, and so that's why I went, because I had just recently -- we just recently acquired Chelsea and the transfer window was in August so that's why I went.

Q. So let's just be clear about this, and there is another reference to football in case my learned friend wants to jump up about it because I'll come to it. You are suggesting, are you, that the reason Mr Abramovich got you to fly all the way to Georgia was to talk about football with Mr Patarkatsishvili?

A. Yes.

Q. Do you think that's very likely to be a reason why you would fly all that way?

A. Yes. You don't know Mr Abramovich. Absolutely.

At that moment in time, my Lady, that's all we did, was football, and for the next seven years. That's all Mr Abramovich talks about.

Q. And just looking at paragraph 90 of your third witness statement, Mr Tenenbaum, you say this in the fourth line

E3/11/106.

Are you there?

A. 90, yes.

Q. "Mr Patarkatsishvili raised the fact that he had some contacts in Brazilian football and enquired whether Mr Abramovich had any interest in making an investment along with him."

A. Correct.

Q. You go on to say that Mr Patarkatsishvili was hoping that this would enable him to travel to Brazil and gain "positive publicity"?

A. Correct, exactly.

Q. And you also say this, this is about six lines up from the end of paragraph 90, that you assured Mr Patarkatsishvili that you would speak to Mr Abramovich about this Brazilian football proposal.

A. Correct.

Q. Then just looking at paragraph 91 E3/11/106, you say you then flew on to Nice where Mr Abramovich was staying, and that you passed on the detail of this conversation, and indeed the question of investing in Brazilian football clubs, I take it, to Mr Abramovich, is that right?

A. Correct.

Q. And then you also note, this is paragraph 91, you say

that:

"The following year Mr Patarkatsishvili did [indeed] invest in the Brazilian club Corinthians along with [his Iranian] partner, [Mr] Kia Joorabchian."

A. Correct.

Q. I don't think you need to turn it up, but that reflects the evidence which you had given in your second witness statement, that was at paragraphs 12 and 13 of your previous statement J2/3.32/52.

Let me ask you this, Mr Tenenbaum, how clear is your recollection of this conversation with Mr Patarkatsishvili in August 2003 about his Brazilian football contacts?

A. The Brazilian football is clear. His excitement that he could also gain positive publicity if he invested somewhere else and could travel freely is clear. The flight in is clear, the helicopter flight is clear. The ambience of the environment is a bit clear, because it was very weird, the house was finished but not really.

It was a very weird setting for me personally. People that I don't really know, I'm there. And so for me that moment is quite clear, that I arrive, I talk to Mr Patarkatsishvili, which is not normal a situation for me, and so that aspect of the trip is very, very clear to me.

Q. You see, Mr Tenenbaum, we have scoured the commercial database of the disclosed documents in this case and we have found that the Brazilian football investment which Mr Patarkatsishvili made has in fact been the subject of a pretty thorough Brazilian criminal investigation, and it appears that this resulted in a Brazilian criminal prosecution being launched in July 2007. Are you aware of that, Mr Tenenbaum?

A. Yes, of course.

Q. There is a document which I would like to take you to. It's to be found at HG, tab 28 at page 214 H(G)28/214.

A. Yes.

Q. You see, what this appears to suggest, Mr Tenenbaum, and you can see it in particular if you go to page 5 of the documents, page 218 within the file H(G)28/218, and if you look at heading 2, is that the first steps that Mr Joorabchian, I'm sure I'm mispronouncing his name, took in Brazil only occurred in mid-2004.

A. Correct.

Q. And indeed that pre-contractual negotiations only started in August 2004. You can see that if you look over the page, look under heading 4 H(G)28/219.

A. Yes.

Q. One also sees under heading 4 that offshore companies were only set up in August 2004.

A. Mm-hm.

Q. And indeed that the investments only started  
in December 2004.

A. Correct.

Q. I have to tell you that despite making a thorough --  
what I hope was a thorough search of the commercial  
disclosure database, and indeed the extensive materials  
relating to this Brazilian football club investment, we  
have been unable to find a single document suggesting  
that Mr Patarkatsishvili or Mr Joorabchian had any  
Brazilian football contacts prior to August 2004.

Now, if that is right, I suggest to you that that  
would indicate that it is unlikely that in August 2003,  
about a year prior to Mr Joorabchian apparently getting  
involved there, Mr Patarkatsishvili was talking to you  
about his contacts in Brazilian football?

A. He was talking about his contacts, of his desire to go  
to Brazil. Before you make an investment you have to  
actually analyse where you're going. The fact that he  
makes an investment in 2004 does not imply that he  
didn't actually think about the investment in 2003.

Q. You see, even if the evidence set out in the Brazilian  
criminal complaint is wrong and Mr Patarkatsishvili did  
already know some Brazilian football contacts as  
at August 2003, given the chronology, and that no

contract was concluded or investment made for over a year, the Brazilian football project could have been no more than a twinkle in Mr Patarkatsishvili's eye in the summer of 2003, couldn't it, Mr Tenenbaum?

A. It was absolutely just a twinkle, that's what I'm trying to explain. He was excited about Roman doing it and he decided to do it himself because of his relationships, I suppose, in Brazil and in Brazilian football. So the fact that he doesn't make an investment in a year's time doesn't mean that Roman buying Chelsea gives him the impetus I think to look at Brazil. That actually is very logical in my mind.

Q. The fact that, as you accept, it was no more than a twinkle in his eye, I'm sure that's a mangling of metaphors, but the fact that it was no more than a twinkle in Mr Patarkatsishvili's eye at that stage, you say was sufficiently important for you to break your journey from Georgia to London by stopping at Nice and reporting immediately and directly to Mr Abramovich about it, do you?

A. Yes, because I explained to Mr Abramovich my meeting with Mr Patarkatsishvili.

Q. You wouldn't have to divert to Nice to tell Mr Abramovich that Mr Patarkatsishvili had this dream or future idea, no more than a twinkle in his eye, that he

wanted to get involved in Brazilian football?

- A. First of all, you don't know Mr Abramovich, and at that time football was the only thing he was thinking about. And the second thing that we discussed, as I know it, is the Tbilisi football club which Mr Patarkatsishvili did own since 2001. So the discussion about football makes absolute sense because he was interested in football, he had an investment in Tbilisi in football since 2001. And the investment that Mr Abramovich made in Chelsea made him realise that he could potentially be free because he couldn't travel at that time.

So that makes perfect sense to me why, and why Mr Abramovich wants to know about things like that.

- Q. Why couldn't you just have spoken to Mr Abramovich about the Brazilian football project or Tbilisi football project on the phone? Why did you have to divert to Nice and see Mr Abramovich in person about that?
- A. That's the way Mr Abramovich is. I mean, he likes to talk to me, he likes to see me, it wasn't a major event. I stopped over and I sent (sic) over to see him.
- Q. You see, I have to suggest to you that your evidence about this is not truthful, Mr Tenenbaum, and that at this meeting, which you accept took place in August 2003, the matters that we see Mr Curtis recording in his handwritten note were discussed with

yourself and Mr Patarkatsishvili?

A. My Lady, I will explain why that is not the case. If we can go through the notes --

MRS JUSTICE GLOSTER: Explain.

A. We have to go through the notes and we have to go in detail why it's logically impossible for me to be at that meeting.

MR RABINOWITZ: I'll take you through the notes in a minute, Mr Tenenbaum, but I'd better put my case --

A. Go ahead.

Q. -- lest I later be criticised for not doing so.

Mr Abramovich asked you to attend in his place because you were one of his senior management team who was already familiar with the Rusal Holding structures and could advise on how to structure an offshore sale of Mr Berezovsky's and Mr Patarkatsishvili's stake. And following the meeting with Mr Patarkatsishvili, Mr Curtis and Mr Fomichev in Georgia you reported back directly to Mr Abramovich in Nice because the matter was sufficiently important for you to need to report to him in person. And that's the truth of it, isn't it?

A. No, it's not.

Q. Okay, well, can we just then look at the notes.

MRS JUSTICE GLOSTER: Are we looking at them in the manuscript or --

MR RABINOWITZ: I think if your Ladyship looks at them in the typed version.

Just picking it up at 005 H(A)59/110.005, you see that Mr Curtis has recorded the following, that Badri explained that:

"Few years ago several people owned several plants -- willing to sell shares. At that point shareholders of Sibneft bought most of these plants.

"Shareholders of [Sibneft] -- [Boris, Badri and Roman].

"We sold Sibneft so far no problems with deal.

"Remained partners with [Roman] in [aluminium]. Now have another partner who holds remainder of shares.

"Agreed with [Roman and] partner in Russian Aluminium -- shareholders 50/50.

"We agree 25 [Boris and Badri], 25 [Roman].

"We are passive shareholder[s] so [Roman] operating partner and every year we get dividends from [aluminium] activities."

That's what was discussed there, was it not?

A. Not in front of me. It's impossible to have discussed that the shareholders of "S" were Boris, Badri and Roman.

Q. You say it's impossible to discuss --

A. In front of me, I would have remembered that. I was

a trustee of Mr Abramovich's trust, I knew that he was the only beneficial shareholder. It is absolutely impossible for me to be at that meeting, to listen to these people talk about these things, and for me (a) not to remember something about this.

Q. That of course assumes that what you are saying about who is the only beneficial shareholder of Sibneft is correct. But on the basis that that is not correct, and that Mr Berezovsky's case is correct, that is precisely the sort of conversation that might have taken place, is it not?

A. Well, definitely not with me.

Q. All right.

A. Because I was on the opposite side of that knowledge, complete opposite side of that knowledge, so why would they discuss that with me if they believe that, for one instance.

Q. Well, they may have believed it and understood that you would have known about the true position as well, Mr Tenenbaum.

A. And why would I explain that I know something else?

Q. You see, Mr Tenenbaum, in a sense you are trying to answer that question by assuming the answer to the very question my Lady has to decide.

A. I see, okay, I'm sorry.

Q. Now, just looking at "Side 2" H(A)59/110.005:

"Because of difficulties of being partner of B [and I think that would be Boris] Badre agreed to sell both parts to [Roman].

"Now have to discuss key issues relating to transaction and all related issues -- price/structure -- our partners must feel comfortable as well."

Then two issues are identified with price and structure:

"Price not complicated we have mutual understanding of what involved -- in any event we will find right price.

"At this meeting just stipulate basic understanding of price from both sides to find middle grounds."

And then it says:

"[Roman and Badri] are eager to find solutions for both partners. Structure we have ideas to discuss."

And then:

"[Badri] asked [Mr Tenenbaum] if he understood [and Mr Tenenbaum] confirmed."

Again, Mr Tenenbaum, I have to suggest to you that this is what you discussed with Mr Patarkatsishvili and indeed Mr Fomichev and Mr Curtis?

A. It is impossible that I discussed it, because if you look at the next point H(A)59/110.005:

"B-T discussed structure. B said we need to participate in upside ..."

I knew that the Rusal stake was sold already. What could I be discussing with them?

- Q. Well, again, Mr Tenenbaum, that assumes that Mr Abramovich's evidence about having sold the 50 per cent to Mr Deripaska is right when the document suggests that he had only sold 25 per cent. That's right, isn't it?
- A. The documents showed only 25 per cent, correct.
- Q. Yes. And if the documents are to be believed, there was no reason at all why you couldn't have been discussing the other 25 per cent?
- A. I wouldn't be discussing with them.
- Q. Now, if you look then at card 2, side 3 H(A)59/110.006. I have to pick it up from the previous page:

"B-T discussed structure. B said we need to participate in upside -- need to have option to buy back and sell if sold to third parties or company go to public market -- or holding cos sold."

Then Mr Curtis looks as if he's unclear as to who said this, you or Mr Patarkatsishvili:

"Do we need option or can we go another way."

Mr Patarkatsishvili:

"Just a method. If offer is high enough we drop option -- all about figure."

You are then recorded as saying:

"What is [the] period/what triggers (what is event) or is it just call."

Then this is recorded:

"Eugene was asking if liked structure for [Sibneft]. [Mr Patarkatsishvili says] yes, problem complicated and costly."

And Mr Patarkatsishvili then says:

"Proposed structure that we now become registered shareholders and then sell back to R."

And you then say:

"Problem is existing shares are bearer company with bearer shares."

Just pausing there, the line from

Mr Patarkatsishvili:

"Proposed structure that we now become registered shareholders and then sell back to R."

That is not dissimilar to what in fact happened in July 2004 where Mr Patarkatsishvili was identified as being the beneficial shareholder of the Rusal shares in order that he sell to Mr Deripaska, do you remember that?

A. Yes, I do.

Q. And what Mr Patarkatsishvili was saying here was that -- or reflected the fact that until this point Mr Patarkatsishvili and Mr Berezovsky had not been reflected as being the owners, and what he was suggesting needed to happen was that the shares should be put in their name first so that they could then sell them to Mr Abramovich.

That's right, isn't it? That's what he was suggesting?

A. I'm sorry, what's the question?

Q. That is what he was suggesting?

A. To whom?

Q. To you.

A. Oh, no.

Q. Okay.

Just looking at the line immediately below that, Mr Tenenbaum, you are recorded as saying:

"Problem is existing shares are bearer company with bearer shares."

Now, you knew as at August 2003, didn't you, Mr Tenenbaum, that the BVI shares were bearer company shares?

A. Well, the fact is I actually knew the opposite because I thought in May 2003 it was registered already as Rusal Holding. That was my knowledge in May 2003.

Q. Can you look, please, at paragraph 50 of your third witness statement, page 91 E3/11/90?

A. Yes.

Q. At paragraph 50 you say:

"I was ... not involved with the registration of ... Rusal ... although I recall that at some stage I provided general advice about what investors would expect if the company was later listed on an international stock exchange. This may be why I have some recollection of the names of four BVI registered companies ..."

You recall that those companies had bearer shares?

A. Correct.

Q. And you say something similar, if you go to paragraph 103 at page 110 E3/11/110. If you look at -- it's in the middle of paragraph 103, and you're talking here -- in fact you're talking here about the cards themselves, and you say:

"As regards Rusal, I was aware at the time that the shares in the BVI company, through which Mr Abramovich's interests in Rusal were held, were bearer shares."

A. Correct. The point -- yes, go ahead.

Q. So in fact what is said in this note, in the card, about the bearer shares, BVI company and bearer shares, was something that you knew about?

A. I knew that originally they were in bearer form, but as of May 2003 I understood that the restructuring was taking place so I would have -- if it's me in this meeting, I would have communicated that information if I was talking, and I don't understand why is it a problem to actually -- why is there a problem in existing shares being bearer? On the contrary, I think it makes sense that it's actually easier.

Q. I don't think that's right, actually. If you look -- sorry, I'm not sure, I don't want to be at cross-purposes with you, but if you look at card 2, side 3, do you see that immediately after you are recorded as saying:

"Problem is existing shares are bearer company with bearer shares."

Mr Curtis is recorded as saying:

"Changing B shares now BVI -- so do have to be registered anyway -- can transfer shares in BVI."

The reference to changing bearer shares now in BVI reflects the fact, does it not, and this may be a point that you were making as well, that in May 2003 an act was passed in the BVI which changed the law in the BVI relating to bearer share companies and required them in the future to be held by custodians and registered?

A. What is the question, I'm sorry.

- Q. Well, are you aware of that?
- A. I'm not aware.
- Q. Okay. Now, just your point about why was the problem that the existing shares were bearer companies with bearer shares, the point that Mr Patarkatsishvili was making was about becoming registered shareholders, and the point that you made in response to that was that the shares were bearer shares.
- A. Okay, but I knew that they weren't actually registered already, so why would I say it's a problem if I know that the company is changing structure? I guess that's what's not clear to me.
- Q. Isn't that precisely the point that Mr Curtis is making, that the structure is going to have to change because of the position in the BVI?
- A. But he didn't know about the May 2003 registration. I knew that.
- Q. He knew about the law which had just been passed in May 2003, and isn't that the reason why there was a change in the position of the BVI companies in May to reflect the change in the law?
- A. No, the change -- the bearer shares remained in existence for a while in Rusal, is my understanding. Madison remained as a bearer company because we were still paying them, as I understand, until 2005 through

those structures.

So the bearer structure actually didn't change how the payments were made. The ownership was changed, how the assets owned, the actual operating assets, not the trading company from which they were being paid. So the operating assets were changing to bearer form -- into registered form, so that's the key point here.

Q. Can we just look a little further down on "Side 4"

H(A)59/110.006. You then say:

"Problem -- shareholders of [Rusal Aluminium] -- all of shareholders in holding co we are partners of third party -- BVIs held 50/50, not RA."

That was right as well in terms of the way in which the BVI holdings were structured?

A. Correct, it was 50/50.

Q. And you would obviously have been aware of that, Mr Tenenbaum?

A. Yes, and so was Mr Fomichev.

Q. Why would Mr Fomichev have been aware of that?

A. Because since 2001 that's how they were being paid, through bearer form, and they knew that the 50/50 of Rual was owned by Mr Deripaska.

Q. Why would they have needed to know that the 50/50 of Rual was owned by Mr Deripaska in order for them to be paid?

A. Because my understanding from the structure that was done with them, they would have seen the flow of dividends, as I understand.

MRS JUSTICE GLOSTER: When you say that's how they were being paid, who is "they"?

A. Well, Mr Berezovsky, the 1.3 billion I guess I'm talking about, I'm sorry. When the 1.3 billion was agreed and paid to them, to Mr Berezovsky and Mr Patarkatsishvili, it was structured through the dividends of Rual and Pex and it went to, I guess, Devonia.

So they would have known, Mr Fomichev and, I only can assume, Mr Curtis, I don't know, would have known how the structure of Rusal was structured. Bearer form, 50/50 with Deripaska.

MR RABINOWITZ: Mr Tenenbaum, what they would have known was that Devonia was receiving dividends from Pex. They didn't need to know anything at all below that.

A. My understanding --

Q. About Rual or Rusal or anything else.

A. My understanding, they did, from Ms Panchenko.

Q. That's certainly not what she has said.

Let's look further along this note. Mr Curtis is then recorded as saying:

"We need to create proof of ownership to show were/why proceeds of sale are derived."

Then Mr Curtis also says:

"If shareholding already at BVI level it is easier to transfer ownership once we have established ownership route to RA -- no need to show changed in Russia just in BVI ... as going to have to change because of law -- good reason to show real. No need to show sale -- just say this was the true position -- reflecting actual position."

What Mr Curtis is suggesting there --

MRS JUSTICE GLOSTER: Why is Curtis "S"?

MR RABINOWITZ: Stephen.

MRS JUSTICE GLOSTER: Right, sorry, thank you.

MR RABINOWITZ: What Mr Curtis is suggesting there is if you have a document which identifies that Mr Patarkatsishvili and Mr Berezovsky were the owners of 25 per cent of the Rusal shares, that would actually reflect the actual real position, and that is what he said to you at the time, did he not?

A. No.

Q. We then have the note Mr Curtis made saying this:

"We have already made certain disclosures in market we will have to consider what we have said -- not to public but to banks/insurance co [etc]."

Now, you have been --

A. Sorry, it doesn't say "banks, insurance companies".

Q. "Not to public but to banks --"

A. Where's banks, sorry?

Q. Over the page, I'm sorry.

MRS JUSTICE GLOSTER: Which card are we on?

MR RABINOWITZ: It goes from the bottom of card 2, side 4 on to card 3, side 5.

Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes, I have that.

MR RABINOWITZ: Now, this comment about representation or disclosures made to banks/insurance companies, can I ask you, Mr Tenenbaum, to be given bundle H(A)76 at page 57 H(A)76/57.

I've asked Ms Panchenko about this document. It's a letter that was produced by Mr Streshinsky following a conversation that he had with Ms Panchenko in the context of the second Rusal sale. But do you see the first sentence:

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find below an alternative structure."

And I suggest to you, Mr Tenenbaum, that this concern within Mr Abramovich's companies or team about representations previously made to banks and insurance companies is precisely the point which is reflected in Mr Curtis's note of his conversation with you, is it

not?

A. It's not with me, sir.

Q. There is then the following exchange H(A)59/110.007.

Mr Tenenbaum:

"Do you have cos to be shareholders either by sale or by reflecting annual."

Mr Curtis says:

"Yes and they are all BVI."

There is then a discussion about whether they have banks which can be used. There is then this exchange, we're still on card 3, side 5. You say:

"Are you happy to show B/Bors."

Which presumably is Mr Patarkatsishvili and Mr Berezovsky.

And Mr Curtis says:

"Yes or just Badre if this is easier for you."

Again, Mr Tenenbaum, you will recall that in the context of the 2004 Rusal sale, the second tranche, what happened in the end was that only Mr Patarkatsishvili was shown as the owner of the Rusal shares and, again, I suggest to you that this again reflects a consistent concern by all of the parties involved as to whether documentation should show Mr Berezovsky as well as Mr Patarkatsishvili. Would you agree with that?

A. I'm sorry?

Q. Would you agree that there was a consistent concern reflected in the end in the -- let me ask that separately.

Would you agree there was a consistent concern about whether documentation should show Mr Berezovsky as well as Mr Patarkatsishvili as an owner of the Rusal shares?

A. The concern is that they weren't shareholders so I don't know how to answer that question.

Q. Well, we know that in the July 2004 sale documentation, the contract that was produced and the deed which was produced and signed by Mr Abramovich did say that Mr Patarkatsishvili had been a beneficial owner of the Rusal shares since March 2000. You're aware of that?

A. I'm aware, but it's not a correct interpretation. What Mr Abramovich signed was a deed acknowledging that Mr Patarkatsishvili is a shareholder, and what we agreed to was that he was a shareholder at the moment of the transfer of shares, to assist Mr Patarkatsishvili. We did not agree and we never -- Mr Abramovich never signed an acknowledgement that said Mr Patarkatsishvili was a shareholder from March 2000.

Q. I've shown you this note, Mr Tenenbaum. Is there anything else in this note that you would like to comment on that I haven't allowed you the opportunity to comment on?

A. I think the key points have been raised.

MR RABINOWITZ: Thank you very much, Mr Tenenbaum. I don't have any more questions.

MR MALEK: No questions, my Lady.

MR ADKIN: No questions.

Re-examination by MR SUMPTION

MR SUMPTION: Mr Tenenbaum, what was the reason why you went to Georgia?

A. I went because Roman asked me to go and to meet with Mr Patarkatsishvili about football.

Q. And precisely what were you supposed to discuss about football with Mr Patarkatsishvili so far as you were aware before the meeting started?

A. He wanted to find out about Chelsea Football Club, what we did, how we did it, as I understood from Roman at that time.

Q. What, Mr Patarkatsishvili wanted to do that?

A. As I understood it, yes.

Q. So did you -- you understood that you were going to be giving information to Mr Patarkatsishvili, did you?

A. Yes, because I was the one that actually purchased Chelsea, I was the one that actually did the transaction, so Mr Abramovich asked me to go and discuss that.

Q. Who did you expect to be present at that meeting before

you got there?

A. I understood I was only going to see  
Mr Patarkatsishvili.

Q. Mr Rabinowitz said to you: if Mr Abramovich had told you  
to go and discuss aluminium or Rusal, you would have  
done so. Did Mr Abramovich say anything of that kind?

A. He did not, and if he would have said I would never have  
gone.

Q. Now, the question of language, what is your first  
language? You are fluent in both English and Russian.  
Which is your first language?

A. I feel more comfortable in English but my first language  
of course is Russian, but I left when I was 10 --  
11 years old, so I think in English.

Q. What was Mr Patarkatsishvili's Russian like?

A. I thought it was okay, it was very good.

Q. What language do you usually speak when you are speaking  
to other fluent Russian speakers?

A. I only speak Russian. They would take offence if I  
spoke anything else.

MRS JUSTICE GLOSTER: Is Georgian a different language from  
Russian?

A. Very different.

MRS JUSTICE GLOSTER: Forgive my --

A. He had an accent, of course, he had a very particular

accent, it was very interesting.

MRS JUSTICE GLOSTER: But Georgian is not similar to Russian --

A. No, no, it's completely different. But he spoke Russian from what I understand. I'm sure he -- I remember him having an accent in Russian, not a Moscow accent.

MR SUMPTION: He spoke Russian like a Yorkshireman.

A. I guess, yes. Actually true. When I married my wife and I went to Yorkshire I didn't understand anything people were saying to me.

Q. Now, do you remember whether anyone was making a note at this meeting?

A. There was no note being taken, I'm certain of that.

Q. What enables you to be certain that no note was being taken at the meeting?

A. Because Mr Fomichev told Mr Shvidler and others that the note was taken after I left, whether at the same time or maybe much later, but he told them that it was taken later, and it was -- I think it was dictated by Mr Patarkatsishvili. He told him some other things as well, that the Devonia agreement was actually a sham and that there was no on-sale.

Q. Mr Tenenbaum, how do you know that the note was dictated in the way that you've described?

A. Mr Fomichev told Mr Shvidler.

Q. Now, if you had seen Mr Curtis at the time making a note, what would you have done differently, if anything?

A. I think if he was taking a note and it was a real business meeting, I would have asked to see the note after to check the note, what was said -- to confirm what I was saying.

If I was saying these things, my experience of anybody taking a note, I would want to review that note, and I would remember if somebody is actually taking a note outside as we're having lunch.

Q. Now, in August 2003, what did you understand to be the form of the BVI shares? Did you understand them at that stage to be bearer shares or registered shares?

A. My understanding of my involvement in May 2003, that it was all changed, it was all restructured, that was my understanding.

Q. So if somebody had asked you in August 2003: what is the current status of these shares, are they presently, as we speak, bearer shares or registered shares? What would your answer have been?

A. My answer would have been that they were registered shares, the assets owning shares, not the trading, because that was what's being restructured as well.

Q. Could you please scroll back, or you may need some

assistance for this, scroll back in the transcript to [draft] page 125 of the transcript, please.

MRS JUSTICE GLOSTER: When you say the BVI shares, could you just clarify for the transcript, BVI shares in which company?

A. The way it was structured, it was really a tolling(?) structure as I understand. I think it was the four companies that --

MRS JUSTICE GLOSTER: Can I just be clear on the dates here?

A. Sure.

MRS JUSTICE GLOSTER: We're looking at August 2003?

A. Before August 2003.

MRS JUSTICE GLOSTER: Before August 2003.

MR SUMPTION: The restructuring he said was in May.

MRS JUSTICE GLOSTER: Yes.

A. Sorry, before May 2003, yes.

I'm sorry, what's the question?

MR SUMPTION: Now, just pursuing that, just to make sure we've got it clear on the transcript, when you said that you would have answered that they were registered shares, which companies were you referring to when you said you would have answered that they were registered shares?

A. Well, I would have answered that the asset owning companies that owned the actual assets, the operating

assets, because it was structured as trading, and then the assets -- the companies that owned the assets, originally they were bearer and then it was restructured into registered form.

Q. Right. So when you gave your answer about being registered shares, you were talking about the asset-owning companies?

A. Correct.

MRS JUSTICE GLOSTER: Can I have the names of those, please?

A. From me? I don't remember.

MRS JUSTICE GLOSTER: You don't remember.

A. No.

MR SUMPTION: Have you got [draft] page 125 of the transcript on the screen? If we could just scroll down a little bit further to line 23, do you see the answer that you gave at lines 23 to 25? Which companies are you talking about there?

A. The asset-owning companies.

Q. Well hang on. When you say:

"Okay, but I knew that they weren't actually registered already, so why would I say it's a problem if I know that the company is changing structure?"

What you say there is:

"... I knew that they weren't actually registered already --"

A. Sorry, I mean to say that if I understood them to be registered at that moment in time, in August 2003, I wouldn't be saying that they were in bearer form.

I guess that's what I'm saying.

MRS JUSTICE GLOSTER: Okay, just let me be absolutely clear in this.

A. Okay.

MRS JUSTICE GLOSTER: As at August 2003, the reconstruction had taken place as of May?

A. I don't know. My knowledge was the restructuring was happening from May 2003, whether at that moment in time the restructuring happened I had no knowledge. So it may have been happening or it may have not happened yet. But my knowledge was from May 2003 that the structure had changed or changing. So in August 2005, my only knowledge was that they were registered already. Whether in fact in August 2003 they were, I don't know, I don't have knowledge of that.

MR SUMPTION: But your belief --

A. But my belief was, yes, correct.

Q. -- whatever the facts may have been, is what you're talking about, is that right?

A. My belief was that.

MRS JUSTICE GLOSTER: You've mentioned August 2005, is that a mistake?

A. Sorry, August 2003.

MRS JUSTICE GLOSTER: August 2003.

MR SUMPTION: Now, you were asked about the knowledge of Mr Fomichev of the bearer shares, and you gave some evidence about the knowledge that they would have derived from the way in which money was paid to them, the 1.3 billion.

A. Correct.

Q. Could you please be given bundle H(A)62, at page 26 H(A)62/26. This is a letter addressed to Curtis & Co by Mr De Cort, which was written on 8 August 2003, about a fortnight before the Georgia meeting.

Would you just like to read through it and tell us whether it assists you in saying what knowledge they had about the status of the shares?

A. Well, they would have had knowledge of the trading company, Rual Trading.

Q. Of the trading company?

A. Correct. And they would have also seen the 50 per cent interest in it.

Q. Where do we see the 50 per cent?

A. We see it in the third paragraph.

Q. And what conclusion does one derive from that?

A. That our side -- that Mr Abramovich held 50 per cent in the Rual trade.

Q. Does that assist one, one way or the other, on the question of whether they were bearer shares or registered shares, or of what knowledge Mr Curtis might have had on that subject?

A. I don't see "bearer" or "registered" here.

MR SUMPTION: Understood.

Okay, thank you very much, Mr Tenenbaum, I have no further questions.

MR RABINOWITZ: My Lady, I have a question arising out of that evidence.

MRS JUSTICE GLOSTER: Yes, fine.

Further cross-examination by MR RABINOWITZ

MR RABINOWITZ: Mr Tenenbaum, for the very first time in re-examination you have suggested that there has been a conversation between Mr Fomichev and Mr Shvidler in which Mr Shvidler was told by Mr Fomichev that this was a fabricated note.

A. Correct.

Q. You have made five witness statements, correct?

A. Correct.

Q. And Mr Shvidler has made six witness statements, correct?

A. Correct.

Q. And it's right, isn't it, that at no stage in any of those witness statements has there ever been this

suggestion made before?

A. Correct.

Q. Thank you very much --

A. No, can I say something?

MRS JUSTICE GLOSTER: You may.

A. We explained this to the lawyers and we were thinking about calling Mr Fomichev, but Mr Fomichev showed Mr Shvidler a text from Mr Berezovsky in which Mr Fomichev thought -- well, thought -- it was stated to him that because he was helping us, Mr Berezovsky threatened him, and it was clearly something that he was concerned about and clearly he was scared for his safety.

And so, therefore, together with the lawyers, we decided that we couldn't call him, because he was scared. He showed the note, it referred to Mr Berezovsky as "Dr Evil", and so -- we wanted to call Mr Fomichev but he didn't want to come. And I don't understand why it didn't come out before but clearly this is an important piece of information.

MR RABINOWITZ: Who saw the text message, Mr Tenenbaum?

A. I did, with Mr Shvidler. Mr Shvidler showed it to me.

Q. I suggest to you that this is completely untrue?

A. Well, you should ask Mr Fomichev --

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm going to take the

break now for ten minutes. Very well.

You're not to talk to anyone about your evidence.

(3.09 pm)

(A short break)

(3.30 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Tenenbaum, I just want to ask you a few questions about your last answer, if I may. You said that Mr Fomichev showed Mr Shvidler a text from Mr Berezovsky. Can you tell me when you say that occurred?

A. A few months ago.

Q. Can you try to be more specific, please?

A. I'll have to come back to you on that, I don't remember. I'll have to ask Mr Shvidler as well what he recalls, I don't remember. A few months ago. It was communicated to the lawyers. They may have a record of that.

Q. You say it was a text, so it follows that there would have been, what, a telephone call -- sorry, a text on a mobile phone?

A. Correct.

Q. Are you suggesting it was sent by Mr Berezovsky?

A. That's what Mr Fomichev told us.

Q. Well, you say that Mr Shvidler saw it --

A. I saw it as well.

Q. Right. So who do you say it was from?

A. Mr Fomichev showed us, and he said it's from Mr Berezovsky.

Q. You also say that:

"... it was stated to him that because he was helping us, Mr Berezovsky threatened him ..."

Can you be very clear as to what you say this text said, please?

A. Okay, I'll try. I don't remember verbatim. The thought was he knew he was helping us.

MRS JUSTICE GLOSTER: Can you be clear when you say --

A. Sorry, Mr -- well, he didn't -- it said that, "I know you're helping them. I'm watching you. I'm listening to your phone calls. I'm controlling your Skype." And I think he referred to Dr Evil, "I'm Dr Evil," something to that effect.

Q. So you say Mr Berezovsky signed himself off as "Dr Evil" in this?

A. Correct.

Q. You also say he showed the note, you say:

"He showed the note ..."

Is that because he'd printed something off?

A. No, he forwarded it to Mr Shvidler's phone?

Q. So Mr Shvidler has a copy of this on his phone, does he?

A. I have no idea.

- Q. But you're saying he must have had a copy of it on his phone at some point?
- A. Correct.
- Q. Do you know if Mr Shvidler still has a copy of this?
- A. I've no idea.
- Q. I take it you have never had a copy of this?
- A. I have not, no.
- Q. Can you explain why you've never referred to this previously in your witness statements?
- A. I spoke to my lawyers and what was I going to say? That he was threatened?
- Q. And Mr Shvidler also says nothing about this in any of his witness statements, does he?
- A. Correct, because he was scared, so how could we say it? We couldn't refer to him.
- Q. According to you, one of the things that Mr Fomichev said was that Badri had dictated the note after the meeting. Why couldn't you have said that in your witness statement, if that was the position?
- A. The lawyers were aware of it.
- Q. Well, that's not an answer to my question, Mr Tenenbaum. It's your evidence --
- A. I actually wanted to say it.
- Q. Are you saying that Mr Shvidler gave a copy of the text to Skaddens, the lawyers?

A. I'm not sure. I don't believe so.

Q. Mr Tenenbaum, I have to suggest to you that you are making all of this up and it's completely untrue.

A. The fact that he confirmed that the Devonia was a sham was done with the lawyers. The fact that the notes were fabricated after the meeting was done in front of the lawyers. The threat was communicated --

MRS JUSTICE GLOSTER: Sorry, just stopping there.

A. Yes.

MRS JUSTICE GLOSTER: When you say "was done with the lawyers," are you saying that Fomichev told --

A. Our lawyers.

MRS JUSTICE GLOSTER: -- your lawyers that?

A. Yes.

MRS JUSTICE GLOSTER: And when you say "the notes were fabricated after the meeting was done in front of the lawyers" --

A. Sorry, it was explained to the lawyers how the notes were fabricated, after I left Batumi.

MRS JUSTICE GLOSTER: When you say "it was explained", you mean Mr Fomichev explained?

A. Yes, sorry, Mr Fomichev explained.

MR RABINOWITZ: Just to be clear, Mr Tenenbaum, you're suggesting, are you, that no one referred to this because of a concern about Mr Fomichev?

A. Correct.

Q. And that's why he hasn't been called as a witness?

A. Correct.

Q. Again, I suggest to you that is completely untrue.

A. It is true.

MR RABINOWITZ: Thank you very much.

MRS JUSTICE GLOSTER: Right. Mr Sumption, any further re-examination after that?

MR SUMPTION: There's no further re-examination, but your Ladyship should know that these were one --

MRS JUSTICE GLOSTER: Well, just a second, if there's no further re-examination --

MR SUMPTION: There is no further re-examination, no.

MRS JUSTICE GLOSTER: Is anything you're about to say likely to lead to a request by Mr Rabinowitz that he further cross-examines this witness?

MR SUMPTION: I doubt it, but I would not wish to deprive Mr Rabinowitz of the option if he thinks differently.

MRS JUSTICE GLOSTER: Right. Well stay where you are, please, Mr Tenenbaum.

MR SUMPTION: The three statements attributed to Mr Fomichev, which your Ladyship has just heard, are three of a number of hearsay statements by Mr Fomichev which we did not allow to be included in witness statements because we were not prepared to call

Mr Fomichev for a number of reasons which I don't propose to go into.

It was quite a complicated matter. The matter came out in re-examination not intentionally. I asked Mr Tenenbaum, as your Ladyship will recall, to say whether he was able to say whether a note was being taken in his presence. That was not designed to elicit his knowledge of how the note was in fact taken although the result was that Mr Tenenbaum did give evidence to that effect, so I followed up his answer in order to clarify what the source of his information was, so far as it wasn't clear, which it pretty well was, in answer to my earlier question. So it came out very largely accidentally and it is there on the record. This happens from time to time.

But the reason why, and I think that I'm in a position to say this myself, why none of the witness statements deal with any hearsay statements from Mr Fomichev was our concern that we should not be leading such information if we were not in fact prepared to call him.

MRS JUSTICE GLOSTER: Yes, I see.

Mr Rabinowitz, you may wish to consider your position in the light of what Mr Sumption has said and in the light of the evidence but that's a matter for

you.

MR RABINOWITZ: Thank you, my Lady.

MRS JUSTICE GLOSTER: I'm not saying that in any threatening way, I'm simply saying that if you wish to make any application --

MR RABINOWITZ: Well if something arises out of that, and I suspect one of the things Mr Sumption is concerned about, and it's a thought, if it is, that's crossed my mind as well, is whether there has been a waiver of privilege here, and that is something we will have to look at carefully.

I entirely understand what Mr Sumption has said about it, and we will look at the transcript and come to a conclusion about that.

MRS JUSTICE GLOSTER: What I'm saying is I don't expect you to make any application now, if indeed you're going to make any application.

MR RABINOWITZ: Indeed, I'm grateful for that.

MRS JUSTICE GLOSTER: Think about it.

MR SUMPTION: My Lady, the position on the evidence is that the next witness is Mr De Cort but my learned friend has indicated to us that, given the speed at which witnesses have succeeded each other, he would prefer Mr De Cort's evidence to be deferred I think until Monday. We are quite happy with that if your Ladyship is. Obviously it

isn't at all easy to deal with one witness after another, particularly when they're all relatively --

MRS JUSTICE GLOSTER: Absolutely, so what are we doing tomorrow then? Mr Deripaska?

MR SUMPTION: Mr Deripaska is giving evidence at 2.00.

MRS JUSTICE GLOSTER: Is that by video-link?

MR SUMPTION: Yes, it is, it's by video-link from New York and therefore 2.00 is very much a fixture.

I should tell your Ladyship that in relation to both Mr Deripaska and Mr Hauser, who is expected to give evidence early next week, we have been asked to make it clear to all those concerned, but obviously particularly to your Ladyship, that Mr Deripaska's privilege in relation to material in the bundles or evidence that he may give, so far as it exists, is not waived. They are anxious that your Ladyship should know that. And Mr Deripaska will be represented by his own counsel while he gives evidence. He is also expected to be here when Mr Hauser gives evidence.

We understand that it may be intended to put in a written statement of what points they may wish to take on privilege, and, if that happens --

MRS JUSTICE GLOSTER: I would quite like to have that now if that were possible.

MR SUMPTION: Well, we don't have it. They say that they

may do that. Now, if they do that it may be sensible -- obviously your Ladyship must have it as soon as anyone does -- it may be sensible, given that we only have tomorrow afternoon for Mr Deripaska's evidence, for your Ladyship to be prepared to sit in the morning in order to deal with any issues of principle that arise on privilege.

MRS JUSTICE GLOSTER: Yes, well, there's not much point me being given the note at 2 o'clock in the afternoon.

MR SUMPTION: Yes, that's very much what we want to avoid.

We have made it clear that we would like to have the note as soon as possible and we will let your Ladyship have it at the very earliest moment that we can.

MRS JUSTICE GLOSTER: Can I make it clear, and obviously I don't know who counsel or solicitors are, that I require it by tomorrow morning so that I can consider it.

MR SUMPTION: My Lady, yes.

I should say that the issues of privilege, although they potentially arise in relation to both Mr Deripaska and Mr Hauser, are primarily, so far as they're problems at all, they're much more likely to be problems in relation to Mr Hauser, the reason being that Mr Deripaska can give evidence of facts within his own knowledge but it may be said that Mr Hauser, as his

lawyer, cannot be required to give evidence of knowledge that Mr Deripaska conveyed to him as part of his instructions in his capacity as a lawyer.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: So the two of them are in a somewhat different position, and for that reason we anticipate, though we haven't seen the memorandum yet, that any difficulties that do arise are much more likely to arise in relation to Mr Hauser. Having said that --

MRS JUSTICE GLOSTER: What, next week?

MR SUMPTION: Yes. Having said that, we will try and defuse the position as far as we can by simply seeking to avoid areas which cause them concern, if we can consistently with our own client's interest.

MRS JUSTICE GLOSTER: Right, okay. So does that mean we don't have a witness for tomorrow morning?

MR SUMPTION: It means we haven't got any business for tomorrow morning unless this business surfaces and needs to be dealt with by your Ladyship tomorrow morning.

MRS JUSTICE GLOSTER: Okay.

MR SUMPTION: There are scheduling issues which we will need to raise with your Ladyship at some stage, but at the moment it's not possible to do so because instructions are still in the process of being taken.

MRS JUSTICE GLOSTER: Right, okay, but we're up to speed on

the timetable?

MR RABINOWITZ: We're very much up to speed, and my learned friend has lost or withdrawn a few witnesses as well so we're certainly not falling behind the timetable.

I think there is an issue -- or perhaps I shouldn't get into it -- with Mr Malek's witnesses and when they can come. I think the parties between us are content with an arrangement. Mr Streshinsky I think can only come next -- not this following Monday but the Monday after, and that's one of the scheduling issues which is going to arise, but rather than take up your Ladyship's --

MRS JUSTICE GLOSTER: Well, if you can't sort it out I'll have to make a ruling, but hopefully you can sort it out.

MR SUMPTION: We will try to sort this out between ourselves as far as we can without troubling your Ladyship. If we need to do so we will do it tomorrow.

MRS JUSTICE GLOSTER: Very well. I'm fairly relaxed about interposing witnesses amongst the expert witnesses.

MR SUMPTION: That may be necessary.

MR RABINOWITZ: Can I just -- sorry, I hope my learned friend was finished.

In terms of Mr Deripaska, we are doing our best to accommodate him and he will be giving evidence from

2 o'clock tomorrow. I cannot say that I am completely confident that in a two and a quarter hour slot I will finish all my questions with Mr Deripaska. To some extent that depends upon the points of privilege which I haven't been told about yet, because it may be that I'm not allowed to ask him a number of the questions I was proposing to ask him, I don't think that is the case, but there is that risk, my Lady, because it is impossible, as your Ladyship knows, to know exactly how long any witness is going to be.

MRS JUSTICE GLOSTER: Is he being cross-examined through translators?

MR RABINOWITZ: I hope and pray not. His witness statement is in English --

MR SUMPTION: I regret to say that he is.

MR RABINOWITZ: He has sworn a witness statement in English.

MR SUMPTION: Mr Deripaska speaks perfectly good English but obviously Russian is his principle language. Rather like the position of Mr Nevzlin, one understands that a witness may be able to speak perfectly good conversational or business English but not be willing to try his luck under pressure of cross-examination, and that seems an entirely legitimate position to take.

MRS JUSTICE GLOSTER: I can understand that.

MR RABINOWITZ: Then all the more so, my Lady, I cannot,

standing here, tell your Ladyship that we'll definitely finish.

MRS JUSTICE GLOSTER: I can sit until about 5.00 but it would be a bit of a problem if I have to sit very much after 5.00.

MR RABINOWITZ: We will do our best.

I don't know to what extent Mr Deripaska is willing to be flexible about when we start. I don't know whether your Ladyship would be willing to start at 1.30, for example?

MRS JUSTICE GLOSTER: I'll start whenever you want me to start.

MR SUMPTION: Can we investigate that and keep your Ladyship informed?

MRS JUSTICE GLOSTER: Yes, certainly. I'll start at 1 o'clock or whenever.

MR RABINOWITZ: If he's in New York I don't want to impose a time which is unreasonable for him, although no doubt Mr Deripaska will do his best to assist the court. We are happy to start whenever Mr Deripaska is ready.

MR SUMPTION: We will find out how early he can reasonably be asked to start.

We're told that the bridge, which presumably has to be booked, will start at 1.30, so that may be the earliest practical time. But we'll try --

MRS JUSTICE GLOSTER: Anyway, I'll leave you to sort that.

MR SUMPTION: We will see what we can organise, my Lady.

MRS JUSTICE GLOSTER: If you could tell my clerk whenever, either later this evening, send him an email, or tomorrow morning, as to when you want to start I will be there.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed.

Mr Tenenbaum, thank you for coming along to give your evidence.

(The witness withdrew)

(3.45 pm)

(The hearing adjourned until Friday, 18 November 2011)

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Friday, 18 November 2011

(1.30 pm)

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: My Lady, three short procedural points. First of all, Mr Stanley is here on behalf of Mr Deripaska, sitting behind me, primarily as I understand it with a view to protecting his interests on privilege.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: It is common ground, as I understand it, that the matters ventilated in the two memoranda that your Ladyship has received will not need to be attended to this afternoon.

MRS JUSTICE GLOSTER: No.

MR SUMPTION: Secondly, your Ladyship has I think been given the letter from Quinn Emanuel explaining why it is that Mr Deripaska has had to give evidence by video-link. Plainly if he had been able to he would have preferred to be here, but these things happen.

MRS JUSTICE GLOSTER: Yes. I've got that, but I've not got it with me, I've just left it on my desk. I don't think I need it. I've read it.

MR SUMPTION: I don't think the details matter. It was a matter of courtesy for your Ladyship.

There is, or there has been, a question about one of the translators who apparently has some involvement as

an expert in other litigation in which Mr Deripaska is engaged. We don't want to have an argument about that. The simplest approach seemed to be to approach Mr Prokofiev, the other translator, and to ask him whether it was feasible for him to do the whole of the translation for Mr Deripaska. He has said that it is but on the understanding that, if he feels that he is getting, in his own word, overheated, he will be at liberty to signal the fact to your Ladyship and we will have a break.

MRS JUSTICE GLOSTER: Yes, you can certainly do that,

Mr Prokofiev, thank you. Thank you for your assistance.

MR SUMPTION: My Lady, I call at a distance of 3,000 miles Mr Deripaska.

MR RABINOWITZ: My Lady, before we take Mr Deripaska, can I just deal with an issue that arose yesterday in the context of Mr Sumption's re-examination of Mr Tenenbaum. Your Ladyship will recall that there was some question about the date upon which Rusal Holding was incorporated and the bearer shares in the BVI companies transferred into the new holding structure. Your Ladyship may recall that you asked to be clear on the dates, that was Day 28, page 140, line 9.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR RABINOWITZ: My Lady, this is in fact dealt with in some

detail in Ms Panchenko's second witness statement,  
I don't propose to turn it up now. The references are  
at paragraphs 111 to 113, E2, tab 7, page 194  
E2/07/194.

In summary, Ms Panchenko confirms that although  
Rusal Holding Limited was incorporated on 7 May 2003, it  
wasn't until 29 September 2003 that the relevant share  
transfers took place, and it follows that, as at  
25 August 2003, the date of the meeting recorded in the  
Curtis notes, the shares in Rusal were still held by the  
six BVI bearer share companies. Your Ladyship can see  
that in her evidence.

MRS JUSTICE GLOSTER: Right, thank you. That's helpful.

Right, is the video-link on or is it muted?

MR RABINOWITZ: I'm told he doesn't want to see me, he only  
wants to see your Ladyship. I don't mind that.

MRS JUSTICE GLOSTER: Right. It's been ascertained that the  
witness can hear the court, has it?

MR SUMPTION: Perhaps we can confirm that.

Mr Deripaska, can you hear us?

MR DERIPASKA: Yes.

MRS JUSTICE GLOSTER: Let the witness be sworn then, please.

MR OLEG DERIPASKA (affirmed)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Good afternoon, Mr Deripaska, or good morning where you are. My name is Jonathan Sumption and I appear for Mr Abramovich.

I wonder if you can -- do you have your witness statement there?

A. Yes, indeed.

Q. Is that a witness statement dated 8 July 2011 which is signed by you on the fourth page of the statement?

A. It is indeed.

Q. Is that statement true, Mr Deripaska?

A. It does -- it is.

MR SUMPTION: Thank you. There will now be some questions.

Cross-examination by MR MALEK

MR MALEK: Mr Deripaska, my name is Ali Malek, I appear on behalf of Mr Anisimov. I've got one question for you, or a couple of questions in fact.

Could you please be provided with bundle F1. Do you have bundle F1 in front of you?

A. I can see it on the screen but it would be much better to have it in hard copy.

Q. I'm sorry, Mr Deripaska, I thought that a hard copy was available.

A. What I'm saying is I can see it on the screen but it would be much better for me to have the hard copy.

Q. I don't know whether one is available. Apparently it's

not, and so could I ask you then to turn on screen to bundle F1, 01, at 47 F1/01/47. Please tell me once that passage appears in front of you.

The English equivalent, for those following in the English, is at F1/01/19.

Mr Deripaska, is it in front of you now?

A. Yes, I have some text now.

Q. Thank you. This is part of the witness statement of Mr Anisimov in these proceedings, and what I'd like you to do, Mr Deripaska, is read paragraph 71 to yourself and, when you've done that, please tell us. (Pause)

A. Yes, I have read this.

Q. Mr Anisimov refers to a couple of discussions with you. The first one is in which you asked whether Badri, Mr Patarkatsishvili was the only principal involved.

Can you tell us whether you agree or disagree that you had a discussion with Mr Anisimov on this matter?

A. I have no recollection of that.

Q. And then the second point that he makes in his witness statement, which you will see in paragraph 71, where he says:

"I recall that I told Mr Deripaska that I would confirm the position with Mr Patarkatsishvili who assured me that Berezovsky was not anywhere near the deal, and I duly informed Mr Deripaska of this fact."

My question, Mr Deripaska, is do you recall having a discussion with Mr Anisimov to that effect?

A. I have already answered that question.

Q. And the answer is that you do not recall having a discussion?

A. That is correct.

MR MALEK: I've no further questions.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr Deripaska. My name is Laurence Rabinowitz and I'm counsel for Mr Berezovsky in this case.

A. Good morning.

Q. Mr Deripaska, in paragraph 1 of your witness statement 04/08/150, you indicate that you became the first CEO of Rusal in accordance with the preliminary agreement of February 2000, that you agreed with Mr Abramovich, is that right?

A. Yes, together with Mr --

THE INTERPRETER: I'm so sorry, my Lady, I was telling Mr Deripaska that I can hardly hear him.

A. I, together with Mr Abramovich, put together -- I created Rusal together with him and I became the first general director of that company.

MR RABINOWITZ: Can Mr Deripaska please be given

bundle H(A)16 opened at page 47 in the Russian  
H(A)16/47, 47T in the English H(A)16/47T.

Do you have that document in front of you,  
Mr Deripaska?

THE INTERPRETER: I'm afraid I cannot hear Mr Deripaska.

MR RABINOWITZ: He said "da".

THE INTERPRETER: He said "da", but I could hear it from the  
room, not from the feed. I cannot hear him.

A. Yes, I can see that document.

MR RABINOWITZ: Now, you see that this document is described  
as a preliminary agreement but it is undated,  
Mr Deripaska?

Can you confirm that this is the agreement that you  
have referred to as the preliminary agreement  
of February 2000?

A. Yes, it is.

Q. Mr Abramovich's evidence is that this agreement was  
concluded in early March 2000. What is your best  
recollection of when this agreement was signed and  
concluded?

A. It was in early March.

Q. So the agreement that you call the preliminary agreement  
of February 2000 is in fact a March 2000 agreement, is  
that right?

A. This document was signed in early March.

Q. Now, I want to ask you first about your relationship with Mr Abramovich. You became business partners with Mr Abramovich in March 2000 in relation to Rusal, that is correct, is it not?

A. Not, it is not. Not entirely, not exactly.

Q. That is what you say at paragraph 6 of your own witness statement, Mr Deripaska E4/08/151.

THE INTERPRETER: I'm so sorry.

A. You're not entirely correct in the sense that Rusal was incorporated a little bit later.

Q. You also went into other business ventures with Mr Abramovich, did you not?

A. Yes, later we incorporated several joint businesses. We created them.

MRS JUSTICE GLOSTER: Mr Deripaska, it would assist me if you could look at me when you're giving your answers. If that means you have to move your chair, please do so. Thank you.

MR RABINOWITZ: Can you identify for us, please, the several joint businesses that you say you created with Mr Abramovich, please.

A. My apologies, my Lady, but I need to speak much closer to the microphone so I will need to lean towards the microphone.

MRS JUSTICE GLOSTER: That's fine.

A. Those were an energy joint business and in automobile construction.

MR RABINOWITZ: And in the process, did you become friends with Mr Abramovich?

A. Yes.

Q. Would you regard Mr Abramovich as a friend now?

A. Yes.

Q. Turning to Mr Berezovsky then, is it correct that by March 2000, you disliked him?

A. Mr Berezovsky owed me a large amount of money for a sufficiently long period of time and he was in no hurry to repay, and also he did not fulfil or perform the obligations that, by that time, he had assumed, and he had not fully performed those.

Q. Is the answer to my question, Mr Deripaska, that by March 2000 you therefore disliked Mr Berezovsky?

A. I have answered your question in the way in which I answered it.

Q. Can you answer it in the way in which I've asked it, please.

Is it fair to say that by March 2000 you disliked Mr Berezovsky?

A. Yes.

Q. And is that still your attitude to Mr Berezovsky?

A. At this point in time, he's absolutely indifferent to

me.

- Q. Now, at paragraph 4 of your witness statement, Mr Deripaska, that's at page 151 for those here E4/08/151, you refer to the claim that Mr Chernoi has brought against you, and I understand your sensitivity about not wanting this trial to trespass on matters in dispute in that claim, and to the extent that I can avoid doing so, I will avoid doing so. But I would like to ask just a few questions about the nature of the claim being made in that action, Mr Deripaska.

Mr Deripaska, it is correct, is it not, that in that action Mr Chernoi claims that he was your partner in SibAl, the Russian aluminium company? That is the allegation, is it not?

- A. I would like to ask my Lady whether or not -- I would like to ask my Lady whether I have to answer these questions because this question will be addressed in court a little bit later.

MRS JUSTICE GLOSTER: You have to answer questions that are in the public domain. I will take each question one by one and decide whether you have to answer it, okay?

In this question, you're just being asked about whether, in general terms, that is the allegation that Mr Chernoi is making against you. Russian aluminium

- A. Thank you, my Lady. Then, with your permission, I would

like to ask for the question to be repeated.

MRS JUSTICE GLOSTER: Yes. Put the question again,  
Mr Rabinowitz.

MR RABINOWITZ: It is correct, is it not, Mr Deripaska, that  
in that action, Mr Chernoi claims that he was your  
partner in SibAl, the Russian aluminium company? That  
is what he alleges, is it not?

A. Yes, he's trying to portray the matter in exactly that  
way.

Q. Does he also claim that, upon the merger of SibAl's  
assets, with those that he says were contributed by  
Mr Abramovich, Mr Patarkatsishvili and Mr Berezovsky to  
create Rusal, he became entitled to 40 per cent of your  
50 per cent interest in Rusal?

A. I do not believe that he really understands what he's  
talking about, but he is attempting to bring the matter  
around to exactly that.

MRS JUSTICE GLOSTER: Mr Deripaska, if your barrister  
objects to any of the questions that Mr Rabinowitz is  
putting to you, he will get up and object. Okay?

MR RABINOWITZ: And is it right that Mr Chernoi's claim is  
for around \$4.35 billion?

A. I've not seen that.

Q. Well, according to a judgment produced by Mr Justice  
Christopher Clarke, that is what he has described as

being the value of the claim, Mr Deripaska.

It is correct, is it not, that the meeting at the Dorchester Hotel on 13 March 2000 features in the claim that Mr Chernoi brings against you?

MR STANLEY: My Lady, I only rise to say --

A. I do not recall that --

MRS JUSTICE GLOSTER: Just a second.

MR STANLEY: When we get to this point of detail, unless Mr Rabinowitz has a document to show Mr Deripaska about it, he should bear in mind Mr Deripaska may not have that sort of detail at his fingertips.

MR RABINOWITZ: It's a central part of the claim but let's just see if he remembers it, my Lady.

MRS JUSTICE GLOSTER: Mr Rabinowitz, again, I don't want to go into the detail of the claim by Mr Chernoi against Mr Deripaska because I can't see its relevance, but if you're referring to a particular paragraph in a particular pleading or case statement, then put it by all means.

MR RABINOWITZ: Well, this is a part of that claim, my Lady, and what I'd like to do is to see whether Mr Deripaska acknowledges that this is part of the claim.

MRS JUSTICE GLOSTER: Is it part of the evidence supporting the claim?

MR RABINOWITZ: It's part of Mr Justice Christopher Clarke's

judgment where he describes this and explains its relevance.

MRS JUSTICE GLOSTER: Do you have a copy of that?

MR RABINOWITZ: We've all got a copy of that. That's at bundle O2/5, tab 79, at paragraph 82 O2/5.079/20. It's page 20 of the bundle, internal page 352.

MRS JUSTICE GLOSTER: When you say internal page 352, do you mean 352 in the printed copy of the --

MR RABINOWITZ: In the printed copy. I think it's page 20 of Magnum.

MRS JUSTICE GLOSTER: What is the context of this judgment, Mr Rabinowitz, please?

MR RABINOWITZ: This is the jurisdiction judgment.

MRS JUSTICE GLOSTER: Right. Continue.

MR RABINOWITZ: It is correct, is it not, Mr Deripaska, that the meeting at the Dorchester Hotel on 13 March features in the claim Mr Chernoi brings against you?

A. I do not recall that.

Q. Well, I can tell you, Mr Deripaska, and perhaps you remember this, that it's right, is it not, that in the course of Mr Chernoi's application to serve his claim against you out of the jurisdiction, Mr Berezovsky gave evidence on behalf of Mr Chernoi? That's right, isn't it?

A. Yes.

Q. And Mr Berezovsky's evidence, served on behalf of Mr Chernoi, was that at the Dorchester meeting and thereafter you did not hide the fact that Mr Chernoi was your partner. That's correct, is it not?

MRS JUSTICE GLOSTER: Well, I think you've got to be clear that what you're putting to the witness is that that was the evidence given by Mr Berezovsky rather than suggesting to the witness that that is the case, ie that Mr Deripaska did not hide the fact that Mr Chernoi was your partner.

MR RABINOWITZ: I thought I had, my Lady, but I'll try to rephrase it.

Mr Berezovsky's evidence is that, at the Dorchester Hotel meeting and thereafter, you did not hide the fact that Mr Chernoi was your partner. That is his evidence, is it not?

A. Mr Rabinowitz is counsel for Mr Berezovsky and I'm sure he understands correctly that this is his evidence. Now, so far as I'm concerned, this is totally untrue. Emphatically untrue.

Q. We understand that that is what you say, Mr Deripaska.

It is also the case, is it not, that Mr Berezovsky has been named by Mr Chernoi as one of the ten witnesses that he intends to call in his litigation early next year, one of the witnesses to give evidence at that

trial?

- A. It's difficult for me to comment in any way because, to be honest, it appeared to me that I would be providing evidence with respect to the Abramovich proceedings, and I did not really prepare for such a wide-ranging consideration of matters, to be honest with you.

But I want to say that I do not know who and how will be summoned by the court within the framework of the proceedings that will take place in April.

- Q. On the basis of the fact that Mr Berezovsky has already given evidence in your proceedings, Mr Deripaska, you would anticipate, would you not, that Mr Berezovsky will be giving evidence for Mr Chernoi at this trial in which the Dorchester Hotel meeting is likely, once again, to feature?

- A. I would not like to speculate.

- Q. You see, I suggest that you are well aware, Mr Deripaska, that Mr Berezovsky is to be one of Mr Chernoi's witnesses and that, unless he goes back on his earlier evidence, he will be referring to the Dorchester Hotel meeting at which you and he were both present, and he will be giving evidence which will be supportive of Mr Chernoi. That is right, is it not?

- A. My answer remains unchanged.

- Q. You see, Mr Deripaska, even though you say at

paragraph 4 of your witness statement E4/08/151 that Mr Chernoi's claim against you is not relevant to this case, I suggest it is really rather clear that you have a real personal financial interest in seeking to show that Mr Berezovsky's account of the Dorchester Hotel meeting is wrong. That is right, is it not?

A. At this point in time, my position is to speak the truth and only the truth.

Q. You see, I suggest, Mr Deripaska, that you obviously understand that your position in your own litigation, that is your litigation with Mr Chernoi, would be strengthened if Mr Berezovsky's evidence as regards the Dorchester Hotel meeting were rejected and his credibility impugned. That is right, is it not?

A. I believe that if someone does not say the truth, that will remain untrue no matter how much fancy verbal footwork that person uses for that.

Q. Mr Deripaska, I want to ask you some questions about the events leading up to the Dorchester Hotel meeting on 13 March 2000, but before I do that, can I just make sure I understand your evidence as to what you say was or was not discussed at the Dorchester Hotel meeting.

Now, do I understand it to be your evidence that at the meeting at the Dorchester Hotel there was no discussion by Mr Abramovich and you of the merger of the

aluminium assets that you had agreed about in the preliminary agreement?

A. Could you kindly repeat your question?

Q. Do I understand it to be your evidence that at the meeting at the Dorchester Hotel there was no discussion by Mr Abramovich and you of the merger of the aluminium assets that you had agreed in the preliminary agreement?

A. My agreements with Mr Abramovich were reached more than a week prior to that.

Q. Can you answer my question, Mr Deripaska.

Do I understand it to be your evidence that at the meeting at the Dorchester Hotel there was no discussion by Mr Abramovich and you of the merger of the aluminium assets that you had agreed in the preliminary agreement?

A. Would you like to read out my evidence to me and I will repeat my evidence.

Q. Do you have any recollection of this at all, Mr Deripaska?

A. I do recall that we did not discuss the matters related to the merger of the assets in the course of the Dorchester Hotel meeting.

Q. And you are sure about that, are you?

A. I'm sure, based on the fact that all the main matters related to the merger of the assets had been discussed and agreed upon one week prior to that.

Q. Very well.

Now, Mr Deripaska, I want to go back in time a little bit to ask you a few questions about the events prior to the Dorchester Hotel meeting. Can you tell me, to the best of your recollection, when did you first learn that Mr Abramovich was purchasing the aluminium assets at KrAZ, Bratsk and Achinsk?

A. Most likely in the first half of February.

Q. Can I ask that you please be provided with bundle H(A)17, opened at page 33, please H(A)17/33. There is a Russian version of this at page 38, Mr Deripaska H(A)17/38.

Do you have that document, Mr Deripaska?

A. What I can see is the 10 February 2000 contract.

Q. Although it is dated 10 February, Mr Abramovich says that it was backdated from 15 February. And under this contract, Mr Deripaska, Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili, if you look at the first line, are described as "Party 1", do you see that?

A. Yes.

Q. They are said to acquire, from the persons described as parties 2 to 5, various interests in KrAZ, Bratsk and Achinsk.

Can I ask you to look at clauses 4 and 5 of this contract, please. (Pause)

Have you read clauses 4 and 5?

A. Yes.

Q. Now, have you seen this agreement before, Mr Deripaska?

A. I saw -- I first saw this contract about two weeks ago.

Q. In what context were you shown this contract two weeks ago, Mr Deripaska?

A. My lawyers gave them to me as a bundle of materials in the run-up to my witness statement today.

MR STANLEY: My Lady, it might be desirable to remind

Mr Deripaska that he doesn't have to provide evidence as to --

THE INTERPRETER: I'm so sorry, my Lady, I can't hear the counsel.

MR STANLEY: I'm sorry, that he doesn't have to discuss anything that he's discussed with his lawyers. It didn't stop at that point, and I don't think it's gone too far so far, but he's not obliged to give evidence as to what he's discussed with his lawyers.

MRS JUSTICE GLOSTER: I will remind him.

Mr Deripaska, you are not obliged to give any evidence relating to discussions which you have had with your lawyers. It was legitimate for Mr Rabinowitz to ask what the context was in which you first saw this document, but you don't have to give any evidence about what you discussed with your lawyers or what advice or

information they gave you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Thank you.

In the discussions you had with Mr Abramovich leading up to the merger of your aluminium assets in March 2000, I take it that Mr Abramovich would have told you about this agreement even if he did not show it to you, is that right?

A. Mr Abramovich assured me that he had purchased those assets.

Q. Now, you tell us that you first learnt of the acquisition of these aluminium assets some time in February, is that right?

A. Yes.

Q. And the acquisition or the proposed acquisition of these assets was a matter also widely reported in the newspapers in February 2000, do you remember that?

A. It's hard for me to recollect what took place ten years ago.

Q. Very well. Well, I'll show you one or two of those newspaper reports about this, Mr Deripaska.

Can you go to bundle H(A)18 at page 14, please H(A)18/14.

Have you been given that, Mr Deripaska?

A. There is material from The Moscow Times.com here.

Q. Thank you.

It's an article dated 12 February, and can you see that the title of the article is:

"Berezovsky & Co Buy Up 3 Smelters", Mr Deripaska?

A. Yes.

Q. And do you see the first paragraph which says:

"In what looks to be a power play to buy a large slice of Russia's aluminium industry, it was announced Friday that three major aluminium producers have been snapped up by companies with firm ties to tycoon Boris Berezovsky."

Do you see that?

A. Yes.

Q. And you would have been aware of reports such as this at the time, in February 2000?

A. It's difficult to recollect what happened ten years ago and, therefore, my answer remains unchanged. I do not remember.

Q. I'm going to show you, if I may, just one or two short articles, Mr Deripaska, in the hope that it will trigger some recollection for you.

Can you go next, please, in the same bundle to page 36 H(A)18/36.

Do you have that yet, Mr Deripaska?

A. (Untranslated).

Q. It sounds like you have the right one. It's an article from Vedomosti on 17 February 2000.

THE INTERPRETER: I'm so sorry, my Lady, I think I just pressed the wrong button and I missed it, I did not translate what Mr Deripaska said.

A. It says -- it says that -- what it says here is:

"Aluminium for half a billion.

"Abramovich is buying the company as well, creating a gigantic holding company."

And this is what I see [said Mr Deripaska. My apologies].

MRS JUSTICE GLOSTER: Thank you.

Ask the question again, please, Mr Rabinowitz.

MR RABINOWITZ: It's an article from Vedomosti dated 17 February 2000 and, Mr Deripaska, the first bold paragraph says this:

"'Vedomosti' has managed to break through the information blockade surrounding the change of ownership at the Bratsk Aluminium Factory and the whole aluminium complex of the Krasnoyarsk Territory. Yesterday direct participants in the negotiations with the shareholders of 'Sibneft' Oil Company, the purchasers of these enterprises, talked about some of the details of the transaction."

Then just following that, the journalist,

Ms Rozhkova says:

"We have managed to find out that Roman Abramovich and his partners are planning to build a gigantic vertically integrated [plant]."

Do you see, Mr Deripaska, that Ms Rozhkova is reporting this as an acquisition by Mr Abramovich and his partners?

A. So what's your question?

Q. Do you see that?

A. What I can see is the article and I see what it says.

I do not recall what it writes about, I do not recall that information and, for me, it really seems a little bit laughable, you know, all the information that is described here.

Q. Okay. I'm going to show you one last article, Mr Deripaska, in the hope that this will assist your recollection. Can you go, please, to page 51 H(A)18/51. This is another article which appeared at the time, this one in the American Metal Market journal. Can I ask you to look at the first three paragraphs.

Would it help if I read it out or do you want to read it to yourself?

A. Please read it out.

Q. Very well.

"Three major Russian aluminium producers have been

bought up in less than a week by oil giant Sibneft in what looks like another major power play involving two of the country's most powerful businessmen -- oil tycoon Boris Berezovsky and State Duma Deputy Roman Abramovich.

"A Sibneft spokesman announced that Sibneft had acquired controlling stakes in the Krasnoyarsk KrAZ) and Bratsk aluminium plants from British metals trader Trans World Group. The two smelters, along with the Sayansk smelter, produce 70 per cent of Russia's aluminium.

"Dmitry Bosov, spokesman for Lev and Mikhail Chyorny, major shareholders in Bratsk and until recently leading figures at Trans World Group, confirmed that TWG had transferred its controlling stakes in the Krasnoyarsk and Bratsk aluminium plants to Sibneft shareholders."

A. I do not recall that article.

Q. Mr Deripaska, you were really steeped in the Russian aluminium business at the time, were you not?

I'll put that slightly differently. You were deeply involved in the Russian aluminium industry at the time, were you not?

A. Well, I can help you by saying that, by that time, I had created a rather successful group, Sibirsky Alyuminiy, which employed over 17,000 people.

Q. You were one of the leading players in the Russian aluminium industry at that time, were you not?

A. Yes, I was the person who had created and was managing the company that was at the cutting edge of the Russian aluminium industry.

Q. Do you seriously say that you were unaware of all the newspaper and industry reports suggesting that Mr Berezovsky had acquired these aluminium industry interests with Mr Abramovich?

Or do you say you really can't recall.

A. What I want to say is that out of the three materials that have been referenced, two are in rather a cul de sac kind of situation. It's really different to find them unless you really scour the internet.

Vedomosti, as a press outlet, is something that I do not trust in terms of the quality of its materials even today, and therefore I would have hardly been reviewing those materials even in those days.

Q. Would you have been reviewing the Financial Times, Mr Deripaska, or would you say that is also something which would not attract your attention?

A. Financial Times at that time was not received by us at regular intervals. We did not have regular sight of that newspaper in those years.

Q. You see, Mr Deripaska, what I would suggest to you is

that you were fully aware at this time that Mr Abramovich had acquired the aluminium assets with partners and that those partners included Mr Berezovsky. And that is right, is it not?

A. You are mistaken.

Q. Very well.

Can I then move on to the meetings that you had with Mr Abramovich which led to what you have called the preliminary agreement of February 2000. Can you recall the first occasion on which you and Mr Abramovich met, when you discussed a possible merger of your aluminium assets?

A. The meeting -- could you be more specific, please, because I believe there is one inaccuracy in your question. Would you mind repeating, please?

Q. If you identify for me the inaccuracy I can eliminate it when I ask you the question again.

What do you say was inaccurate?

A. I'm just asking you to repeat the question, please.

Q. Very well.

I want to ask you whether you recall the first occasion on which you and Mr Abramovich met to discuss a possible merger of the aluminium assets?

A. Yes.

Q. And can you tell me where that was?

- A. We were meeting in order to discuss the merger of aluminium assets, which were problem assets, and which, in that problem condition, had been purchased by Mr Abramovich at the Baltschug Kempinski Hotel.
- Q. Can you tell me who was involved in those talks? Was it just you and Mr Abramovich or were other people involved as well?
- A. Mr Bulygin was there with me and, on Mr Abramovich's side, there was Mr Shvidler.
- Q. And in the course of the meetings that you had with Mr Bulygin, Mr Shvidler and Mr Abramovich, did you agree the key terms of the merger that you were discussing?
- A. In the course of which meetings?
- Q. Well, you have described a meeting in the Kempinski Hotel. Mr Abramovich's evidence is that --
- A. I was speaking about the meeting, not numerous meetings in the plural. It was -- the meeting to which I was making reference did take place at the Baltschug Hotel.
- You're asking me about meetings in the plural and that's why I'm trying to be clear. I'm asking you to confirm what meetings you are referring to.
- Q. And I will do that for you, Mr Deripaska.
- Mr Abramovich's evidence is that, after you met at the --
- A. And also, if I may, I would like to correct the

transcript that I can see here.

Q. Is that a transcript in English, Mr Deripaska?

A. Yes.

MRS JUSTICE GLOSTER: Yes, you may correct the transcript.

A. The name of the hotel is Baltshug Kempinski.

MR RABINOWITZ: Mr Deripaska, thank you. Things like that will be picked up by the transcript writers so don't worry about that sort of point.

You asked me to clarify the meetings.

Mr Abramovich's evidence is that the meeting started at the Baltshug Hotel, Kempinski Hotel, and then carried on at his house, Mr Abramovich's house, at Sareevo Village in Moscow, straight after the Baltshug Hotel meeting. Is that your evidence as well?

A. Our meeting at the Baltshug Hotel finished in the early hours of the morning so I went to get some sleep, and it was not before late in the afternoon of the next day that we met with Mr Abramovich at his place in order to sign our agreement.

Q. I follow. So is it your evidence that the meeting at the Baltshug Hotel broke up late at night and then the meeting reconvened during the day the following day?

A. Well, if this is your understanding in English then that's right. But for me it was a different meeting, a distinct meeting.

Q. I'm grateful for that, Mr Deripaska.

And is it right then that Mr Bulygin also left the Baltschug Kempinski Hotel and reconvened the following day at Mr Abramovich's home in Sareevo Village?

A. Yes. The meeting finished, Mr Bulygin and myself and also Shvidler and Abramovich left Kempinski and went our separate ways.

Q. And then reconvened the following day at Mr Abramovich's home, correct?

A. Correct, outside of the city, in the suburbs.

Q. And by the end of the reconvened meeting at Mr Abramovich's home, do you agree that the key terms of the merger had been agreed?

A. Well, I believe that you are mistaken in the sense that it was agreed the next day. I tried to finalise all the negotiations while we were still meeting at the Baltschug, and next day we reconvened to sign the document that had been prepared by Alexander Bulygin.

Q. And is it the case that the key terms, which you say you'd agreed at the Baltschug Hotel -- sorry, that you were keen to have those key terms put into a written document straightaway?

A. Could you kindly repeat your question?

Q. Is it the case that the key terms having been agreed, you were keen to have those terms put into a written

document straightaway?

- A. Well, if it's not inconsistent with what I have just said, I would like to repeat that we agreed on the merger of part of the assets that had been declared by Abramovich as the assets that he had purchased in order to create a joint business, and that was in the Baltschug -- at the Baltschug.
- Q. Yes, but that's not the question I asked you, Mr Deripaska. My question to you was: is it the case that you were keen to have those terms put into a written document as soon as possible?
- A. In principle, yes.
- Q. Well, was it not because you were keen to have the written documents -- sorry, you were keen to have these terms put into a written document as soon as possible that Mr Bulygin prepared the document on his laptop while you were at the meeting?
- A. This is not the case.
- Q. Can you tell me what you say the case is then, please?
- A. Bulygin prepared the document the next day.
- Q. Are you saying he prepared it between the Kempinski Hotel meeting and meeting again at Mr Abramovich's house the following day?
- A. I believe that now you're right. You are now referring to two meetings.

- Q. Very well. And Mr Bulygin tells us that the parties discussed each of the terms of the preliminary agreement, is that correct?
- A. I really do not know what Bulygin has conveyed.
- Q. What's your recollection? Do you think the parties discussed all of the terms?
- A. I believe that we agreed on everything at the Baltschug, everything that was necessary in order to put in place the joint business.
- Q. Can I ask you, please, if you still have bundle H(A)16 at page 47 in the Russian H(A)16/47, 47T in the English H(A)16/47T, to go back to the agreement that you made on that occasion.

I'd like you to look at page 48 H(A)16/48, 48T in the English H(A)16/48T.

I want you to look in particular, Mr Deripaska, at clause 4.1 of the agreement.

You see it reads:

"Parties 1 [that's Mr Abramovich] and 2 [that's you] warrant that, together with their partners (not including TWG or any companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of Parties 1 and 2 and are not subject to any third party rights, disputes or

attachments."

Now, I do not want to trespass on your action with Mr Chernoi by asking you about the reference here to your partners, I just want to ask you about the position of Mr Abramovich. Do you agree, Mr Deripaska, that by clause 4.1 Mr Abramovich is indicating that he does have partners which do not include the TWG group?

A. No.

Q. Is that not what the clause says, Mr Deripaska?

A. Bulygin was drafting this document in a hurry and I believe that it would have been much more appropriate to say "interested parties or stakeholders", judging from the context of this paragraph.

Q. You see, Mr Deripaska, I suggest to you that this clause was of particular importance to you because you wanted to ensure that you would not end up in a merger deal with your rival Trans-World Group, that is right, is it not?

A. I want to thank you very much for your concern but I would ask you to allow me to be what I am and to remain what I am, and to recall what I did and what I'm doing.

Q. You see, Mr Deripaska, Mr Bulygin's recollection is that each term was discussed. Are you saying that he is wrong about that?

A. Would you mind showing me the witness evidence that you are now referring to?

Q. Yes, it's at bundle E4, tab 1, page 5, paragraph 11 E4/01/5.

A. Would you like to read this out to me or shall I read it to myself?

Q. Well, why don't I read you what Mr Bulygin says here, Mr Deripaska. He says:

"The discussions [and he's talking about the Kempinski Hotel discussions] concluded by around 4.00 am or 5.00 am. Mr Abramovich then proposed that we should all travel to his home in Sareevo Village to celebrate the merger. I very much had the impression that, so far as Mr Abramovich was concerned, the deal had now been reached and there was no need to document our agreement straightaway. He seemed to think that a handshake was enough. Throughout the discussions he appeared calm and relaxed, despite the intensity of the discussions.

I drove with Mr Deripaska to Mr Abramovich's house where Mr Deripaska made it clear to me that, in view of its significance, he wanted to have the agreement we had just reached memorialised immediately in writing.

Accordingly, at Mr Abramovich's house we went back over the terms of the agreement, and, as we discussed each term, I typed in my laptop computer in Russian the

various provisions of the document which I titled the 'Preliminary Agreement'."

He then explains that he doesn't have the computer or the original version of that.

Does that help your recollection, Mr Deripaska?

A. Today I would be hard put to recall that Bulygin was typing away something on his computer.

Q. Very well.

Can I ask you, please, to look at clause 4.2 of the preliminary agreement H(A)16/48T.

"Party 1 [that's Mr Abramovich] --"

Sorry, I'll wait for you to get that.

"Party 1 [Mr Abramovich] warrants its and its partners' concerted will to sign the Agreement on the terms determined herein, and shall be fully liable to Party 2 for any action (omission) by its partners associated with the performance hereof."

Is it right that you were most anxious to ensure that Mr Abramovich warranted that his partners would consent to the transaction, Mr Deripaska?

A. No, and I can explain that in greater detail if that is of interest.

Q. Please do.

A. You see, the assets that Abramovich had acquired at that time were in a rather complex -- complicated condition.

All those factories were on the brink of bankruptcy, including the Achinsk plant, which had already been put under external management, was in administration. And unless swift action had been started, almost immediately, in order to achieve a recovery from the crisis -- and this is a production that cannot be stopped, this is a continuous production -- even if for one day they had fallen short of feedstock the assets would have been greatly damaged and harmed.

I was interested, I had a vested interest in making sure that everything that we had agreed upon be implemented very, very accurately and clearly in order to save those plants. Now, for that, all the interested persons had to act together, and that means the suppliers, the managers of those plants, those people who had trade relations with those plants. And this is exactly what I asked Mr Abramovich to ensure that it happened, to the extent that that was under his influence.

- Q. Mr Deripaska, none of those people were going to sign the merger agreement with you, that's right, isn't it?
- A. Well, if you allow me, I'd like to read the translation of what I've just said into English to make sure it was properly translated and then we can continue our discussion, with your permission.

MRS JUSTICE GLOSTER: Yes, please do. (Pause)

A. Thank you, thank you.

Would you mind repeating your question, please?

MR RABINOWITZ: Very well.

None of those people were going to sign the merger agreement with you and Mr Abramovich, that's right, is it not?

A. There was no need for this. Mr Abramovich assured me that he had total control of those assets, I mean with those people who were related to that.

Q. You see, Mr Deripaska, clause 4.2 H(A)16/48T is a clause directed to ensuring that it was Mr Abramovich and his partners' concerted will to sign the agreements on the terms set out herein.

But none of the people supplying feedstock and the like would have been party to this agreement at all, would they?

A. Could you ask a specific focused question?

Q. I thought I had, Mr Deripaska, and I'm not going to repeat it.

I'm going to ask you a different question.

Mr Shvidler signed this agreement and Mr Bulygin tells us that he assumed that Mr Shvidler was Mr Abramovich's partner in this enterprise. Did you also understand Mr Shvidler to be Mr Abramovich's

partner?

A. It's difficult for me to comment on what Mr Bulygin has said.

Q. That isn't what I asked you, Mr Deripaska. I asked you whether you understood Mr Shvidler to be Mr Abramovich's partner?

A. May I just comment again? You have asked me about what Bulygin knew, and my answer was that it's difficult for me to comment on what Bulygin knew.

So far as Mr Shvidler is concerned, it was probably the first time in my life that I had seen him at the Baltschug.

Q. Well, did you understand him to be Mr Abramovich's partner for the purpose of this transaction?

A. Mr Shvidler was very businesslike, very sure of himself, very tough.

MRS JUSTICE GLOSTER: The question is: did you think that Mr Shvidler, who signed the agreement, was a partner of Mr Abramovich at that time?

A. At that point in time it was very difficult for me to make any judgment. It was the first time that I was seeing the person. But he was very sure of himself. The way he conducted himself was very, very self-assured.

MR RABINOWITZ: Very well, I'm going to ask you a different

question then, Mr Deripaska.

It's right, is it not, that Mr Paul Hauser of the solicitors Bryan Cave assisted you between 11 March 2000 and 15 March 2000 in connection with the merger of your and Mr Abramovich's aluminium interests into what subsequently became Rusal?

A. Can I ask you two questions?

MRS JUSTICE GLOSTER: Yes. Put them, Mr Deripaska.

A. Number 1, what do you mean when you refer to Rusal?

Because there were very many legal entities at that time and it's important for me to make sure that we're talking about the same legal person, legal entity.

MR RABINOWITZ: I follow your concern, and let me slightly rephrase the question so we don't get hung up on the definition of Rusal or Rusal Holdings.

Is it right that Mr Paul Hauser of the solicitors Bryan Cave assisted you with your negotiations with Mr Abramovich in the period between 11 March 2000 and 15 March 2000? That is the period leading up to your merger agreement, sale and purchase agreement with Mr Abramovich. So I'm asking you about Mr Paul Hauser.

A. I was negotiating with Abramovich, one on one. It was between me and him. He was assisted by Mr Shvidler, I was assisted by Mr Bulygin.

Sorry, can I just adjust the translation. I did not

mean one on one, I meant on my own. I was negotiating with him on my own.

- Q. You see, according to Mr Hauser, he has acted for you for many years and he was involved in assisting you in the merger of your aluminium interests with Mr Abramovich in what was later to become the Russian aluminium company, Rusal. That is what he says in his evidence, Mr Deripaska --

MR SUMPTION: My Lady, that has been put to Mr Deripaska as a statement by Mr Hauser. It's in fact taken from our witness summary of what we expect Mr Hauser to say. It really shouldn't be put as something that Mr Hauser has attached his own authority to.

MRS JUSTICE GLOSTER: Mr Deripaska, just to cut through this, what was Mr Hauser's role in this period so far as you were concerned? In what capacity was he acting for you, if he was?

- A. Mr Hauser -- so far as I can recall, Mr Hauser was a legal adviser for my people in the sense that at that time I had a large corporate department of Sibirski Aluminium and he was one of the lawyers who was assisting them with legal matters.

MR RABINOWITZ: And he was assisting them with legal matters in relation to the transaction which took place in March 2000, correct?

A. Well, to be exact, I do not recall exactly what his role was. The person who was in charge of my corporate department was Stalbek Mishakov, and it was he who decided who would take part in the preparation of the documents and to what extent and how.

Q. Right. And Mr Mishakov, was he a lawyer? What was he?

A. He was head of the corporate department.

Q. And was he a qualified lawyer?

A. I think he was.

Q. And for how long had he been acting for you as at March 2000?

A. I have no exact recollection but at that time he was responsible for corporate matters.

Q. Very well.

Now, can I ask you next, please, to go to bundle H(A)83 at page 236 H(A)83/236.

Mr Deripaska, do you recognise this agreement?

A. No, I do not.

Q. Right. Well, it's a sale and purchase agreement, as you can see, dated 20 July 2004. If you go to page 244 H(A)83/244, you can see who the vendor and purchaser companies are.

So the vendor company is Cliren Investments Ltd and the purchaser company is Eagle Capital Group, formerly Baufinanz. Baufinanz or Eagle Capital Group is one of

your companies, is it not?

A. Yes, I recall there was such a company, Eagle, yes.

Q. And this is the agreement, Mr Deripaska, by which your company, Eagle Capital Group, acquired the outstanding 25 per cent of shares in Rusal Holding Limited that it did not already own in July 2004 for \$450 million. Do you remember this now?

A. What I'd like to say is that I get the feeling that I have never seen this agreement.

Could you formulate your question, please?

Q. Well, as I say, this was the agreement by which your company acquired the outstanding 25 per cent of shares in Rusal Holding Limited that it did not already own. But if you don't remember this agreement, I'm not going to take you to any particular provision.

Do you recall, Mr Deripaska, that before this acquisition by Eagle of the shares from Cliren, there was a document by which Mr Abramovich's company, Madison, transferred these 25 per cent of shares to Cliren so that they could be sold on to your company, or do you not recall that either?

I can show you the document but I don't expect it's going to help you very much.

A. What is your question?

Q. Well, do you recall that other transaction by which

Mr Abramovich's company, Madison, transferred the shares to Cliren so that they could be transferred by Cliren to your company?

A. Which shares? What is Cliren company?

Q. I can see I'm not going to get much assistance from you with these documents.

Can I ask you, please -- you can put that away -- to go to a document at H(A)76, page 106 H(A)76/106. Do you have that document in front of you, Mr Deripaska?

You should have in front of you, Mr Deripaska, a memorandum from Mr Hauser to Mr Mishakov, Stalbek Mishakov, dated 18 June 2004, in other words shortly before your purchase of the second tranche of Rusal shares, the second 25 per cent tranche.

Now, these were your two lawyers, Mr Mishakov was your corporate lawyer and Mr Hauser was the person that he had engaged. You probably have not seen this before, and I'm not suggesting you have, but as you can see Mr Hauser has produced this memo shortly after a telephone conversation he's had with Mr Mishakov, and he says:

"As I understand the position, Madison is today holding the 25%... in [Rusal Holding Limited] ... on behalf of B Company or that company's ultimate owners ('B')."

Read that first paragraph, if you would, to yourself, Mr Deripaska, unless you want me to read it to you?

A. Well, if you read it out to me, it will be easier for me to understand because the interpreter will translate it.

Q. He says:

"As I understand the position ..."

So this is Mr Hauser to Mr Mishakov obviously.

"... further to our telephone conversations ... today.

"As I understand the position, Madison [that's Mr Abramovich's company] is today holding the 25% shareholding in [Rusal Holdings Limited] (the 'Shares') on behalf of B Company or that company's ultimate owners ('B'). Madison (and perhaps thus [Mr Abramovich] himself) is therefore a trustee for B with respect to the Shares. As a trustee, Madison (and [Mr Abramovich]) are subject to the highest standards of responsibility and conduct which the law imposes (so-called 'fiduciary obligations'). Relations between [Mr Abramovich] and B have apparently broken down, and [Mr Abramovich] no longer wishes to deal directly with B. It also is assumed that [Mr Abramovich] would prefer to discontinue serving as B's trustee and so wishes to divest Madison of the Shares."

I'm not going to read the whole memo to you, Mr Deripaska, because what I want to ask you is this: are you able to offer an explanation as to how both Mr Hauser and Mr Mishakov, the lawyers who were working for you on this transaction --

MRS JUSTICE GLOSTER: Just a second, Mr Stanley, let him ask the question.

Don't answer the question until I've ruled on it, okay?

Right, please put the question again.

MR RABINOWITZ: Lots of people are going to jump up but I'll put the question anyway.

Are you able to offer an explanation, Mr Deripaska, as to how it is that both Mr Hauser and Mr Mishakov, two lawyers acting for you in this transaction, could have reached that understanding of the position as Mr Hauser refers to it?

MRS JUSTICE GLOSTER: Do you want to object to that?

MR STANLEY: Yes, I do, my Lady. I'll object on the basis of privilege though there might be other objections that one can make to it. It is asking this witness to speculate about how his lawyers could have reached a conclusion without -- if one wants to ask whether he had information which was relevant to that, that's a legitimate question. But to ask a witness how his

lawyers have reached a conclusion must, quite apart from the problems of speculation that it involves, and quite apart from the problems of asking him about someone else's document, it must involve asking, if it's to serve any purpose, prying into matters which are privileged.

MR RABINOWITZ: My Lady, he can say he doesn't know, and if he says he doesn't know, I can move on.

I can put the question differently, I can put the question in this way, I can ask him whether this information came from him.

MRS JUSTICE GLOSTER: Well, why don't you start --

MR STANLEY: No, my Lady. With respect, my learned friend cannot ask whether information to lawyers came from the client. That is absolutely a privileged matter. That is precisely the question that my learned friend cannot ask.

MRS JUSTICE GLOSTER: Right. Mr Rabinowitz, ask the witness whether he's seen the document before.

MR RABINOWITZ: I'll ask him that.

Have you seen this document before, Mr Deripaska?

A. No.

MRS JUSTICE GLOSTER: You can ask him, I think, Mr Rabinowitz, whether he had any knowledge about the contents of what is in this document, and I'm going to

allow you to explore that with him.

MR RABINOWITZ: Thank you.

Mr Deripaska, can you tell us whether you had any knowledge about the matters which Mr Mishakov and Mr Hauser are referring to here, or Mr Hauser is referring to here?

A. As I've already said, I've not seen this document.

Q. I'm going to move on, my Lady.

MRS JUSTICE GLOSTER: What's the answer?

MR RABINOWITZ: His answer to the second question was that he hadn't seen the document, which of course was the answer to the first question as well.

MRS JUSTICE GLOSTER: Mr Deripaska, in this first paragraph the suggestion is made that Madison, that's Mr Abramovich's company, is holding the 25 per cent shareholding in Rusal Holdings Limited on behalf of another company, called B Company, or that company's ultimate owners, B.

Is that something, or is that issue something that you knew anything about at that time?

A. No, I was not aware of that in any way.

MRS JUSTICE GLOSTER: Is that something you discussed at any time with Mr Abramovich, that his company, Madison, was holding the 25 per cent in Rusal Holdings Limited on behalf of a B Company or the company's ultimate owners,

B?

A. Could you assume who is meant here, whom they're talking about?

MRS JUSTICE GLOSTER: Do you assume that anyone is meant here as a result of your knowledge now or at the time?

A. My objective, my purposes, my objective was to do business with Mr Abramovich, and Mr Abramovich was -- and it was one of my conditions that we discussed at the meeting at the Baltschug, and I believe, and it appears to me, that it would be difficult for Mr Abramovich some time after that to start telling me that he might be having some other position with respect to those assets.

MRS JUSTICE GLOSTER: Right. Well, Mr Rabinowitz, I'm going to allow you to continue on the basis of what knowledge this witness had, if any, of these matters at the time. I'm permitting you to ask questions along that line but that's a matter for you, not the court, to do.

MR RABINOWITZ: My Lady, I am really reticent to get into matters where someone is going to claim privilege. We've got other witnesses we can ask about this.

MRS JUSTICE GLOSTER: Okay. All I'm saying is I'm permitting you, if you wish to do so, to continue cross-examining along those lines.

MR RABINOWITZ: He's answered your question, and I am actually concerned about the time because we're going

incredibly, incredibly slowly.

On that, I don't know whether your Ladyship is content to move on without a break. It is incredibly hot in here.

MRS JUSTICE GLOSTER: Mr Prokofiev, the interpreter, are you able to continue? You would like ten minutes?

THE INTERPRETER: If at all possible, my Lady, ten minutes would be helpful.

MRS JUSTICE GLOSTER: Ten minutes I'm going to take for the break.

MR RABINOWITZ: My Lady, he should probably be told --

MRS JUSTICE GLOSTER: Yes, Mr Deripaska, don't discuss your evidence with anybody, do you understand? And no telephone calls or anything of that sort, or texting.

Okay.

(3.12 pm)

(A short break)

(3.27 pm)

MR RABINOWITZ: Mr Deripaska, can I now ask you, please, about the meeting at the Dorchester Hotel on 13 March 2000. As I understand it, you were in London on 10 March 2000, is that correct?

A. I was in London in early May.

Q. But you were also in London on 10 March 2000, were you not?

- A. It's difficult for me to recall the dates, but in early May, at the beginning of May, I was in London, yes.
- Q. You see, according to evidence that Mr Abramovich's solicitors have been told Mr Hauser will give, you were in London at a meeting to discuss the merger with Mr Abramovich in the week including 10 March. Do you not recall that?
- A. Could I review the document that you're referring to?
- Q. You can certainly have a look at what I was referring to. That's at bundle E3, tab 15 at page 128 E3/15/128.

Mr Hauser, who is one of the lawyers who was working for you on this transaction, says this -- or has said that he's going to say this:

"On Saturday 11 March 2000 Mr Hauser attended a meeting at the Four Seasons Hotel on Park Lane with one of his partners [that's Mr Walter White], Mr Stalbek Mishakov ... Mr Eugene Tenenbaum ... Mr Hauser was informed that Mr Mishakov had attended meetings in London on the previous day, attended by Mr Deripaska, Mr Tenenbaum and Mr Abramovich..."

Do you see that?

- A. Which paragraph is this?
- Q. It's paragraph 2, Mr Deripaska.

A. And so what's the question?

Q. Well, I've asked whether you were in London on 10 March.

Perhaps I can help you in this way --

A. I was in London at the beginning of May, I have answered that question.

Q. It may be a translation problem. Can we be clear that Mr Deripaska understands the difference between March and May because he keeps answering my question about March by talking about being in London in May, Mr Translator.

A. You may have misheard. I was saying that I was in early March -- I was in London in early March, that's the third month of the year. May is the fifth month of the year.

Q. In fact, Mr Deripaska, you were in London on 10 March or are you disagreeing with that?

A. Once again, I recall that I was there at the beginning of March.

Q. You see, Mr Deripaska, in evidence that you have given in the proceedings that you have with Mr Chernoi, you have told the court that on 10 March you flew to London in a chartered plane from Moscow -- and that's, for anyone who wants to find this reference, at paragraph 95 of Mr Justice Christopher Clarke's judgment O2/5.079/23 -- and that you attended a meeting at the

Lanesborough Hotel that day.

MR STANLEY: No, my Lady, that's 2001. That's a completely different period. That's a crucial meeting for the Chernoi case, nothing to do with this case at all, and I think that is May 2001 -- March 2001, sorry.

MR RABINOWITZ: Thank you.

MRS JUSTICE GLOSTER: Forget that question, Mr Deripaska.

MR RABINOWITZ: Forget that question.

So you think you were there in early March. Do you say that you didn't attend meetings to discuss your merger with Mr Abramovich at the beginning of March in London?

A. You have confused me a little bit. Could you kindly focus on this and ask your question in specific terms and ask me -- and tell me what is it exactly that I have to forget from what you have been saying prior to this point in time?

Q. You have to forget nothing at all, Mr Deripaska. I'm asking you to remember.

Do you remember whether you were at a meeting in London in early March 2000 to discuss your merger with Mr Abramovich?

A. In early March I do recall being in London in order to realise and implement what we had agreed upon at the Baltschug Hotel.

Q. And then you fly back to Moscow and you tell us that you -- when you were back in Moscow -- were asked by Mr Abramovich to accompany him to London to meet Mr Berezovsky, correct?

A. You're referring to my witness evidence or to something else?

Q. I'm referring to your evidence, Mr Deripaska. Do you not remember this?

A. I do remember this, I'm just trying to understand because you keep jumping back and forth between various documents and I would like to hear a more specific question from you.

Q. Well, I'm trying my very hardest, Mr Deripaska. I'll ask the question again.

You were asked by Mr Abramovich to accompany him to London to meet Mr Berezovsky, is that correct?

A. When? When was that?

Q. Well, can you tell me whether you have ever been asked by Mr Abramovich to fly to London to meet Mr Berezovsky?

A. Yes, he did ask me to meet with him.

Q. And you tell me, please --

THE INTERPRETER: I'm so sorry, I'm not sure I understood whether it was the 12th or the 13th.

Mr Deripaska has just repeated it. It's 13 March.

MR RABINOWITZ: You say that on 13 March he asked you, or

that you flew back with him on 13 March? When do you say he asked you to fly back?

A. On the 13th. I believe that he asked me on the eve.

Q. So that would be 12 March because you flew on the 13th?

A. On the 11th or on the 12th, on the eve -- in Russian it means prior to that.

Q. So that would have been on the 12th because you flew on the 13th, okay?

MRS JUSTICE GLOSTER: Well, is that right, Mr Deripaska?

I mean, maybe you can't remember, but did Mr Abramovich ask you the 12th, the day before you flew on the 13th?

A. I do remember that he asked me prior to that. Whether it was in the evening of the 11th or on the 12th, I am afraid I cannot recollect now.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: Now, can you recall what Mr Abramovich said to you when he asked you whether you would fly back with him to London to meet Mr Berezovsky?

A. He asked me to fly to London in order to meet with Berezovsky and with him.

Q. And that's all he said, is it, or did he say something else?

A. I am afraid I remember the principal theme.

MRS JUSTICE GLOSTER: What was the reason why he wanted you to fly back to London to meet Mr Berezovsky?

A. He asked me to do him a favour.

MR RABINOWITZ: Did Mr Abramovich tell you, when asking you to fly to meet Mr Berezovsky, that he had spoken to Mr Patarkatsishvili, and that it was Mr Patarkatsishvili who had asked him to fly to London to meet Mr Berezovsky?

A. I do not recall that, but it's hardly possible that he would have told me about Patarkatsishvili.

Q. Sorry, Mr Deripaska, can you just be clear in what you're saying. You say it's hardly possible that he would have told you about Mr Patarkatsishvili. Are you saying he didn't tell you that he'd had in fact two conversations with Mr Patarkatsishvili and that is why he was going back to London to meet Mr Berezovsky?

A. I have no recollection of that.

Q. And, again, just to be clear about this, are you saying you simply do not recall clearly, or are you saying you do recall clearly and Mr Abramovich did not tell you about his conversations with Mr Patarkatsishvili?

A. Once again, I apologise, it's very difficult for me to recollect such specific details ten years on, ten years after the events.

Q. Well, are you saying then that you don't have a clear recollection of this, but he might have mentioned Mr Patarkatsishvili?

A. If I may, I'd like to say what I want to say.

MRS JUSTICE GLOSTER: Yes, go on.

A. And I would like to say that I do not recall Abramovich saying anything about Patarkatsishvili.

MR RABINOWITZ: You see, Mr Deripaska, Mr Abramovich's evidence is that he called you after having two telephone conversations with Mr Patarkatsishvili, the first one in which he told Mr Patarkatsishvili about the merger agreement that he was making with you, and the second one in which Mr Patarkatsishvili told Mr Abramovich that Mr Berezovsky wanted to see him in London.

Are you saying that none of that was passed on to you by Mr Abramovich?

A. Most likely, yes.

Q. Most likely, yes, none of that was passed on to you?

A. What I want to say is that that kind of details would have been hardly appropriate for discussion at that time, and much less today, particularly today I cannot recollect those details.

Q. Well, you say those kind of details would have been hardly appropriate for discussion at that time. Which kind of details do you say would have been hardly appropriate for discussion at that time?

A. Why speculate? Please move on to the question.

Q. That was the question, Mr Deripaska. Tell me which details you say would have been hardly appropriate for discussion at that time?

A. The details of what, could you be more specific? The details of what?

Q. Mr Deripaska, in your answer to my question, earlier question, you said:

"What I want to say is that that kind of details would have been hardly appropriate for discussion at that time, and much less today..."

What I'm asking you is which details do you say would have been hardly appropriate for discussion at that time or today?

A. Well, maybe this was not entirely properly translated but I'll try to explain.

I believe that it stands to reason that the person who had been doing something prior to making calls to someone, he had had lunch or breakfast, went for a walk, he would not have been -- he would not be sharing that with the other person, the more so since the substance of the matter under discussion was entirely different, was something entirely different.

Q. Well, Mr Deripaska, your agreement with Mr Abramovich was subject to a confidentiality agreement, do you remember that?

A. Which one of the agreements?

Q. The preliminary agreement that you'd made with Mr Abramovich at the Baltshug Hotel, Kempinski Hotel, and at his house contained a confidentiality agreement, do you recall that?

A. If you don't mind, could I have sight of the agreement?

Q. It's at bundle H(A)16 at page 49 in the Russian H(A)16/49 and 49T in the English H(A)16/49T.

MRS JUSTICE GLOSTER: It is clause 13.

A. Yes, there is a provision to that effect there.

MR RABINOWITZ: And Mr Abramovich's evidence was that you were very concerned to keep this confidential. Was that right?

A. At that time I believed that the less information there is about my agreements with Abramovich with respect to those assets that were proposed to become part of the partnership, the better would it be for me to achieve a recovery from the crisis for those assets.

Q. You see, if Mr Abramovich was going to tell --

A. I would suggest that the interpreter uses the term "turnaround".

THE INTERPRETER: It's a very good term, we can use that. That's the interpreter's comment.

MR RABINOWITZ: If Mr Abramovich was going to tell Mr Patarkatsishvili and indeed Mr Berezovsky about your

agreement, he could not do so under this contract without your permission. Do you see?

A. Well, it's hard to speculate.

Q. Well, it may be hard to speculate but these were not inappropriate matters for Mr Abramovich to mention to you as to why you were going to London if, as he says, he had told Mr Patarkatsishvili about the merger agreement and Mr Berezovsky wanted to meet to hear about it in person. That must be right, must it not?

MRS JUSTICE GLOSTER: I think that's too long a question, Mr Rabinowitz.

MR RABINOWITZ: Do you agree that if Mr Abramovich was going to tell Mr Patarkatsishvili about your preliminary agreement, and that the reason he was flying to London to see Mr Berezovsky was to tell him about the agreement, then that was something that he would need to tell you about because of clause 13.

A. It's hard to speculate at this point in time.

Q. All right.

Now, on the next day, that's the 13th, because your conversation, you tell us, with Mr Abramovich was on the 12th, you got on a plane to see Mr Berezovsky in London. Did Mr Abramovich give you any explanation as to why the meeting with Mr Berezovsky was one which needed to be done at that time in London?

A. I do not recall that.

Q. Mr Berezovsky at that time lived in Moscow but Mr Abramovich was, having just returned from London, flying back to London to see Mr Berezovsky. But you say he didn't tell you why it was necessary to make that flight in a hurry in that way?

A. Could I (sic) repeat your question?

Q. I'm just asking you whether you understood from Mr Abramovich why it was necessary to fly to London to see Mr Berezovsky on the 13th when Mr Berezovsky lived in Moscow and would be returning to Moscow?

A. I do not recall where Berezovsky was living at that point in time.

Q. Is not the obvious reason why you were flying to London then because you needed to talk to your fellow merger partners, including Mr Berezovsky and Mr Patarkatsishvili, before 15 March when you hoped to complete the merger?

A. Ah, this is wrong.

Q. Mr Deripaska, can I consider with you the reasons that you give as to why you say you agreed to meet Mr Berezovsky by taking this 12- or 13-hour round trip to London, please.

The first reason you give, this is at paragraph 6 in your witness statement E4/08/151, is that you say you

were:

"... keen to build [up] a good relationship with Mr Abramovich ..."

And you thought that this would be:

"... a good opportunity to get to know Mr Abramovich and Mr Shvidler better."

Is that right?

A. Yes, that was one of the reasons.

Q. But, of course, you could always spend time with Mr Abramovich and Mr Shvidler in Moscow rather than having to fly all the way back to London to attend a meeting with people who you did not like. That's right, isn't it?

A. Well, number one, number one, I had not been informed about the fact that apart from Berezovsky there was going to be anyone else there.

Number two, Abramovich and Shvidler were very busy people, and I want to tell you that very often we met during nighttime because they had their own large chunk of business and they were dealing -- they were working in the oil business.

Number three, we had by that time spent a week working very diligently with respect to the merger of the assets, and it was necessary for me to spend some time with Abramovich because we had agreed that we would

be resolving all the matters that arose one on one, and he had an opportunity to influence the resolution of various matters, and I had to explain to him what the conditions were, how I had resolved the issue of the supply of feedstock, what we were going to do with respect to the outstanding debt, the payables of those plants, what we will be doing with respect to the marketing and distribution of the products produced by those plants. So I needed to spend some time with him because, after that, it would have been much easier for me to implement the things that we had been planning to implement.

Q. However busy they were, Mr --

A. Would you allow me to read the translation first, if I may?

MRS JUSTICE GLOSTER: Yes, please do. (Pause)

A. (Not interpreted) Number three, after number three.

(Interpreted) "We" refers to me and my people, my managers.

(Not interpreted) Supply not "feedstock", supply raw material.

(Interpreted) And in the last line, "I had been planning to implement", not "we".

Thank you.

MR RABINOWITZ: Thank you, Mr Deripaska.

If you and Mr Abramovich and Mr Shvidler needed to spend time together, you were both in London the previous week, were you not, the week including the day of 10 March?

- A. If I recall correctly, that visit, the time that I had spent in London before the 13th, I had spent a lot of time speaking with the suppliers of raw materials, with world traders, who worked on marketing matters. And if we had been discussing anything between Abramovich and myself then we definitely had not had enough time to take all the significantly important decisions.

But I would like to emphasise once again that the trip to London on the 13th was, let's say, a favour I was doing to Mr Abramovich at his personal request.

- Q. Well, you give a second reason in your witness statement as to why you say you wanted to -- or why you were willing to take this 13-hour round trip to meet someone who you didn't like, and that, you say, is because you were owed money by Mr Berezovsky. You say that was £8.5 million together with interest, is that right?
- A. What I want to say is that the party that you act for had been shirking from any conversation for over a year about how and when he would be repaying his debt.
- Q. Are you saying, Mr Deripaska, that you had previously asked Mr Berezovsky to repay this money and that he'd

failed to do so?

- A. What I want to say is that he had been trying to avoid a repayment of the debt for a long time. He knew that under the contract he had to repay the debt and when he had to repay the debt.
- Q. Are you saying you had asked him to repay the debt, on which you were getting interest, and that he had failed to do so?
- A. What I want to say is that he had been avoiding to have a meeting with me. How could I have asked him?
- Q. Well, Mr Deripaska, I'm sure that you had a fax, a telephone, even perhaps an email through which you could have contacted Mr Berezovsky. Isn't that right?
- A. I'm not sure that Mr Berezovsky knows how to use email.
- Q. Well, whether or not Mr Berezovsky knows how to use email, assuming you do, Mr Deripaska, you could have contacted one of his people, could you not?
- A. You may not be aware, but the person you act for did not have employees or people who worked for him. He was solo, he was a loner.
- Q. You see, Mr Deripaska, for all you knew, all it would have taken to sort out repayment was a phone call to Mr Berezovsky asking him to repay you. You didn't have to do anything as dramatic as to fly back to London on this 12-hour round trip to ask him for the money, did

you?

- A. I believe that when a borrower borrows money he is perfectly aware that there is a date of maturity, the time by which he has to repay the debt. All it takes is read the contract for that. And if that person is aware of what he's doing, he must be acting in accordance with that, he must be acting accordingly.

This is all I want to say.

- Q. Well, can I ask you this then. You see, Mr Berezovsky's evidence about this debt is that he was surprised that it hadn't been repaid. And your own evidence, this is at paragraph 9 E4/08/152, is that the question of your debt was only discussed very briefly and it was agreed that Mr Abramovich would take care of the debt, is that correct?

- A. I am not sure I understand what you mean when you say "surprised".

- Q. He was surprised that it hadn't been repaid. That is what his evidence is. Your evidence is that it was discussed --

- A. I would like to reiterate once again that the person had borrowed money from me several years prior to that, he had had to -- he should have repaid the money for a long time prior to that, and you believe he was surprised? It's not a small amount of money, it's not 10p.

- Q. No, it isn't, Mr Deripaska, nor would you have needed 10p, you had just done a transaction with Mr Abramovich which involved you agreeing to pay him around half a billion dollars, that's right, isn't it?
- A. I'd like to remind you that he had borrowed the money in 1997 and he should have repaid the money much earlier than this accidental meeting that took place at the Dorchester, and this is all I want to say.
- Q. What I have to suggest to you, Mr Deripaska, is that this question of the debt was a matter that was easily resolved and it was certainly not something that would have required a short notice flight by you back to London in order to deal with it. That is right, is it not?
- A. I believe that Berezovsky has a track record, a practice of forgetting about his personal liabilities and commitments and obligations. And I would like to call your attention to the fact that he -- when he was borrowing the money, he knew that he had to repay the money and he had to pay the interest. He was doing neither of those two.
- Q. Can we --
- A. And also when he had asked me about that, when he was asking me to lend him money, he was pleading with me because he needed that for his personal objectives. He

needed to buy some property, some real estate, and that was really touching, it was quite touching.

Q. Can we --

A. Just for the interpreter, once again the word was "pleading".

Q. Can we please look at your travel arrangements --

THE INTERPRETER: Mr Deripaska agrees with that term.

MR RABINOWITZ: Can you go to bundle H(A)18 at page 113, please H(A)18/113.

This is the itinerary which was prepared for this trip by Global Jet, and just taking you through this, it suggests that you took off from Moscow at around 11.00 am local time and that the flight would be for three and a half hours. Is that your recollection, Mr Deripaska?

A. I do not recall exactly when the departure time was.

Q. Right. And you see that you were flying on a Gulfstream V jet. Mr Abramovich tells us it's a very comfortable plane.

You were flying over lunchtime, were you served lunch on the plane?

MRS JUSTICE GLOSTER: What's the relevance of that,

Mr Rabinowitz?

MR RABINOWITZ: Your Ladyship will see in due course, I hope.

A. I would like to clarify that this is a draft, this is not a flight report from what I can see here. The date is 12 March.

Q. Do you recall whether you were served lunch on the plane? You may not recall it. And if you don't recall it just say so, please.

A. I -- unfortunately I'm afraid I cannot recall.

Q. According to this itinerary, you can tell us if this isn't your recollection, after arriving at Luton you then got a helicopter from Luton to Battersea in order to arrive there at 12 noon, is that your recollection? You may not have a precise recollection.

A. I'm afraid I cannot recall those details at this point in time.

Q. Well, we can pick up some of these details if you go to paragraph 7 of your witness statement E4/08/152.

You see at paragraph 7 you say that you travelled to London on Mr Abramovich's plane along with Mr Abramovich and Mr Shvidler on the morning of Monday 13 March 2000.

You then say this:

"We then went in separate cars to the Dorchester Hotel in Park Lane, where we were due to meet Mr Berezovsky some time in the early afternoon."

Is that right? You were due to meet him in the early afternoon?

A. Possibly.

Q. Well, that's what you say here.

According to that itinerary, you would have arrived at the Dorchester Hotel at around 12.30, possibly a little later, if you were coming from Battersea. Can you recall?

A. Unfortunately it's very difficult for me to recall the exact time. I apologise. I beg your indulgence.

Q. Don't apologise. If you can't remember, you can't remember.

Do you remember this, when you arrived at the lobby of the hotel, that's the Dorchester Hotel, did Mr Abramovich call up to the suite where Mr Patarkatsishvili was staying?

If you don't remember, just say so, Mr Deripaska.

A. I'm not sure that I will be able to recollect now. And, so far as I can remember, we used different cars.

Q. That's what you said in your witness statement and I'm content to accept that.

A. Maybe, possibly he arrived -- he and Shvidler arrived a little bit earlier.

Q. And Mr Patarkatsishvili was obviously content that you should go up to his suite, is that right, when you arrived?

A. I have no recollection of any of what you're referring

to.

Q. All right. Now, you tell us that the meeting took place in the early afternoon at Mr Patarkatsishvili's suite, that's what you say at paragraph 7. Does it follow that that meeting would have been, what, around 1.30/2 o'clock?

A. I will not speculate. I do not have a specific recollection but it was in the afternoon.

Q. Well, in the early afternoon you tell us.

When you arrived at the suite, you tell us that you found Mr Patarkatsishvili was there but that Mr Berezovsky turned up an hour or so late, is that right?

A. Yes, he appeared in a hour.

Q. And can you just tell us this, did you know that Mr Patarkatsishvili was going to be at the meeting with Mr Berezovsky or not?

A. I did not know that.

Q. So is the position this, that you flew with Mr Abramovich in the hope that you were going to build a relationship with him and that you arrived at the hotel to be met by someone who you did not like?

A. Can I let you know what I was thinking at that time?

MRS JUSTICE GLOSTER: Yes, please do.

MR RABINOWITZ: Please do.

A. I thought that I could use that time in order to resolve some issues which, as partners, we needed to discuss with Mr Abramovich, and I was thinking that I was doing him a favour which he asked me to do him by meeting with Berezovsky, and that I was doing -- I was trying to accommodate him.

Patarkatsishvili, whom I saw in the room, for me really he was a surprise.

Q. And how do you say you reacted when you arrived to find Mr Patarkatsishvili there, Mr Deripaska?

A. I do not recall myself reacting in any way.

Q. Now, I think you and Mr Abramovich both say Mr Berezovsky arrived an hour late. How do you say that Mr Berezovsky was dressed when he came into the part of Mr Patarkatsishvili's suite where you were waiting, Mr Deripaska?

A. Well, once again, I'd like to remind you of what I have already said.

I had been invited by Abramovich to attend a meeting with Berezovsky. I had had to spend an hour, almost an hour, waiting in that suite, and obviously I was speaking on the phone and doing other things with a person who was not very pleasant to me. I'm talking about Badri.

Now, an hour later Berezovsky, somewhat ruffled and

a little bit confused, turned up. When I say ruffled, I mean he was panting, his hair was not properly done. That's what I meant.

Q. My question to you was how do you say Mr Berezovsky was dressed, Mr Deripaska?

A. What do you mean?

Q. Well, was he wearing clothes?

A. Well, he was not naked.

Q. Was there anything about what he was wearing which was particularly striking to you?

A. I don't think he was wearing a tie, and I think there was a shirt, and above the shirt there was like a dressing gown or something like that.

Q. So you think he was wearing a shirt, what, trousers?

A. To be honest, I do not recall those details.

And I'm looking at the translation here. I'd like to ask the translator, what is a dressing gown?

THE INTERPRETER: My Lady, I've been explaining to Mr Deripaska what exactly a dressing gown is and he now agrees with my translation and my description. Thank you.

MR RABINOWITZ: Do you say that Mr Berezovsky was wearing trousers, Mr Deripaska?

MRS JUSTICE GLOSTER: If you don't remember, say so.

A. I do not remember.

MR RABINOWITZ: You see, Mr Deripaska, I have to suggest to you that all of this is just absurd and that you are making it up. Is that right?

MRS JUSTICE GLOSTER: I think you've got to be specific, what you're alleging he's making up.

MR RABINOWITZ: That he was wearing a dressing gown.

The suggestion that Mr Berezovsky was wearing a dressing gown is just nonsense, isn't it?

A. Well, I think that I know the person that you act for sufficiently well, and if he wants to portray himself as a businessman now is really overstating what the actual position was in the 1990s. He might have turned up in any form, even in the nude. That would have been quite in his character.

Q. You see, Mr Deripaska, you say nothing at all about this in your witness statement, do you?

A. My witness statement is the resume of what I have been telling my lawyers.

Q. You see, we know Mr Berezovsky's movements on the morning of 13 March 2000 and they are fully accounted for. Mr Berezovsky had come straight from the House of Lords and was running late for this meeting.

Did he tell you when he came in that he'd been in the House of Lords that morning?

A. No, nothing of the kind was said. More than that,

I think the fact that he was confused, and also what Badri said, to the best of my recollection, to the effect that "Boris is here, he's a little bit busy," and there was a snicker on his face.

- Q. You said earlier that it would have been in Mr Berezovsky's character to turn up in the nude. Did you ever see him in the nude, Mr Deripaska, or is this just an attempt on your part to smear Mr Berezovsky?
- A. It's a Russian figure of speech.
- Q. You see, I suggest to you, Mr Deripaska, that what you're saying is not true and you are simply saying this in order to try and smear Mr Berezovsky. Do you want to comment on that?
- A. You are not right. Berezovsky has done enough smearing himself.
- Q. Now, I want to move on from the more sensational aspects of your evidence to focus on the more substantial question that the court has to decide, namely what you say was discussed at the Dorchester Hotel.
- THE INTERPRETER: I'm so sorry, I will repeat that in Russian. My apologies, my Lady.
- MR RABINOWITZ: Now, you describe what you say was discussed during the meeting at paragraph 9 of your witness statement. Can you have a look at that? E4/08/152
- You say that the meeting was very general, it lasted

less than an hour, and that you were content to say very little. Is that correct?

A. Yes, the meeting involving Berezovsky was also not a long one.

Q. Then if you go to paragraph 10 of your witness statement E4/08153, you say there that:

"We did not discuss the combining by Mr Abramovich and me of various of our aluminium assets ..."

Is that true?

A. Yes, this had all been resolved prior to that, one week -- more than a week prior to that meeting.

Q. Mr Deripaska, I have to suggest to you that that is simply not true.

Can I ask you, please, to go to bundle E1, tab 3 at page 85 E1/03/85. If you would prefer to read it in Russian, it's at page 186 E1/03/186.

We're looking at paragraph 166 of Mr Abramovich's statement. Do you have that, Mr Deripaska? Has someone given you that?

A. Yes, I have a document in front of me. If you don't mind I will read it. Is it 166? Prior to that there is a subheading "Meeting", "Dorchester Hotel Meeting", right?

Q. What I'm particularly interested in, Mr Deripaska, about nine lines down is Mr Abramovich's evidence was that his

understanding from Mr Patarkatsishvili was that:

"... Mr Berezovsky wanted to hear from me [that is Mr Abramovich] directly about the merger."

That is the reason Mr Abramovich explained he was flying back to London to see Mr Berezovsky, because Mr Berezovsky wanted to hear directly from him about the merger. Do you see that?

A. Yes, I have read this.

Q. And if the very purpose of the meeting, and the reason Mr Abramovich was flying back to London, was so that Mr Abramovich could tell Mr Berezovsky about the merger. It was inevitable, was it not, that the merger would be discussed, contrary to what you say in your witness statement?

A. I cannot comment on another person's witness statement. He writes what he -- the way he wants to write it. If you're interested, I'd like to recall once again that we had spent six or seven hours, about six or seven hours over the previous eight or nine days discussing all the necessary things and acts that we, and I mean myself and Abramovich, we had to undertake in order to put in place the partnership. And I think that I've done a good job explaining to Abramovich what aluminium business is all about, because neither himself nor Shvidler had had any profound understanding of that at the time we were

meeting, about the difficulties that might arise, that the plants can stop unless the raw materials are supplied regularly and unless all the other necessary materials are procured.

Therefore, your assumption that over 30 minutes one can discuss anything seriously I think, as of today, seems naive. And when you keep saying to me that I'm wrong or I am misled, you do it wittingly, you do it on purpose.

Q. Very well. You see, Mr Deripaska, I suggest to you that that was why you attended the meeting at short notice, not as a favour to Mr Abramovich or as a debt collector but to talk to Mr Berezovsky and Mr Patarkatsishvili about the merger. That is correct, is it not?

A. You are mistaken.

Q. Well, can I ask you, still looking at Mr Abramovich's witness statement, to go to paragraph 170, so it's just a page on in the English E1/03/86. Do you see at paragraph 170, Mr Abramovich says that:

"Once Mr Berezovsky arrived, it was a an informal meeting --"

MRS JUSTICE GLOSTER: I think you should read the previous sentence as well, the previous clause.

MR RABINOWITZ: "We met with Mr Patarkatsishvili in his hotel suite --"

MRS JUSTICE GLOSTER: Sorry, I mean all of paragraph 170,  
Mr Rabinowitz.

MR RABINOWITZ: "Once Mr Berezovsky arrived, it was an  
informal meeting, and did not involve business  
negotiations. We talked about the completed merger and  
our hopes that this would see an end to the bloody  
aluminium wars."

So Mr Abramovich says that you talked about the  
merger, but you say that's wrong, do you?

A. Well, maybe we're reading the -- we're reading different  
paragraphs. I see that Abramovich says here that it was  
awkward because we had spent one hour waiting, and it  
was awkward vis-a-vis myself, and I'm glad that ten  
years on this is the way he sees that situation.

Are we talking about the same paragraph?

Q. The next paragraph, paragraph 170, Mr Deripaska.

A. Oh, my apologies.

I do not recall that.

Q. Mr Deripaska, I have to suggest to you that the meeting  
at the Dorchester Hotel was a meeting of principals  
involved in the aluminium merger at which the topic of  
each side's respective partners was discussed. That is  
the truth, is it not?

A. You're profoundly, deeply wrong. Or you are  
deliberately saying something which is wrong.

Q. And what happened at that meeting, Mr Deripaska, was this. It was agreed that Mr Abramovich would hold 50 per cent of his interest in what was to become Rusal on trust for Mr Berezovsky and Mr Patarkatsishvili. Do you agree with that?

A. No.

Q. And it was also agreed that the trust under which Mr Abramovich would hold these shares or these interests would be governed by English law, the same law that you had agreed should govern the Rusal merger relationship? Do you agree with that?

A. No.

Q. And it was also agreed that none of the parties would sell their interests without the consent of the other parties, that is right, is it not?

A. Can I ask you?

MRS JUSTICE GLOSTER: Well, do you want elucidation of the question, because otherwise --

A. Yes, I just want to say who was it who could have formulated those assertions, the way you see it?

MR RABINOWITZ: This was agreed at that meeting, Mr Deripaska, between you, Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili, that none of you would sell without the consent of the others?

A. You know, when there is a business meeting, someone

offers something or makes an assertion, makes an affirmation.

Now, in your question I would like to be more clear about who you are saying could have offered something or who could have spoken about this in those terms or in the form in which you are now setting it out.

Q. Is that going to affect your answer to my question, Mr Deripaska? If I were to say Mr Abramovich formulated it in those terms, would you say "Yes, I remember it was agreed"?

A. No, it would have been clear that it just doesn't make any sense at all and it's totally absurd.

Q. So your question to me is a rhetorical one, is that right?

MRS JUSTICE GLOSTER: Don't let's go into that.

Put the question again if you want to,  
Mr Rabinowitz.

A. No, in this case --

MRS JUSTICE GLOSTER: Just put the question again,  
Mr Rabinowitz, and let the witness answer it.

MR RABINOWITZ: I'm going to ask the question once more,  
Mr Deripaska. See if you can answer it.

Do you accept that at this meeting it was agreed that none of the parties who were there would sell their interests in Rusal without the consent of the others?

A. That meeting did not discuss -- those matters were not even discussed at that meeting, and that's why I'm asking you who, in your opinion, could have submitted those proposals?

Q. My opinion doesn't matter, Mr Deripaska, it's your evidence which matters.

I'm going to move on --

A. Well, I think it does matter because this will immediately show you how absurd your position is and I just want to help you.

Q. That's very kind of you, Mr Deripaska.

MRS JUSTICE GLOSTER: Mr Deripaska, he's not asking you whether or not Mr Abramovich or you or Mr Patarkatsishvili or Mr Berezovsky put forward this proposal. His only question to you is, was it agreed? You've answered that question. Okay.

MR RABINOWITZ: There's just one other matter I would like to ask you about and that is your purchase from Mr Abramovich of a 25 per cent interest in Rusal on 17 September 2003 for \$1.568 billion. Do you recall that, Mr Deripaska?

A. Well, that was part of a large transaction which saw the end of our partnership with Roman.

Q. So you do recall it, do you?

A. I do recall that that was part of a larger -- a large

transaction which put an end to my partnership with Abramovich.

- Q. Can I ask you just to look at a document, it's at bundle H(A)64, page 27, please H(A)64/27. This is one of the share purchase agreements dated 17 September 2003 under which you acquired the 25 per cent interest from Mr Abramovich at that time.

If you go to page 35 H(A)64/35, you can see at the bottom of the page the purchase price of 1.568 billion that you were paying for those interests. Do you see that?

- A. I do not recall this document, and the amount is probably the one that we had agreed upon with Roman, give or take a few. But I do not recall, do not remember this document.

- Q. I want to show you another document if I may. Can you be given bundle H(A)65 and go to page 172, please H(A)65/172. Now, if you have page 172 it's called a "Deed of Pre-Emption and Option", and the purpose of this agreement --

THE INTERPRETER: I'm so sorry, Mr Rabinowitz, could you give me a second, please, I need to open -- which page did you say it was?

MR RABINOWITZ: H(A)65, page 172.

THE INTERPRETER: 172, thank you very much.

Thank you very much, Mr Rabinowitz.

MR RABINOWITZ: If you look at the recitals to this agreement, Mr Deripaska, you can see the purpose of this deed had been:

"... agreed by the Parties [the parties were Mr Abramovich's corporation Madison and your corporation Baufinanz] as of the Effective Date that the Grantor [that's Mr Abramovich's company] granted to [your company] a right of first refusal to purchase the entirety of the business interests [that was the remaining 25 per cent of Rusal] in the event that the Grantor proposes any transfer of [those interests] to any other Person."

Do you remember agreeing that?

A. I do not recall that document.

Q. I'll just show you one other provision, which is the second recital:

"It was further agreed by the Parties as of the Effective Date that in the event of a contemplated change of Ownership Rights, [your company] should be entitled to purchase the entirety of the Business Interests --"

A. I'm sorry, which paragraph are you referring to now?

MRS JUSTICE GLOSTER: Recital B, under "Whereas".

A. Yes.

MR RABINOWITZ: Do you want me to read that again,

Mr Deripaska?

"It was further agreed by the Parties as of the Effective Date that in the event of a contemplated change of Ownership Rights, the Option Holder should be entitled to purchase the entirety of the Business Interests in accordance with the terms of this Deed."

So the other thing that this agreement was doing was giving your company the right to acquire the remaining 25 per cent interest in Rusal if there was a change in the ownership rights in respect of the 25 per cent that Madison still held, do you understand that?

A. I can hear you reading it out.

Q. So this deed of pre-emption did not in fact grant you, Mr Deripaska, or your companies, an unrestricted option to purchase the remaining 25 per cent. It merely granted you a right of pre-emption or a right to acquire that arose in certain limited circumstances. That's correct, is it not?

A. Once again, I'd like to remind you that I did not remember this document and the chances are I've never seen it.

Could you be more specific in your question based on my position?

Q. Well, if you don't remember this document all I can do

is show you the provisions and ask you whether you remember them. But let me put this question to you, Mr Deripaska. This is the agreement -- this is one of the agreements that you entered into with Mr Abramovich in September 2003, okay? You can take that from me, please.

- A. Well, it is probably part of the large transaction that was implemented by my employees.
- Q. Very well. And what this agreement provides is that you have an option or a right of pre-emption that arises in limited circumstances, but what you do not have here is an unrestricted option to acquire these 25 per cent of shares at a fixed price. That is what this agreement provides? Do you recall this at all?
- A. It's very difficult for me to comment. I've already told you that I most probably have never seen this document, and I can see that it's signed by my employees, not even by myself.
- Q. You see, Mr Deripaska, what this document shows is that in September 2003 you had certainly not entered into any agreement with Mr Abramovich under which you were entitled to purchase the full 50 per cent of Rusal shares that he held at a fixed price. And that reflects the agreement you made with Mr Abramovich, does it not?
- A. I think that you are deliberately confusing the

situation. Could you simplify the question based on the understanding that, as I said to you, I've not seen this document. And please can you explain to me, on the whole, in general, what is it exactly that you want me -- what you want to find out from me.

Q. In September 2003, you had simply acquired from Mr Abramovich 25 per cent of the Rusal shares at a fixed price of around \$1.5 billion together with a right of pre-emption, which may or may not have arisen, to purchase the other 25 per cent of the shares at a price that had not been fixed. Is that correct?

A. I believe that it would be wrong to pluck just part of a transaction out of a larger transaction, the general transaction. If you want I can give you some comment on what happened and how it happened when we decided to put an end to our joint business between myself and Mr Abramovich.

MRS JUSTICE GLOSTER: Well, tell me in headline terms what the deal was.

A. In about the middle of 2003, Roman said that he would like to focus only on the oil business because there was a major transaction that he was working on at that time. And, in general, he suggested to me that we should put an end to our partnership. We spent a long time discussing what the price might be based on the

understanding that at that time we had three partnered businesses: we had one joint production of automobiles, of cars, car manufacturing business; we had a joint business in energy, power business; and we had a joint aluminium business.

The price that he wanted to get was quite high. I spoke with him and we discussed that and I took some time out in order to be able for me to discuss with the banks the possibility of raising finance for that.

These were amongst the largest of the transactions that were being implemented at that time in Russia and I decided on the amount which, in principle, I could raise with the banks. And I got back to him, I reverted to him, and it all happened in the second half of the summer 2003.

And after that, we came to an agreement as to how and in what way we were going to terminate that partnership. Now, after that, I instructed my people to draft those contracts that Mr Rabinowitz is referring to.

MRS JUSTICE GLOSTER: Right. Thank you.

A. So this is the description in headline -- in a headline form.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Mr Deripaska, I suggest to you that that's

not quite right and that you did not agree to sell the full -- sorry, you did not seek to -- you did not at that stage enter into an agreement with respect to the full 50 per cent of the shares that Mr Abramovich held.

Do you dispute that?

A. Well, once again I'd like to remind you, if I may, that I went to talk to the banks and I realised, after that, that I can raise 1.9 -- about \$1.9 billion.

Q. I suggest to you also that the reason that you only acquired 25 --

A. Sorry, and the total amount, the total price of the transaction, if I remember correctly, for all the businesses was about \$2.3 billion, a little bit more than that, a little bit more than \$2.3 billion.

And so, therefore, those were difficult negotiations in terms of what assets will be bought out by myself at the initial stage and that's why it was structured the way it was done.

Q. Mr Deripaska, I suggest to you the reason that at that stage you did not acquire a full 50 per cent from Mr Abramovich was because you were told that only 25 per cent was available. Do you dispute that?

A. No, the reason is that I simply did not have sufficient funds available to me, I did not find sufficient funds immediately, and I can say that because I was actually

handling that transaction.

Q. All right. Can you go, please, to HG, tab 17 at page 158 H(G)17/158.

A. Would you allow me to suggest to the translator that he uses "deal" instead of "transaction". "Transaction" is usually something that you do in furtherance of the main deal. If the translator uses the word "deal" that will be more clearly understood.

THE INTERPRETER: That's his suggestion to the interpreter.

I fully agree, my Lady.

MRS JUSTICE GLOSTER: Right. What paragraph?

MR RABINOWITZ: Paragraph 52.

Just so you know what this is, Mr Deripaska, it's your own evidence contained in a witness statement that you yourself have made for the English court in your litigation dated 15 February 2008. Do you want to look at what you say at paragraph 52 in relation to the deal that was done in September 2003?

"Originally I made an offer in 2003 for Mr Abramovich's full 50 per cent interest, but I was told that only 25 per cent was available."

Was that true, Mr Deripaska?

A. Could you formulate your question again, please?

Q. I'm asking you whether the evidence that you gave to the English court in this witness statement was true?

- A. This witness statement definitely was true. I would just like to say that that statement, with respect to the jurisdiction matter only, and all the other events here, are described in the form of a resume only. What I'm giving you now is giving you a fuller explanation in response to your question.
- Q. However full your explanation may be now, Mr Deripaska, the reason you didn't buy the full 50 per cent was because you were told that only 25 per cent was available. That is right, is it not?
- A. Well, what I can do is only reiterate that, for me, the negotiations with banks were very difficult and, as a result of that, I was able to raise about 1.9 -- almost \$1.9 billion, and Abramovich then asked me to first put an end to our relationship with respect to the power business and the car manufacturing business because they were highly politically sensitive businesses and plants, if I can put it that way. And when he entered that complex oil-related deal he did not want to have any conflict of interest with the authorities.
- Q. Mr Deripaska, if that was the case, why did you not take an unrestricted option in respect of the 25 per cent remaining shares that Mr Abramovich held at a fixed price?

A. Which option?

Q. The option to acquire the remaining 25 per cent of shares from Mr Abramovich at a fixed price.

Let me start that somewhere else.

If the deal was that you were going to buy or that you agreed to buy the full 50 per cent of shares from Mr Abramovich in September 2003 at a fixed price, why did you not, in respect of the 25 per cent of shares that you were not buying at that time, take an unrestricted option to acquire those other shares at a fixed price at a time when you could afford to pay for those shares?

A. Well, first of all, you have to realise that this deal, and I'm reiterating that, that agreement between us was not just the sale and purchase of shares by some companies, we were putting an end to the partnership. And, in that case, when I received the full rider, the full freedom of action to build my business, it was very important for me at that time, and that, at the end of the day, resulted in the creation of the global company Rusal. The beginning was -- the beginning for that was the putting an end to the partnership with Roman. And, for me, it was sufficient to get those promises which he was giving to me.

MR RABINOWITZ: Thank you very much, Mr Deripaska. I don't

have any more questions for you.

MRS JUSTICE GLOSTER: Thank you, Mr Rabinowitz.

MR ADKIN: No questions.

MRS JUSTICE GLOSTER: Mr Sumption.

MR SUMPTION: No re-examination.

MRS JUSTICE GLOSTER: Thank you very much, Mr Deripaska, for giving your evidence by video-link. Thank you very much. You may be released.

THE WITNESS: Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Right, Mr Rabinowitz, Mr Sumption, Monday the witness will be? So I can read the statements.

MR SUMPTION: The next witness is Mr De Cort.

MRS JUSTICE GLOSTER: Yes, and he'll take all Monday, will he?

MR RABINOWITZ: My Lady, he certainly would have. My learned friend told me about five minutes ago, well, before we started the afternoon session, that some further disclosure has to be made in relation to Mr De Cort and that I'm likely to get those documents later today.

That may affect both the amount of time we need for Mr De Cort and indeed precisely when we can start because, at the moment, no one is very clear how many

documents there are or how significant they are. Now,

I will start as soon on Monday as I can --

MRS JUSTICE GLOSTER: Well, you've got the weekend,

Mr Rabinowitz.

MR RABINOWITZ: Well your Ladyship says that, and your

Ladyship can tell my wife that.

MRS JUSTICE GLOSTER: I think I'd rather leave that to you.

MR RABINOWITZ: I'd rather you did than I did.

MR SUMPTION: My learned friend can show his wife the

transcript.

MRS JUSTICE GLOSTER: Anyway see how you go.

I would quite like to know for various reasons how you see the timetable panning out in the light of the recent letter that you gave me, the parties sent me.

MR RABINOWITZ: Indeed. What the parties had hoped, my

Lady, is that at the end of Monday we would be able to have a fully informed discussion about it.

MRS JUSTICE GLOSTER: About scheduling?

MR RABINOWITZ: About scheduling.

MRS JUSTICE GLOSTER: Fine.

MR SUMPTION: Your Ladyship, will your Ladyship say 10.15

unless my learned friend asks for a slightly later start?

MRS JUSTICE GLOSTER: Yes, very well. 10.15 unless

Mr Rabinowitz asks for a later start. Very well.

(4.55 pm)

(The hearing adjourned until  
Monday, 21 November 2011 at 10.15 am)

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Monday, 21 November 2011

(10.15 am)

(Proceedings delayed)

(10.35 am)

MRS JUSTICE GLOSTER: I'm sorry to have kept you waiting gentlemen, I had a meeting in the building which I had to go to.

Discussion re Timetable

MR SUMPTION: My Lady, can we start, before we call the next witness, Mr De Cort, with a discussion about the timetable.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: We have produced, and Ladyship may have had a chance to look at it --

MRS JUSTICE GLOSTER: I've had a quick look at it.

MR SUMPTION: This is our draft timetable. The witnesses of fact and the expert witnesses are substantially agreed. The timetable follows upon consultation with others, and I think all of us think that that is feasible, and particularly with a day for expert overflow on 5 December.

As regards witnesses of fact, I must ask your Ladyship for leave to rely on the witness statement of Mr Bulygin as hearsay evidence since the earliest he can be available is the 15th and even that is contingent on

the state of his health after his really quite serious operation. So it seems the sensible thing is to rely on that as hearsay evidence.

MRS JUSTICE GLOSTER: Is that opposed?

MR SUMPTION: It is not as I understand it.

MRS JUSTICE GLOSTER: But obviously any questions as to weight will be left until submissions.

MR SUMPTION: Of course.

There are two other witness statements which your Ladyship may not be conscious of; one, they both relate to what one might call the costume issue. Mr Berezovsky has put in a seventh witness statement, or seeks to put in a seventh witness statement on that --

MRS JUSTICE GLOSTER: I've read that de bene esse.

MR SUMPTION: There is also a witness statement from a Mrs Gill about Mr Berezovsky's movements in the morning and at lunchtime.

MRS JUSTICE GLOSTER: I've read that too.

MR SUMPTION: As regards Mrs Gill, we are happy that that should go in as unchallenged evidence, it seems uncontroversial.

As regards Mr Berezovsky, I have floated this with my learned friend, although I don't know what his position on it is. What I suggest is that rather than putting my learned friend to the trouble of recalling

Mr Berezovsky so that I can simply formally put to him that his evidence is wrong because it is countered by three other witnesses who were present, that your Ladyship should, by agreement, deem that evidence to be challenged. There would be no substantial cross-examination other than putting it to him that the recollection of others is different. So that we suggest that it be dealt with in that way.

Now, the one area of substantial dispute on this timetable concerns closing speeches.

MRS JUSTICE GLOSTER: Just before you get to that. The accountancy valuation evidence, for reasons that I know about, has gone and is being held over potentially to another day.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: The only issue I had on that, and it's because I haven't yet read the accountancy valuation evidence, is whether there's anything in that evidence that goes to the issue as to whether the payments that Mr Berezovsky and Mr Patarkatsishvili did receive relate in any way to the actual revenues or profits, however you define it, of Sibneft or Rusal.

MR SUMPTION: We have considered that. It's certainly our position, and I don't think that this is disputed but Mr Rabinowitz will say if it is, we don't think that

there is an overlap because nobody suggests, whether the 1.3 billion be regarded as a purchase price for shares or as a pay-off of final payment of krysha, we don't believe that anybody suggests that it was a scientifically calculated figure or that anybody did, even informally, a DCF calculation in relation to it.

MRS JUSTICE GLOSTER: So nobody is going to be saying: oh, look at the EBITDA in that accountant's report. That relates percentage-wise to what Mr Berezovsky was receiving, or wasn't.

MR SUMPTION: They clearly by definition aren't going to be saying that because they say it's a huge undervalue, so the question is are we going to be saying it, and the answer is --

MR RABINOWITZ: My Lady, my learned friend may be at cross-purposes with your question.

The valuation report simply relates to the value of Sibneft and indeed Rusal, so it won't touch on the question that your Ladyship asked about whether the payments that they received relate to profits made in any particular --

MRS JUSTICE GLOSTER: I'm happy, if everybody is agreed that that's so --

MR RABINOWITZ: I'm just informing your Ladyship that the reports are simply about the value of Sibneft as at 2001

and as at other periods, and indeed the value of Rusal, so it does not touch on the point that your Ladyship raises and therefore won't assist your Ladyship on that point.

MRS JUSTICE GLOSTER: As long as nobody is going to be asking me to look at any of the contents of the accountancy reports in relation to issues of liability, that's fine. But I wouldn't want there to be, as it were, some sort of mix-up here and suddenly I was being invited to look at them.

MR RABINOWITZ: No, your Ladyship will not be asked to look at aspects of that.

MR SUMPTION: Nor by us.

MRS JUSTICE GLOSTER: Fine.

MR SUMPTION: My Lady, that leaves, as the one issue of principle, the question whether final speeches should be heard this term. Now, in our submission, there is no reason, now that the valuation side has gone for the moment, to defer any final speeches beyond the end of this term.

If I can just make three short points on that --

MRS JUSTICE GLOSTER: Were you still proposing to go first?

MR SUMPTION: If all final speeches are done before Christmas then I would suggest that we use the usual order with my learned friend going first. But if my

learned friend's final speech is deferred until next term then I would ask to go first as had been informally discussed earlier.

The present point that I am making is that I suggest that all final speeches should be dealt with in this term, and I make that suggestion for essentially these reasons. First of all, it seems perfectly feasible, we are quite satisfied that we will be able to do it, including producing a full document with evidence references in advance of the final speeches actually being delivered. We in fact have a running draft at the moment. But in any event, even on the footing that Mr Rabinowitz may not have started his, I don't know what the position is, he has three weeks and a team of nine counsel in which to do that and we submit that it is entirely feasible to do it if one prioritises one's work properly.

MRS JUSTICE GLOSTER: The problem about that is, up until today or yesterday, he's been operating -- or up until whenever you raised this point, he's been operating in the happy belief that he's going to have the Christmas break to prepare them, so maybe he hasn't been doing a running draft. Isn't that the problem?

MR SUMPTION: My Lady, we have never conceded that position because we have always reserved the possibility of all

the final speeches being delivered this term if the timetable worked out that way, and indeed the original purpose of your Ladyship sitting on Fridays, for example, was to leave that possibility open.

Now, I wouldn't have been pressing this point if the valuation evidence, which would have been quite time-consuming to cross-examine on, both in terms of preparation and court time, was still going to be dealt with this term, but that's not now the position. And, in our submission, it has always been a distinct possibility that the timetable might permit final speeches to be made this term.

One also needs, in my submission, to bear in mind both the expense to the parties of keeping their team on foot, particularly when some of them come from Russia, over a significant period in January in order to deal with this, and indeed the implicit expense to the court and other litigants in taking up the timetable for any longer than is really necessary on the assumption of efficient management of litigation.

My learned friend has three weeks from now in which to deal with this on the timetable that we have proposed and a very large team for that purpose.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: My Ladyship those are my points.

MRS JUSTICE GLOSTER: Right. Mr Rabinowitz.

MR RABINOWITZ: My Lady, first on the question of Mr Berezovsky and Ms Gill's evidence about the Dorchester Hotel, your Ladyship has read it and I don't need to tell your Ladyship what it says. I have indicated to my learned friend that Mr Berezovsky obviously disputes this completely, and your Ladyship has seen that, and he's absolutely willing to go and give evidence to this effect. If my learned friend wants to deal with him in the way he has suggested, I'm content that that's the way it should be done.

On the timetable, my learned friend says it's perfectly feasible that we can be in a position to put in written closings and orally close before the end of the term, and he does that in part on the basis that he is in a position to do it.

The point that your Ladyship made to my learned friend about Mr Sumption, really from the outset, your Ladyship knows that the first discussions we had about this were on the basis that Mr Sumption would, for perfectly understandable reasons, want to close this term and that we would not.

Now, the consequence of that has been that we have not, as Mr Sumption has been, preparing on ongoing draft. And, indeed, however big the team is they have

been occupied on other things, and fully occupied. We are simply not in a position where we will be able to produce a written document. My learned friend wants it to be done by 9 December, that is I think three days after we finish with evidence, on the basis that we then have oral closings thereafter. That, I have to say, is just something we cannot do.

In my respectful submission, the earliest that we're likely to be able to produce something in writing is very much later in December.

Now, I say that, my Lady, in the context of what is, as your Ladyship knows, an absolutely huge claim where there has been a great deal of evidence which needs to be analysed, facts have moved on very substantially since the written opening, and your Ladyship will be greatly assisted by a written document which properly does that rather than having, as my learned friend seems to suggest, seven days of oral closing. That can only be on the basis that he understands that, certainly on our part, we will not be able to produce a written document which properly assists your Ladyship.

MRS JUSTICE GLOSTER: If Mr Sumption were to make his oral closings before you did, what would be the position in relation to the Chancery defendants? Would they follow you or would they follow Mr Sumption?

MR RABINOWITZ: They want to go after me.

Now, one possibility -- sorry, just to go to another point. The first time that my learned friend has raised this possibility with me was this morning, I think, and I think it does follow from the fact that the valuation evidence has gone, it may have been Friday, but it's really a consequence of the valuation evidence going. And indeed, until your Ladyship had received the letter explaining the circumstances, and dealt with it, we were not in a position where we would know one way or the other whether this was at all possible.

I am not suggesting that we could not get in written closings before the end of the term but, in my respectful submission, we would not be in a position, with the best will in the world, to be able to do that until very shortly before the end of this term. In my respectful submission, if my learned friend, as he needs to, wants to close his case and do an oral submission at the end of this term, then so be it.

But given the stakes, my Lady, and given the complications in this case, we respectfully submit that we should not be rushed on this. My learned friend makes some point about the fact that there is a Russian angle and people might have to arrange to come from Russia; given the costs already incurred and the amounts

at stake, in my respectful submission, that really doesn't carry much weight. Your Ladyship will be much better assisted if the parties are given a proper length of time to produce written closings, and then indeed a proper length of time to read them before we come back to address your Ladyship on the oral submissions.

MRS JUSTICE GLOSTER: Right.

Do you want to say anything else, Mr Sumption?

MR SUMPTION: My Lady, I would just say this. If your Ladyship is minded to accede to Mr Rabinowitz's suggestion that his closing speech should be deferred until next term, we would wish to take him up on the suggestion that he made a moment ago, that his written closing could at least be in, and to suggest that if your Ladyship is attracted by that idea, then if his written closing -- we would produce our written closing rather earlier than that, we would produce our written closing probably around the 12th.

If his written closing were to be available by the 16th, the Friday, and I were to deliver my oral closing in the following week, the last three days of term, though I will actually only be a day to a day and a half, then we would at least have the ability to take into account his points when delivering our oral submissions, albeit not our written ones.

I put that forward as a compromise solution if your Ladyship is not minded to have all closing speeches this term.

MRS JUSTICE GLOSTER: Thank you.

Do the Chancery defendants want to make any submissions?

MR MALEK: Just this, my Lady, that as Mr Rabinowitz mentioned a moment ago, as far as we're concerned, we would prefer the usual order so that our submissions will come at the same time as Mr Rabinowitz's, and our oral submissions will come after Mr Rabinowitz's oral submissions.

But as to the question as to whether all the submissions can be done before the end of term, it's easy for us to say yes because we've got less issues to deal with. Our preference would be if that's possible, but if that's not possible then we would suggest that our submissions go in the usual order as I've just indicated.

MRS JUSTICE GLOSTER: What, with you after the claimants?

MR MALEK: Yes.

MRS JUSTICE GLOSTER: Mr Adkin?

MR ADKIN: My Lady, our position is exactly the same as that outlined by Mr Malek.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm not going to

require you to make your oral closings before the end of this term because I think that would put unfair pressure on you in circumstances where your team has been conducting cross-examination.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: I also think that it's important that the court has as much assistance as possible and therefore, as it were, in the court's own interest I think it's preferable I give you the time you say you need.

Having said that, I think I would be assisted to have your written closings prior to hearing from Mr Sumption in closing, so would it be feasible to have yours served by, say the 16th?

MR RABINOWITZ: My Lady, again in the spirit of compromise, can I go for the Monday which at least gives us the extra weekend, so you'll --

MRS JUSTICE GLOSTER: That doesn't give them much time to take it on board, that's the problem.

MR RABINOWITZ: Well my learned friend was perfectly happy to do this on the basis of not seeing anything. The submissions are for your Ladyship rather than for my learned friend. My learned friend's original proposal, indeed his proposal until this morning, was that he would make submissions in a sense blind as to what we

were going to say.

MR SUMPTION: Well, no, because my original proposal was that all submissions in writing should be served by the 9th so that I would have had the weekend to study my learned friend's.

MR RABINOWITZ: When I say original proposal, I mean proposal up until today.

As your Ladyship knows, a weekend can make a huge difference to the quality of the submissions, particularly -- in a sense we're only getting two weeks from the end of evidence to do this. Now, I'm not saying that we can't make a start on it, but the timetable -- we're still going for quite a tight timetable here, sitting on Fridays, and really belting on so that we can finish.

This is in part obviously because we want to be as efficient as possible, but, in my respectful submission, your Ladyship will be assisted rather than the other way around by allowing that extra weekend so that we can make sure it's as good as we can hope to make it.

MRS JUSTICE GLOSTER: Well, you will obviously have the ability to put in post-hearing submissions in the sense of post-Mr Sumption, both sides will have that, because it's unrealistic to assume that you will have, I would have thought, taken on everything that he's served by

the 12th if you're being required to serve by the 16th.

So, as it were, the story book isn't closed on the 16th if you're required time to serve your written submissions by then.

MR RABINOWITZ: In a sense, what will happen is if he puts in something on whenever he says he's going to put it in --

MRS JUSTICE GLOSTER: He's suggesting the Monday.

MR RABINOWITZ: That will serve as a distraction rather than anything else for us because your Ladyship, I suspect, will expect us to take on board those points.

MRS JUSTICE GLOSTER: No, not necessarily.

MR RABINOWITZ: All right.

MRS JUSTICE GLOSTER: I think it is important to me that the defendant responds to your written case in the three days that are available for Mr Sumption to make his closing submissions, so I think that I am going to require you to serve your written closings by say 4 o'clock on the 16th, but I obviously will, if you wish to do so, allow you to serve a further document that deals with anything you feel you haven't had time to deal with. And that would be on the basis that the claimants serve theirs by -- can you serve yours by the 9th, Mr Sumption, or are you looking --

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: You can serve yours by the 9th, so that does give ...

Right, 4.00 pm for the defendants on the 9th; 4.00 pm for yours on the 16th.

Can I say something, please, and it's this, it would assist me if the evidence and the closing submissions is structured by reference to the list of issues so that I'm not -- obviously you can analyse the evidence referentially, I don't need it repeated each time, but I don't really want to go, as it were, picking up through other bits of evidence which aren't pegged to the particular issue.

In other words, if you want me to look at something in another part of the document, I need to be told that it also relates in your view to issue A1(b) or whatever it is.

MR RABINOWITZ: Very good.

Your Ladyship hasn't fixed a time for the evidence from Mr Malek's client or the other Chancery defendants. Mr Malek has indicated to me that he would be content to put in his document on the 16th as well.

MRS JUSTICE GLOSTER: Yes. I think the Chancery defendants and the claimant's written closings by 4.00 pm on the 16th, Mr Abramovich's by 4.00 pm on the 9th.

MR RABINOWITZ: In terms of setting a time for next term,

does your Ladyship intend to --

MRS JUSTICE GLOSTER: For next term?

MR RABINOWITZ: In a sense for oral closings, if we're going to put in a written document on the 16th --

MRS JUSTICE GLOSTER: Yes, for your oral closings, the first day of term is the 11th, I think, isn't it?

The first day of term is I think Wednesday, the 11th. I'm off on compensatory leave on the 12th and 13th so I suggest that we start on the Monday if that suits.

MR RABINOWITZ: That suits. I'm grateful, my Lady.

MRS JUSTICE GLOSTER: That's the 16th.

MR RABINOWITZ: My learned friend, Mr Malek, is asking how many days. Neither your Ladyship nor ourselves are in a position to say with certainty. If your Ladyship has had a long written document, I don't suspect your Ladyship will want very long oral closings.

MRS JUSTICE GLOSTER: I will fix the number of days but I need to do it on an informed basis, and if you can't tell me I'm certainly not going to lay down times at this stage as to what the timetable should be.

I mean, I'm either going to be listening to this case or I'm going to be writing the judgment so it's no problem so far as I'm concerned, although I know I've got one day when I'm doing another case which my clerk

will inform you of the date.

MR RABINOWITZ: I'm grateful, my Lady.

MR ADKIN: My Lady, the only point I think that was left out of that was the order of closings on the 16th. Is your Ladyship content with what was suggested by Mr Malek?

MRS JUSTICE GLOSTER: Yes, I was. I thought Mr Rabinowitz was not opposing that.

MR RABINOWITZ: On the 16th, I think Mr Malek was suggesting that we all give --

MR ADKIN: Sorry, of January?

MRS JUSTICE GLOSTER: No. So far as order of closings is concerned, you're going first and the others are following.

MR RABINOWITZ: Indeed.

MR ADKIN: My Lady, I'm grateful.

MRS JUSTICE GLOSTER: And then Ms Davies will have an opportunity to reply. Well, we'll see how we go after that.

MR RABINOWITZ: My Lady, just on that, I think what has been agreed is that the opportunity to reply will have to be limited to new points. That's what we agreed on the basis of Mr Sumption going first. Obviously there will be a potential for disagreement as to what is a new point given that we are serving our document early.

MRS JUSTICE GLOSTER: I don't think I'm going to lay down

precisely what the protocol --

MR SUMPTION: It depends how much we've been able to take in of their document over that weekend but we will obviously do our best.

MRS JUSTICE GLOSTER: I think in a big case like this, we will just see how we go, and obviously none of you are going to be unnecessarily prolix, I'm sure.

MR SUMPTION: I'm sure that's right, my Lady. I have no doubt that it's right that Mr Rabinowitz should have the last word, whatever happens, but we would welcome the opportunity, ideally in writing in the case of detailed points, to respond to things that have not been sufficiently dealt with before.

MRS JUSTICE GLOSTER: Very well. Thank you.

MS DAVIES: My Lady, our next witness is Mr De Cort. Before I call him, can I just pick up on a point that arose at the end of Friday in relation to the further disclosure that we made on Friday night.

Just to explain the genesis of that, because there's a privilege point connected, if I can just hand up the letter that we sent with the further disclosure.

(Handed)

MRS JUSTICE GLOSTER: Do you want me to read this now?

MS DAVIES: Yes, my Lady. (Pause)

Essentially, when we call Mr De Cort, we accept

there will be a limited waiver of privilege in relation to the instructions that he received but that waiver of privilege does not go further, and in particular does not cover the legal advice that he provided.

MRS JUSTICE GLOSTER: Right. Well if an issue arises on privilege I will deal with it, as it were, as and when it arises.

MS DAVIES: My Lady, I'm grateful. Then I will call Mr De Cort.

MR ANDRE DE CORT (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MS DAVIES

MS DAVIES: Mr De Cort, could you be provided with bundle E2, open at tab 9, please E2/09/269. You should find there your second witness statement in these proceedings which is your only witness statement for this trial. Is that correct?

A. Yes, that's correct.

Q. And if you turn to page 294 E2/09/294, is that your signature?

A. That is my signature.

Q. Now, you should find on the table in front of you a few pages headed "Corrections to the Second Witness Statement of Andre De Cort", and you should find there that you wish to make corrections to paragraphs 29, 33,

38, 39, 41, 49, 50 and 52, is that correct?

A. Yes, it is correct.

Q. Subject to those corrections, is your witness statement true?

A. Yes, it's true.

MS DAVIES: There will be some questions. Thank you.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr De Cort.

A. Good morning.

Q. Mr De Cort, you are a lawyer by training, aren't you?

A. Yes, I am.

Q. And you were admitted to the Brussels bar in 1986?

A. Yes, indeed.

Q. And between 1990 and 2002, you worked for Skadden Arps, firstly in Brussels, and then from 1993 onwards in Moscow?

A. That is correct.

Q. You joined the Moscow office of Mr Abramovich's company, Millhouse Capital UK, in December 2002 as head of the international legal department, is that correct?

A. That is correct.

Q. And then in January 2004, you moved to Millhouse Capital's London office where you held, and indeed still hold, the position of legal counsel, correct?

A. That is correct.

Q. Presumably you would not wish to be involved, given your background as a lawyer, with creating false or misleading contractual documents, would you, Mr De Cort?

A. That is correct.

Q. And you would not knowingly want to misrepresent the true position to banks or financial institutions or other third parties?

A. That is correct.

Q. Now, I'd like to ask you some questions about your involvement in confirmations of certain dividend payments totalling \$177.5 million to Blue Waters and Rich Brown, and you deal with these matters -- you don't need to turn it up -- but you deal with these matters in paragraphs 6 to 14 of your witness statement E2/09/270.

In your witness statement, certainly prior to the amendment that you made very late last night, you had accepted that the entities to which these dividends were being paid, \$177.5 million dividends, Blue Waters and Rich Brown, were entities associated with Mr Berezovsky and Mr Patarkatsishvili. Correct?

Do you want to remind yourself of what you had said at paragraph 38 of your witness statement? You'll find this if you go to page 282 E2/09/282].

A. At the time I made this declaration I wasn't aware who those entities belonged to.

Q. Well, shall we just look at what you said, Mr De Cort, and that will help you answer the question I asked.

You are dealing here, and that's in paragraph 38, with concerns you had about giving a warranty later on. Mr De Cort, I'm taking you to your original witness statement, not your correction. And what you say there is:

"An additional concern in regard to warranting the beneficial ownership of shares held by Madison in particular, given that based on my own involvement with the source of funds letter for Blue Waters (described above) I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and ... Mr Patarkatsishvili."

So you were making it very clear in your witness statement that you did understand that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and Mr Patarkatsishvili. That's right, isn't it?

A. No, that's not correct. When I was reviewing my witness statement in preparation for giving evidence today,

I discovered that it could be misread that way and that's why I've made the clarification.

- Q. I suggest to you it's not a question of misreading it that way, that is what you were saying?
- A. That is not what I meant to say.
- Q. All right. We'll come back to it because I suggest you were very well aware of the fact that Blue Waters and Rich Brown were entities associated with Mr Patarkatsishvili and Mr Berezovsky.
- A. That is not correct.
- Q. All right. Now, you also, just staying with the payment of these dividends, tell us -- this is at paragraph 9 of your witness statement -- that you were at no time told of the reason for the payment of the \$50 million which was paid to Blue Waters, is that right?
- A. That is right.
- Q. Did you ask anyone what the reason for the Blue Waters payment was, Mr De Cort?
- A. No, I did not. The reason for that is I was only asked for a very limited reason to give a letter clarifying what the source of funds was.
- Q. You see, Mr De Cort, I suggest to you that's a little bit surprising. Did you not want to know why one of Mr Abramovich's companies, Madison, was making this dividend payment to companies associated with an entity

that you would have understood had nothing to do with Mr Abramovich's companies?

- A. I was at this point in time very new at the company. I was only there for about six months, and people said that they were making a payment to someone and they need to provide a source of funds letter. I think it is important to go probably to the instruction that I received from Denton Wilde Sapte as the purpose of this letter.
- Q. I'll ask my question again. Did you not want to know why Mr Abramovich's company, Madison, was making this dividend payment to companies associated with this entity that you would, at the very least, have understood was not owned by Mr Abramovich?
- A. I didn't see the need to know that for purposes of the request that I received to make the source of funds letter.
- Q. Was it not a matter of some concern to you, Mr De Cort, as the newly appointed head of the international legal department of Millhouse Capital, that these dividend payments were made to companies that you would have known had nothing to do with Mr Abramovich's companies?
- A. There was no question to me that there was an honourable reason why this payment was being made.
- Q. So we can take it that nobody in Mr Abramovich's team

ever suggested to you at this time that the reason for the payment of the \$50 million to Blue Waters was to do with an earlier transaction that had been concluded between Mr Abramovich and Mr Berezovsky and Mr Patarkatsishvili?

A. No one ever mentioned it to me at the time.

Q. And no one would have -- no one mentioned it to you at that time, that it was a part payment to compensate Mr Berezovsky and Mr Patarkatsishvili for commission that they had had to pay in order to get their money into the west?

A. That is correct.

Q. And presumably you would have had no reason to suspect that this payment of the \$50 million to Blue Waters was anything other than what it purported to be, namely a dividend payment paid via Madison and Espat to Blue Waters, ultimately deriving from Madison's own entitlement to profit distributions from Rual Trade Limited, the trading arm of Rusal group, is that right?

A. I was asked to describe the source of funds, and I described the source of funds accurately in my letter.

Q. And presumably -- I'm going to repeat the question -- you would have had no reason to suspect this payment of the \$50 million to Blue Waters was anything other than what it purported to be, namely a dividend payment via

Madison and Espat to Blue Waters, ultimately deriving from Madison's own entitlement to profit distribution from Rual Trade Limited, the trading arm of Rusal group, correct?

A. I was only told that we had to make a payment to a third party and that it would be structured this way.

Q. I've asked the question twice, I'm not going to ask it again.

Can you go, please, to bundle H(A)62 and turn up page 19 H(A)62/19. Do you see there an attendance note dated 16 July 2003 made by Mr Nick Keeling of Denton Wilde Sapte, Mr De Cort?

A. No, that's not this document.

Q. Are you at H(A)62, page 19?

A. Oh, 19?

MRS JUSTICE GLOSTER: I am, and it's not the document.

A. 19 or 90?

MR RABINOWITZ: Page 19 H(A)62/19.

MRS JUSTICE GLOSTER: The [draft] transcript had said 90.

A. Yes, that is the attendance note.

MR RABINOWITZ: Does your Ladyship have it?

MRS JUSTICE GLOSTER: Yes, I've got it now.

MR RABINOWITZ: Ms Khudyk in her evidence accepts that she took part in a conference call with you and Mr Keeling at around this time and so I take it you don't dispute

having taken part in this conference call, Mr De Cort?

A. I do not dispute this, I don't know the exact date, but given that I sent a letter afterwards, on 8 August, I assume that might have very well been in mid-July.

Q. We can see from this attendance note that it starts, this is the first paragraph, by recording that:

"NK [that's Mr Keeling of Denton Wilde Sapte] attending SLC [that's Mr Curtis] in Gibraltar and discussing the proposed arrangements for payment of a dividend out of Russian Aluminium."

That's Rusal, is it not, Mr De Cort? You may not know but --

A. Russian Aluminium is abbreviated often as Rusal, but the dividend payment eventually was sourced from Rual which is a trading arm.

Q. A trading arm of Rusal, correct?

A. Yes, indeed.

Q. Thank you.

So Mr Keeling and Mr Curtis appear to have been under the impression that the reason for the payment that was the subject matter of discussion here was the payment of a dividend out of Russian Aluminium, correct?

A. I don't know whether it derives from this document. I know that it was being structured as a payment of a dividend out of Rual. And actually I describe the

structure, if you look at the attendance note on the third paragraph or fourth, depending on how you count the paragraphs, it says that I explained the structure for the payment.

Q. We'll come to that, Mr De Cort. I'm just asking for your evidence as to whether you accept that their understanding, as reflected in this document, was that the reason for the payment that they were discussing was the payment of a dividend out of Russian Aluminium?

A. Can you point me to the paragraph where their understanding is reflected?

Q. Well, look at the first line:

"NK attending SLC in Gibraltar and discussing the proposed arrangements for payment of a dividend out of Russian Aluminium."

A. That's what it says indeed, yes.

Q. And we can see from the next paragraph that the conference call had been set up by RF, which is Mr Fomichev, with yourself, do you see that?

A. I did not know Mr Fomichev at the time and the phone number that is listed is not my phone number. It's the phone number of Ms Panchenko.

Q. All right. Presumably Ms Panchenko could have brought you into the phone call?

A. I would have assumed that her secretary might have

organised it, yes.

Q. Since you don't dispute you were involved in this phone call, that really doesn't take matters very much further, does it? It was a conference call set up by --

A. Yes, it was a conference call set up. I remember there was at least -- there was more than one person at the other side of the telephone line. I don't remember particularly the names of who was there, but I do remember that it was with the office of Denton Wilde Sapte.

Q. Presumably Mr Fomichev would have said something about who Mr Keeling and Mr Curtis were and why they were calling you, Mr De Cort?

A. I don't recall it, I don't recall Mr Fomichev's name. I didn't remember that there were three people at the other side of the phone call, I know there was more than one, I had an impression it was two but there might have been a third one as well.

Q. Although your name is spelt incorrectly because Mr Keeling doesn't appear to have met you, I think that's your evidence as well, you are correctly described as in-house counsel for Millhouse, yes?

A. That is correct.

Q. I think it's common ground that it appears as if Mr Keeling was labouring under a misapprehension that

Millhouse held Mr Abramovich's ownership interests in Rusal, you can see that recorded in the second para of this memo.

A. Yes, that is definitely a misapprehension.

Q. In fact the true position as at July 2003 was that Madison, Madison Equities Corp, a bearer share BVI company, was used as the holding company of 50 per cent of the interests in the Rusal group, that's right, isn't it?

A. Yes, that is correct.

Q. Can I just ask you this: who did you understand at the time of this conversation in July 2003 physically held the bearer shares in Madison?

A. Mrs Khudyk.

Q. Mrs Khudyk?

A. Mm-hm.

Q. Thank you.

A. It was not confirmed to me but I assumed that based on the fact that she was dealing with the shares.

Q. Just then going back to Mr Keeling's memorandum --

A. And I was referring there to the physical holding of the certificate.

Q. Who did you understand Mr Curtis, Mr Keeling and Mr Fomichev to be representing on this call with you, Mr De Cort?

- A. The other party that was supposed to receive the payment.
- Q. The other party that was supposed to receive the payment? Were you not interested to know who they represented, the individuals who they represented, Mr De Cort?
- A. No. My involvement, as I said, was very limited. I was at the time in the midst of the Yukos/Sibneft merger, the second one, that is, and the only involvement I had with this payment was for the source of funds letter which had to come from the in-house legal counsel.
- Q. You were discussing with them a payment of \$50 million, and your evidence is, is it, that you were not interested at all in who the individuals were lying behind these entities, or this entity, to whom the payment was made, is that your evidence?
- A. That is correct.
- Q. I suggest to you that that is very unlikely to be the truth, Mr De Cort.
- A. I disagree with that. It is the entire truth.
- Q. Now, just going back to the memo, do you see that there is a portion of the memorandum which has been indented and that appears, does it not, to be the part of the memo that Mr Keeling attributes to information provided by you?

- A. From Mr -- from the way Mr Keeling has prepared this attendance note, it is very clear that it contains a lot of information that isn't properly attributed. It is indeed -- visually it looks like all of this is information from me, but there is again clearly information that I have not provided to him.
- Q. Mr De Cort, when you were having this discussion, were you not concerned to know that the payment that was being made was at least a payment which was being made for a lawful and not an unlawful purpose?
- A. I was asked to comment on the source of funds, where these funds came from, and that is what I wrote the letter about.
- Q. So is the answer to my question that you were not concerned to know whether the payment was being made for a lawful or unlawful purpose?
- A. I was not paying attention to that.
- Q. Now, just looking at the points, the four paragraphs which Mr Keeling attributes to you, can I invite you to read those for yourself, or have you recently reminded yourself of this and don't need to re-read it? (Pause)
- A. I have read it.
- Q. I think it's common ground that there is a mistake in the third paragraph similar to the mistake we've already seen Mr Keeling made at the start of the memorandum,

where he says:

"Millhouse may sit between Rusal and Rual Trade. We are awaiting clarification from Curtis & Co (James Jacobson) as to Millhouse's position in this structure."

You point out, that's at paragraph 13 of your statement E2/09/272, that Mr Keeling's supposition regarding Millhouse had no foundation, and you say it is odd that he should have thought that Curtis & Co or Mr Jacobson could shed light on that matter, and that if any such suggestion had been made in the call you would have corrected it; that's correct, isn't it?

A. That is correct. It clearly indicates that note doesn't correctly reflect the discussions, and it attributes words to me which I have not said.

Q. Well, it contains one or two mistakes, Mr De Cort. Indeed, apart from that, just focusing if you would on the first two paragraphs, you do not suggest, do you, Mr De Cort, that the structure which Mr Keeling has noted you as describing there is wrong?

A. No, that is indeed correct. I'm not disputing everything that is in his memo, I am just pointing out that there are a number of mistakes and a number of attributions made that are clearly not correct.

MRS JUSTICE GLOSTER: So the first two paragraphs are

correct, are they?

A. Indeed, yes.

MR RABINOWITZ: And again, although there are errors,

Mr De Cort, I think you've confirmed more than once that you don't dispute that you did take part in this telephone conversation?

A. Yes, indeed I took part in this telephone conversation.

Q. Do you recall explaining this structure, at least as reflected in the first two paragraphs, to Mr Keeling and Mr Curtis in the course of the telephone conversation?

A. I do have a vague recollection of that, yes.

Q. And just going to the fourth paragraph, what about this fourth indented paragraph, Mr De Cort? Did you not explain the dividend routing to Mr Keeling on this occasion? Wasn't that the purpose of the call?

A. Yes, I would assume I had explained it to him.

Q. And then just looking down at the bottom of the page, Mr De Cort, the final paragraph on page 19 we can see says this H(A)62/19:

"[Nick Keeling] and [Mr Curtis] emphasised in the conference call the legal requirements as to due diligence in relation to the proposed transactions. In particular this would involve identifying the various parties involved and also identifying the source of funds and receiving acceptable confirmation that they

are of non-criminal [origin]."

Do you see that, Mr De Cort?

A. Yes. And actually the second sentence very clearly identifies what it is that they were looking for: identifying the parties involved, identifying the source of funds, and confirmation that the funds are from non-criminal origin, and that is exactly what my letter confirms. And that was my limited involvement in this conversation.

Q. Indeed. And it's right, isn't it, that you were subsequently asked to provide a source of funds letter confirming these matters, do you recall that?

A. Yes, indeed.

Q. We'll turn that up in a moment, but before we leave this document we can see that in the last paragraph, just after the passage we've been looking at, Mr Keeling says this:

"Mr De Cort confirmed that the funds in question constituted properly earned profits arising from trading activities on behalf of Rusal."

Do you see that?

A. Yes, indeed.

Q. And you've said, at paragraph 13 of your witness statement E2/09/272, that you regard this as incorrect, because as you confirmed in your final source

letter, the source of funds were Rual's trading activities?

A. Yes, indeed.

Q. Mr De Cort, is that really a fair criticism of this part of Mr Keeling's note? Don't you explain at paragraph 8 of your witness statement that Rual was the trading arm of Rusal group?

A. I'm not trying to create a false impression that Rual and Rusal are significantly different, they are two separate legal entities, and so if someone asks me to confirm the source, where the funds come from, I want to identify the correct legal entity.

Q. All right. So if Mr Keeling had --

A. Overall it relates to the Rusal business in the broad sense of the word.

Q. Indeed, so if Mr Keeling had recorded you as saying that these funds were properly earned profits arising from trading activities on behalf of the Rusal group, you would not have objected to that?

A. With the words "on behalf of the Rusal group", you could indeed say that that includes Rual, yes.

Q. And I think we can agree on this: what you are certainly not recorded as saying anywhere in this memorandum is that the \$50 million payment to Blue Waters was all to do with an earlier transaction between the parties and

was to compensate Mr Berezovsky and Mr Patarkatsishvili for commission that they had to pay to a third party for getting the money into the western banking system?

A. I had no knowledge of that at the time. I was not enquiring about that because, as I said, my role was quite limited.

Q. Now, can I ask you now, please, to turn on in this bundle to page 26, H(A)62/26.

A. Yes, I have it.

Q. This is the letter written by you about three weeks after your conference call with Mr Curtis and Mr Keeling, dated 8 August 2003, correct?

A. That is correct.

Q. And it's a letter that was signed, as one sees, by you, Mr De Cort, on Millhouse Capital paper, correct?

A. Yes, indeed.

Q. And we see also you've signed as head of the international legal department, correct?

A. That is correct.

Q. And you see the heading "Re: Espat Ventures Limited -- Declaration of Dividend", and you've addressed it to Curtis & Co, that's right, isn't it?

A. Yes, indeed.

Q. Do you want an opportunity just to remind yourself of what this letter said by reading it to yourself,

Mr De Cort?

A. Yes, please. (Pause)

I have read it.

Q. And we can see from the second paragraph of this letter, can't we, Mr De Cort, that you were representing to Curtis & Co that Blue Waters held 50,000 shares in Espat representing the entire shareholding of Espat, yes?

A. Yes indeed.

Q. And Bluewater, certainly in terms of what you had been saying at paragraph 38 before your correction, was an entity which you understood to be associated with Mr Berezovsky and Mr Patarkatsishvili?

A. No, I did not understand that at the time. I had no knowledge of that.

Q. Now, as we've already discussed, Espat is of course the company that sat atop of Madison, and Madison was, of course, the company that sat atop and held 50 per cent of the Rusal group, including both Rusal and Rual Trade Limited, correct?

A. Espat was temporarily interposed as parent of Madison, and the reference to Madison holding both Rual and Rusal at that point in time was only focused on Rual Trade.

Q. Sorry, but Madison did hold both Rual and Rusal, correct?

A. I didn't know about Rusal.

Q. Okay. Now, we can see from the third paragraph of this letter that you were also representing to Curtis & Co that Espot would:

"... fund this dividend payment from a dividend entitlement from its 100 per cent owned subsidiary Madison ..."

A. Yes, indeed.

Q. And you can see from the third paragraph of the letter that you were also representing to Curtis & Co that Madison would in turn fund this dividend payment from a dividend entitlement arising from its 50 per cent shareholding in Rual Trade, a company which you describe as the trading arm of Rusal group?

A. Yes, indeed.

Q. Now, can we just have a look at paragraph 8 of your witness statement where you explain how this is going to work.

A. Coming back on an earlier question, I would like to point out that the reference to "entities associated with Mr Patarkatsishvili and ... Mr Berezovsky", in paragraph 38 E2/09/282, is all in connection with a discussion of a transaction in 2004, while the dividend declaration that I'm referring to earlier in my witness statement happens in 2003, so there was no intention whatsoever to associate one with the other.

Q. Well, I understand that, Mr De Cort, and I understand why it gave rise to sensitivities in 2004. But just looking at paragraph 38 again E2/09/283, and I don't for a moment dispute that that is the context in which you mention it.

What you say, and it's about being concerned about warranting the beneficial ownership of shares held by Madison, was that you had a concern about it because you understood -- you say:

"... given that based on my own involvement with the source of funds letter for Blue Waters ... I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and ... Mr Patarkatsishvili."

You see, that is why you say you have a sensitivity about making this representation about beneficial ownership, because you understood these entities were associated --

A. No, the sensitivity was -- results from the fact that the shareholding had been transferred to a third party outside Mr Abramovich's control.

Q. All right, we will come back to that in detail, but can we just have a look at paragraph 8 for the moment E2/09/271. You see, in paragraph 8, you're talking

about how -- what you were describing in the letter of 8 August 2003 was to operate, just going about eight lines down. You say that you recall specifically having it explained to you that:

"... temporary transfers of ownership would be involved such that Espat was to be appointed on a temporary basis as the 100% owner of Madison to receive the dividends, and that Blue Waters would in turn become the temporary shareholder of Espat which would declare a dividend to Blue Waters."

Do you see that?

A. Yes, I see that.

Q. And then you go on to say that:

"In order to achieve this, Espat's 50,000 bearer shares would be transferred into the ownership of Blue Waters on a temporary basis and then re-transferred once the dividend had been declared."

A. Yes, indeed, I see that.

Q. Do you say that the same was to be done with regard to Madison, Mr De Cort; were the bearer shares that had been transferred on a temporary basis to Espat going to be retransferred once the dividend had been declared?

A. That was my understanding, yes.

Q. And to whom were the bearer shares in Madison going to be retransferred, Mr De Cort?

A. I had at that point in time no understanding of that but I assumed it was Mr Abramovich.

Q. Is that how it worked in practice, Mr De Cort, to the best of your knowledge? Presumably these share transfers did take place?

A. These share transfers were actually documented, yes.

Q. So you say they did take place because, if they didn't, otherwise the representations you were making to Curtis & Co in the source of funds letter would have been false, would they not?

A. That is correct.

Q. And so you knew, did you not, Mr De Cort, as a result of the Blue Waters dividend transaction and your involvement in it that you could not subsequently provide any warranty to the effect that Mr Abramovich had, since 15 March 2000, been the sole ultimate beneficial owner of Madison or, through Madison, the Rusal group?

A. That was indeed a concern.

Q. And that is what you say at paragraph 38 of your witness statement E2/09/282. We've just had a look at that, haven't we, Mr De Cort?

A. Yes, indeed.

MR RABINOWITZ: I don't know whether your Ladyship was proposing to take --

MRS JUSTICE GLOSTER: I'll go on for another quarter of an hour just because we were late in starting.

MR RABINOWITZ: All right.

Now we will come and deal in due course with the warranty position, but before we do can we just identify the context in which this question of providing a warranty about Mr Abramovich's ownership of Madison or the Rusal group arose.

I'm right, am I not, that you're talking here about the second Rusal sale in June and July 2004, and Mr Hauser's insistence that his principal, Mr Deripaska, should have confirmation of the ultimate beneficial ownership of Rusal Holdings Limited from March 2000 up to the date of transfer?

A. Yes, that is correct.

Q. Just for the record, Rusal Holding Limited had by this time come to replace Madison, and Mr Deripaska's company Eagle Capital Group, as the intermediate holder of the six BVI companies through which the Russian Aluminium interests were held, is that right?

A. I'm sorry. (Pause)

I understood Rusal Holding at that point in time to be the entity that overall owned the aluminium assets. I didn't do any particular diligence as to how the restructuring took place.

Q. Let's just go then if we can to paragraph 38 of your witness statement, page 282 E2/09/282, it's five lines up from the bottom. Again:

"An additional concern was in regard to warranting the beneficial ownership of shares held by Madison in particular, given that based on my own involvement with the source of funds letter for Blue Waters ..."

Just pausing there, the source of funds letter is the one we've just looked at, isn't it, the 8 August letter?

A. Yes, indeed.

Q. Then we have the bit that you've corrected:

"I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and/or Mr Patarkatsishvili."

Then you say this:

"Although I was not involved in the specific mechanics concerning those payments, I was generally aware of them from my participation in providing the source of funds letter described above and thus had to tread carefully with regard to any requested warranty concerning [the] beneficial ownership of shares held by Madison. For [this reason], in a follow-up email sent to Mr Hauser --"

A. I'm sorry, I have to correct you, it says "for these reasons".

Q. I do apologise.

"For these reasons, in a follow-up email sent to Mr Hauser on 17 June 2004, I stated that there would be no warranties about beneficial ownership."

Okay?

A. Yes, I see that.

Q. Let's just see if we have understood this correctly.

Your point here is that you were concerned in 2004 about providing historical warranties of ownership of Madison, in particular from 15 March 2000, correct?

A. I generally had an adverse reaction to giving a historic warranty. In all my years of practice, I've never seen anyone ask for a warranty of title historically in connection with a transfer of shares.

Q. Just see if I can get my question answered: your point here is that you were concerned in 2004 about providing historical warranties of ownership of Madison, in particular from 15 March 2000, is that correct?

A. Actually we're not referring to beneficial ownership of Madison, we're talking about beneficial ownership of the Rusal shares.

Q. All right, but subject to that?

A. Subject to that it's correct, yes.

Q. Thank you. And that concern you say arose in part out of your involvement in the 8 August 2003 source of funds letter, correct?

A. Yes, that is correct.

Q. And in particular, it arose out of the fact that you had been involved in producing a letter which concerned the payment of dividends declared for benefits plainly not associated with Mr Abramovich, leave aside whether you knew that they were for Mr Berezovsky or Mr Patarkatsishvili. Is that correct?

A. Yes, that was one of the concerns.

Q. And those --

A. Although, as I've indicated in my witness statement, it was an additional concern.

Q. Yes. I think what you're saying here is that because of this you were concerned in 2004 about providing Mr Hauser with confirmation that his client Mr Deripaska was looking for, namely that since 15 March 2000, Mr Abramovich had at all times been the ultimate beneficial owner of the remaining 25 per cent stake in the Rusal group, because you would have known that that would have been --

A. Yes, that was one of the additional concerns, indeed.

Q. Because you would have known that would have been a false representation, given what you knew about what

had happened in August 2003?

A. Yes, indeed.

Q. At the very least.

Now, the other difficulty which you refer to at paragraph 38 of your witness statement E2/09/282 was compounded, was it not, by another difficulty which arose at the time, Mr De Cort, and that's the Rich Brown correspondence, do you recall that?

A. The Rich Brown correspondence, I only vaguely recall it, but, yes, I do -- I think you remember -- do you mean to the other letter that you --

Q. Indeed.

A. I only vaguely recall it. I didn't -- it was only in the disclosure here that I -- my attention was drawn. I didn't have any particular recollection of it without having seen the documents.

Q. But you were involved in that?

A. I had -- it is obvious that I might have looked at that, or that I probably looked at that at the time, yes.

Q. That was, of course, an attempt by Mr Jacobson of Curtis & Co to get you to produce another letter similar to the one that you had produced for Blue Waters?

A. As far as it can derive from the documents disclosed, yes, indeed.

Q. Now, can we then just look -- my Lady, I'm going to move

on to a slightly different part of the story. I'm very happy to keep going but --

MRS JUSTICE GLOSTER: Okay, I'll take a break now. Ten minutes.

(11.40 am)

(A short break)

(11.57 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr De Cort, just one last point in relation to the Rich Brown correspondence that arrived, I think, at the very same time as you were engaged in drafting the second Rusal sales transaction, and Mr Hauser was pressing you for warranties concerning the beneficial ownership of the Rusal group since 15 March 2000. Do you recall that Mr Jacobson of Curtis & Co was writing, chasing for the letter, the source of funds letter?

A. I don't think he was writing to me but, as I said, until I see the -- saw the disclosure here I've not entirely remembered this second request for a letter for Rich Brown.

Q. Ms Khudyk in her evidence says that she passed the correspondence on to you to deal with?

A. That is very well possible.

Q. Do you recall that the amounts that were involved in the Rich Brown source of funds letter was -- I think it was

\$127.5 million?

A. I don't recall but I'm not disputing that.

Q. My question is really this: would you not have been concerned to know who was behind that transaction, given again the amount of money involved?

A. As I said, I had no recollection from that except for the correspondence that's been disclosed, and I don't deny that I might have looked at that at the time, but I have no recollection about it.

Q. Very well. Let's move then to 2004 and your involvement with the second Rusal sale.

Can I perhaps begin by just asking you to look at a couple of newspaper articles which appeared in the Russian press just before you became involved in the second Rusal sale, and about which you say you have a vague recollection.

Can you go, please, to bundle H(A)74 at page 127 H(A)74/127.

Now, you should have in front of you an article from Vedomosti dated 2 June 2004. Do you have that?

A. Yes, I do.

Q. You can see that the article is entitled:

"Berezovsky does not agree with the sale of shares [in] Russkiy Aluminiiy."

Do you see that?

A. I see that.

Q. Then if you look at the first paragraph, below the italicised introduction, we can see that the article starts by saying:

"As the Vedomosty has learnt Roman Abramovich, Chukotka Governor, is going to sell his remaining shares in RusAl to his partner Oleg Deripaska. However for the deal to be successful Abramovich has reached an agreement with the oligarch in disgrace Boris Berezovsky. The negotiations will be difficult: the partners have clash of opinions on the number of RusAl shares belonging to Berezovsky."

You see that?

A. I see that.

Q. Then if you look at the next paragraph, we can see what the clash of opinions was:

"As the Vedomosty has learnt Oleg Deripaska can become a sole owner of RusAl within this month. A source close to Abramovich says that the sale to Deripaska of 25% RusAl shares remaining under control of Millhouse Capital has been practically decided and the deal can be closed within a month. However the source has specified that Abramovich does not control the entire 25% holding, the final beneficiaries of its 15% are the disgraced oligarch Boris Berezovsky and his

friend and old business partner Badry Patarkatsishvili that is why the deal conditions should be agreed... with them as well."

I take it you're not able to shed any light on whom the source close to Mr Abramovich might have been, are you, Mr De Cort?

A. No, I have not seen this article until it was produced in these proceedings.

Q. So this is not one of the articles you have a vague recollection of seeing?

A. No, it was an English language article, and I understand there is an article in the Moscow Times that's in these proceedings and I assume, but I'm not 100 per cent sure, but I assume it would have been that article.

Q. We'll have a look at that shortly.

Just skipping over the next paragraph which deals with the first Rusal sale and Mr Deripaska's pre-emptive rights, you see that Vedomosti claims to have spoken to another source. The article continues:

"One more source ..."

Do you see that paragraph?

A. Mm-hm.

Q. "One more source close to the shareholders of this company confirmed to the Vedomosty the information that Berezovsky is the owner of 15% RusAl shares. For a long

time Berezovsky kept claiming that he had a stake in Rusal, without specifying its amount. Rusal and Base Element emphatically deny any connection with Berezovsky."

Again, I take it you don't know -- you can't shed any light on who that source is?

A. No, not at all.

Q. Just looking at the next paragraph, we can see what Mr Berezovsky's response is:

"Yesterday the disgraced oligarch said to the Vedomosty that Badry Patarkatsishvili and he owned not only 15% but all 25% [of] RusAl shares [remaining] under Millhouse management and he had no intentions to sell them."

Then in the next paragraph, various quotes from Mr Berezovsky, he says:

"'Nobody has talked to me, I have received no offers from Abramovich and Deripaska' ..."

Then:

"'Though the shares belonged to him (Abramovich) and he independently conducted negotiations I believe it incorrect. It destroyed the balance (between the shareholders) and allowed Deripaska to form a controlling stake'."

The article then notes that Mr Berezovsky said that

he:

"... reserved [the right] to challenge the deal in Court."

Do you see that?

A. I see that.

Q. You had as of 2 June 2004 moved to Millhouse's London office and taken up your position as legal counsel to Millhouse. That's correct, isn't it?

A. That is correct.

Q. And this article surely would have been brought to your attention, wouldn't it, Mr De Cort?

A. No, this article was not brought to my attention.

Q. A possible threat of legal proceedings had been made by Mr Berezovsky arising out of the way in which the first Rusal sale had been handled, and you say that it wouldn't have been brought to your attention?

A. No, this has not been brought to my attention.

Q. Another article, I think you say, was brought to your attention, or at least other articles were brought to your attention, I think that's what you say at paragraph 29 E2/09/279, is that right?

A. My meeting with Mr Hauser, yes, he referred me to an article, an English language article, which I believe might very well have been the article that was published in the Moscow Times.

Q. You say at paragraph 29, on page 279 E2/09/279:

"I have a vague recollection from that period of press reports referring to claims by Mr Berezovsky to a share in Rusal."

You say:

"One of [the] reports may ... have been the Moscow Times report ... which has recently been drawn to my attention."

A. Yes, "recently", just meaning like I didn't remember it was the Moscow Times, so...

Q. Now, if you still have the article in front of you, the Vedomosti one, you see there's a quote from Millhouse.

It says:

"Millhouse manages 25 per cent of RusAl shares as before. We cannot disclose who the beneficiaries of this holding are, though [they're] neither Berezovsky, nor Patarkatsishviliy among them."

Do you see that?

A. Yes, I see that.

Q. You see, Mr De Cort, whatever was being said here, you knew because of your involvement in the source of funds letter in August 2003 that there was some connection between Madison and the Rusal group and Mr Berezovsky and Mr Patarkatsishvili, did you not?

A. No, I did not.

Q. I suggest that that is the position because you knew, as you had been saying at paragraph 38 E2/09/282, that Mr Berezovsky and Mr Patarkatsishvili were connected to Blue Waters?

A. No, that is a misconstruction of my words.

Q. Now, the other newspaper report that you referred to, Moscow Times, of 3 June 2004, you can see at bundle H(A)74 at page 129. H(A)74/129

A. Yes, I see that.

Q. And just remind yourself of it, Mr De Cort.

This is the article, is it, that you recall seeing?

It's the one you refer to at paragraph 29 E2/09/278?

A. I assume that that might have been the article, yes.

Q. And, again, you can see in the article that Mr Berezovsky is indicating not only that he had 25 per cent but that he's reserving -- he's making it clear that he might challenge the Rusal transaction in court, isn't he, Mr De Cort? Fourth paragraph from the end he says that. He says he could appeal the transaction in court?

A. Yes, I see that.

Q. As the head of Millhouse's international legal department that would have been a matter of some concern to you, wouldn't it?

A. Yes, as I say, this -- that article was drawn to my

attention during my meeting with Paul Hauser on 15 June, yes, and it was a matter of concern.

Q. Did you speak to anyone at Millhouse about it?

Mr Tenenbaum or Ms Panchenko or Ms Khudyk?

A. From what I've been able to reconstruct, I know that I had discussions internally. From what I've been able to reconstruct, we had discussions internally, and it's also clear from the correspondence, including the correspondence that had been disclosed on Friday.

Q. Yes, because we know that you did subsequently ask Mr Tenenbaum whether Mr Abramovich could give a warranty to Mr Deripaska that these claims which Mr Berezovsky had advanced in the press in relation to Rusal were baseless, do you recall that, Mr De Cort?

A. Can you point me to the document, please?

Q. Can you go, please, to bundle H(I) tab 10, page 39.

My Lady it's a new bundle which has been added to Magnum. These are the documents which were disclosed very late on Friday night. H(I)/10/39.

A. Yes, I see that.

Q. This is an email from yourself to Mr Tenenbaum dated 12 July 2004, and you say this towards the end of your email:

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

And that is obviously a reference, is it not, to the claims that we've seen in the press about Mr Berezovsky having 25 per cent?

A. Yes, indeed.

Q. If you then turn to the next tab, tab 11, page 42 H(I)/11/42, again this is one of the documents we received on Friday night.

A. Yes, and I think Mr Tenenbaum's answer is quite unequivocal, it says:

"It has no basis."

Q. I think he says:

"I don't think we should say that it has no basis."

A. No, you are misreading it. My email has two paragraphs, the first paragraph doesn't request a comment, the second paragraph has two prongs to it, and Mr Tenenbaum responds to both prongs of the second paragraph of my email:

"... are we willing to give it ..."

His answer is:

"I don't think we should say that."

Full stop.

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

He says:

"It has no basis."

Q. I suggest to you that what you are asking him here is:

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

And he is saying:

"I don't think we should say that it has no basis."

And that the full stop is a typo.

A. No, that is not what it says, you are misreading the punctuation.

Q. All right. Well, I don't want to debate that with you.

A. I think it is very important.

MRS JUSTICE GLOSTER: There is a full stop, is there?

A. There is indeed a full stop, my Lady. I think Mr Rabinowitz is entirely misconstruing this correspondence.

MR RABINOWITZ: You see, I suggest to you that if he meant what you say he meant it's difficult to see why he should have started the email by saying:

"I don't think we should say that."

A. It is very clear, I think, what it says.

I am asking, as regards the second paragraph, two questions:

"... are we willing to give it ..."

And he says:

"I don't think we should say that."

And:

"... are we willing to state that the claims ...  
have no basis?"

And he says:

"It has no basis."

These are two separate questions -- two separate  
answers, separated by a full stop. How much clearer can  
it be?

Q. I'll tell you why I disagree with you, Mr De Cort, for  
what it's worth. The "I don't think we should say that"  
responds to what you asked him about saying. And what  
you've asked him about saying is to state that the  
claims in the public domain have no basis.

Otherwise he would have said, "I don't think we  
should give it," not "I don't think we should say it."  
But again that's a matter of interpretation and I don't  
want to spend any more time with you on this.

A. I definitely disagree with your interpretation. That's  
not the way I understood it.

Q. All right. Can we at least agree on this, that  
ultimately you did not give any warranty or  
acknowledgement to Mr Deripaska that the claims in the  
public domain had no basis, did you, Mr De Cort?

A. No, because they had no basis we didn't want to give  
them any credibility by even referring to them.

Q. Well, it doesn't give them credibility by referring to

them and saying "it has no basis," in fact it removes --

A. Actually we need to go back, we need to go back to when I was writing to Mr Tenenbaum.

Q. Well, it's set out at the bottom of the email that you have at tab 11, isn't it?

A. No, it's the attachment to tab 10, second paragraph, starting at the end of the second line H(I)10/40:

"... other than any that are in the public domain, no Claims were properly asserted in respect of the [Rusal] shares ..."

So I make a carve-out regarding -- I propose a carve-out regarding the claims in the public domain, and he says they have no basis, we shouldn't even say that.

MRS JUSTICE GLOSTER: I don't think we've got the attachment, have we?

A. Yes, it is at tab 10, the second page. It's H(I)10/40.

Q. Can you just repeat that answer, Mr De Cort? I think we're all struggling to see where you're referring to.

A. The second paragraph of the attachment, at the end of the second line -- there's two elements to this thing:

"To [my best] knowledge and belief ..."

And then he talks first about encumbrances on the first line and the beginning of the second line, then he

goes on in the end of second line and in the third line about claims. As regards claims, what we're saying is that:

"To the best of my knowledge and belief ... other than [those] that are in the public domain, no Claims were properly asserted ..."

That was the proposed language. And the response of Mr Tenenbaum is that the claims have no basis and we should not say that.

- Q. But Mr Berezovsky's claims were in the public domain, were they not?
- A. Yes.
- Q. So you seem to be saying, other than those in the public domain there were no claims which were properly asserted? Isn't that suggesting that you were accepting that Mr Berezovsky's claims were properly asserted?
- A. That was my proposal to limit the liability of Mr Abramovich in respect to the warranty he gives. And the response, the instructions, this is the conservative approach of me as a lawyer, the instructions that I get from Mr Tenenbaum is that those claims have no basis whatsoever so we should not make that carve-out.
- Q. But we can agree with this, that ultimately you did not give any warranty or acknowledgement to Mr Deripaska that the claims in the public domain had no basis, did

you, Mr De Cort?

A. We need to go back then to the final documentation.

This was not to Mr Deripaska, this was to Eagle Capital, I believe. I need to go back which document. But the claim -- sorry, excuse me, the warranty regarding encumbrances and claims was not in the document -- in the deed of acknowledgement, it was in other documents. And indeed there is no carve-out for claims in the public domain.

Q. Indeed. So you did not give --

A. No, we gave actually a full warranty about no claims.

Q. The claims in the public domain having no basis?

A. No, if you read it correctly what I was proposing is we were asked for a warranty that there were no claims. I wanted to carve out from that warranty the claims in the public domain so that we would not give a warranty about those.

Mr Tenenbaum says we should not carve that out and we should give a flat no claims warranty, which is eventually what happened. And the reason he said that is that the claims in the public domain, my wording that I had proposed gave them some credibility while his position was they have no basis whatsoever, therefore we should not carve them out from our warranty.

Q. You see, I suggest that you were well aware, and indeed

Mr Tenenbaum was well aware, that there was a basis to these claims and that is what explains why Mr Tenenbaum is telling you, as I suggest he is, that we should not say that it has no basis, but you disagree with that, do you?

A. I disagree with that because, eventually, we did give a warranty that there are no claims.

Q. Very well.

Now, you tell us, this is at paragraph 23 of your statement, three lines down E2/09/277, that on 11 June 2004 you received two documents via email from Mr Mishakov who, as you explain, led Mr Deripaska's team and worked closely with Mr Deripaska, correct?

A. I don't -- yes, indeed.

Q. Can we just have a look at H(A)74, page 223, which is one of the two documents that you received H(A)74/223.

A. Yes, I'm there.

Q. Can you confirm that this is one of the two documents that you received from Mr Mishakov?

A. It looks like it, yes.

Q. This is a transaction chart that Mr Mishakov, Mr Deripaska's lawyer, the lawyer leading his team, had produced, and you can see that the top half of the page shows the transaction structures, a series of boxes and numbered steps, do you see that?

A. Yes, I see that.

Q. And the numbered steps are then explained in the bottom half of the page, do you see that?

A. Yes, I see that.

Q. And just can you help me with this, can we just identify which companies are named in the boxes on the page? RH Limited at the bottom, that's a reference to Rusal Holding Limited, is it not?

A. Yes, it is.

Q. And again you'll tell me if I'm wrong, but Rusal Holding Limited was the holding company which since September 2003 held 100 per cent of the stake in the Rusal group, that is both Rusal itself and its trading arm Rual?

A. I don't know these details, but it is in my view the top holding company of whatever the Rusal group is, yes.

Q. All right. And as a result of the first Rusal sale, 75 per cent of Rusal Holdings was by the summer of 2004 held by Mr Deripaska's company, Eagle Capital Group, that's right, isn't it?

A. I assume so, yes.

Q. And ECG on the left-hand side is a reference to Eagle Capital Group?

A. That is correct, although the chart doesn't indicate that it owns the other 75 per cent, but yes.

Q. No, that's right. Now, the remaining 25 per cent, that's to say the 25 per cent not held by ECG, was held in the summer of 2004 by M, that's the bearer share BVI company that we saw featured in the source of funds letter; that's right, is it not?

A. That is Madison, yes, indeed.

Q. And M is Madison, thank you very much for that.

In broad terms, the purpose of the second Rusal sale was ultimately to transfer the remaining 25 per cent stake which Madison held in Rusal Holdings Limited to ECG, Mr Deripaska's company, Eagle Capital Group, that's right, isn't it?

A. That is correct, yes.

Q. But the shares were not to pass directly from Madison to Eagle Capital Group, were they, Mr De Cort, just looking at this chart? You can see that they were first to pass through two other companies identified as P and Beneficiaries' Company, correct?

A. That is correct.

Q. And that was so, was it not, Mr De Cort, even though Eagle Capital Group had a right of pre-emption under the deed of pre-emption of 2003?

A. That is correct. This is all part of an arrangement between the three parties.

Q. And that is why there had to be a waiver by ECG of its

pre-emption rights which we see in this diagram is the arrow identified as step three in the process. You can follow that point if you look at note 3.

A. Yes, that is correct.

Q. The point is also picked up at note 3 at the bottom, is it not?

A. Yes, that's correct. If I'm not mistaken, the waiver was conditional or it was drafted in such a way that the shares couldn't actually leave. They would eventually end up with ECG. I forget the exact wording but that was the concept at least.

Q. Now, P -- again, tell me if I'm wrong -- that was to be a parent company which sat above Madison, something like Espat?

A. Yes, a temporarily appointed parent company, indeed.

Q. So step one involved the stake in Rusal being passed by Madison to its parent, correct?

A. Yes.

Q. And then at the second stage, P Company, was to pass the 25 per cent stake in Rusal Holding on to the Beneficiaries' Company, correct?

A. Yes, indeed.

Q. And this is not in Mr Mishakov's note but can you just confirm that, initially, the Beneficiaries' Company was intended to be a company called Finance & Investors or

F&I?

- A. It was not identified at this stage, it was much later that it was identified as Finance & Investors, yes, initially.
- Q. And in fact because of problems I think with F&I's holding structure in the Marshall Islands, a different company called Cliren came to be used?
- A. I don't know what the reason was but indeed a different company called Cliren came to be used.
- Q. And in due course, in the draft sale documentation which we're about to look at, what is referred to here as the Beneficiaries' Company was often simply referred to as B, was it not, Mr De Cort?
- A. I believe that's correct, yes.
- Q. So just again looking at this, steps one and two are the transfer of the 25 per cent stake in Rusal Holding from Madison via the parent company to the Beneficiaries' Company, that's right?
- A. That is correct.
- Q. And then step three was to be the waiver of Eagle Capital Group's pre-emption rights?
- A. That is correct.
- Q. And then step four, which we can see is what Mr Mishakov wanted as explained in the numbering below, was a guarantee from RA -- that's Mr Abramovich, isn't it,

Mr De Cort?

A. Yes, indeed.

Q. We can see that the guarantee that Mr Abramovich was to provide was a representation and warranty that the beneficiaries -- and I'm looking now at note 4 -- the beneficiaries, B&B, are the ultimate beneficiaries of 25 per cent of Rusal Holding's shares. Do you see that, note 4?

A. Yes, I see that.

Q. I'll come back to that in a moment, Mr De Cort. But working through the diagram, the next step, step five, was to be the share purchase agreement between Eagle Capital Group and the Beneficiaries' Company, correct?

A. Yes, indeed.

Q. And by this, the Beneficiaries' Company would sell the 25 per cent stake in Rusal Holdings to Eagle Capital Group, correct?

A. Correct.

Q. And by that way the Eagle Capital Group, owned by Mr Deripaska, would ultimately end up with 100 per cent of the ownership of Rusal Holding?

A. That is correct.

Q. And then, just looking at the sixth and final step, this, as we see if we look at the notes, point 6, was for a release to be executed by the Beneficiaries'

Company jointly with the beneficiaries B&B, in which they would warrant that they were the beneficiaries of 25 per cent of Rusal Holdings and by which they would release Eagle Capital Group, Rusal Holding and Mr Deripaska from any claims relating to the establishment and management of Rusal Holdings?

A. Yes, I see that.

Q. And you received this memorandum, you tell us, via email from Mr Mishakov on 11 June 2004. That's right, isn't it?

A. I believe that to be correct, yes, together with the memorandum of Paul Hauser dated 9 June, also addressed to Mr Mishakov.

Q. We can see that second document, Mr Hauser's memorandum, if you go to page 219 H(A)74/219 and just briefly look at that.

A. Yes, I see that.

Q. That is, as you see, the memorandum dated 9 June 2004 which was sent by Mr Hauser to Mr Mishakov, correct?

A. Yes, indeed.

Q. This is what Mr Mishakov then sends on to you and we can see from the first paragraph that Mr Hauser says that this memorandum summarises the procedure by which the 25 per cent stake of "Rual Holdings" and I think that's a typo for Rusal Holdings because there was no Rual

Holding Company.

"... owned ... Madison ... would be sold to Eagle Capital Group..."

That's right, isn't it?

A. I can see that about the typo. I leave it up to you but it's probably likely a typo, yes.

Q. Mr Hauser says that his memorandum is intended to supplement Mr Mishakov's transaction diagram that we've just been looking at, which Mr Mishakov had sent to Mr Hauser earlier in the day. Do you see that?

A. Yes, I see that.

Q. That's why I suggest it's pretty clear that the reference to Rual should have been a reference to Rusal.

A. Yes, it's very likely, yes.

Q. Then just looking at what Mr Hauser says in bullet point 1, he says:

"We are advised [Mr Hauser and Mr Mishakov have taken instructions from someone] that Madison ... has bearer shares, all of which are currently in the possession of its parent [company] ('P'). The shares of P would be transferred to a company ('B') which is owned by ... ultimate beneficiaries ..."

Who Mr Hauser refers to as "BB", do you see that?

A. Yes, I see that.

Q. And I don't want to spend time going through this whole

document with you, Mr De Cort, but we can see --

A. I am broadly familiar with it.

Q. All right. We can see that there are further references by Mr Hauser in this memorandum to "BB". For example, if you look at bullet point 5 over the page H(A)74/220, you see towards the end that he's talking about a guarantee to be given by "each of BB", do you see that? "... on the part of B, the selling company", the penultimate line of point 5?

A. Yes, and so BB refers to the beneficiaries of company B.

Q. Yes. But there's plainly more than one that he has in mind?

A. Yes, he uses a plural.

Q. Yes. You see it again at bullet point 6, there's a reference to "any of BB", "it is expected that each of BB". He says --

A. Yes, he used the plural tense.

Q. And just looking at the italicised bit below point 6, bullet point 6, Mr Hauser says:

"We would expect to prepare Deeds of Release and Indemnity to be executed by each of BB [et cetera] ... to include an assurance that BB were the only persons who have ever been beneficially entitled to the Shares."

Now, it's fairly clear that when Mr Hauser is referring in his memorandum to the persons he refers to

as BB, those are the same persons which Mr Mishakov identifies on his diagram as the beneficiaries B&B. I think that reflects your own evidence?

A. It looks like that, yes. I just would like to note that this memorandum and the structure chart does not include any input from anyone on our side. This was purely done on Mr Deripaska's side.

Q. I was going to just check that with you. When Mr Hauser says at the start of his memorandum "We are advised", that advice hadn't come from you; that's what you're saying, is it?

A. That did not come from me, no.

Q. All right.

A. I had not spoken with Mr Hauser at that point in time, I believe.

Q. All right but you would have received this document from Mr Hauser?

A. No, I didn't receive it from Mr Hauser, I received it from Mr Mishakov.

Q. Indeed but you would have received Mr Hauser's document --

A. Yes, indeed.

Q. And when you received this document from Mr Mishakov, who did you believe Mr Mishakov and Mr Hauser were referring to when they referred to B&B or BB as the

ultimate beneficial owners?

- A. I don't think I paid particular attention at that point in time to this aspect of the transaction. I was focusing on how the shares moved around.
- Q. Are you really saying that you gave no thought at all to who it was they were saying were the beneficial --
- A. The very first time that I received this memorandum I did not pay any attention to this at all. I think I probably at first might have paid attention to this after my meeting with Mr Paul Hauser.
- Q. So you'd previously seen newspaper reports which suggested that --
- A. No, I had not seen previously newspaper reports. The newspaper reports were presented to me by Mr Hauser during our meeting.
- Q. Mr De Cort, I had understood from your evidence that you had seen the Moscow report, Moscow Times report of 3 June?
- A. No, it was Mr Hauser that brought it to my attention.
- Q. And when that had been brought to your attention, you understood that the reference to B&B were to Mr Berezovsky and Mr Patarkatsishvili?
- A. I now don't have any particular recollection but it is very possible that I could have understood it that way, yes.

- Q. It's fairly obvious that you would have understood it that way, isn't it?
- A. Yes, I said it's very likely that I would have understood it that way.
- Q. And what did you do at that stage to find out more about the position in relation to B&B as beneficiaries of this 25 per cent of Rusal, Mr De Cort?
- A. We had some internal discussions and I was told at some point in time clearly that the Rusal shares belonged to Mr Abramovich. They were being passed along to Mr Patarkatsishvili to compensate him for his involvement and that there was no truth to Mr Berezovsky's claims.
- Q. Mr De Cort, if you really had had those discussions and you really had been told by someone internally that there was no truth to the claims and therefore no basis for any reference to B&B as being the beneficiaries of these shares, can you explain why it was that you did not immediately go back to Mr Mishakov or Mr Hauser and explain that the memoranda that they had produced were just completely wrong?
- A. I'm sure that I addressed the issue of the ownership of the shares with Mr Hauser at some point and then the discussion all turned around to warranties that would be given.

Q. You see, Mr De Cort, it's absolutely plain from the documentation that you do not at this stage go back, either to Mr Mishakov or to Mr Hauser, and say: you have completely misunderstood, there are no beneficiaries sitting behind this 25 per cent stake, it is all owned by Mr Abramovich. But we find nothing at all from you passing at this stage to either Mr Mishakov or Mr Hauser to that effect.

A. I'm sure that I've passed the information on to them and that it was made clear, but the focus of our attention was on the warranties that were going to be given in this transaction.

Q. You see, there is no correspondence saying -- no documentation at all saying that that is what you have told them.

A. I disagree with that.

Q. All right. Can we next then, please, go to bundle H(A)75 and turn to page 37 to see what happens next H(A)75/37.

Now, you should, I hope, have at H(A)75, page 37 a document headed "Document Diary for Documentary Closing". Do you have that, Mr De Cort?

A. Yes, I have that.

Q. Were you the author of this document or do you think it was more likely produced by Bryan Cave, Mr Hauser?

- A. I was definitely not the author of this document. I'm not even sure I saw it at the time.
- Q. It has come from your disclosure though, do you see that?
- A. Yes, but I believe that that might have been provided to us at some point in time by people acting on behalf of Mr Patarkatsishvili, in connection with these proceedings. By the -- on the side of Mr Anisimov, I'm sorry.
- Q. I think if that were so, it would have a reference to the Anisimov defendants in the disclosure --
- A. No, what I'm saying, that it was provided at some point in time to us as a courtesy and eventually then ended up in our disclosure.
- Q. Now, we can see that as at 10 June 2004, when this document diary was produced, it was envisaged that a number of documents would have to be drawn up. Do you see that?
- A. Yes, I see that.
- Q. The purpose of this document diary appears to have been to identify those documents which needed to be produced and to assign the initial drafting of them to a particular party. Do you see that? That's correct, isn't it?
- A. That is obvious from the document, but I just want to

clarify that prior to these proceedings I had not seen this document.

Q. All right. But just see if you can help us with some things which arise out of this document. If you look down the right-hand column, headed "Responsible Party", you can see that the task of drawing up the document has been allocated to various people. Can you help us with this, Mr De Cort? "MH", that's likely to be a reference to Millhouse, is it not?

A. Yes, it is.

Q. And that is obviously an indication that your team -- it was envisaged that your team would have the task of drawing up that particular document, you would agree with that presumably?

A. By whoever was preparing the document, yes.

Q. And "Basel", you see that in the fourth box down, that is likely to be a reference to Basic Element, that's Mr Deripaska's company, correct?

A. Yes, indeed.

Q. And "Salford", they were assisting on Mr Patarkatsishvili's side at this time with the documentation of the transaction, were they not, Mr De Cort?

A. I was never aware of any involvement by Salford.

Q. Okay.

Now, again, just looking at the diary, still on page 37, you can see that it was envisaged that a number of parties would be required to enter into the contract. "RA", that's obviously a reference to Mr Abramovich, is it not?

A. I assume so, yes.

Q. And you see references to "B Co[mpany]" under "Sale of RH Shares to ECG," that would obviously be a reference to the Beneficiaries' Company that we saw on Mr Mishakov's chart, correct?

A. That is likely, yes.

Q. And "M" again would be Madison.

A. I would assume so, yes.

Q. And "P" would be Madison's parent, it's the same as the chart --

A. I assume so, yes.

Q. And "OD", which I'm not sure appeared on the chart, that is obviously a reference to Mr Deripaska?

A. That would be logical indeed, yes.

Q. Then do you see there are also references to "B1" and "B2", for example towards the -- the third or fourth last boxes on the page. B1 gives a guarantee, B2 gives a deed of guarantee, do you see that?

A. Yes, I see that.

Q. You see it again in box --

- A. I don't think I had seen the references to B1 and B2 before these proceedings.
- Q. Again one sees references to B1 and B2 on the following page, box 8.
- A. Yes.
- Q. And again, under "Delegation of Authorities" there's a reference to B2 authorising B1 to enter into the negotiations and agreement on his behalf, do you see that?
- A. I see that, yes.
- Q. Again, would you accept that it is reasonable to assume that B1 and B2 here were the same B&B, or BB, that we've seen identified in the other documents produced by Mr Mishakov and Mr Hauser?
- A. That is possible. As I said, I had not seen this document before these proceedings.
- Q. If you go to document number 11 H(A)75/38.
- A. Yes.
- Q. You see it says:
- "RA Deed or Release and Indemnity in favour of RH and its affiliates including an assurance that B1 and B2 are the only persons who have ever been beneficially entitled to RH shares."
- A. I see that.
- Q. Again that strongly suggests that that would be the BB

or the B&B because we saw from Mr Mishakov's --

A. Yes, it is likely that.

Q. And just looking at the last box, page 38, you can see that it was envisaged that a general power of attorney would be issued by B2 in favour of B1 authorising him to act on B2's behalf and to execute any agreements, do you see that?

A. I see that, yes.

Q. And you can see why that is needed if, for example, just looking back up the chart at box -- sorry, at document 8, page 38, you see that B1 is identified in the second box as being the signature person. In order to see what I mean by signature person you have to go back to page 37. The second box along identifies the signature person. And if you look at box 8, you will see that B1 is signing for B2.

A. Yes, indeed.

Q. So would you agree at least with this, that it's plain at this stage that it was envisaged by the author of the document that two ultimate beneficiaries were involved although one would be executing documents for and on behalf of the other, correct?

A. That is correct.

Q. Although I think we know that in fact no power of attorney was ever procured from Mr Berezovsky

authorising Mr Patarkatsishvili to execute deeds in relation to this transaction for or on his behalf, that's right, isn't it?

A. Not that I know of, yes.

Q. Can we just perhaps look at another document that was circulating at around this time, Mr De Cort, one with your mark-up on it. Can you go please in the same bundle to --

A. Page 155?

Q. -- 155, very good. You've done your homework H(A)75/155.

You see that this document had been headed up "Deed of Guarantee" and was to be a guarantee provided by Mr Abramovich, but you, it appears, have changed that language and you've replaced it with the words "Deed of Warranty and Indemnity", and indeed it's no longer to be executed by Mr Abramovich but rather by Madison and Madison's parent, whoever that might be. Correct?

A. Yes, that is correct.

Q. And then just looking at footnote 1, at the bottom of the page, which is an added amendment, it's right, is it not, that that indicates to us that this is your amendment. You put a note to yourself:

"ADC to discuss with [I think it must be Ms Khudyk]."

Is that right?

- A. Yes, all those amendments in this document are my amendments. It's a marked-up version of the document that I sent back.
- Q. Thank you. And if you just look, still on this page, to clause --
- A. Excuse me, the reason for the footnote is at that point in time we were at the very beginning stages of the transaction. I had no information, I had received a memorandum from Mr Hauser and Mr Mishakov, the transaction chart, and then I received this document. So I was really -- I was looking what was going on and where shares would pass, but that's the extent of my information at that point in time.
- Q. Just looking at clause 1.1(a), which is really where you put this footnote to speak to Ms Khudyk, you were saying there:

"In consideration of [Eagle] consenting to the disposal of the shares [that's the 25 per cent stake in Rusal Holdings] by Madison and the subsequent disposal of the shares by P, M&P [that's Madison and its parent] irrevocably warrants ... to ECG that.

"(a) during the period from 15 March 2000 up to and including the B Transfer, the ultimate beneficial owners of the Business Interests (as defined in the DPO)

[that's the 25 per cent stake in the Rusal group] represented by the shares..."

And then you have this:

"... are X and Y and that X and Y have been the beneficial owners since 15 March 2000."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. Of course we have seen from the source of funds letters and the Denton Wilde Sapte attendance note that you and Ms Khudyk were both involved in the Blue Waters transaction; you had been, hadn't you?

A. If Blue Waters is the one in 2003, yes, then I was -- I mean, involved in the transaction, I provided a source of funds letter.

Q. And you understood, as you tell us at paragraph 8 of your witness statement E2/09/271, you were told at the time of that transaction that it involved a temporary transfer of the ultimate beneficial ownership of Madison, through Madison of the Rusal group to Blue Waters, that's right, isn't it?

A. Yes, that is correct.

Q. And I suggest to you that that is a company that you knew to be associated with Mr Berezovsky and Mr Patarkatsishvili but you deny that?

A. Yes, I deny that. I didn't know that at the time,

I only found it out through these proceedings.

Q. You see, I suggest that is why you're putting down a marker here, as footnote 1, to discuss this warranty further with Ms Khudyk, to check with her that the Blue Waters transaction really had just been a temporary transfer of ownership, or whether it was the case that Mr Berezovsky and Mr Patarkatsishvili had always, since 15 March 2000, been the ultimate owners of the 25 per cent of Rusal as per this warranty?

A. No, the reason I put the footnote, as I just explained to my Lady, is that I was at that point in time just getting involved in the transaction, I did not have any information at all, to check on what basis we could give such a warranty.

Q. You tell us, Mr De Cort, at paragraph 33 of your witness statement, it's at page 281 E2/09/281.

MRS JUSTICE GLOSTER: That's in the new version.

A. No, I don't think I made any changes to paragraph 33.

MRS JUSTICE GLOSTER: Well, only a very small one.

MR RABINOWITZ: Looking at the second last sentence here, you say you cannot recall whether or not you discussed this matter with Ms Khudyk or what her response was.

A. Yes.

Q. You must surely have sought instructions from her, mustn't you, Mr De Cort, given the size of the

transaction?

- A. Eventually, after my meeting with Paul Hauser, yes, I had extensive internal discussions, as is now also evident from the correspondence -- the additional correspondence that was disclosed on last Friday.
- Q. Now, just looking at paragraph 33 again of your statement E2/09/280, you say you sent these revised drafts back to Mr Mishakov on 11 June 2004.
- A. Yes.
- Q. Can we just look at the covering email of 11 June and H(A)75, page 205 H(A)75/205.
- A. Yes, I'm there.
- Q. And again, it's clear from this that when you sent this back to Mr Mishakov you didn't suggest to him that there was a complete misunderstanding, that there were in fact not any two ultimate beneficial owners separate from Mr Abramovich who had owned the 25 per cent stake in Rusal; that's right, isn't it?
- A. That's correct. As I've said, at that point in time I had no information about that whatsoever.
- Q. So Mr Mishakov would, when he received this draft back from you, naturally have assumed that your understanding was the same as his understanding, namely that there were two ultimate beneficial owners, B&B, or X and Y, as they appeared in your draft, or B1 and B2, who had been

owners of the 25 per cent of the Rusal group since 15 March 2000. It's obvious, isn't it, Mr De Cort?

A. I don't think that's obvious. He had sent me a memorandum that indicates that. I had not denied it nor affirmed it and the warranty, I just briefly changed some language, some wording of the warranty but I made a footnote saying that I have to discuss this further. So from that you can very well imply that I'm not comfortable yet with this position.

Q. In fact what you had done was to change his B&B to X and Y?

A. No, actually I did not change B&B to X and Y. X and Y was in the original draft that Mr Mishakov sent to me.

Q. All right, but you didn't take X and Y out, did you?

A. No, because I had no information about it.

Q. We can at least agree about this, that when you sent this revised document back to Mr Mishakov, no one had told you that the purpose of the transaction was simply to compensate Mr Patarkatsishvili for his services and pay him outstanding commission?

A. I don't know exactly at what time I was told about that. It was relatively early on but I was -- I assume at the very latest it must have been around 15/16 June when we had the internal discussions following my meeting with Paul Hauser.

- Q. But I think you're accepting that, when you sent this back, no one had told you that the purpose of the transaction --
- A. So at that point in time indeed --
- Q. -- was simply to compensate Mr Patarkatsishvili for his services and to pay him outstanding commission?
- A. As I -- my evidence was that at the very latest, around the 15th/16th, I would have been told. It is clear from my correspondence that I did not yet know anything about the beneficial ownership of the companies. I don't know what was mentioned about the purpose of the transaction at that time.
- Q. You see, Mr De Cort, it's obvious because if you had been told that the only purpose of this transaction was to compensate Mr Patarkatsishvili for his services and pay him outstanding commission, there is no way you would have sent the document back in this format, unless that is you were happy to be involved in drawing up entirely fictitious paperwork. That is right, is it not?
- A. Logically that is correct, yes. I just -- I cannot tell you at what time I was told. That is correct.
- Q. Well, I think -- I mean, it's not only logically correct, it must be correct.

Anyway, let's see what happened next, Mr De Cort.

You tell us at paragraph 37 of your witness statement E2/09/282 that you recall going to Mr Hauser's office in London for a meeting or perhaps two meetings in mid-June 2004. It's page 282.

A. Yes, I see that that's correct.

Q. And there is correspondence in the files, I don't think we need to turn it up, which suggests that the meetings were on 15 or 16 June or 15 and 16 June in fact?

A. No, I think it is now clear from the additional correspondence that it was on the 15th.

Q. Right, so you think it was just on the 15th and not on the 16th?

A. Yes, I think if you turn to H(I), flag 1 H(I)/01/1, that is my email from 15 June to Mrs Panchenko and Mrs Khudyk in which I say, I had a meeting today with Mr Paul Hauser.

Q. Indeed. I'm not disputing you had a meeting on the 15th. It's really as to whether there was also a meeting on the 16th but you think there was only one meeting?

A. I think there was only one meeting. There's further reference to a meeting on the 16th apparently but it was a meeting in Moscow in which I didn't participate.

Q. All right. Now, you also tell us, this is paragraph 37, still in paragraph 37, about five lines in, that you can

recall that one of the main issues discussed was Mr Deripaska's need for confirmation of the ultimate beneficial ownership of the Rusal Holding shares from 15 March 2000 up to the date of transfer, correct?

A. Yes, indeed. Mr Hauser referred me to the -- to an article which I believe to be the article of the Moscow Times where these claims were being made by Mr Berezovsky and he said that, as a result of that, given that he was on notice, he had to seek confirmation about the beneficial ownership from the start-up of the operations.

Q. If you can go to a document, still in bundle 75, that you will see at page 228.001 H(A)75/228.001, that sheds some light on what it was --

A. It's H(A)75?

Q. Still in H(A)75, page 228.001, it's a very bright orangey colour.

A. Why are those in orange, if I may ask?

Q. They were added in after the trial bundle was put together I think, so that people could recognise that they had been added in late but that may not be right.

A. I don't think I've seen this document ever before.

Q. Well, can I just show you the document and you can --

A. Sure.

Q. It's a document headed "Madison Representations and

Warranties". If you go to page 004 H(A)75/228.004, you will see that it appears to have been produced by Bryan Cave, so that would be Mr Hauser --

A. Yes. I'm quite sure I've never seen this document before.

Q. -- on 14 June 2004. So that was a day before you say you met him?

A. Yes, it looks like.

Q. Can I just ask you then to go back to page 228.001 H(A)75/228.001?

A. Yes.

Q. You see, because if you look at the table at 228.001, we can see the warranties that Mr Deripaska was looking to receive both from RA, Mr Abramovich, and from the beneficial owners in the second and third columns. Do you see that?

A. I see that, yes.

Q. And then there is a column 4 for comments next to it. Do you see that?

A. I see the column, the "Comments" column, yes.

Q. Are you sure that Mr Hauser would not have shown you this document which he'd obviously just produced prior to meeting with you on the 15th?

A. I'm almost 100 per cent certain, yes.

Q. You see, you have said that the main item discussed at

the meeting was warranties in respect of beneficial ownership interests and here we have a document produced by Mr Hauser covering exactly that ground just before the meeting. I suggest to you it is likely that he would have shown you the document.

- A. No, it is highly unlikely that I've seen it. We had a discussion, he showed me a newspaper article and we had an overall discussion but I don't think he had produced any document particularly for the meeting.
- Q. I suggest that at the very least he would have raised with you the matters that he had set out in this document, which I'll show you.
- A. I think I've set out in my email what I -- in my witness statement what I believe the three main matters were that he wanted to cover, one of which was clearly the warranties regarding beneficial ownership from 15 March.
- Q. Let me show you what the document says because this may help trigger a recollection as to whether, even if he didn't show you the document, he would have raised with you the matters that the document sets out.

If you look at the first column, do you see the heading "Objective"?

- A. Yes.
- Q. And then under that Mr Hauser sets out his objective which is the:

"Need to confirm ultimate beneficial interest of shares from date of first agreement establishing Rusal to the date Shares acquired by Eagle Capital."

Do you see that?

A. I see that. That definitely does not ring a bell.

Q. Although you acknowledge that that was the main matter that you were there to discuss?

A. No. I mean, the first agreement that's referred to is not something I was aware of. I just was aware of the date 15 March 2000.

Q. All right. If you look at the next column, you can see that the warranty that was being sought by Bryan Cave was a warranty from Mr Abramovich that:

"During the period from 15 March 2000 up to and including the Final Transfer, the ultimate beneficial owners of the Business Interests (as defined in the [deed of pre-emption and option]) represented by the Shares were the Beneficial Owners."

Do you see that?

A. I see that.

Q. If you look to the next column, headed "Coverage from [the] Beneficial Owners", you can see that the corresponding warranties were also going to be sought by Mr Deripaska from the beneficial owners. Do you see that? Just have a read of that.

A. Yes, I see that, although I find it quite surprising that the people that are represented to be the beneficial owners would only give such warranty with respect to their knowledge. If they really are the beneficial owners, then it's a bit surprising.

Q. Well, if you look at the comments, you may have some insight into that. If you look at the comments in the fourth column, it says:

"We need to know ultimate beneficial ownership because if we do not know precisely who the beneficial owners are:

"(1) the buyer cannot be sure he is getting comprehensive releases from everyone with an interest in Russian Aluminium; and

"(2) the buyer cannot be sure that he is getting representations and warranties as to share ownership from the people who can give them.

"RA should be able to give unqualified assurance as to ultimate beneficial ownership because he was the trustee holding the Business Interests. Trustees can hold only for known, not for unknown beneficiaries.

"X and Y can give only a 'knowledge and belief' assurance as to ultimate beneficial ownership because they cannot know whether RA might have held the Business Interests for someone else. While trustees have to know

who their beneficiaries are, beneficiaries do not necessarily need to know that the trustee is holding something on their behalf (indeed, it is not uncommon for beneficiaries not to know that a trustee is holding assets in trust for them).

"It is possible in theory for X and Y to have held their beneficial interests for someone else or to have encumbered their beneficial [interest] without telling the RA that this was the case. In such a case, RA would hold the interest as trustee for X and Y who in turn would hold the interest as trustee for someone else. We need to know that this was not the case here and the only persons who can give such assurances are X and Y, not RA. However, this can be covered by a 'knowledge and belief' standard as X and Y will know whether they have been holding interests for a third party."

A. We had no discussion whatsoever about trusts or trustees. The word "trusts" and "trustees" was not used at all during our meeting, I'm quite certain about that.

Q. But what is clear from this, Mr De Cort, is that Mr Hauser went into your meeting on 15 June at which you recall the question of warranties as to beneficial ownership being discussed under the clear impression that Mr Abramovich was holding the 25 per cent stake in Rusal on trust for X and Y. That's right, isn't it?

- A. That looks like it from the document but we had no discussion whatsoever about trusts or trustees.
- Q. And presumably these matters would have been discussed between you and Mr Hauser, Mr De Cort?
- A. We had no discussion about trusts or trustees. We discussed beneficial ownership, that is correct, the warranties relating to beneficial ownership.
- Q. You say that notwithstanding what you say in paragraph 37, that one of the main issues discussed was Mr Deripaska's need for confirmation of the ultimate beneficial ownership of Rusal?
- A. Yes, as I say, we discussed ultimate beneficial ownership and warranties regarding ultimate beneficial ownership. We did not discuss any type of trust or trustees.
- Q. If you're talking about ultimate beneficial ownership of Rusal, doesn't that almost inevitably raise issues of trusts and trustees?
- A. We were discussing the type of warranty that was required. Ultimate beneficial ownership can take many forms.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Very well.

Mr De Cort, you understand that you're not to talk to anybody about the evidence?

THE WITNESS: Yes.

MRS JUSTICE GLOSTER: Your evidence or about the case generally.

Very well. 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Just before we broke, Mr De Cort, I had asked you about the meeting you had with Mr Hauser on 15 June at which you discussed the question of warranties in respect of beneficial ownership going back to 15 March 2000. But you tell us, this is at paragraph 38 E2/09/282 of your witness statement, that you were reluctant to give the warranties that Mr Hauser was seeking, and do have paragraph 38 open, but you mention two concerns there, don't you, Mr De Cort?

The first concern that you mention was Mr Hauser's reference to the press reports which we've looked at in which Mr Berezovsky was alleging that he had an interest in Rusal, and you say you were concerned that anything Mr Abramovich might say about beneficial ownership might come back to haunt him, is that right?

A. Yes, it's correct, it's what I say.

Q. You give as an example a situation in which there was an

IPO of Rusal in a few years' time and Mr Berezovsky would halt the process, making a claim on some or all of the assets, correct?

A. Yes, that's what I say.

Q. Just pausing there, the warranty that Mr Hauser was looking for at this stage was a warranty from Mr Abramovich that Mr Berezovsky and Mr Patarkatsishvili would have been the ultimate beneficial owners of 25 per cent of Rusal since 15 March 2000, that's right, isn't it?

A. That is correct.

Q. And if Mr Abramovich had given that warranty to Mr Deripaska, and it was mirrored by similar warranties from Mr Berezovsky and Mr Patarkatsishvili, which is what we've seen Mr Hauser was looking for in his 14 June warranties chart, then there would have been no prospect of Mr Berezovsky sticking a spanner in the works at a subsequent IPO, would there? You would have given Mr Deripaska his own warranty about beneficial ownership and entered into a release?

A. I don't understand the last sentence of your question.

Q. Well, if you had given the warranty that Mr Hauser was looking for --

MRS JUSTICE GLOSTER: Which page are we looking at in terms of the warranty that Hauser is looking for?

MR RABINOWITZ: If your Ladyship goes back to his warranty chart?

MRS JUSTICE GLOSTER: Yes, that's where I am.

MR RABINOWITZ: It's 001 H(A)75/228.001.

MRS JUSTICE GLOSTER: Yes, I'm there. Whereabouts? It's "Coverage from Beneficial Owners"?

MR RABINOWITZ: Indeed. Effectively saying that they were the only -- sorry, H(A)75.

MRS JUSTICE GLOSTER: I mean, it's "Coverage from Beneficial Owners", you're looking at that column?

MR RABINOWITZ: Indeed.

So in effect if you had a warranty from Mr Abramovich saying that the owners of the shares were the beneficial owners, and the beneficial owners said they were the only beneficial owners, then you couldn't have Mr Berezovsky throwing a spanner in the works because accompanied by those warranties, and we saw this from Mr Mishakov's structure chart, would have been a release.

A. But that would not have represented the true position.

Q. Well, I suggest to you, Mr De Cort, that it would have represented the true position.

A. No, what I was told, following my meeting with Hauser, we had internal discussions and I was told in no uncertain terms that these shares belonged to

Mr Abramovich and only to Mr Abramovich, that there was no truth to the claims of Mr Berezovsky, and that Mr Abramovich ever had any dealings with Mr Patarkatsishvili in connection with the aluminium assets.

MRS JUSTICE GLOSTER: Mr Rabinowitz, can I be clear, are you putting the suggestion that the problem would have been removed if a warranty had been given by Mr Berezovsky and Mr Patarkatsishvili? Is that the suggestion you're making to the witness, that they should have asked Mr Berezovsky and Mr Patarkatsishvili to come up with some sort of warranty?

MR RABINOWITZ: The main warranty would be a warranty by Mr Abramovich saying that Mr Berezovsky -- that the beneficial owners were the beneficial owners. If you had that and you then had Mr Berezovsky also saying that, to their knowledge, they were the only beneficial owners, accompanied by a release given to Mr Deripaska and indeed to Mr Abramovich, it's difficult to see how Mr Berezovsky could later come along and disrupt events because he would have been brought into the transaction, which is what Mr Hauser was envisaging --

A. There is now a very nice theoretical construct from Mr Abramovich. If you go back and look at H(A)75/196, that is an email from Mr Streshinsky -- from Mr Mishakov

to me in which he very clearly indicates that Mr Streshinsky was not ready to give any type of warranties whatsoever about the shares, except from the day that company B would take ownership over the shares.

We can discuss many theoretical constructs here today. We need to look at the facts, and the facts are what they are.

Q. Well, let's just look at what you say at paragraph 38 E2/09/282, because that's the first of the grounds that you give, concern that Mr Berezovsky could throw a spanner in the works.

The second of the grounds that you identify in your witness statement is the one we've already touched upon which is the concern you had arising out of your own involvement in the source of funds letter for Blue Waters as a result of which you knew that on a temporary basis, at the very least, Blue Waters had been the ultimate beneficial owner of Madison, and through Madison the Rusal group, correct?

A. Not fully correct. It would have been the beneficial owner of Madison but probably not the ultimate beneficial owner, and ultimate beneficial ownership typically goes to an individual.

Q. All right. And I've already suggest to you that you knew that Mr Berezovsky and Mr Patarkatsishvili were

associated with that entity and I know that you deny that?

A. I did not know that at the time.

Q. But we now know, do we not, Mr De Cort, in light of the documents that were disclosed for the very first time on Friday, that there was in fact another reason, indeed I suggest to you this was the real reason, why you were not prepared to give Mr Hauser the warranties on beneficial ownership that he was seeking.

Can I ask you, please, to go in bundle H(I) to tab 4, page 17-18 H(I)/04/17.

A. Before we turn there, maybe I can just clarify 38 and the two reasons I give, if I may.

MRS JUSTICE GLOSTER: Yes, go ahead.

A. I was told, as I've already explained, in no uncertain terms that these shares only belonged to Mr Abramovich. There was no truth to the claims being made by Mr Berezovsky. At the same point in time, I knew that the shares had temporarily transferred and therefore we could not cover that period definitely. In addition, given that the claims were being made by Berezovsky, I did not want to expose Mr Abramovich to any liability and, therefore, for those purposes did we not give a warranty as to historical ownership which, in addition, as I've explained before, is an extremely

unusual warranty to ever give in a corporate transaction.

Eventually, this was resolved as a matter of risk allocation between the parties in the deeds of acknowledgement which we at some point in time probably will turn to.

MR RABINOWITZ: Yes, we will get to that, Mr De Cort. Can you in the meantime, please, go to bundle H(I) tab 4, page 17 where I suggest we will see the real reason that you did not want to give the warranty H(I)/04/17.

Do you see at page 17 an email from yourself to Ms Panchenko dated 16 June 2004, also copied to Mr Tenenbaum at a couple of addresses; do you have that?

A. Yes, I see that.

Q. This would have been just after your meeting with Mr Hauser at which the warranties were discussed, correct?

A. After my meeting with Mr Hauser and after our internal discussions.

Q. All right. Let's just look at what you say. You say:

"Dear Irina [that's Ms Panchenko].

"Following our conversation earlier this afternoon, I enclose a draft reply to the Bazel's ..."

That's Mr Deripaska's counsel, Base Elements. And then you carry on with the email:

"You will note that I have left two variants with respect to the 1st item regarding beneficial ownership. Having discussed this further with Eugene, we feel that we would rather not give this warranty as we would not want to further document BB's beneficial ownership."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. If you then look over the page H(I)/04/18, you see at the first numbered item, we see the two variants of the beneficial ownership since 15 March that you were considering warranting, variant A and variant B. And:

"Variant A -- Madison can warrant to the best of its knowledge regarding its ultimate beneficial owner being [BB]."

Then:

"Variant B -- Madison will not give any warranties regarding its ultimate beneficial owner."

So just looking back at the first page, the covering email, it looks as if, having spoken with Ms Panchenko and then more recently with Mr Tenenbaum, Mr Tenenbaum's preference was that there should be no warranties on beneficial ownership, that's to say variant B. And that, as you document here, is because you do not want to further document BB's ownership. Is that what Mr Tenenbaum told you, Mr De Cort?

A. No, this is the conclusion that I came to based on our discussion. As I've explained, I was told in no uncertain terms that those shares solely belong to Mr Abramovich. The reference to further documenting is a reference to the document that you find at H(A)75/155, which is a draft of deed of guarantee and indemnity that we've looked at earlier in which the other sides, without our initial participation, made such a warranty.

And I, coming to the conclusion -- having the information I then had, I said there is no reason that we would want to say anything that any third party could misconstrue, even if that was possibly to assist banks, as we now know the -- Mr Anisimov and his colleague Mr Streshinsky were dealing with banks and trying to pass information to banks, and I did not want there to be any ambiguity that there was any truth to such a statement.

Q. You see, Mr De Cort, I suggest your concern about not further documenting the beneficial ownership of BB is not to do with a draft that you had produced, but it has to do with the source of funds letter that you had drafted in August 2003 and your knowledge that those entities were related to Mr Berezovsky and Mr Patarkatsishvili. That is right, isn't it?

- A. That is not correct at all. I only understood Blue Waters to be associated with Mr Berezovsky and Mr Patarkatsishvili as a result of those proceedings here.
- Q. Can you explain, please, why at paragraph 38 of your witness statement E2/09/282 you nowhere mentioned this reason about not wanting to further document the beneficial ownership of Mr Berezovsky and Mr Patarkatsishvili?
- A. Because I did not -- obviously those documents were harvested from our computers, from our PCs, but in preparing my witness statement these documents were not particularly drawn to my attention, probably as a result of the fact that they were initially considered privileged, and I've probably not considered them fully at the time, otherwise I would have gladly included it in my witness statement.
- Q. You see, you must have been conscious that this document existed at the time you were drafting your two reasons, Mr De Cort? I suggest to you that you have deliberately not referred to this, which I suggest is the real reason?
- A. No, that is not correct. That is not correct.
- Q. You see, Mr De Cort, what I suggest is that the email that you have disclosed in fact gives us an insight as

to what the internal thinking within Millhouse was, and that is this: that you never wanted to document Mr Berezovsky's beneficial ownership in relation to Rusal, just as in relation to Sibneft, not because that did not accord with the true position but because you were concerned that Mr Berezovsky would use any such documentation as a basis to bring claims which you knew were fully justified against Mr Abramovich both in relation to Sibneft and Rusal. That's right, isn't it?

A. That is wrong. As we've previously also discussed this morning, the BB reference here is not a reference to Mr Berezovsky, it is a reference to the beneficiaries, the B company.

Q. B&B, Mr De Cort, as I thought you had accepted already, was very likely to have been a reference to Mr Berezovsky and Mr Patarkatsishvili, and you knew that, did you not?

A. That is correct, but in your question at [draft] page 104, line 3 of the transcript, you said:

"... [not want] to document Mr Berezovsky's beneficial ownership ..."

Q. Yes, but it would have been obvious, Mr De Cort, that when you came to produce the final documentation, that would have been a reference to Mr Berezovsky and Mr Patarkatsishvili?

A. Yes, and there was no truth to that.

Q. Well --

A. And that's the reason why it was not to be documented.

Q. Can we then just have a look at another document that you have only just disclosed, and that is at bundle H1 (sic), tab 1, page 1 H(I)/01/1.

A. Yes, I see that.

Q. This is an email from yourself to Ms Panchenko and Ms Khudyk referring to your meeting with Mr Hauser on the 15th. You say:

"I had a meeting today with Paul Hauser... counsel to Base Element, to discuss the principal outstanding issues."

Then you explain that at your meeting with Mr Hauser he wanted to lay out what his client was looking to receive, and the first item that Mr Hauser was looking for was confirmation of the ultimate beneficial ownership of the Rusal shareholding from 15 March 2000, you can see that in your first point there.

A. Yes, I see that.

Q. Then if we look further down the page, below the redaction, the first big redaction and before you get to the second redaction, we can see what you say in relation to item 1. You say that you've discussed the matter with Natalia, that's presumably Ms Khudyk, isn't

it, Mr De Cort?

A. Yes, that's correct.

Q. And she says that as the matter "is not known to P", that's Madison's parent, isn't it, Mr De Cort?

A. Yes, it's a temporary company with nominee director, employee directors who don't have any knowledge of this information.

Q. She's saying, Ms Khudyk, that P would not want to make any statement; that's correct, isn't it?

A. That is correct, as I explained, because P is a temporary company with either nominee directors or employee directors who have no involvement with these matters, so they would not have any knowledge to make such statements.

Q. Then look at the second point, you say:

"I have already indicated to the other side that if we were to make any statement in this respect, such statement would be limited to 'the best of our knowledge' as we don't know whether B Company (BB) is maybe acting as a front for other ... beneficial owners."

Do you see that?

A. I see that, and I can explain if you'd like.

Q. Now, do you see, Mr De Cort, that what you are saying in this email to Ms Panchenko, in terms of the issues that

you discussed with Mr Hauser, very largely corresponds to what Mr Hauser had identified as being the matters to be discussed with you in the document that we looked at earlier, Madison representations and warranty documents.

- A. Yes, and I confirm categorically that I have not seen this document.
- Q. Do you not think that, in light of the fact that you are responding in a way which corresponds with the issues that Mr Hauser raised with you, you may well have seen the document, or at least that he put these points to you from that document?
- A. He put those points to me but he did not show me any document, and I have not seen this document until this morning actually.
- Q. All right, but let's just go then back to what you say --
- A. And in my witness statement, the way I have put those points, I have actually derived that from my email of 17 June that is also in the disclosure, it's referenced in my witness statement. That's the basis on which I made the statement in paragraph 37 E2/09/282, I believe, where I identify the matters we most likely discussed.

I, at that point in time, had not seen this email that we are now looking at.

Q. Just looking at what you say, just above the larger redaction towards the bottom of the page:

"I have already indicated to the other side that if we were to make any statement in this respect, such statement would be limited to 'the best of our knowledge' as we don't know whether B Company (BB) is maybe acting as a front for other ultimate beneficial [shareholders]."

What is at least clear from this email, Mr De Cort, is that when you had your discussion with Mr Hauser on the 15th you did not say to him: what are you talking about? There are no ultimate beneficial owners called BB or represented by BB. This stake just belongs to Mr Abramovich?

A. Indeed I didn't tell him that. As I've already explained a few times today, when I went -- the first time that Mr Berezovsky's name in connection with Rusal was mentioned to me was in that meeting. I went into that meeting blind, I had no information. It's after that meeting that we started internally discussing the situation.

Q. Are you really saying that you went to this meeting blind without having taken any instructions from anyone in Millhouse as to what the position was?

A. Yes.

- Q. I suggest to you that is simply --
- A. That is entirely the truth.
- Q. Right. I suggest to you that is not the truth.
- A. That is the truth. I disagree with you.
- Q. Can we at least agree on this, that what this document indicates, at least at this point, is that your understanding was that there were other ultimate beneficial owners, referred to as BB, who owned the 25 per cent stake of Rusal, and the only thing you were not sure about is whether they were acting as a front for other beneficial owners?
- A. I at that point in time had no information whatsoever, but indeed I made that statement, I write it here. But I had no information at all what the position was.
- Q. Well, your understanding at least was that there were other beneficial owners, referred to as BB, who owned the 25 per cent stake of Rusal, and the only thing that you were not sure about, on the base of your understanding, is whether they were acting as a front for other beneficial owners.
- I'm just asking you about your understanding,  
Mr De Cort.
- A. This is a reflection of what I said to Mr Hauser, yes, that's correct.
- Q. And what was your understanding at that time?

A. I had basically no information, I was just commenting on a warranty that he was asking me to make, and I commented just as a draftsman would comment on a warranty without having any information, saying: there's probably carve-outs that are needed, et cetera.

I was working in a vacuum at that point.

Q. You say you were working in a vacuum and that you had received -- not bothered to get any information at all?

A. No, because this transaction started for me as a transaction just to transfer ownership of the shares. I did not consider -- I had not assumed when we started this transaction there would be requests for ultimate beneficial ownership et cetera, and eventually we'd have to do the due diligence on that to determine what the situation is.

As a draftsman, a corporate draftsman, not every draft is like a signed witness statement. These are drafts based on the information, the best information at that point in time you have, and that information may be very little.

Q. If this was your understanding at the time, can you tell us what your understanding was based on?

A. I had basically no understanding about the ownership structure of Rusal, I was just looking at the drafted warranty, and where probably there would be limitations,

such as saying something should only be to our knowledge et cetera. It's just a pure drafting exercise.

But it became clear from the meeting that there were issues based on the article that Mr Hauser referred me to, and after that we had an internal discussion, which then led to my email of 17 June to Mr Hauser.

Q. Now, I want to ask you next, if I may, about the revised structure of the Rusal sale transaction which arose on 17 June 2000 which you refer to in paragraph 39 of your witness statement, that's page 283 E2/09/283.

We saw, Mr De Cort, from Mr Mishakov's transaction chart, we looked at that this morning, that the second Rusal sale was originally going to be structured with a transfer from Madison via its parent company, P, to the Beneficiaries' Company, B. Do you remember that, Mr De Cort?

A. Yes, I do.

Q. But we know that on 17 June 2004, Mr Streshinsky, who was instructed on Mr Patarkatsishvili's side of the transaction, sent two emails to Ms Khudyk suggesting a revised transaction structure, is that correct? Do you remember that?

A. Yes.

Q. I wonder if we could just turn to the first email that Mr Streshinsky sent to Ms Khudyk, bundle H(A)76, page 54

H(A)76/54.

A. It's also in the H(I) bundle, I think.

Q. All right. Well, H(A)76, page 54.

A. Yes, I'm there.

Q. Now, we can see there that Mr Streshinsky was proposing a simplified structure split into two parts, relating to dividends and shares. Under the first paragraph, Mr Streshinsky says:

"BP (an individual) and B (a company with B as the sole shareholder) on the one hand, and M on the other hand, shall conclude the Deed of Accounting and Release, which would approximately state the following."

Just pausing there, we know that Mr Streshinsky's evidence is that the reference to B in the parenthesis he is going to say was a typo; that's not something that we accept, but that's a matter I'll have to take up with Mr Streshinsky and not let that detain us with you, Mr De Cort.

A. Mm-hm.

Q. What we then see Mr Streshinsky proposing was that the parties, including Madison, should provide the following acknowledgement, that:

"... according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of

shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery and also in the establishment and capitalisation of R Holding, and at the time of the establishment of R Holding they became and still are [the] beneficiary owners of 25% of shares of R Holding, who, among other things, have the right to receive all dividends payable on the above 25% of shares in R Holding and the right to receive such shares, whereas M was and still is the nominal holder and the trustee in respect of such shares, and holds them for the benefit of B/BP."

Do you see that?

A. Yes, I see that.

Q. So Mr Streshinsky, like Mr Hauser, was also suggesting that there should be a warranty, or a reference at least, to the historic beneficial title, wasn't he, Mr De Cort?

A. Yes, I see that.

Q. Mr Streshinsky, like Mr Hauser, was also suggesting that there was a trust relationship, and that B/BP, whoever those persons or entities might be, were the ultimate beneficial owners of 25 per cent of Rusal, and indeed had been since 15 March 2000; that's right, isn't it?

A. That is what's written here, yes, but we will have to discuss this when we look at the next document.

- Q. Mr Streshinsky's email, to which this letter was attached in Russian, was sent to Ms Khudyk at 10.05 on Thursday morning. You can see that if you go to page 23 of the same bundle H(A)76/23.
- A. I think 1.05 on Thursday afternoon but -- which page?
- Q. Page 23. You see it says 10.05 BST?
- A. Yes, British time, that time, yes. 10.05 British time, 1.05 Moscow time.
- Q. All right. We now know from Ms Panchenko's evidence that Ms Khudyk must have shown Mr Streshinsky's email to her because Ms Panchenko has acknowledged that it was she who had a telephone conversation with Mr Streshinsky that day. Just for the transcript, that is at Day 27, page 8, line 2.

Following the telephone conversation with Ms Panchenko, Mr Streshinsky then sent through, later on 17 June 2004, a revised version of the simplified structure. You can see that if you go to page 65 H(A)76/65. That's the covering email. We have the text itself at page 57, a few pages back H(A)/76/57.

- A. Yes, I see that.
- Q. And if you have page 57, we can see that Mr Streshinsky starts this letter by saying:

"As discussed over the phone [and that's obviously a reference to the conversation with Ms Panchenko], in

order to meet the representations that you previously made to the banks, please find below an alternative structure."

Do you see that, Mr De Cort?

A. I see that.

Q. And then if you go down below to paragraph 1, we can see how this has now changed. The first five lines about the agreement of the 10 and 15 March 2000 and oral and other arrangements have stayed the same. But whereas before the parties were to expressly acknowledge a trust relationship and beneficial ownership in favour of B/BP, we now see that the acknowledgement is to be this:

"M undertook to pay [to] BP and B the amounts equal to those received as income on 25 per cent of shares in R Holding, including dividends payable on such 25 per cent of shares and amounts/assets received from any sale of such 25 per cent of shares ..."

Then in brackets, one for the lawyers:

"Therefore, it was solely a right in personam rather than a trust or a right in rem -- a lawyer's comments."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. So Ms Panchenko seems to have told Mr Streshinsky that the deal should be structured differently, and in particular we can see that it appeared she was unhappy

with the first proposal that Mr Streshinsky was making which would have involved a formal acknowledgement of a trust relationship between Madison and B and BP, that's correct, isn't it?

A. I disagree with that.

Q. Right, can you tell me why you disagree with that?

A. Yes, I can, because you're missing one piece of the puzzle. And the piece of the puzzle you're missing is the first email that Mr Streshinsky sent to Ms Khudyk.

It is clear from the cover email, it is at H(I)6/21, it is clear from that email that the first proposal that Mr Streshinsky sent was a proposal he sent after a meeting the preceding day with people on our side, most likely Ms Panchenko and possibly also Ms Khudyk. So the very first proposal that Mr Streshinsky sent was following a discussion with our side.

Now, it is extremely unlikely that Ms Panchenko would have said on one day, "Yes, there is a trust," and then the next day called back saying, "Oh no, there is not a trust." So the more likely version of events here is that Ms Panchenko described exactly what is described in the second version of the Coalco letter, namely that there was an entitlement to get the proceeds of those shares, there was no trust, and that the lawyers on the

side of Mr Streshinsky had misunderstood this.

I think that is a much more likely event -- events that took place.

Q. Well, I suggest that, in fact, what has happened is that Mr Streshinsky did understand there to be a trust arrangement but, as a result -- and I accept that it's as a result of what Ms Panchenko said to him at some point, presumably during the telephone conversation -- he has redrafted the scheme so as to suggest that the 25 per cent entitlement to which B/BP should have in the Rusal shares should be in personam and not in rem?

A. He indeed corrected it after the telephone call because Ms Panchenko called him saying, "This is not what we discussed yesterday. There is no trust. You are entitled to receive the proceeds of those shares."

Q. Do you see --

A. Otherwise Ms Panchenko would have said one day that there is a trust and the next day there is no trust. I think that is extremely unlikely.

Q. Well, if you look at the top of the letter, do you see that Mr Streshinsky says:

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find... an alternative structure."

That suggests that the reason Mr Streshinsky was

given by Ms Panchenko for the change in structure was because of representations that Millhouse or Madison had previously made to banks, correct?

A. And those representations to banks represented the truth, there was never any trust, and so when Mr Streshinsky wrote it in the form of a trust, Ms Panchenko said: sorry, we can't say that because that is not a truth. The representations have also been made in line with those -- with the facts as they are, namely that these are Mr Abramovich's shares, and Mr Patarkatsishvili is only entitled to the economic benefit that he will now receive by means of those shares.

Q. If what Ms Panchenko was saying to Mr Streshinsky was, "Look, you got it wrong, what you have put down in your structure doesn't represent the true position," that is what she would have said to him. But what she has instead said to him is, "Because of representations we have made to banks we need to change the structure."

A. No, she probably said "It's entirely wrong. We amongst others have made representation to banks that contradict this".

Q. Well, I suggest the position is --

A. You're not saying that these two lines are exact -- the literal transcription of the telephone conversation

between Mr Streshinsky and Ms Panchenko I would assume?

- Q. I suggest the position is perfectly clear from what Mr Streshinsky says in his letter, Mr De Cort?
- A. I disagree with that.
- Q. Can I ask you this, Mr De Cort, can you tell me, was the concern that Ms Panchenko mentioned to Mr Streshinsky the real concern, that any representations would conflict with representations previously made to banks, or was the real concern the one that we've seen recorded in your email to Ms Panchenko, following your conversation with Mr Tenenbaum, namely that you should not make any representations that would further document BB's beneficial ownership?
- A. No, we didn't want to mislead anyone. The shares were Mr Abramovich's shares, and we did not want to create any documents that would show anything different because there was no basis for that.
- Q. Can I ask you next, Mr De Cort, please, to go to page 69 in bundle H(A)76 H(A)76/69.
- A. Yes, I'm there, sorry.
- Q. It's an email from yourself to Mr Hauser timed at 19.50 hours CEST. CEST stands for what?
- A. I think it's Central European Standard Time, that's Paris, Brussels time basically.
- Q. Thank you. And you are sending this email after

Mr Streshinsky's revised letter and the telephone conversation to which it refers. We can see, looking at your email to Mr Hauser on the evening of 17 June, that you say this:

"Dear Paul.

"I tried to call you but did not get an answer at the Basic Element [office] and your mobile was answered but then shut off.

"This is where we are on the issues we discussed.

"1. There would be no personal undertakings/guarantees. Only Madison (and, if relevant, P) would warrant/undertake.

"2. There would be no warranties about beneficial ownership."

Just pausing there, up until this point, the transaction as we've seen had been proceeding happily on the basis that there were to be warranties to the effect that X and Y or BB had been the ultimate beneficial owner since 15 March 2000, that's right, isn't it?

A. No, that's not right, the transaction wasn't proceeding happily. There was barely any process. It had just started.

Q. All right. We've certainly seen that Mr Hauser was looking for that sort of warranty, that's right, isn't it?

- A. That is correct.
- Q. And we saw that your amended deed, which you sent back to Mr Mishakov on 11 June, contained a warranty about X and Y being beneficial owners, correct?
- A. In absence of information, I was just amending briefly the wording, but I had no base -- no information to know whether or not this is something we would eventually be able to give.

In a corporate transaction things are often drafted and negotiated and in the process, in parallel, or subsequently, before they get signed, people do the due diligence to make sure that the warranty can be given.

- Q. So on this day, 17 June, when Ms Panchenko, having understood what warranties were to be given, telephoned Mr Streshinsky telling him that those warranties could not be given because of representations made to the banks, you on that same day then email Mr Hauser and, certainly for the first time in any written communication that we have seen, you tell him that, contrary to the drafts which have passed between you, there are now going to be no warranties about beneficial ownership?
- A. Yes, indeed. Following our internal discussion it became clear that these were Mr Abramovich's shares. We could not give anyone the impression that they belonged

to anyone else. At the same point in time, given the claims being made, I advised that we better do not give any warranties so we don't expose ourselves.

There's a number of reasons for that. Warranties about the historical beneficial ownership I've never seen in any other transaction, they were quite unusual, particularly also about the ultimate beneficial ownership. Furthermore typically warranties are limited to the amount of the purchase price to be received. Here the purchase price on Mr Abramovich's side was zero, so we wanted zero exposure. We were willing to assist, to pass(?) the shares along, but we were not going to take on additional liabilities.

- Q. Would it be right to assume, Mr De Cort, that what has happened here is that Ms Panchenko, as well as speaking to Mr Streshinsky on 17 June and telling him that the beneficial ownership warranties would not be given, also speaks to you on 17 June and told you that you were to make it clear that no beneficial ownership warranties would be given?
- A. I think it follows from my email on 16 June that I wrote to her and that we've looked at previously that, yes, we did have a discussion. I don't think that she specifically told me not to give the warranties, that was something that more likely is a decision that I took

as the lawyer -- or not more likely, I'm quite certain about that. But yes, we had a discussion overall about the transaction.

- Q. Can we then go back to the document at H(I) tab 4, please H(I)/04/17. This is where you set out variants A and B. She obviously has come back to you and said, "Go with variant B." That's right, isn't it?
- A. No. If you see from the cover email, it's very clear that I indicate my preference to go for variant B, and then as a project manager of course I discuss that with her and that's the way we proceed.
- Q. Of course, from this point on, it is fair to say, is it not, that any possibility of Mr Berezovsky being mentioned in any contractual document simply disappears?
- A. There was no basis for that.
- Q. Okay.
- A. And actually, as we've seen before, when we looked at a document at H(I), tab 11, I at some point in time suggested to make a reference to the press reports but eventually that got taken out.

And for reference, for the transcript, the document, the deed of settlement, is at H(A)86/53, that's where Madison gives the warranty about no claims.

- Q. Now, the position as to what could be said about beneficial ownership remained an issue between you and

the people acting for Mr Deripaska for a little while after that, didn't it, Mr De Cort?

A. Yes, because we had to deal with the allocation of risk. Warranties are ultimately an allocation of risk between parties to a transaction.

Q. They, in general terms, wanted some sort of representation or statement about beneficial ownership and were not content for nothing at all to be said, that's right, isn't it?

A. Yes, but we made sure that in no document there was a document that could possibly be shown to banks or elsewhere, there would be any reference -- that there would be anything included that was untrue. Therefore this was done in separate documents, the deed of acknowledgement only between the three principals who knew with their eyes wide open that this was solely for purposes of risk allocation.

Q. Do you recall, Mr De Cort, that the position regarding the beneficial ownership warranty started to be resolved following a telephone call between yourself and Mr Mishakov which took place on 2 July 2004? You refer to this very briefly in footnote 46, page --

A. I recall that there was somewhere a reference to a phone call, yes.

MRS JUSTICE GLOSTER: What paragraph?

A. I don't recall that particular phone call but --

MR RABINOWITZ: It's footnote 46 on page 288, my Lady  
E2/09/288.

A. This phone call is purely a reconstruction.

Q. Okay. We can turn up the email that I think you're  
reconstructing from, if you go to bundle H(A)79 at 139,  
please H(A)79/139.

A. Can I put this back?

Q. Yes, you can, sorry.

So this is an email from yourself to Mr Mishakov  
dated 6 July 2004. Can I ask you just to read that  
email briefly to yourself, please. (Pause)

A. Yes, I've read it.

Q. Thank you. So what we can see you saying here, on the  
second paragraph, is that on Friday, that is  
2 July 2004, the issue which was identified was that  
Mr Mishakov was concerned that Millhouse would say one  
thing now but subsequently say another. Do you see  
that?

A. Yes.

Q. And in order to address that concern, you explained  
that, while you were not prepared to make any statement  
about beneficial ownership for the past and in  
particular you were not ready to make any representation  
or warranty, you were willing to sign a document,

deposition, which would freeze the position and not allow Mr Abramovich subsequently to say something inconsistent; that's right, isn't it?

A. That is correct, and that shows exactly how open we were about this.

Q. If you then look at paragraph 47 of your witness statement, page 288 E2/09/288, you tell us, this is five lines from the end, that this was a matter that you may have discussed -- or that you believe you discussed with Mr Tenenbaum and had agreed with him as an appropriate way forward. Correct?

A. Yes.

Q. In this email to Mr Mishakov at page 139 H(A)79/139, you tell him that you can live with him turning the deposition into a deed of acknowledgement but that you don't want to include any reliance language because you were concerned that, by doing so, this might effectively turn it into a warranty which is what you wanted to avoid, correct?

A. Yes. As I said before, my purpose was, although I knew exactly well that these were the shares belonging to Mr Abramovich, my purpose was to avoid any type of liability.

Q. Then with regard to content --

A. But at the same point in time, to make it clear what the

facts were, I was willing to enter into a deed of acknowledgement to explain what the facts were.

Q. Then with regard to content, you say that you had indicated that you could state only that you had dealt with one person, and who that person was, and you set out a sample statement, correct?

A. That's correct.

Q. We can see from that sample statement that you were proposing -- just looking at the last few lines of it, at this stage it simply said that it should say that:

"... [Mr Abramovich] only dealt and interacted with..."

And then you were going to give a name, in connection with the 25 per cent stake of Rusal. That's the last two lines on page 139.

A. Yes, that's correct.

Q. And the name that I think you were contemplating was Mr Patarkatsishvili's name at this stage, correct?

A. Yes, indeed. I was told at some point in time, mid-June probably, that the transaction was to compensate him for his involvement in the original Rusal acquisition -- aluminium acquisition.

Q. Well, I suggest to you that that's not true but that's a matter that I've already taken up with Mr Abramovich.

Just again staying with this document, what you were

offering of course did not touch at all on the question of beneficial ownership. The statement that you were proposing at this stage did not include, you will see that this comes in later, into the final version of the deed of acknowledgement, a statement that whoever the name says is the beneficial owner of the shares, is the beneficial owner of the shares.

That was not at this stage something that you were offering, do you see that?

A. That is correct, yes.

Q. If you then go to page 140, the following page H(A)79/140, we can see what Mr Mishakov's reaction was to your suggestion, Mr De Cort. His email back to you later that day, as you see, says:

"Dear Andre.

"I have taken out any statements concerning the transfer of the Shares. The only thing which is left is the confirmation of the beneficial ownership. Andre, we have not talked about the confirmation of whom [Mr Abramovich] was dealing with, we are not interested in his statement of his interactions. We need the confirmation of beneficial ownership. We cannot take anything else, otherwise the whole matter becomes useless. Please contact your principal to discuss my proposal. I hope that my approach toward compromise

will be met from your side. If you want I can talk to Eugene or Irina myself."

So Mr Mishakov was saying that your statement about Mr Abramovich's interactions did not go far enough, it needed also to go on to say something about beneficial ownership, correct?

A. That is correct.

Q. And Mr Mishakov was suggesting that, if necessary, he could talk to Eugene, presumably that's Mr Tenenbaum?

A. Yes, indeed.

Q. Or -- Ms Panchenko would be Irina, wouldn't it?

A. Yes, indeed.

Q. Can we just see then what happens next. Can you go next please to bundle H(A)81 at page 145, please H(A)81/145.

A. Can I put this bundle away?

Q. Yes, I think so. If you get rid of everything but your witness statement and H(A)81 you'll be fine.

A. H(I) also?

Q. You can put that to one side.

So at H(A)81, page 145, we have an email chain. Can we focus on the first in time email, which is the one that starts towards the bottom of the page, and that's an email which you sent to Mr Hauser on 9 July 2004.

A. Yes, indeed. Yes, I see that.

- Q. We can see that you say to Mr Hauser, who is acting for Mr Deripaska of course, that you have been trying to come up with something that would be acceptable both to Mr Deripaska and to Mr Abramovich. You then set out your proposed wording, correct?
- A. Yes.
- Q. What you then suggest is that Mr Abramovich should state and acknowledge that he has reviewed the warranties and representations in clause 3.1.1 of the deed of release. That was of course a reference to the warranties and representations that were to be made by Mr Patarkatsishvili in the deed of release, correct?
- A. Yes.
- Q. And what you indicate that you will consider Mr Abramovich saying about this, this is at clause 2.1, or point 2.1, is that, to the best of Mr Abramovich's knowledge and belief such warranties and representations are true and correct in all material respects, correct?
- A. Correct.
- Q. This was the genesis, was it not, of the acknowledgement that we ultimately see whereby Mr Abramovich acknowledges that whomever Mr Patarkatsishvili says is the beneficial owner of the 25 per cent stake in the Rusal shares, that person is indeed the beneficial owner of those shares, and indeed had been since March 2000?

A. This was my proposal that had not yet been reviewed internally, but he was trying between the lawyers to see whether he could come to some compromise that at the lawyers' level we could possibly find agreement with an intention then to submit it to the principals, yes.

Q. I follow that, Mr De Cort, but this was, was it not, the genesis of what eventually became the acknowledgement that we ultimately see?

A. The second part of that acknowledgement, yes.

Q. Then if we just look at the top of page 146 H(A)81/146, we can see that you also wanted to add, so that's over the page, you wanted to add in this language after Mr Abramovich's acknowledgement:

"For the avoidance of doubt the statements and acknowledgements in this Clause 2 do not constitute a representation or warranties by [Mr Abramovich], but are given as part of a due diligence investigation into historic dealings with the Business Interests referred to in said Clause 3.1.1 of the Deed of Release."

Again this reflects, does it not, your anxiety that this acknowledgement should not have the status of a warranty and be actionable at Mr Deripaska's behest?

A. Yes, that's correct. As I've explained to you, we were engaging in a risk allocation exercise here.

Q. And then if we look back to page 145, just to see

Mr Hauser's response, page 145, he makes it clear in fact in an email which he is sending to Mr Mishakov, you see it says "Dear Stalbek", it's obviously gone to you by accident. He says:

"The avoidance of doubt stuff is not acceptable. If Andre deletes that, I think we can live with the rest of it."

A. I see that.

Q. If you then go to page 147, same bundle H(A)81/147, you then very politely, if you look right at the bottom of the page, the first email in the chain, you wrote back to Mr Hauser and you pointed out his mistake.

A. Sorry, where is that?

Q. If you look right at the bottom of page 147, you say:

"It seems you have replied this to me rather than forwarding [it] to Stalbek."

A. Yes, I see that.

Q. Then you say:

"I'm not sure why we can't express what we've been discussing since the beginning, [that is] that these are not representations and warranties."

This then leads to Mr Hauser sending directly to you, the same day, a further email, which is the one we see at the top of page 147, in which he explains why he's not happy with the avoidance of doubt language that

you wanted to include.

Can you read that to yourself, please, Mr De Cort?

A. The whole email, you mean?

Q. There are only three points. It's just points 1 to 3 at 147. I can take you through it if you prefer.

A. No, I'll read it, thank you. (Pause)

Yes, I've read it.

Q. So Mr Hauser's first point was that the statement you were proposing was not entirely accurate, the information is not being sought just for due diligence purposes but to nail down Mr Abramovich's position in the event of a subsequent dispute. Correct? That's what his first point says, is it not?

A. Yes, that's correct.

Q. Then his second point is that, as soon as you started putting in the document what the statement was not, he would have to start by specifying what it positively was. By way of example, he suggests that he would want to include an estoppel, possibly liability for any tortious misrepresentation in the event that Mr Abramovich was found to have told a deliberate untruth, and Mr Hauser says that he doesn't want to go round the houses with you on that one, correct?

A. That is correct.

Q. Then Mr Hauser's third point was that the principals had

not agreed to put any gloss on the statement, in his view for good reason, given the "can of worms" that would otherwise be opened up as per his first and second points. Do you see that?

A. Yes, I see that.

Q. We can see what happens next if you go to page 150 of the same bundle, please H(A)81/150.

Again, just starting with the email towards the bottom of the page, we see that you again reply to Mr Hauser's email and you suggest an alternative acknowledgement which would be made on behalf of Mr Abramovich.

What you suggest that Mr Abramovich might acknowledge instead is that -- "BP" is obviously Mr Patarkatsishvili, so:

"[Mr Patarkatsishvili] and his Affiliates and Associated Persons were the only persons (other than [Rusal Holdings, Mr Deripaska] and their respective Affiliates and Associated Persons) with whom he and his Affiliates and Associated Persons had any dealings, arrangements or understandings with respect to the [Rusal Holding] Shares (including predecessor shares) and the interests and business represented thereby."

Do you see that?

A. Yes, I see that.

- Q. The reason you proposed that alternative wording for the acknowledgement, Mr De Cort, was that you knew that this was in fact closer to the truth, because you knew or at least very strongly suspected, as a result of your involvement in the source of funds letter that we saw earlier, that Mr Abramovich had not only had dealings and arrangements with Mr Patarkatsishvili in respect of the 25 per cent stake in the Rusal group, but that he had also had dealings and arrangements with companies associated with Mr Berezovsky; that's right, isn't it?
- A. No, I did not know that at all at the time.
- Q. And indeed you understood that the parties that had earlier been identified as BB were the ultimate beneficial owners of the 25 per cent stake in Rusal although you did not know if they might also turn out to be fronting for someone else. We saw that, you will recall, in the document you disclosed on Friday, the document at H(I)/01/1.
- A. I was just in abstracto, in a vacuum, making some comments on the language of a warranty. I had no knowledge at that point in time.
- Q. And that is why you were trying to propose, or you were proposing, this alternative wording for the deed of acknowledgement?
- A. No, that is not correct. This alternative wording was

basically based on what I was told internally that the only people Mr Abramovich ever dealt with was Mr Patarkatsishvili.

Q. Or his affiliates and associated persons?

A. No, he dealt with Mr Patarkatsishvili, but we made eventually the language broader, yes, that's correct.

Q. We can see how Mr Hauser reacted when you tried to explain the scope of Mr Abramovich's acknowledgement to people other than Mr Patarkatsishvili. If you look at page 150 H(A)81/150, he writes back and he says:

"Dear Andre.

"Thanks. The problem with this is the use of the term 'Affiliates' and 'Associated Persons' which raises again the relationship between BP and B2."

Of course, you understood that Mr Hauser, referring to B2, was very likely referring to Mr Berezovsky, correct?

A. That is correct.

Q. Mr Hauser then goes on:

"For example, might B2 [Mr Berezovsky] argue that he was a 'predecessor' or a 'successor' to BP. Might it be argued that the Business Interest was held on behalf of some other company of which BP and B2 were joint shareholders, and that the company was thus an 'Affiliate' of BP as being under BP's control due to an

'agreement with any other Person'; eg, B2

[Mr Berezovsky]?"

And that was true of Blue Waters, was it not?

A. Until this date they still don't know who actually owns Blue Waters, I know it's been disclosed but I just don't have any focus. I know it was one or the other, I don't know.

Q. And it was true of Rich Brown which was the other company in respect of which a source of funds letter was sent?

A. I didn't know at the time, I didn't recall the Rich Brown letter, but eventually I -- I've apparently looked at it at the time, but I had no knowledge whatsoever who was associated with that company.

Q. Just looking at the final paragraph, he says:

"You appreciate my problem; I'm not trying to be paranoid about the world at large nor am I raising theoretical issues about things that are unlikely ever to occur. I have a specific issue that I need to address, which is [Mr Berezovsky]."

So Mr Hauser was adamant, wasn't he, that he was not now going to allow you or Mr Abramovich to row back on the acknowledgement you'd previously suggested which involved saying that Mr Patarkatsishvili was the only person with whom Mr Abramovich had dealt and had

understandings?

- A. Mr Hauser has made it clear from 15 June that he, as a result of the press articles, he had an issue, he was on notice of certain claims that were being made in the press, and we were all in a vacuum about that. We had never received any type of letter or clarification whatsoever from Mr Berezovsky saying that he had a claim, he just made some allegations in a newspaper. It's a form of blackmail.
- Q. Mr Hauser was resisting -- you're now putting forward a different acknowledgement on behalf of Mr Abramovich whereby Mr Abramovich acknowledged that he had dealings not just with Mr Patarkatsishvili, but also that he had dealings with Mr Patarkatsishvili's affiliates and associates, correct?
- A. Yes, he seemed to have problems with that.
- Q. And you would obviously have preferred to use this "affiliates and associates" language, and I suggest that that was because of your involvement with the source of funds letters; you dispute that?
- A. I dispute that. At that point in time I was not at all thinking about a source of funds letter. I did not associate one with the other.
- Q. In fact, Mr De Cort, although you say you were not thinking of the source of funds letter, the source of

funds letter in relation to Rich Brown was happening at around the same time as you were trying to deal with the beneficial ownership warranties, was it not?

A. That might be correct but I was not associating one with the other.

Q. Well, Ms Khudyk tells us that she referred that correspondence to you to deal with.

A. As I said, I might very well have dealt with that at that point in time, but I was not putting one and one together. Rich Brown is not an entity that is ever mentioned in connection with Rusal group transaction. I didn't know who was the owner or were the owners of Rich Brown, and I didn't put that together with Rusal at all.

Q. They were being paid with the Rusal dividends, were they not?

A. Yes, that was a payment mechanism.

Q. From Rusal, or Rual --

A. From Rual I believe.

Q. Which is the trading arm of Rusal, correct?

A. Yes.

Q. But you didn't put two and two together?

A. One and one together, yes. I don't know; my involvement with the Rich Brown letter was very limited, I think there may be only one email or something. Really this

letter didn't go anywhere. I might have at some point in time shown a draft, made an initial round of comments on it, and that was it.

Q. Well, there's more than one email, Mr De Cort, but I'm not going to take you through all of those.

MRS JUSTICE GLOSTER: Choose your moment for the break, Mr Rabinowitz.

MR RABINOWITZ: My Lady, now is as good a time as any.

MRS JUSTICE GLOSTER: Very well, ten minutes.

(3.14 pm)

(A short break)

(3.30 pm)

MR RABINOWITZ: Now, in paragraph 53 of your statement E2/09/291, Mr De Cort, you tell us that before you signed off on the final wording for Mr Abramovich's statement in the deed of acknowledgement you had to get the approval of Ms Panchenko, who was the project manager; is that right?

A. Yes, that's correct.

Q. And you also explain, still at paragraph 53, that Ms Panchenko also made it clear that you would also need to get Mr Tenenbaum's approval before she could sign off as project manager, is that correct?

A. That is correct.

Q. Did you, so far as you can recall, seek Mr Tenenbaum and

Ms Panchenko's approval?

A. I'm sure I did, yes.

Q. Can we just have a look at the final wording for the deed of acknowledgement. You set it out at paragraph 54 and we can take it from there:

"[Mr Abramovich] states and acknowledges to [Mr Deripaska] that with respect to the Shares (including predecessor shares) and the Business Interests represented thereby (as defined in the Deed of Release) (other than [Mr Deripaska], the Company and their respective Affiliates and Associated Persons), he had only had discussions, arrangements and understandings with, and he only interacted and [dealt] with [Mr Patarkatsishvili]."

Of course Mr De Cort, as a result of the Blue Waters transaction and the source of funds letter, you were aware that Mr Abramovich's company, Madison, through which the interests in Rusal were held, had been involved in arrangements involving dividends declared for the benefit of entities, and I suggest you knew that those were entities associated with Mr Berezovsky as well as Mr Patarkatsishvili?

A. No, I did not know that at the time.

Q. I suggest also, as we've seen from the document disclosed late last week, that you understood that

Millhouse's understanding was that BB, which you knew to be a reference to Mr Berezovsky, was indeed the ultimate beneficial owner and had been that since 15 March 2000, but that nothing should be done to further document that beneficial ownership?

A. No. As we've discussed this morning, BB stood for the beneficiaries of B company, and the further documentation refers just to the fact that drafts had been prepared without our involvement, referring to beneficial ownership interests of various people. After my internal discussion it became clear what the real situation was, and then indeed there was no reason, no justification, no basis on which we would further document that.

Q. I suggest that you were in fact aware of the arrangements and understandings relating to the Rusal shares which involved not just Mr Patarkatsishvili but companies which you either knew or strongly suspected to be associated with Mr Berezovsky?

A. No, that is not correct. Mr Berezovsky's first association with Rusal was from the press article that Mr Hauser showed me.

Q. Well, I suggest that what happened is that you agreed on this occasion to be overruled by your superior, Mr Tenenbaum, didn't you, Mr De Cort? You felt you were

not in any position to question his judgment as to what should be said here? And that you let the deed of acknowledgement go through in its final form even though you knew that it did not accurately state the position?

A. No, I was told that Mr Abramovich only ever had dealings with Mr Patarkatsishvili in respect of the aluminium assets.

MR RABINOWITZ: My Lady, I have no further questions for Mr De Cort.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: I have no questions, my Lady.

MR ADKIN: I have no questions, my Lady.

Re-examination by MS DAVIES

MS DAVIES: Mr De Cort, just two matters. First of all, you were asked this morning about your email exchange with Mr Tenenbaum on 12 July in relation to the warranty about the basis of claims in the public domain. You said that eventually a warranty that there are no such claims was given?

A. Yes.

Q. And this afternoon, you referred to a document, I just want to check that we've all seen it and that it's the right document. It's H(A)86/53, if you could be given that. H(A)86/53.

MRS JUSTICE GLOSTER: Is this the reference made at [draft]

T30/62 by the witness, because I have a question like that?

MS DAVIES: Yes, my Lady.

MRS JUSTICE GLOSTER: It's [draft] page 62 of the transcript, that's where I picked up the point.

MS DAVIES: That's right, my Lady. Then this afternoon, during the course of his evidence, Mr De Cort came back to this issue and -- I'll just find the reference -- made a reference to the document at H(A)86/53 in this context.

I can't find the reference to where it is -- [draft] page 123 I'm being told.

MRS JUSTICE GLOSTER: Yes, I remember it.

MS DAVIES: So if we could just look at H(A)86, page 53, which is the document you referred to this afternoon where you said:

"... that's where Madison gives the warranty about ... claims."

A. Yes, that's correct.

Q. Could you just --

MRS JUSTICE GLOSTER: Hang on, can I just get there, please.

MS DAVIES: I do apologise, my Lady.

MR RABINOWITZ: Just before one goes off on a false premise, Mr De Cort's evidence, as I understood it, was about giving that warranty to Eagle Capital, whereas these

seem to be to a different company.

MRS JUSTICE GLOSTER: Well, you tell us, please, Mr De Cort.

If you want to scroll back through the transcript, the first page where I certainly had a note to ask you about it, if counsel didn't, was at [draft] page 62.

Have you scrolled back on the screen? You have to press the stop button.

A. To [draft] page 62?

MRS JUSTICE GLOSTER: Yes, go back to [draft] page 62, just the last few lines of page 61, Mr Rabinowitz says at line 24 on [draft] page 61:

"You see, I suggest that you were well aware, and indeed Mr Tenenbaum was well aware, that there was a basis to these claims and that is what explains why Mr Tenenbaum is telling you, as I suggest he is, that we should not say that it has no basis, but you disagree with that, do you?"

You say:

"I disagree with that because, eventually, we did give a warranty that there are no claims."

I'm just interested in which document you were referring to when you said that?

A. I thought it was in the deed of settlement but, of course, yes indeed there is a contract with the Cliren party on behalf of Mr Patarkatsishvili, and I'm just

trying to recollect whether there was another document that we signed with a deed of release of some sort that we signed with the Deripaska side but I'm not sure.

Maybe I was mistaken.

MS DAVIES: Can I take this in stages, Mr De Cort. Can you first of all point us, in the deed of settlement, to the clause you had in mind when you referred to it this afternoon.

A. The clause I was referring to is clause 3.

Q. Any particular part of clause 3?

A. Clause 3, sub-clause (iii), where I refer in the third to last line, "rights and claims of third parties".

MRS JUSTICE GLOSTER: Sub-clause 3?

A. Clause 3, sub-clause (iii).

MS DAVIES: And that we can see from the beginning of clause 3 is a representation and warranty provided by M, who is?

A. Madison.

Q. To B, who is B?

A. B is Cliren, Mr Patarkatsishvili's company. And the representation is made to the best of the knowledge of Madison and Madison's affiliates and associated persons, and that includes Mr Abramovich. Because the affiliates or associated persons definition includes the ultimate beneficial owners. The associated persons definition on

page 2, top of page 2, means a party's ultimate beneficial owners. So it basically says that to the best of Madison and Mr Abramovich's knowledge there are no rights and claims of third parties.

Q. And then if you could look at --

MRS JUSTICE GLOSTER: So are you referring to 3(i), are you?

A. No, 3(iii).

MRS JUSTICE GLOSTER: 3(iii), thank you.

A. At the end of the third line:

"... to the best of [Madison's] and [Madison's] Affiliates' and Associated Persons' knowledge [which includes Mr Abramovich], rights and claims of third parties ..."

Q. If you could now be given bundle H(A)77, at page 109, you should find an email from Mr Streshinsky to Mr Hauser and yourself H(A)77/109.

Do you have that?

A. Yes, I have that.

Q. And it says:

"In the meantime please see attached summary of open points drafted by Artem."

And refers to an attached file, "Table of Warranty Issues Eng.doc".

If you turn forward to page 110 H(A)77/110.

A. Yes.

Q. You see a heading "Issue 1: Scope of warranty of title"?

A. Yes.

Q. And three columns, and there's a column headed "M". Who does M represent in this document?

A. Madison.

Q. And could you read that? (Pause)

A. Aloud?

Q. Now, can you recall whether or not this statement of Madison's position was accurate as at 23 June 2004?

A. Yes, eventually I think there is a further version of this document that was circulated after our conference call in which the square brackets were removed from the position of Madison, and that I'd signed off on that.

Q. Thank you.

Just one other matter, Mr De Cort, you were just asked some questions this afternoon about the payments to Blue Waters and Rich Brown which you had some involvement in, the source of funds letters.

A. Yes.

Q. Can you just clarify for us whether those payments to Blue Waters or Rich Brown involved payments of dividends by Rusal or Rusal Holding Limited so far as you are aware?

A. The one to Blue Waters, which was in 2003, was from Rual Trade. The one in 2004 I really have no recollection.

I mean, it never got off the ground so I really didn't go into the details of who was making which payments, or would have been making which payments.

Q. And can you help us with the question of whether there was a corporate relationship, and if so what, as between Rusal and Rual?

A. I know that Rual was a trading arm and I think that eventually it was incorporated into Rusal Holding but I don't know exactly the form of that restructuring.

MS DAVIES: Thank you very much, Mr De Cort.

MRS JUSTICE GLOSTER: I have no questions. Thank you very much indeed for coming along to give your evidence.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: You may be released.

(The witness withdrew)

Are you going to start with the next witness tomorrow?

MR SUMPTION: Yes, tomorrow we are. He is appearing under a witness summons and he will be here for a clean start at 10.15.

MRS JUSTICE GLOSTER: Yes. Apart from Mr Bulygin who, as you've indicated, you will be applying for leave to serve as a hearsay notice, that is the end of the evidence, is it?

MR SUMPTION: That is right. I had taken it from this

morning that in the absence of opposition from my learned friend your Ladyship was giving me leave to rely on that as a hearsay statement.

MRS JUSTICE GLOSTER: Is that right, Mr Rabinowitz?

MR RABINOWITZ: That is right.

MRS JUSTICE GLOSTER: Very well, fine.

Okay, so it's not anticipated that I'll be sitting this Friday, is that right?

MR SUMPTION: That is right.

MRS JUSTICE GLOSTER: I'm doing another case on Monday, 16 January, which has been in the diary, it's a criminal case, for some time so I won't start on the Monday.

I think my clerk has sent an email.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Tomorrow, do we need to start at 10.15? I'm in your hands if you'd like to --

MR RABINOWITZ: I don't think we need to. 10.30 would be adequate.

MR SUMPTION: I'm sure that's fine.

MRS JUSTICE GLOSTER: 10.30.

(3.45 pm)

(The hearing adjourned until  
Tuesday, 22 November 2011 at 10.30 am)

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Tuesday, 22 November 2011

(10.30 am)

MS DAVIES: My Lady, our next witness is Mr Hauser.

Mr Hauser, my Lady, you will recall, was the subject of Mr Stanley's memorandum last week.

MRS JUSTICE GLOSTER: Yes, I have it here.

MS DAVIES: Mr Stanley is here again today to represent Mr Deripaska's interests. We have had a discussion since the exchange of memoranda, as a result of which we don't think there's an issue that we need to trouble my Lady with and we believe that the matters we indicated we wished to be carved out are agreed, and we will obviously just have to see how we proceed.

Of course there has been no waiver of privilege and Mr Hauser is not authorised to waive privilege in his evidence, and I certainly am very conscious of that in the questions I will be asking.

MRS JUSTICE GLOSTER: Okay, if an issue arises I'll have to deal with it, but it's very difficult to deal with these kind of issues, as it were, of high principle rather than dealing with a specific question, so we'll just wait and see where we get to.

MS DAVIES: Absolutely, my Lady. Mr Hauser is responding to a summons both from my clients and from the Anisimov defendants, Freshfields, but it's been agreed that I

should take him first and we'll see where we get to.

MRS JUSTICE GLOSTER: You're taking him in-chief?

MS DAVIES: I am, my Lady. There is no witness statement.

So I will call, if it's convenient, Mr Hauser.

MRS JUSTICE GLOSTER: Yes. Very well.

MR PAUL HAUSER (sworn)

MRS JUSTICE GLOSTER: Please sit down, Mr Hauser, if you'd like to.

Examination-in-chief by MS DAVIES

MS DAVIES: Good morning, Mr Hauser.

A. Good morning.

Q. Could you please state your full name?

A. Paul Edward Hauser.

Q. And your address?

A. 88 Wood Street, London.

Q. And your occupation?

A. Solicitor.

Q. Which firm do you practise with currently?

A. Bryan Cave.

Q. And how long have you been with that firm?

A. Since 1982.

Q. In 2000, was one of your clients Mr Oleg Deripaska?

A. Yes, it was.

Q. And did he remain one of your clients subsequently?

A. Yes, he did. He's my client to this day.

- Q. If you can be given bundle H(A)18 at page 124 H(A)18/124, you should see there a document headed "Share Purchase and Sale Agreement SA/SN-01..." dated 15 March 2000. Do you have that document?
- A. I have that.
- Q. Have you seen that document before?
- A. Yes.
- Q. Were you involved in the negotiation of this document?
- A. Yes.
- Q. Looking at the document, you can see that the two parties are, firstly, Runicom Limited and, secondly, GSA (Cyprus) Limited. Can you recall whose company GSA (Cyprus) Limited was?
- A. That was Mr Deripaska's company.
- Q. And Runicom Limited?
- A. Was Mr Abramovich's company.
- Q. On whose behalf were you involved in these negotiations?
- A. Mr Deripaska.
- Q. Can you recall when you first became involved in the negotiations of this agreement?
- A. That would have been on the Saturday prior to the date on which this agreement was signed. I think 15 March was probably the following Wednesday so I would have been involved from the Saturday morning.
- Q. Did you attend any meetings in London as part of

negotiations of this agreement?

A. Yes, I attended a meeting in the morning of Saturday at the Four Seasons Hotel with Stalbek Mishakov and Mr Tenenbaum.

Q. Who was Mr Mishakov?

A. Mr Mishakov is, or was at the time, Mr Deripaska's in-house Russian lawyer.

Q. And who did you understand Mr Tenenbaum to be?

A. I understood him to be a representative of Mr Abramovich.

Q. Was there anyone else present at that meeting?

A. Yes, I have -- had at the time a partner, Walter White, who accompanied me to the meeting, so there were four of us present.

Q. Staying with this agreement, the 15 March agreement, did you subsequently attend any further meetings for the purposes of negotiating its terms?

A. Insofar as you're asking about meetings that I may have attended involving Mr Abramovich's representatives, the answer to that is yes. I attended a quite lengthy meeting in Moscow on the Tuesday afternoon following the meeting in London, which meeting lasted well into the evening and into the small hours of the morning.

Q. Who was present at that meeting?

A. Well, it was Mr Mishakov and me on behalf of

Mr Deripaska, and it was Mr Tenenbaum, Andrey Osipov and Ken Schneider on behalf of Mr Abramovich.

- Q. And that, you say, was on the Tuesday afternoon following the meeting in London. Would that have been the 13th or 14th --
- A. I don't have a calendar so I remember by days of the week. It was the Tuesday afternoon, the meeting would have started I think round about 4 o'clock.
- Q. And it lasted for approximately how long?
- A. Twelve or 13 hours, I think we finished about 5.00 am on the Wednesday morning.
- Q. Can you recall whether or not during that meeting you discussed anything about where your respective principals were?
- A. Yes, I was told that Mr Deripaska was -- well, I should stop for a minute. The meeting on Tuesday was held in the Sibneft offices in Moscow in a conference room on the ground floor, actually on a mezzanine floor in the offices. I was told that Mr Deripaska and Eugene Shvidler were upstairs in Mr Shvidler's office although I didn't see them during the course of the negotiations.

The reason that I knew that to be the case was because, as we negotiated during the night and into the morning, as issues arose respecting the agreement, deal

points, then either Mr Mishakov or Mr Tenenbaum or both of them would go upstairs and would get the principals, in this case Mr Deripaska and Mr Shvidler, to reach agreement on whatever the point was, and then they would come downstairs, tell Mr Schneider and me, we would incorporate it into the document and we would continue our negotiations.

- Q. I've just been told the Tuesday was the 14 March in fact. So you had a meeting overnight on the Tuesday?
- A. Yes, the meeting was on the Tuesday, starting at about 4 o'clock, and it ran into the final small hours of the morning on the Wednesday when this agreement was finalised and was taken off to be signed.
- Q. Were you involved in any other meetings prior to this agreement being signed with representatives of Runicom?
- A. Not with representatives of Runicom, no.
- Q. Focusing solely on your communications with representatives of Runicom or Mr Abramovich, prior to the signing of this agreement, the 15 March agreement, can you recall whether or not any mention was made in those communications of Mr Berezovsky?
- A. No. No mention was made.
- Q. And the same question about Mr Patarkatsishvili?
- A. No. No mention was made of Mr Patarkatsishvili.
- Q. Could you now be given bundle H(A)19.

A. Can I put this away?

Q. Yes, of course. And go to page 22 H(A)19/22. You should see there an amended and restated share purchase and sale agreement dated 15 May 2000. Do you have that document?

A. I do.

Q. Do you recognise this agreement?

A. Yes.

Q. Were you involved in the negotiations that led to this agreement?

A. Yes.

Q. On whose behalf were you involved in those negotiations?

A. Mr Deripaska.

Q. Who did you deal with as a counterparty for the purposes of those negotiations?

A. At this stage it was almost entirely Mr Schneider on behalf of Mr Abramovich.

Q. Now, focusing solely on your communications with Mr Schneider or any other representative of Mr Abramovich in the context of negotiating this agreement, can you recall whether or not any mention was made in those communications of Mr Berezovsky?

A. No mention was ever made of Mr Berezovsky.

Q. And the same question about Mr Patarkatsishvili?

A. No mention was ever made of Mr Patarkatsishvili.

Q. Could you put that away and now be given bundle H(A)64 at page 18 H(A)64/18.

You should have a share purchase and sale agreement, this time dated 17 September 2003.

A. Yes, I have it.

Q. If you see in paragraph 1, this refers to the vendor and the purchaser being identified in schedule 1, which you'll find at page 25 H(A)64/25. And we see reference to two companies, Madison Equities Corporation and Baufinanz Limited, page 25.

A. Sorry, are you sure? I don't think it's on -- we're talking about -- this first one, I think the reference is actually on page 8 -- oh, you're looking at the document --

Q. Schedule 1.

A. You're looking at the document numbering on the bottom right-hand side?

Q. Yes, I am. Sorry, Mr Hauser.

A. Yes, okay. Page 8 of the agreement.

Q. Schedule 1: vendor, party 1, Madison Equities. Purchaser, party 2, Baufinanz.

A. Yes, I see that.

Q. Do you recognise this agreement?

A. Yes.

Q. Can you recall whose company Madison Equities

Corporation was?

A. Yes, it was Mr Abramovich's company.

Q. And Baufinanz Limited?

A. Was Mr Deripaska's company.

Q. Were you involved in the negotiation of this agreement?

A. Yes.

Q. On whose behalf were you involved in those negotiations?

A. Mr Deripaska.

Q. Can you recall who your counterparty was for the purposes of negotiating this agreement?

A. Yes. It was again Mr Schneider as Mr Abramovich's lawyer. He was -- the person who dealt with the deal points was Andrey Osipov on behalf of Mr Abramovich.

Q. Again, focusing solely on your communications with Mr Schneider, Osipov or any other representative of Mr Abramovich, for the purposes of negotiating this agreement, can you recall whether or not any mention was made in those communications of Mr Berezovsky?

A. No mention was ever made of Mr Berezovsky.

Q. And again the same question about Mr Patarkatsishvili?

A. No. No mention was ever made of Mr Patarkatsishvili.

Q. Right, you can put that one away.

If we go to bundle H(A)85 at page 8 H(A)85/8. You should find another share purchase and sale agreement, this one dated 20 July 2004 between, again, a vendor and

purchaser identified in schedule 1, and schedule 1 is at page 16.

A. Yes, I have it.

Q. It's not very clear, but the vendor is identified as Cliren Investments Ltd and the purchaser Eagle Capital Group?

A. Yes, I see that.

Q. Do you recognise this agreement?

A. Yes.

Q. Were you involved in the negotiations that led to this agreement?

A. Yes.

Q. If you could just leave that one open and could also be given bundle H(A)84 at page 64 H(A)84/64.

You should here have a document entitled "Beneficial Owner Deed of Release DR/BP", again dated 20 July 2004?

A. Yes, I have that.

Q. Do you recognise that agreement?

A. Yes.

Q. Were you involved in the negotiations that led to this agreement?

A. Yes.

Q. If you could turn in this bundle to page 206 H(A)84/206 you should have another agreement dated 20 July 2004 at page 206?

A. A deed of acknowledgement I think.

Q. Yes, a deed of acknowledgement between Mr Abramovich and Mr Deripaska. Do you recognise that agreement?

A. Yes.

Q. Were you involved in the negotiation of that agreement?

A. Yes.

Q. Can you recall when you first became involved in the negotiations that led to the three agreements dated 20 July 2004 that we've just looked at?

A. In September of 2004. Oh, I'm sorry, no, this is --

Q. These are dated July --

A. These are July 2004. No, I first became involved in this -- I was first instructed, I should say, on 31 May 2004.

The first negotiations was in respect of a meeting that was held in Moscow, I believe the following Friday. Again, I don't know the exact date, I only remember by dates of the week -- days of the week.

Q. I have a calendar for 2004 which has the days of the week --

A. That might be helpful if you could show that to me.

Q. -- if that might assist, if I could hand that up.

(Handed)

A. Yes. The -- I was first instructed on 31 May, which was a Bank Holiday, I remember that, and the first meeting

I held with -- in terms of negotiations or representatives of anyone from the other side was on Friday 11 June.

Q. Okay. I'll come to that meeting in a minute, if I may, but just to establish certain other things first.

As part of the negotiations that you undertook in relation to these three agreements dated 20 July 2004, did you personally have contact with anyone who you understood to be representing Mr Abramovich?

A. Yes.

Q. Who was that?

A. Mr De Cort.

Q. Anyone else?

A. From Mr Abramovich, no.

Q. If you could please be given bundle H(A)74.

A. Shall I leave these open?

Q. I think you -- actually if you just put them to one side.

A. Okay.

Q. H(A)74, page 129 H(A)74/129. You should have in front of you an article published in the Moscow Times on June 3 2004?

A. Yes, I see that.

Q. Do you recognise this article?

A. Yes, I do.

Q. When do you think you first saw this article?

A. It would have been early in the week that I went to Moscow, so I believe it was about Tuesday, 8 June.

Q. Do you recall whether or not you read it at that time?

A. Yes, I did.

Q. If you go forward in bundle H(A)74 to page 219 H(A)74/219, you should find a memorandum to Mr Mishakov described as emanating from you, Mr Hauser, "Paul Hauser".

A. I see that.

Q. Do you recognise that memorandum?

A. Yes, I do.

Q. Were you the author of that memorandum?

A. Yes, I was.

Q. Now, I understand that this memorandum would once have been a privileged document and I want to make clear I do not want to pry into any privileged matters, but I do wish to ask you a few questions about any communications you had with Mr Abramovich's representatives about the matters covered in the memo. I just make that clear at the outset.

If you could read the first two paragraphs of the memorandum. (Pause)

A. Yes.

Q. Can you recall whether or not prior to preparing this memorandum you had had any discussions with Mr De Cort about the matters covered in the first two paragraphs of it?

A. I had no discussions with him prior to 9 June.

Q. Now, the first paragraph refers to a diagram of the transaction. If you could turn to bundle H(A)74, page 223 H(A)/74/223, do you see a document which has got a lot of arrows and boxes at the top and then numbered paragraphs 1 to 6?

A. Yes, I do.

Q. Is that the diagram of the transaction to which you were referring in your 9 June memorandum, or were you referring to a different document?

A. No, this is the diagram.

Q. Now, if you look at this document and the explanation below, at paragraph 4 it states that:

"RA provides guarantee with regard to the representation and warranty that the Beneficiaries (B&B) are the ultimate beneficiaries of 25% of RH's shares."

Do you see that line?

A. Yes.

Q. Again, can you recall whether or not, at the time you prepared your 9 June memorandum, you had had any discussion with Mr De Cort, or any other representative

of Mr Abramovich, about the terms of the assurances or other terms that might be provided by Mr Abramovich?

A. I had had no discussions with him at all. I hadn't had any discussions with him about the transaction at all. So the answer to the question is no, I had no such discussions.

Q. Now, you told us a moment ago that the first negotiation meeting you went to was on 11 June, a couple of days after this memorandum. Who did you meet with on 11 June?

A. I met with Stalbek Mishakov, the meeting was in Mr Mishakov's office in Moscow, and then I met with Ms Arbatova and with Mr Streshinsky.

Q. Did either Mr Streshinsky or Ms Arbatova explain to you at the meeting who they were representing?

A. Yes, they said that they were representing Mr Patarkatsishvili.

Q. Did they explain why they were representing Mr Patarkatsishvili at this meeting?

A. Yes, they said that he had a beneficial interest in the shares and that he was the person who would be selling them to Mr Deripaska.

Q. Which shares did they say he had a beneficial interest in?

A. The shares that were the subject of the 2004

transaction, the 25 per cent of the shareholding in Rusal Holding.

- Q. Can you recall whether or not either of them explained to you how Mr Patarkatsishvili had acquired that beneficial interest?
- A. No, they didn't. They simply indicated that they were acting for him, that he would be the seller, that he had a beneficial interest, and we then had a general discussion as to how we would move the transaction forward.
- Q. Can you recall whether or not any reference was made to Mr Berezovsky at this meeting with Mr Streshinsky and Ms Arbatova?
- A. Yes, there was a reference to Mr Berezovsky, because I took the Moscow Times article with me. So in terms of talking about the beneficial owner of the shares I was told that Mr Patarkatsishvili was the beneficial owner and I raised with them the statement that was in the Moscow Times article.
- Q. And what was their response?
- A. That Mr Berezovsky did not have an interest, that Mr Patarkatsishvili was the sole beneficial owner of the 25 per cent of the shares to be acquired by Mr Deripaska.
- Q. Now, was Mr De Cort present at this meeting?

- A. No, he was not able to attend because his mother was ill.
- Q. Did you subsequently have any discussions or meetings with Mr De Cort about this transaction?
- A. Yes, I had a meeting with him when I returned from Moscow to London on the following Tuesday which was the -- looking at your calendar -- 15 June.
- Q. Was anyone else present at that meeting, or was it just --
- A. No, it was just the two of us.
- Q. And can you recall whether or not Mr Berezovsky's name came up during the course of your discussions with Mr De Cort on that occasion?
- A. Yes, because I showed Mr De Cort the Moscow Times article.
- Q. And what did you say to Mr De Cort?
- A. Well, the -- to kind of go back a little bit, the purpose of the meeting with Mr De Cort was to follow up on the meeting in Moscow of the Friday that he was not able to attend, because it was pretty clear from the meeting on Friday, as we went through the documents that would be required, that a number of documents would be required from Mr Abramovich. And so we needed -- I needed Mr De Cort to know that because it was now a transaction involving three parties rather than two.

So the principal purpose of the meeting was to coordinate the preparation of documents and execution of them.

The second principal purpose of the meeting was to discuss with Mr De Cort the fact that I had been told on Friday that Mr Patarkatsishvili was the beneficial owner of the 25 per cent of the shares that were being sold to my client. There was then a third issue which was more, I suppose, in the way of an aside than anything else, in which I also brought Mr De Cort's attention to the Moscow Times article and said effectively, "By the way, Mr Berezovsky is also claiming an interest in these shares. Do you know anything about it?"

Q. Can you recall what Mr De Cort's response at this meeting was?

A. Mr De Cort told me that he would have to take instructions, that he had had no instructions coming to the meeting, and that he heard what I said but he would need to get back to me.

Q. Could you please go to bundle H(A)75, page 228.001 H(A)75/228.001?

A. Do I need these bundles anymore? Can they all be closed?

Q. You can put away bundle H(A)74.

You should at page 228.001 have a document entitled

"Madison Representations and Warranties", and if you turn forward to page .004 H(A)75/228.004 you should see that the document is identified as a Bryan Cave document dated 14 June 2004.

A. Yes, I see that.

Q. Do you recognise this document?

A. Yes.

Q. Do you know who prepared this document?

A. Yes, I did.

Q. Now, 14 June 2004 was the day before your meeting with Mr De Cort? You've just told us --

A. Yes, that would be the Monday.

Q. Can you recall whether or not you took a copy of this document to your meeting with Mr De Cort?

A. No, I didn't. I didn't take a copy of the -- I can recall I didn't take a copy of the document with me to the meeting with Mr De Cort.

Q. Do you recall whether or not you provided Mr De Cort with a copy of this document on any other occasion?

A. Well, that requires a bit of an explanation as to what happened to this document and what had occurred.

As far as the Monday was concerned, I had simply come back from Moscow. I had been told something by Mr Patarkatsishvili's representatives, and this would have represented my initial thinking as to how we might

cover the representations and warranties. I would not, on the Tuesday, have presented this to Mr De Cort because I had not spoken to Mr De Cort and I had no idea what his client's position was as to who was the owner of the shares. So there would have been no point in presenting this document to Mr De Cort on the Tuesday.

Thereafter what happened was we had a series of negotiations which ultimately led to the documents that you brought my attention to at the start of this line of questioning. In the middle of those negotiations, there was a subsequent version of this document which was produced by Mr Faekov, Artem Faekov, who was the lawyer acting for Mr Patarkatsishvili. He took this initial draft, changed it to reflect what we had discussed in the meantime, and sent it back to me and Mr De Cort for our approval before the revised document was sent to the principals for their discussion and agreement.

So that Mr De Cort did see a version of this document, I don't think he ever saw this document, but he would have seen the version that Mr Faekov produced which was based upon this document.

- Q. Thank you. If you could now -- you can put that away and now turn to bundle H(A)76 at page 106 H(A)76/106. You should here find another Bryan Cave memorandum, this time dated 18 June 2004.

A. Yes, I see that.

Q. Do you recognise this document?

A. Yes, I do.

Q. Who was the author of this document?

A. I was.

Q. Now, again, I understand that this is a document which it is said was originally privileged, and I do not want to pry into any privileged issues, I only want to ask you about any communications you've had with representatives of Mr Abramovich about the contents of this document. I just want to make that clear.

Could you please read the first paragraph, not the "I write", but the paragraph starting "As I understand the position." (Pause)

A. Yes.

Q. Can you recall whether or not this paragraph reflects matters that had been explained to you by Mr De Cort prior to preparing this memorandum?

A. It did not. None of this was discussed with Mr De Cort or explained by him.

Q. In the first paragraph, we can see a reference to Madison being "a trustee for B with respect to the Shares." Do you see that?

A. Yes, I do.

Q. Can you recall whether or not at the time you prepared

this memorandum you had had any discussion with Mr De Cort about whether or not Madison was holding 25 per cent of the Rusal shares on trust for any other party?

A. Well, the answer in -- if you're asking did I -- did we discuss the possibility that Madison was a trustee or held the shares in trust, the answer to that is no. On the other hand, had I raised with Mr De Cort on the meeting on 15 June the claim that Mr Patarkatsishvili was the beneficial owner of the shares, the answer to that is yes. There would have then, if that was true, have been various consequences because, of course, Mr Patarkatsishvili did not appear to be the owner of Madison. But did we during the course of that discussion use the words "trust" or "trustee"? No we didn't.

Q. Had there been any discussion between you and Mr De Cort between your meeting on 15 June and the preparation of this memorandum on 18 June?

A. Well, I believe that in the meantime I had received an email from Mr De Cort. As I recall, it was the previous day. This was issued on the Friday. I think on the Thursday I had received an email from Mr De Cort that had responded to my requests for representations and warranties from Mr Abramovich, so I had received

a communication from Mr De Cort, but we had not discussed it, I had simply received the email.

The only discussion, to be clear, that I had had with Mr De Cort was the meeting on 15 June.

Q. In the last two sentences of the first paragraph, there's a reference to:

"Relations between RA ..."

That's presumably Mr Abramovich?

A. Yes, it is.

Q. "... and B have apparently broken down, and RA no longer wishes to deal... with B. It also is assumed that RA would prefer to discontinue serving as B's trustee and so wishes to divest Madison of the Shares."

Can you recall whether or not the content of those two sentences was based on any information that had been provided to you by Mr De Cort?

A. No, it was not based on information that was provided to me by Mr De Cort in terms of the -- not in terms of what he told me. The first sentence you've referred me to:

"Relations between RA and B ..."

B referring to, at that stage, Mr Patarkatsishvili:

"... [had] apparently broken down ..."

The reason why I had reached that conclusion was because of the way that, on the one hand, Mr Patarkatsishvili's representatives were dealing with

the matter and, on the other, the way that Mr De Cort apparently was dealing with the matter, and that is that each were content to deal with me but I didn't see very much communication. In fact, I saw no communication running between Mr Patarkatsishvili and Mr Abramovich's people. So, as a consequence, I had the strong impression that they were communicating, to the extent that they were, they were communicating with each other through me rather than directly with one another.

Q. You can put that bundle away. If you could now be given bundle H(A)80 at page 86 H(A)80/86. You should find an email dated 8 July 2004 from your email address to Mr Faekov?

A. Yes, I have that.

Q. Do you recognise that document?

A. Yes.

Q. Who was the author of that document?

A. I was.

Q. If you could look at paragraph 1(a) of this document, you see that it refers to:

"The principal is entering into this transaction on the express understanding that matters have been resolved with B2."

A. Yes.

Q. Who was B2 a reference to in this document?

A. Mr Berezovsky.

Q. It goes on in the third sentence to refer:

"Instead, my principal is taking the word of BP..."

A. Yes.

Q. Who was BP referring to in this document?

A. Mr Patarkatsishvili.

Q. If you could now take bundle H(A)81.

A. I can put this away?

Q. Yes, thank you. At page 150 H(A)81/150, you should see another email, this time dated 9 July 2004 from your email address. Do you recognise this document?

A. Yes, I do.

Q. Who was the author of this document?

A. I was.

Q. It's sent to Andre De Cort.

A. That's correct.

Q. If you could just read the email to remind yourself of its content. (Pause)

A. Yes.

Q. Could you explain who the acronym B2 is referring to in this email?

A. Mr Berezovsky.

Q. And the acronym BP?

A. Mr Patarkatsishvili.

Q. Now, in the final paragraph of your email, you say:

"You appreciate my problem; I'm not trying to be paranoid about the world at large nor am I raising theoretical issues about things that are unlikely ever to occur. I have a specific issue that I need to address which is B2."

You see that paragraph?

A. Yes.

Q. Can you recall whether or not you explained to Mr De Cort what the specific issue with B2 was that you needed to address?

A. Yes, it was Mr Berezovsky's claim to be an owner of the shares as reflected in the Moscow Times article.

MS DAVIES: Thank you very much, Mr Hauser. There will be some questions.

Cross-examination by MR MALEK

MR MALEK: Mr Hauser, could you turn, please, to your memorandum of advice of 9 June, which you will find in the bundle at H(A) volume 74 at page 219 H(A)74/219.

A. Yes, Mr Malek.

Q. You were asked by my learned friend Ms Davies as to whether or not anything said in this memorandum of advice was based on anything said to you by Mr De Cort. My question is, is anything in this memorandum based on anything said by Mr Streshinsky?

A. No, in fact I hadn't met Mr Streshinsky at the time

I wrote this memorandum.

Q. Or Mr Faekov?

A. Or Mr Faekov. I had not met him at the time I wrote the memorandum.

Q. Could you now be -- there are no other questions on that memorandum, could you now be provided with the other memorandum of advice dated 18 June, which is at H(A)76 at page 106 H(A)76/106.

Again you were asked questions about to what extent this was based on information provided by Mr De Cort, looking at the first couple of paragraphs.

Again, was anything in this memorandum, in the first couple of paragraphs that we looked at -- in fact the first -- the second paragraph, based on anything said by Mr Streshinsky or Mr Faekov?

A. No. I think the answer to your question is the same that I gave to Ms Davies, and that is that this is not based upon anything they told me. But the sentence that begins:

"Relations between RA and B have apparently broken down ..."

Was based upon my experience of dealing with all of them. And just as Mr De Cort didn't seem to be communicating with Mr Patarkatsishvili's representatives, so too Mr Streshinsky and Ms Arbatova

did not seem to be communicating with Mr De Cort.

MR MALEK: I have no further questions.

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

Cross-examination by MR MASEFIELD

MR MASEFIELD: Mr Hauser, I'm Mr Masefield and I'm one of the counsel instructed by Mr Berezovsky.

Can I make it clear at the outset that I'm conscious of the fact you're here under compulsion and that you've been told by Mr Deripaska you're not at liberty to waive any privileged information. You can rest assured I have no intention of trying to trick you or trap you into an inadvertent waiver of privilege in relation to any of the matters upon which you are instructed and are now being asked to give evidence. That's not my purpose.

I've tried to formulate my questions with some care so as to avoid straying into those areas, and no doubt Mr Stanley QC, one of Mr Deripaska's counsel who is here in court, will correct me if I go wrong. But if at any stage you feel that I've overstepped the mark, or have any concern about whether or not you are free to answer, feel free to raise that concern and to say that you're not sure that you can answer the question without disclosing privileged information and we will then try to resolve the matter. Do you understand?

A. I do. Mr Masefield, if I can just make two points of my

own in respect of all that. The first one is that, insofar as just as you are constrained in your questions, there may be occasions when I am constrained in my answers and I give answers which are less than complete and, dare I say, may on occasion even seem to be evasive.

Q. I fully understand.

A. If and to the extent that occurs, the only reason why it occurs is because, as you say, just as you are conscious of Mr Deripaska's privilege, so too am I. Mr Stanley is here in a sense to police me, to make sure that I don't go over the boundary, but I'm Mr Deripaska's solicitor and in the first instance it is my responsibility to him as his solicitor to make sure that I don't overstray the bounds of privilege.

The second point that I would make relates to actually a personal point, and that is that I was given Mr Rabinowitz's opening day submissions when it was suggested that somehow or other I connived in, I believe the phrase was "air-brushing" Mr Berezovsky out of the various purchase and sale documents.

I would ordinarily, in circumstances like that, want to give a complete response to those sorts of allegations. I think those allegations in the first instance suggest that I may have done something

improper, dare I say even dishonest. I think second of all that a solicitor who engages in air-brushing someone out of documents, if anything else can be said about him, he is an incompetent solicitor, because the documents then do not do what it is that they purport to do.

In these circumstances, as I say, I would ordinarily want to make a complete response to those sorts of allegations, I'm not in a position to do so because I am constrained by privilege, but I would like to at least put it on the record that insofar as those allegations are made, I completely and most emphatically deny them.

Q. Thank you for that, Mr Hauser. That is now on the record and I understand your position.

MRS JUSTICE GLOSTER: Right, Mr Masefield, can we get on with the questions, please.

MR MASEFIELD: Yes.

Now, Mr Hauser, you've said that you're a partner in the law firm Bryan Cave and you practise out of its London office, is that correct?

A. That's correct.

Q. You first came to London to practise law in 1980, didn't you?

A. I did.

Q. And you've been admitted as a solicitor in England and

Wales?

A. I have.

Q. You've also been admitted as an attorney at law in the courts of New York State, the Federal Court for the Southern District of New York, correct?

A. That's correct.

Q. And your practice with Bryan Cave covers both corporate and tax planning?

A. It does that. In more recent years, it has covered a fair amount of litigation, but yes.

Q. Tax disputes and also commercial litigation?

A. And also commercial litigation, yes.

Q. We know from the documents that have been disclosed in these proceedings that both you and your firm Bryan Cave have acted for Mr Deripaska and his associated companies since at the very least March 2000, correct?

A. We've acted for Mr Deripaska since October 1999.

Q. I'm grateful. And presumably, as a corporate lawyer with many years of commercial experience, you would regard yourself as a reasonably prudent and careful --

A. Sorry, someone coughed. I didn't catch the last part.

Q. I'll repeat the question. Presumably as a corporate lawyer with many years of commercial experience, you would regard yourself as a reasonably prudent and careful man?

A. Yes.

Q. We can see from the documents that have been disclosed that you're a man who pays considerable attention to detail when you become engaged on behalf of clients in corporate transactions?

A. Yes.

Q. And in particular, where M&A work is concerned, can I take it you're someone who pays a lot of attention to due diligence?

A. Yes.

Q. And in the absence of satisfactory answers, to ensuring that adequate warranties and the like are in place to protect your client's interests?

A. Well, I would say that -- the way you phrased the question was: in the absence of satisfactory answers, that I would ensure that adequate warranties and the like are in place, I would say that I would ensure it as a general matter, whether I had received adequate answers or not.

Q. I'm grateful. So just to state the obvious, and without wishing to trespass on any privileged material, whenever you're instructed on a merger and acquisition transaction where you're acting for the purchaser, you would want to ensure that you got proper warranties of title, would you not, Mr Hauser?

A. Yes.

Q. Speaking in entirely general terms, when you're instructed in a substantial transaction, presumably you'll do your best to understand the context in which that transaction has arisen?

A. Yes.

Q. The relevant background against which the transaction is being conducted?

A. To the extent I can determine that, yes.

Q. And in order to understand that background matrix of fact, and again speaking in entirely general terms, your first and most obvious port of call would be your client, would it not?

A. No, I wouldn't necessarily say -- well, in terms of obtaining instructions, yes, I would, in the first instance, look to my client. Whether my client is in the best position to give me the background information depends on the transaction and depends on the client.

Q. It may do, but your client will be one of the people whom you would want to try to find out more information about the background to the transaction?

A. Yes.

Q. Other people would be the other parties, your counterparties?

A. Yes.

Q. And it would be a rare case, would it not, where you had no real information relating to the transaction and had to proceed merely by speculation or solely by relying on information in the public domain, such as newspaper reports?

A. Well, I think the question is seeking a particular conclusion. You say it would be a rare case where I would have no information, no real information, relating to the transaction? That's true. On the other hand, as you go through transactions, depending upon the specific transaction you may have a greater or lesser amount of information with which to work.

I think the way you put it, to have a transaction in which there is no real information, no information, yes, that would be a rare case.

Q. And all the more so when the transaction in question is a transaction worth hundreds of millions of dollars, it would be madness to become engaged in such a transaction without first seeking proper instructions from your client, would it not?

A. I think that the way in which I would approach a transaction frankly doesn't depend upon the value. I think I would approach all transactions equally.

Q. And would your approach be in relation to all transactions to seek proper instructions from your

client?

A. Yes.

Q. Now, I want to ask you some questions about your involvement in March 2000 in one of the merger transactions that led to the formation of Rusal, okay? I don't want to ask you about the content of your instructions, Mr Hauser, but can you please confirm that you were in fact instructed in early March 2000 to represent Mr Deripaska's interests in a proposed merger transaction which ultimately led to the formation of Rusal?

A. I was instructed to represent Mr Deripaska's interests. I wouldn't necessarily describe the initial transaction as a merger transaction. But I was instructed to represent Mr Deripaska in the negotiations which led to the 15 March 2000 agreement.

Q. That's fine, I don't want to debate the nature of that agreement, that's going to be a matter of submission in due course.

Without referring to the content of anyone's instructions, Mr Hauser, please can you also confirm that Mr Mishakov was also instructed to represent Mr Deripaska's interests in relation to that transaction?

A. Yes, he was.

Q. And that Mr Mishakov was also a lawyer by training?

A. Yes.

Q. Now, I understand that you attended a meeting in London on 11 March 2000 with Mr Alexander Bulygin. I don't want to ask you questions about the instructions he gave you, but is that fact correct, Mr Hauser?

A. Yes, it is.

Q. I don't want to, as I say, get into the instructions which Mr Bulygin may have given you on behalf of Mr Deripaska, Mr Hauser, and nor do I need to, because we know from Mr Bulygin's own evidence that his understanding as a result of the preliminary agreement of 5 March 2000 was as follows: firstly, that Mr Abramovich was not entering into the merger transaction with Mr Deripaska on his own; secondly, that on the contrary Mr Bulygin understood that Mr Abramovich was acting together with partners; thirdly, that those partners did not include anyone within the Trans-World Group; and fourthly, that Mr Bulygin made the assumption that one of Mr Abramovich's partners was Mr Shvidler, although he was not clear who the other partners were.

And for the record, the reference to that is Mr Bulygin's witness statement, paragraph 13, at E4, tab 1, page 7 E4/01/7.

Following your meeting with Mr Bulygin on

11 March 2000, Mr Hauser, you've told us that between 13 March and 15 March 2000 you took part in negotiations in Moscow with Mr Abramovich's representatives concerning the details of the merger process?

A. No, I told you that I did that on the 14th and the 15th. I didn't participate in negotiations with Mr Abramovich's representatives on the 13th.

Q. I understand. So were you travelling out on the 13th, or you arrived on the 14th and went straight into negotiations --

A. No, I travelled out on the morning of the 13th and arrived in Moscow later in the afternoon that day.

Q. Understood. Ultimately, those negotiations led to the share purchase and sale agreement which was drawn up and executed on 15 March 2000?

A. Yes.

Q. Can we have a brief look at that, Mr Hauser. Can you please be given -- you can put away the bundles that you've already got, and can you please be given bundle H(A)18 and turn within that to page 124 H(A)18/124.

A. Before we go on to that, you have made a number of submissions about what Mr Bulygin is said to have said. Is there a question for me in relation to any of that?

Q. There isn't, because --

MR STANLEY: My Lady, there shouldn't be a question about whether Mr Bulygin said that to Mr Hauser, that's for sure.

MR MASEFIELD: Exactly. I cannot put that question to you, Mr Hauser. I am under a constraint as well.

A. Just asking.

Q. Now, you should have at H(A)18, page 124 H(A)18/124, a copy of the share purchase and sale agreement dated 15 March 2000, Mr Hauser.

A. I do.

Q. As we can see, the parties to that agreement are Runicom Limited, who is described as the vendor, yes?

A. Yes.

Q. And GSA (Cyprus) Limited, who is described as the purchaser, yes?

A. Yes.

Q. And what is being sold pursuant to the contract we can see from the definition of "Shares" on page 125 H(A)18/125, if you turn over the page, and that is 50 per cent of the shares in the companies, with a capital C, which are named in the schedule 1 to this agreement. I don't think we need to turn that up, it's page 138. But those shares comprise shares in the companies Runicom Fort Limited, Galinton Associated Limited, Palmtex Limited and Dilcor International

Limited.

It's those companies, Mr Hauser, you can take this from me, that as at the time held the shares in the underlying aluminium assets such as Krasnoyarsk, Achinsk and Bratsk, do you follow?

A. Yes. Well, since I negotiated the agreement I don't need to take it from you, I do recall this.

Q. You do recall that. If we turn within the agreement to clause 6, Mr Hauser, at page 131 H(A)18/131, do you see there a heading, "Vendor's and Purchaser's Representations and Warranties"?

A. Yes.

Q. Below that are set out the warranties of title and the like which Runicom was making to your client, yes?

A. Yes.

Q. And looking at clause 6.1.1 of this agreement, we can see that it provides:

"The Vendor and the Other Selling Shareholders are together the legal and beneficial owners of 100 per cent of the shares of the Companies, which shares are owned free from all encumbrances, charges and liens..."

Do you see that, Mr Hauser?

A. I do indeed.

Q. If we look back at the definition of "Other Selling Shareholders", which we have at page 125 H(A)18/125,

we can see that the contract provides that "Other Selling Shareholders" means:

"... those other persons who together with the Vendor are the legal and beneficial owners and holders of 100 per cent of the shares (both in registered and bearer form) of the Companies as at the Completion Date."

Do you see that, Mr Hauser?

A. I do.

Q. So to summarise, there is a warranty that Runicom Limited, together with other selling shareholders, are the legal and beneficial owners of 100 per cent of the four offshore companies, yes?

A. Yes.

Q. But when you turn to look to see who the other selling shareholders are, they're not named, are they?

A. That's right, they're not.

Q. Instead you are simply told that those are the persons who, together with Runicom, are the legal and beneficial owners of 100 per cent of the four offshore companies, correct?

A. That's what the agreement says.

Q. But what both clause 6.1.1 and the definition do suggest is that there are a number of other selling shareholders with proprietary interests in the four offshore

companies in addition to Runicom Limited?

- A. No, they raise the possibility that there are other selling shareholders, they don't suggest anything.
- Q. The use of the plural is more than a possibility, isn't it, Mr Hauser?
- A. No, in terms of drafting the document they raise the possibility. I can give you a more complete explanation if you want to formulate a question.
- Q. Let me formulate this question, Mr Hauser. It follows from this definition, does it not, that during the course of the negotiations leading up to the conclusion of this agreement, you were most probably not told by any of Mr Abramovich's representatives that Mr Abramovich was the only legal and beneficial owner of the four offshore companies in addition to Runicom?
- A. No, because you've misinterpreted the agreement. If you start with the agreement: if the agreement had said the vendor was Mr Abramovich personally then the analysis that you'd given was correct. But the agreement doesn't say that. What the agreement says is a particular company, Runicom Limited, is the vendor.

Now, if we can spend a couple of minutes just to explain how this clause was developed and why we did what we did, you had suggested to me about five or ten minutes ago that ordinarily doing a transaction of this

sort I would want to conduct as much due diligence as I could before we proceeded with the transaction. It is apparent, given the time constraints that we were under, that we didn't have time to construct -- to conduct the due diligence. It was also the case that Mr Schneider, who had just then been brought in to act for Mr Abramovich, had limited information as to the structure of the deal and the companies that were being acquired.

During the course of the negotiations, on the Tuesday night and the Wednesday morning, we had to consider a number of possibilities. Possibility 1, that with respect to the companies that Mr Deripaska was acquiring an interest in, we were not certain that the interests that Mr Abramovich held in those companies was in each case owned via Runicom. It was possible that there were other companies within the Abramovich group that had interests in some of these companies. And so the first reason we had to refer to "other selling shareholders" was to take account of the possibility that there were companies, Abramovich companies, other than Runicom that held some of the shares.

The second reason we needed to do this was because it was not entirely clear at the time we negotiated this transaction that in fact Mr Abramovich or Runicom had

completed the acquisition of all of the shares of the companies, the underlying companies, that Mr Deripaska was buying an interest in. We had to take account of the possibility that there were still interests that were being held outside of Mr Abramovich's group that he was still in the process of completing purchases from. So that was the second possibility we had.

The third problem we had, and we discussed this expressly, was the ongoing suspicion on the part of my client that perhaps Trans-World still had an interest in some of the assets that Mr Abramovich had said he had acquired. One of the things that we were most insistent upon was to ensure that this share purchase and sale agreement was in all respects enforceable, even if it transpired that Trans-World still had some sort of an interest.

There was then the fourth possibility, which is in fact something that again Mr Schneider and I discussed, which was dealing with Mr Abramovich himself. It was possible that he had one or more other partners that had interests of one sort or another in the company, but the person that we actually were focused upon was Mr Shvidler, and the question was whether Mr Shvidler had an interest in these companies. I asked Mr Schneider whether he knew whether that was or was not

the case, Mr Schneider did not, and it seemed that Mr Shvidler was actually running the deal negotiations on that evening, sitting with Mr Deripaska, so we took account of that possibility as well.

So that's why the phrase "other selling shareholders" was inserted into the purchase and sale documentation.

Q. I'm very grateful for that explanation, Mr Hauser, because possibilities 3 and 4 that you just enumerated contemplate, do they not, that there may have been other persons who were involved in addition to Mr Abramovich?

A. Correct, but there's a difference between what you're now saying, contemplating the possibility that there may have been, and the way that you originally phrased the question, which was suggesting that there were.

I would accept your analysis, it contemplated the possibility that there would be other shareholders, but I don't accept your analysis or your conclusion that, in fact, it suggested that there would be.

Q. And you didn't get to the bottom of it, you say, before the share purchase and sale agreement was concluded on 15 March 2000?

A. Well, I suspect that this particular clause was probably negotiated about 1 or 2 o'clock in the morning, and we finalised the document about 5.00 am. I think we were

probably the only people who were up in Moscow at that time. It would have been rather difficult for me to have come to the bottom of it.

Q. Indeed that's rather reflected, isn't it, in the somewhat circular definition that you see here, because if you had got to the bottom of it and you'd found out who particular partners were, if there were indeed particular partners, one could have named them in the agreement, yes?

A. We could have. We could have, yes.

Q. It contained a confidentiality provision so there would have been no problem with that.

A. I'm sorry, I don't know why the confidentiality provision would have affected whether we could have named the partners.

Q. Well, there might have been sensitivity about documenting the existence of other people's ownership interests in these assets, Mr Hauser.

A. Oh, if your question -- let's cut to the chase on this one. If your question is: during the course of the negotiations was there any sensitivity raised about naming other partners, and was that part of the motivation for including, as you describe it, a somewhat ambiguous clause, "other selling shareholders"? No, that was not anything of what we discussed that evening.

There was no issue about that, or sensitivities.

- Q. And were you reassured at least of this from Mr Abramovich's representatives, that the Trans-World Group were not in fact included within the definition of "other selling shareholders"?
- A. Well, insofar as the definition itself is concerned, on the face of it "other selling shareholders" could have taken account of the Trans-World Group. If you're asking me, was I told during the course of the negotiations that Trans-World didn't have an interest in any of the assets that Mr Deripaska was buying into? The answer to that is yes, I was told that.
- Q. You were told that expressly?
- A. Yes.
- Q. But you weren't told who the other selling shareholders might be, expressly?
- A. No, but I've told you how it was -- how the phrase was drafted.

It also is the case that, frankly, whatever I had been told in the course of negotiations, yes, that's fine as far as it goes. But at the end of the day, the legal obligations and responsibilities are based upon the terms of the purchase and sale agreement. If in fact, having been told that Trans-World was not -- no longer had an interest in these shares, if subsequently

it had transpired that Trans-World did have an interest, and somehow or other that interest had affected the value of whatever it was Mr Deripaska had been buying into, the fact that at 2 o'clock in the morning Mr Schneider had told me, or had reassured me "No, Trans-World doesn't have an interest in this" wouldn't have helped my client at all.

So the fact of the matter is, "other selling shareholders", the definition was drafted in the widest possible way to make absolutely certain that Mr Deripaska got what it was he thought he was buying, and that's the reason we drafted it that way.

MR MASEFIELD: My Lady, that might be a convenient moment if you wanted to rise.

MRS JUSTICE GLOSTER: Yes, certainly.

You mustn't talk to anybody about your evidence or about the case.

THE WITNESS: Of course.

(11.29 am)

(A short break)

(11.40 am)

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

MR MASEFIELD: Thank you. Now, the share purchase and sale agreement of 15 March 2000 was subsequently amended and restated on 15 May 2000.

A. That's correct.

Q. And we have a copy of the amended and restated agreement in bundle H(A)19. I wonder if we can turn that up, it's page H(A)19, page 22 H(A)19/22.

A. Can I put this away?

Q. You can, thank you.

What I hope you have there, Mr Hauser, is a copy of the agreement I was referring to, the amended and restated agreement of 15 May 2000. Do you have that?

A. Yes, I do.

Q. Obviously, if anyone had wanted to make corrections to the earlier agreement to tighten up warranties or to pick up on any errors that had crept into the drafting there had now been two months in which to do so, yes?

A. Yes, that's right.

Q. And you've told us that you're involved in negotiating the terms of this amended and restated agreement, that's correct?

A. Sorry, before we just continue with that, page 2, there seems to be something blacked out in relation to AGK Securities. I don't know if there's anything else in here which has been blacked out. Obviously that is not in the original of the document.

Q. That's fine. You don't need to worry about that, Mr Hauser.

- A. All right, then to go back to your question, yes, I was involved in negotiating the terms of this agreement.
- Q. And the main change between the earlier 15 March 2000 agreement and this amended and restated agreement was that the Bratsk assets were now being brought into the merger, do you recall that?
- A. That was one of the main changes, there were a number of other substantial changes too, but that was one of the main changes, yes.
- Q. Previously they were going to be spun off but now they are going to be included as part of the deal, correct?
- A. I have no idea what the original deal was because the original 15 March 2000 agreement made no reference to the Bratsk assets.
- Q. Well, they did make a reference --
- A. Did they?
- Q. It said they were going to be spun off. Shall we have a look at that?
- A. All right, we should probably have a look at that.
- Q. If you go back to H(A)18, if you turn within that to page 141 H(A)18/141, you will see there's a schedule 2 there which dealt with the shares and the aluminium assets that were going to be brought within the merger.
- It's page 141, Mr Hauser.
- A. Yes, I do, but this is -- no, I think --

Q. Wait for my question, Mr Hauser. Part III says

"Spin-Off Shares:

"Any and all shares held by the Companies in Open Joint Stock Company 'Bratsky Aluminium Plant'."

A. Yes, that's right.

Q. So the Bratsk shares were going to have been spun off under the original agreement, that's correct, isn't it?

A. There were Bratsk shares that were being spun off under the original agreement, but when you refer to "the Bratsk shares", what the 15 May agreement refers to is the fact that Mr Abramovich at that stage had acquired a substantial interest, I think about two-thirds of the shareholding in Bratsk. And on the basis of that, the original deal was renegotiated.

What had happened on 15 May, and the reference to spin-off shares, was frankly, as I recall, to deal with miscellaneous small holdings of Bratsk shares that may have been caught up in these companies. But there was a fundamental difference between what had happened between 15 May and 15 -- and the earlier period, 15 March, and that is that Mr Abramovich in the meantime had acquired a substantial interest in the Bratsk smelter.

Q. That may have been what you were told at the time, Mr Hauser, but in fact Mr Abramovich acquired his

interests in the Bratsk smelter under the 10 February agreement in 2000. So he had already acquired those interests by the time of the 15 March 2000 agreement. But I'm not sure we need to trouble ourselves about this.

A. Fine.

Q. A direct consequence of the Bratsk assets being brought into the merger was that the purchase price which Mr Deripaska was due to pay had been increased from 400 million, which was to have been paid under the 15 March 2000 agreement, to \$575 million, which was to be paid under this agreement. Do you recall that?

A. That was one of the consequences, yes.

Q. And we can see the 575 million is referred to in the fourth recital of the later agreement which we have in bundle 19 at page 22 H(A)19/22. If you look down the page to the fourth recital, do you have that?

A. Yes.

Q. We see the figure there that is now due to be paid by Mr Deripaska to Runicom Limited, yes?

A. It also is referred to in the definition of "Net Transfer Price" on page 2.

Q. I'm coming on to that.

This was something you were probably not aware of at the time, Mr Hauser, but this net transfer price of

575 million in fact exactly equalled the sum which Mr Abramovich, and we say his partners, were due to pay to Mr Reuben, Mr Chernoi, Mr Bosov and Mr Anisimov for the aluminium assets. Was that in fact something you were told about at the time, Mr Hauser?

A. No.

Q. And we know from Ms Panchenko and Mr Shvidler's evidence in these proceedings that this 575 million, which was due from Mr Deripaska, was in fact used to discharge the debt due to Mr Reuben and others under the February aluminium acquisition agreement. But, again, presumably that was not something that you were told about at the time?

A. I was not.

Q. Now, if we look a little bit further down the page on page 23 H(A)19/23, you've referred to the "Net Transfer Price" provision on that page. We can see further down that there is -- rather than a reference to "other selling shareholders", there's now a new defined term, which is "Other P1 Shareholders"; do you see that, Mr Hauser?

A. Yes.

Q. Is this a term which you recall was the subject of discussion with Mr Abramovich's representatives?

A. Yes.

Q. They clearly accepted this term because it's in the final form of the executed agreement, correct?

A. Yes.

Q. And we can see that the definition provides that:

"Other P1 Shareholders [are] those other persons and/or entities (whether legal or natural) who together with Party 1 [that's Runicom Limited] are the legal and/or beneficial owners and/or holders of 100 per cent of the shares (both in registered and bearer form) of the P1 Companies..."

Do you see that?

A. Yes I do.

Q. Then turning forward in the agreement to page 33

H(A)19/33, Mr Hauser, we have at clause 7 the relevant representations and warranties, do you have that?

A. I do indeed.

Q. Now, clause 7.1(a) is similar to the warranty in the 15 March 2000 agreement, it's the warranty of title by which Runicom Limited warrants that it, together with the other P1 shareholders, are:

"... the legal and beneficial owners of 100 per cent of the shares of the P1 Companies ..."

Do you see that?

A. I do.

Q. And so it's reasonable for us to conclude, is it not,

Mr Hauser, that none of Mr Abramovich's representatives had told you in the two intervening months since the share purchase agreement that the reference to "other selling shareholders" in the plural was wrong, and that there should instead be a reference simply to one other P1 shareholder, or even just to Mr Abramovich?

- A. Well, whether they had told me that or not I would have insisted on this language anyway, for all of the reasons that I had indicated that we needed a definition of "other selling shareholders".

Nothing had changed between 15 March and 15 May. My objective was to make sure that this transaction, just as the previous agreement, was not torpedoed or in any way affected by someone showing up, or claiming an interest, or it subsequently being determined that some other group company in the Abramovich group had an interest in, or held shares, or that in some respect the purchase of some of these underlying assets hadn't yet completed.

So the same considerations applied for March -- for May 15 as applied for March 15.

- Q. And those considerations, you told us earlier, included as points 3 and 4 the possibility that Mr Abramovich had partners and the possibility that Mr Shvidler was a partner?

A. Yes.

Q. And those possibilities you had still not resolved one way or the other?

A. Well, frankly, had I resolved them or not I still would have drafted the document as I had. Because as I said to you, if on 15 March at 2 o'clock in the morning, if I had been told by Mr Shvidler -- I'm sorry, by Mr Schneider, that Trans-World didn't have an interest, then that wouldn't have taken me very far in terms of giving protection to my client. Similarly, if I had been told that on 10 May, in the middle of the day, it still wouldn't have given me the protection that I needed.

I needed to ensure that this document was legally enforceable whatever happened, and if someone climbed out of the woodwork, or Mr Abramovich came back and said, "Actually, terribly sorry, it wasn't Runicom that owned these shares, it was someone else," then that was not going to affect the legal effectiveness of this agreement.

Bear in mind as well that a number of the underlying companies were bearer share companies.

Q. Correct.

A. So the ownership of the underlying companies, although I was told that it was Runicom, how did I know that it

was Runicom? What was I going to do? Was I going to go sit in Mr Abramovich's office and see the share certificates and sit there until we completed the deal? It wouldn't have made any sense.

So as a consequence I needed to have that language included in the agreement to make sure that no matter what had happened, no matter what the underlying position was, no matter how the shares of the underlying companies were owned, this document remained effective.

Q. Let's look further down the page that we are on, page 33 H(A)19/33, the representation and warranty at clause 7.1(d). We see a further representation of warranty there which says:

"Party 1 has the power and authority to act in the name of and to represent any and all of the Other P1 Shareholders in respect of the sale of the P1 Shares, and to receive their portions of the Net Transfer Price on their behalf."

Do you see that provision, Mr Hauser?

A. I do.

Q. So what this demonstrates, Mr Hauser, is the parties' agreement and understanding was that the 575 million purchase money was due not just to Runicom Limited, correct?

A. No, what it indicates is -- and let's actually read the

document. It says:

"Party 1 has the power and authority to act in the name of and to represent any and all of the Other P1 Shareholders ..."

Well, if you take out "all"; "to represent any of the Other P1 Shareholders". That is, if there are any.

So this isn't an affirmative declaration that the other P1 shareholders exist, it simply covers the possibility that they might exist. And if they did exist, then what this clause says is that the purchase price is \$575 million and not a penny more.

Q. Let's look at the last part of the clause though, Mr Hauser:

"... and to receive their portions of the Net Transfer Price..."

That suggests the transfer sum is going to be apportioned between parties?

A. No, it suggests that if there were other P1 shareholders, then obviously they would be entitled to some of the purchase and sale consideration. And to the extent that was the case, that whatever was paid to Runicom would represent -- would be a complete discharge of whatever would be due to these other shareholders if they existed.

Q. Mr Hauser, I'm not going to debate the provision with

you because it's going to be a matter of submission as to how it should be construed. But what we can say --

A. I can only tell you what I did --

Q. I appreciate that.

A. -- and why I negotiated it and how the negotiations transpired.

Q. What we can see from this agreement is that the 575 million which was due to Runicom and all the other P1 shareholders, that was the sum that was in fact used to discharge the debt of the aluminium assets that Mr Abramovich, and we say his partners, had acquired back in February 2000. But you say you weren't told about that at the time, were you, Mr Hauser?

A. Well, your initial question started with: what we can see from this agreement is that the 575 million was used to discharge Mr Abramovich's debt.

You can't see that from this agreement at all, and to be clear, no, I didn't know any of that.

Q. We are at cross-purposes.

What we can see from this agreement is that the sum was due to be paid to Runicom and all the other P1 shareholders, that's what it says.

A. Yes.

Q. And it was that sum --

A. If any.

- Q. -- that was due to Runicom and all the other P1 shareholders that was used to discharge the debt to Mr Chernoi, Mr Reuben, Mr Anisimov, and Mr Bosov, but you didn't know about that?
- A. Well, to go back to the beginning of your question: what we can see from this agreement is that the sum was due to be paid to Runicom and all the other P1 shareholders, if any. That's what it says.
- With respect to how the money was then used, there is nothing in the agreement that gives any indication at all.
- Q. You say "if any", but it doesn't actually say "if any" at all, Mr Hauser.
- A. It does. It says no person -- it says:
- "P1 has the power and authority to act in the name of and to represent any and all of the other P1 shareholders ..."
- The word "any" is there.
- Q. It says "any", not "if any".
- MRS JUSTICE GLOSTER: At the end of the day, the document and its interpretation is a matter for me.
- MR MASEFIELD: I agree, my Lady.
- Let's move on, Mr Hauser, to September 2003, to the time of the first Rusal sale transaction?
- A. Can I put these away?

Q. You can put away bundle 18 and bundle 19.

Once again, without waiving privilege as to the contents of any instructions, can you confirm that you were in fact instructed on behalf of Mr Deripaska in relation to the September 2003 transaction?

A. Yes, I was.

Q. And as well as the various share purchase and sale agreements which were executed at that time, which related to a first 25 per cent tranche of Rusal, the parties also entered into a deed of pre-emption and option agreement relating to the last 25 per cent tranche of Rusal not owned by Mr Deripaska?

A. They did.

Q. Were you involved with that, Mr Hauser?

A. Yes, I was.

Q. Could we turn the document up, please. It's bundle H(A)65, page 172 H(A)65/172.

What I hope you have there, Mr Hauser, is an agreement entitled "Deed of Pre-emption and Option", do you have that?

A. I do.

Q. And it's dated the 30th day of September 2003, do you see that?

A. Yes.

Q. You say you were involved in the drafting of this

document, were you, Mr Hauser?

A. Yes, I was.

Q. And if we look at the first page of the agreement, page 172, which we're on, recital A, we can see that it says:

"Whereas:

"It had been agreed by the Parties as of the Effective Date that the Grantor granted to the Option Holder a right of first refusal to purchase the entirety of the Business Interests in the event the Grantor proposes any transfer of the Business Interests to any other Person."

Do you see that provision, Mr Hauser?

A. Yes.

Q. Then at recital B we can see it says:

"Whereas:

"It was further agreed by the Parties as of the Effective Date that in the event of a contemplated change of Ownership Rights, the Option Holder should be entitled to purchase the entirety of the Business Interests in accordance with the terms of this Deed."

Just pausing there, what the contract clearly contemplates are two potential triggers, yes? Recital A is the situation where Madison, the grantor, is contemplating a sale to a third party, correct?

- A. Correct.
- Q. And recital B is the situation where a change in ownership structure of Madison is contemplated, correct?
- A. Correct.
- Q. And if either of those events arose then Mr Deripaska's company, Baufinanz, the option holder, has a right of first refusal to purchase the entirety of the business interests?
- A. Correct.
- Q. That's the last 25 per cent stake in Rusal, that's recital C, isn't it?
- A. Yes. When you say the last 25 per cent stake in Rusal, at that point, Rusal still referred to the conglomeration of interests rather than Rusal Holding, which is why we used the phrase "business interests".
- Q. I agree with you, Mr Hauser and I don't think we need to debate that point.
- The price that Mr Deripaska's company, Baufinanz, would have had to pay under this contract is dealt with slightly differently depending on which of the two triggers has been activated, do you recall that?
- A. Yes, I do.
- Q. If you turn to page 175 H(A)65/175 and look at section 2, we can see what was to happen in the event of a contemplated sale to a third party.

Looking at clause 2.3, we can see that on receipt of a bona fide offer from a third party, Madison had to send a written pre-emption notice to Baufinanz, correct?

A. Yes.

Q. And the pre-emption notice was to set out, amongst other things, the proposed price to be paid for the business interests? That's 2.3.2.

A. Yes, that's right.

Q. Looking at clause 2.4, Baufinanz had to then, within the next 30 days, deliver to Madison a written notice either offering to match the third party price, or tabling a different price in terms, or saying that it was not interested; do you see those provisions?

A. I do.

Q. And finally, looking at clause 2.6, if Baufinanz had tabled different terms and prices Madison and Baufinanz had to negotiate in good faith for a period of 30 days, and if no agreement could be reached then Baufinanz could deliver an election notice offering to match the terms of the price offered by the third party?

A. Yes.

Q. So that was what was to happen in the event of a third party offer. But if the triggering event was not a third party offer but a change in control or ownership rather different rights arose, and those are set out in

section 3 which we have at page 177. I don't think we need to work through all the detail of it, Mr Hauser, but you can take it from me that the way the price was then to be calculated was that the parties were to negotiate in good faith, and if no agreement was reached after 30 days, Baufinanz could serve a nomination notice on Madison which would require the matter to go off to an expert determination at which the expert would fix the price?

A. That's correct.

Q. Now, do you have recollection of those provisions, Mr Hauser?

A. Yes, I do.

Q. And would you at the very least agree with me that if in September 2003 Mr Abramovich's representatives had told you that Mr Deripaska had an unrestricted option to buy the remaining 25 per cent of Rusal at a fixed price of 450 million, you would have drawn up a rather different contract to this one?

A. Now you're asking me if Mr Abramovich's representatives had told me, would I have drawn up a different contract? Yes, I would have.

Q. Thank you, Mr Hauser.

And can we therefore take it that Mr Abramovich's representatives did not tell you in September 2003 that

Mr Deripaska had an unrestricted option to buy the remaining 25 per cent of Rusal at a fixed price of \$450 million?

A. Yes.

Q. Thank you, Mr Hauser. We can put away bundle H(A)65.

Finally I would like to ask you a few questions, Mr Hauser, about your involvement in the second Rusal sale. I'm very conscious of privilege issues that have arisen and for the need for us to proceed carefully here.

The second Rusal sale documentation really kicks off at the start of June 2004 and the deal was concluded on 20 July 2004. Do you remember that?

A. Yes, the deal was concluded on 20 July, that's correct.

Q. And you've confirmed already that you were in fact instructed in relation to that transaction on Mr Deripaska's behalf?

A. Yes.

Q. And you may or may not recall this, but it's fairly clear from the documents and communications passing between yourself and the other parties that the second Rusal sale transaction developed in the course of three different stages, and let me just summarise those stages for you as it may make things a bit easier as we work through the documents.

Stage one was the initial period from 9 June 2004 up until 17 June 2004. Now, during that period, drafts were passing backwards and forwards between the parties which contemplated that Mr Abramovich or his companies would warrant that there were two ultimate beneficial owners, X and Y, who had (sic) beneficial owners of a 25 per cent stake in Rusal since 15 March 2000; do you understand?

A. Well, I understand what you're saying, yes.

Q. Then there's a second stage which starts on 17 June 2004 when Mr De Cort sent you an email stating that there were going to be no warranties from Mr Abramovich's side regarding beneficial ownership. And stage two was then a period of impasse where the parties were trying to reach a compromise on the warranty relating to beneficial ownership, do you remember that?

A. Well, again, I understand what you're saying, yes.

Q. And that impasse lasted up until the beginning of July 2004. And then, in early July 2004, the impasse was resolved and the solution, which was then fine-tuned in the course of stage three up until closing on 20 July 2004, was this: firstly, Mr Abramovich would acknowledge but not warrant that he had only ever had dealings with Mr Patarkatsishvili, and that whoever Mr Patarkatsishvili said was the beneficial owner must

be the beneficial owner.

Alongside that acknowledgement --

MRS JUSTICE GLOSTER: Well, do you accept that, Mr Hauser?

A. Well, I don't think I've accepted anything, my Lady, yet. All I've done is acknowledged that I've heard what I've been told. I would not have characterised the negotiations in this way.

MRS JUSTICE GLOSTER: All right.

MR MASEFIELD: We'll come on to the documents in a moment, my Lady.

MRS JUSTICE GLOSTER: Well, I'm not sure where it's getting you if all you're doing is putting your version of events and the witness is saying "Well, I wouldn't have characterised it in that way.

MR MASEFIELD: My Lady, why don't we go straight to the documents.

Could we start with your 9 June memorandum, which we have at bundle H(A)74, page 219 H(A)74/219. This is the memorandum that we've looked at already this morning, Mr Hauser, and you've confirmed that you were the author of it.

I don't want to go through the memorandum at length with you, Mr Hauser, because we can all see what it says and because, to some extent, I'm constrained by questions of privilege. But focusing on the first

numbered paragraph that we have at page 219, we can see that the paragraph starts:

"We are advised ..."

And the same is also true of the second numbered paragraph, do you see that?

A. Yes.

Q. Now, I don't want to stray into privileged areas, Mr Hauser, and I don't want to ask you about any advice that you received from your client, but can you tell me this. I think you may have given these answers already or at least the first two. Did Mr Abramovich's representatives provide you with the advice that you're referring to here?

A. No.

Q. Did Mr Patarkatsishvili's representatives provide you with the advice that you're referring to here?

A. No.

Q. And when you refer to "advice", you are not referring simply to the newspaper reports or information in the public domain, were you, Mr Hauser? That would be an odd use of language, would it not?

MR STANLEY: My Lady, I think that is going too far. He's going beyond asking whether there was information from particular people and he's asking: what did you mean by "you were advised"? If you ask -- your Ladyship can see

where the question is going, you eliminate all possibilities and whatever remains is that this must have come from your client.

MRS JUSTICE GLOSTER: Well, I don't see why he shouldn't ask whether the information that is in that paragraph came from what he'd seen in the newspapers.

MR STANLEY: Yes, very well my Lady.

MR MASEFIELD: Would you answer the question, please, Mr Hauser. Would you like me to put it to you again?

MRS JUSTICE GLOSTER: I think you should put it in the way I've just formulated it, please, Mr Masefield. Did you get what you've seen in paragraph 1 --

MR MASEFIELD: Was the information that we see in that paragraph, did that come from what you had seen in the newspapers, Mr Hauser?

A. The specific information, no. The only newspaper account I had was the Moscow Times article, and you can see what's in the Moscow Times article.

Is it the case that the memorandum in part took account of what was in the Moscow Times article? Yes, it did.

Q. I'm grateful for that answer, Mr Hauser, and in particular the word "in part".

Can we turn next to bundle H(A)75, we can put away bundle H(A)74, and turn within bundle H(A)75 to

page 228.001 H(A)75/228.001.

This is the table headed "Madison Representations and Warranties", Mr Hauser, that we've looked at already and which was drawn up by Bryan Cave on 14 June 2004.

Do you remember that?

A. Yes.

Q. And this therefore followed the meeting that I think you have already explained to the court that you had with representatives of Mr Patarkatsishvili on 12 June 2004?

A. On the 11th.

Q. On the 11th.

A. Yes.

Q. I'm grateful. This was a document which was produced not just for Bryan Cave's or your client's internal purposes, Mr Hauser, we know that it was sent to Mr Patarkatsishvili's representatives, do you remember that?

A. Yes, eventually it was sent to them, yes.

Q. I think you've said that you don't recall tabling this document at the meeting which had with Mr De Cort on 15 June 2004, but would you accept that you were likely, at the very least, to have raised at that meeting with Mr De Cort the matters that have been carefully set out by you in the schedule the day before the meeting?

A. No. I don't accept that. First, I think the question

was: I don't recall tabling the document at the meeting I had with Mr De Cort? No, I think my evidence is I didn't table it at the meeting with Mr De Cort.

With respect to discussing what was laid out in this note, no, Mr De Cort told me he didn't know anything -- he had no instructions from his client, and so there was no point in having any more specific discussion with Mr De Cort as to how, for example, representations and warranties as to title might be divided up between Mr Abramovich on the one hand and Mr Patarkatsishvili on the other, because Mr De Cort had no instructions one way or the other.

- Q. Mr Hauser, what was Mr De Cort doing arriving at this meeting with no instructions from his client? What was the purpose of him meeting with you?
- A. I think he was meeting with me in order to be briefed as to what had been discussed on the previous Friday, and that was the principal function of the meeting, for me to tell him what we had discussed --
- Q. For you to update him with what you had heard from Mr Patarkatsishvili's representatives?
- A. Yes.
- Q. Once again, Mr Hauser, I'm not going to ask you detailed questions about what this document says because we can all see what it says, and, in particular, we can see in

the "Comments" section on the second page over, the references to X and Y.

But can I ask you this: in the "Comments" column on that right-hand side of the document, various factual propositions are set out, including the statement that Mr Abramovich was a trustee holding the stake in Rusal on trust for known beneficiaries described as X and Y. Can you tell me this, did Mr Abramovich's representatives provide you with that factual information?

A. No.

Q. Did Mr Patarkatsishvili's representatives provide you with that factual information?

A. Well, no, the answer is no. I think -- I'm trying to see what you're referring to, I think you're starting with the last full paragraph on page 2?

Q. And higher up the page:

"X and Y can give only a 'knowledge and belief' assurance..."

A. I think the reference you quoted was:

"In such a case, RA would hold the interest as trustee for X and Y who in turn would hold the interest as trustee for someone else."

Q. And there's a reference to trust back on the first page as well.

- A. Yes, all right. All I'm -- I'm looking at this particular paragraph. The opening sentence says:
- "It is possible in theory..."
- And then it indicates "In such a case". It seems to me that on the face of it, the paragraph makes it clear that there is a certain degree of speculation that's going on at that point.
- Q. And the speculation involved in that paragraph is the question of whether X and Y are fronting for further individuals, but it's not speculation about whether X or Y existed, or whether Mr Abramovich was holding on trust --
- A. In respect of that paragraph, yes, you're right.
- Q. Now, I was asking you whether Mr Patarkatsishvili's representatives had provided you with that factual information, Mr Hauser, and I think your answer is no, but can you confirm that?
- A. Sorry, which -- I'm beginning to get a little lost. Which factual information are you asking me they did not confirm?
- Q. Did they provide you with the information that Mr Abramovich was holding on trust for X and Y?
- A. No.
- Q. I'm grateful. And can you confirm to the best of your recollection that that was not information that was

based solely on newspaper reports?

MR STANLEY: Well, my Lady, it's the same question, the same problem again; "not ... based solely on" is an attempt to discover whether it came from the client. It's the only purpose that question can serve.

MRS JUSTICE GLOSTER: You can ask the question.

MR MASEFIELD: I'm grateful, my Lady.

Can you confirm to the best of your recollection that that was not information that was based solely on newspaper reports?

A. The issue I think is -- the question, to go back to it, is did they provide me with the information that Mr Abramovich was holding on trust for X and Y, is that the question?

Q. That is the question.

A. The answer to that is, in the course of the meeting we had on the Friday, Mr Patarkatsishvili's representatives said that Mr Patarkatsishvili was the beneficial owner of the shares.

Q. Yes.

A. Now, if that was the case, and if Mr Abramovich or one of Mr Abramovich's companies was actually the legal owner of the shares, then it would logically follow that that company was holding either as nominee or perhaps as trustee for Mr Patarkatsishvili.

Now, with respect to whether there was a Y issue, then we, as I think I previously said, did discuss in the Friday meeting the Moscow Times article and the possibility that Mr Berezovsky may have an interest as well. Now, Mr Patarkatsishvili's representatives told me on the Friday that Mr Berezovsky did not have such an interest, but on the other hand, as I think we started this cross-examination, and you asked me if I'm a careful lawyer, and the answer is yes, and I don't always believe everything that I've been told.

Q. I'm very grateful for that answer, Mr Hauser.

Now, moving on to the second stage in the Rusal sale transaction, do you recall that on 17 June 2004 Mr De Cort sent you an email stating, for the first time so far as we're aware, that his client would not be making any warranties regarding beneficial ownership?

A. Well, in answer to the second part of the question, do I recall that Mr De Cort sent me an email, yes, I do. Do I accept that in fact the negotiations could be divided up into three stages, no.

Q. I'm not worried about that. Can we turn the email up briefly, Mr Hauser, it's bundle H(A)76/69 H(A)76/69. You can put away bundle 75. Perhaps you would like to read the email quickly to yourself, Mr Hauser. (Pause)

A. Yes.

Q. We can see that in the second numbered item here, Mr De Cort has told you that there would be no warranties about beneficial ownership. Do you see that?

A. I do.

Q. Do you recall whether Mr De Cort explained the reason why there would be no warranties about beneficial ownership, Mr Hauser?

A. No, I think the email speaks for itself. That was what I received, was the email.

Q. There was no follow-up discussion between you and Mr De Cort explaining why he could not provide any warranties about beneficial ownership?

A. Yes, there were discussions with Mr De Cort as to why his client didn't want to provide warranties about beneficial ownership and what they all had to do with was his understanding, which was something that we discussed openly, that following the acquisition of the shares, in the following years, it was likely that Mr Deripaska would attempt to list Rusal. There would be an IPO, and Mr De Cort made it very clear that he didn't want Mr Abramovich to have to assume liabilities in connection with the listing.

Of course, as far as I was concerned, the arguments as to why Mr De Cort didn't want Mr Abramovich to give warranties as to ownership were precisely the reasons

why I wanted Mr Abramovich to give warranties or someone to give warranties as to beneficial ownership.

Q. Indeed. And if matters had proceeded as had originally been envisaged where there were warranties of beneficial ownership in favour of X and Y, and X and Y were also involved in documentation including releases, that would have meant that there would be no prospect of the IPO subsequently being derailed by X and Y coming forward. That logically follows, doesn't it?

A. I think this goes to the issue of your dividing the negotiations up into different phases. I don't accept --

Q. I'm not sure that it does, Mr Hauser, don't worry about the phases.

A. No, but let me answer your question.

Q. Yes, please do.

A. The position was, from the beginning of June up to and into the beginning of July, I had asked repeatedly from both Mr De Cort as well as from Mr Patarkatsishvili's representatives as to the nature of the beneficial interests and when the beneficial interests had arisen.

That was -- as far as I was concerned, it was a single continuum of negotiations, there was no break, there was no first stage, there was no second stage. The only stage was me asking the questions. Up until

the beginning of July, I didn't get an answer to those questions and that was the principal focus. And it struck me that in terms of, for example, this answer, this answer didn't take us any further because this answer simply said there would be no warranties about beneficial ownership with no explanation as to what the underlying beneficial ownership was.

Q. So up until the beginning of July, you were not getting clear answers from Mr De Cort about who, if anyone, the beneficial owners were, is that correct?

A. Or from the representatives of Mr Patarkatsishvili as to the nature of his interest and in particular when it arose. So, yes, it's the case that Mr De Cort was not giving me clear answers but let's not single him out as an individual, I also wasn't getting clear answers from Mr Patarkatsishvili's representatives either.

Q. I'm grateful for that too.

Now, can we turn to bundle H(A)76, page 106 H(A)76/106, which is your memorandum dated 18 June 2004 which you drew up the day after the email that we've just looked at, the email in which Mr De Cort said there would be no warranties regarding beneficial ownership. Do you see that memorandum?

A. I do.

Q. Again, to set your mind at rest, Mr Hauser, this is

a memorandum that we know was sent by Mr Mishakov to Mr Patarkatsishvili's representatives so it's a communication that crossed the line and is no longer privileged. But tell me this, do you recall whether it was also sent to Mr Abramovich's representatives, Mr Hauser?

A. No. In fact, I should say with respect to both of these memoranda, until the commencement of this action, I was not aware that either of these documents had been sent by Mr Mishakov or anyone else, either to Mr Abramovich's representatives or to Mr Patarkatsishvili's representatives.

Q. Because it was Mr Mishakov who had sent on the 9 June memorandum to Mr Patarkatsishvili's representatives and to Mr De Cort.

A. Well, if you say that's the case, that's the case.

Q. You were unaware of it?

A. I frankly don't know. I was not aware of it. And it also -- the conclusion or the further conclusion from all of that is that, during the course of these negotiations in 2004, I never had any discussions either with Mr Patarkatsishvili's representatives or Mr Abramovich's representative as to anything to do with either of these memoranda.

Q. That's fine and I accept that.

Now, this memorandum refers to a telephone conversation that you had with Mr Mishakov and I don't want to go into the contents of that telephone conversation because that may be privileged, but the second paragraph commences by saying "As I understand the position..." Do you see that, Mr Hauser?

A. I do.

Q. Again, without wishing to stray into any areas of privilege, Mr Hauser, and without referring to any information that you received from Mr Mishakov or your client, can you tell me whether your understanding was based on what Mr Abramovich's representatives had told you?

A. I think I previously indicated that this second paragraph is not drafted on the basis of any information I obtained from Mr Abramovich's representatives.

Q. Nor indeed from Mr Patarkatsishvili's representatives?

A. Nor indeed from Mr Patarkatsishvili's representatives.

Q. And nor was it derived solely from information that was available in the newspapers?

A. Well, this was not derived from -- I think the newspaper article that I referred to speaks for itself.

Q. I'm grateful, Mr Hauser.

Now, we know that your proposal in this memorandum which was to transfer the trust relationship was not in

fact taken up and that, until early July 2004, a table entitled "Key Issues" passed backwards and forwards. That's Mr Faekov's table that you've referred to earlier in your evidence. Do you remember that table that Mr Faekov had drawn up?

- A. Yes, if we start with your comment, my proposal in the memorandum was not in fact taken up. The answer is that I was not aware that this memorandum had ever been even sent to Mr Patarkatsishvili's representatives or Mr Abramovich's representatives so it follows from that that we never negotiated the proposals that were set out in the memoranda because I didn't even know they had it.

With respect to the second point, there was a table entitled "Key Issues" that Mr Faekov revised based upon the draft that I had previously produced, I think on 14 June, and, yes, that Mr Faekov, having revised it, sent it to me and sent it to Mr De Cort for us to sign off on in order that it could then be put to the principals.

- Q. Just in relation to the first part of your answer, Mr Hauser, Mr Mishakov certainly didn't pick up your proposal and carry it forward to the other parties because we don't see any communications to that effect. That may not be something you were aware of at the time though?

A. I'm not aware of that at the time. I am aware of the fact that, if this proposal had been followed through, then I would have expected to have known about it since I was principally responsible for the negotiations.

Q. Absolutely.

And then in early July 2004, you began to get answers, as I think you indicated earlier, about beneficial ownership and we can see that if we take up bundle H(A)79 and turn to page 139 H(A)79/139. Do you see there an email from Mr De Cort dated 6 July 2004 to Mr Stalbek and copied to yourself?

A. Yes, to Mr Mishakov, yes.

Q. Sorry, Mr Mishakov, my mistake. Could you just briefly read the email to yourself, to remind yourself about what it says. (Pause)

We'll come on to the response in a moment. If you want to look at that, by all means do, but I was just going to focus firstly on Mr De Cort's email to you -- which was copied to you.

A. Well, I'm just wondering if -- because Mr De Cort's email starts by saying:

"We also want to resolve this as soon as possible..."

Is he referring or is he responding to the email from Mr Mishakov which is on the next page?

Q. No, I think that is the response from Mr Mishakov on the next page that we have, given the timings. It's 13.18.55 CEST that Mr Mishakov responds to the Andre De Cort email.

A. Then presumably there is an earlier email from Mr Mishakov to which this is responding?

Q. There is but I don't think we need to go to that for the moment, Mr Hauser.

What we see being proposed by Mr De Cort in this email of 6 July 2000 to resolve the impasse in relation to beneficial ownership warranties was that, although his client would not make any warranty or representation about beneficial ownership, he was prepared to sign a document that would freeze the position and prevent Mr Abramovich saying something else subsequently which was inconsistent with it, yes?

A. Well, that's what the email says.

Q. And we can see the acknowledgement that Mr De Cort was proposing in the prepenultimate paragraph of this email, can't we, Mr Hauser?

A. Yes.

Q. And that acknowledgement which Mr De Cort was proposing did not, it seems, go far enough and we can see that if we turn over the page to page 140 where we have Mr Mishakov's response to Mr De Cort later the same day

H(A)79/140. Could you read that to yourself?

A. Yes.

Q. What he says is that they are not interested in a statement of Mr Abramovich's interactions; what they are looking for -- what you are looking for is confirmation of beneficial ownership. Do you see that?

A. Yes.

Q. And so to avoid having to follow all this through, you can take it from me that what ultimately happens is a compromise. It was agreed that Mr Abramovich would acknowledge that the only person he had dealt with was Mr Patarkatsishvili and that whomever Mr Patarkatsishvili said was the beneficial owner was the beneficial owner. Do you recall that?

A. Yes.

Q. And at the same time Mr Patarkatsishvili would warrant that at all times since 15 March 2000 he had been the ultimate beneficial owner and was acting solely on his own account, do you recall?

A. That's correct. In fact that was contained in a separate agreement that was between Mr Patarkatsishvili as an individual and Mr Deripaska as an individual.

Q. That is also correct.

A. So it was not simply reflected in the corporate

documents but there was also an individual undertaking.

Q. That is correct, Mr Hauser.

As a result your client no longer had the benefit of a direct representation or warranty from Mr Abramovich but you did have the benefit of a direct representation or warranty from Mr Patarkatsishvili. Do you recall that?

A. Well, that's right although we did have the benefit of Mr Abramovich's acknowledgement.

Q. You did, and there was some debate between the parties, which I don't think we need to go into, about quite what that acknowledgement constituted. Do you recall that?

A. Yes, there was a debate. As far as I was concerned, the acknowledgement was frankly as good as a representation because it was -- an acknowledgement was given knowing that Mr Deripaska would be relying upon it.

I was never really quite sure why Mr De Cort tried to draw a distinction between a deed of acknowledgement and a representation, but since it seemed to make him happy, then I was prepared to go along with it.

Q. Well, we can see the consequence of the representation from Patarkatsishvili, but only the acknowledgement from Mr Abramovich, reflected in an email which you sent to Mr Faekov on 8 July 2004. Can we just turn that up? It's bundle 80, you can put away bundle 79 and go to

bundle H(A)80/86.

Do you have there an email that you sent, Mr Hauser, to Mr Faekov and copied to Mr Streshinsky on 8 July 2004?

A. Yes, and copied to Mr Mishakov as well.

Q. You're correct. You say at bullet point 1:

"My principal is not prepared to cap liability equal to the value of the purchase consideration received."

The liability that you're talking about capping or not capping, because you don't want to cap it, was Mr Patarkatsishvili's liability, wasn't it?

A. That's correct.

Q. The reason that you state, the first reason, we can see in paragraph (a), and we can pick it up in the third sentence:

"Instead, my principal is taking the word of [Mr Patarkatsishvili] (and indirectly [Mr Abramovich]) that this has been sorted [out] one way or the other."

A. Yes.

Q. So you were now looking primarily to Mr Patarkatsishvili and his representation and only indirectly to Mr Abramovich?

A. That's correct.

Q. I'm grateful. Now, I'd like to look briefly with you, if I may, Mr Hauser, at an email that you sent to

Mr De Cort on 9 July 2004. Can we turn that up in bundle H(A)81, page 150 H(A)81/150.

If we could start by looking at the second email on this page which is the email which Mr De Cort sent to you on 9 July. Do you see that halfway down, Mr Hauser?

A. I do.

Q. You'll see if you read it to yourself that Mr De Cort was now proposing a slightly different acknowledgement that would be made by his client.

Do you want to just read it to yourself? (Pause)

A. Yes.

Q. And then if you look back up the page, we can see that you replied via email to Mr De Cort the same day explaining that you thought that there was a problem with his proposed wording.

Do you want to read that email to yourself? (Pause)

A. Yes.

Q. And in the light of that email, Mr De Cort ultimately backed down, didn't he, Mr Hauser? He agreed a final form of wording for the deed of acknowledgement in which Mr Abramovich acknowledged to your client that the only person he had ever dealt with or had understandings or arrangements with was Mr Patarkatsishvili, and that final acknowledgement made no reference to Mr Patarkatsishvili's affiliates and associated persons?

A. That's correct.

Q. We can see that -- we can put bundle H(A)81 away -- if we go to bundle H(A)84/82. Do you see there the deed of acknowledgement that is dated 20 July 2004 that was to be executed, and was in fact executed, by Mr Abramovich and Mr Deripaska?

A. Yes, I do.

Q. If we turn within the document to page 83, we can see that at the bottom of the page the final form of the acknowledgement that Mr Abramovich was prepared to make to Mr Deripaska is set out.

Would you like to read that to yourself, Mr Hauser?

(Pause)

A. Yes.

Q. That acknowledgement in its final form makes no reference to the beneficial owners of affiliates and associated persons also being interested in the 25 per cent Rusal shareholding, does it, Mr Hauser?

A. No, it doesn't. It says what it says.

Q. What you never got, Mr Hauser, was a deep pocket warranty from Mr Abramovich to Mr Deripaska or to Eagle Capital to the effect that Mr Berezovsky's claims that he had made in the press in early June 2004 were baseless?

A. No, I got a deep pocket warranty from

Mr Patarkatsishvili that that was the case.

Q. You did, but not from Mr Abramovich, correct?

A. That's correct.

Q. And none of the other documents that were executed by Mr Abramovich's company, Madison, included a warranty or representation or acknowledgement by Mr Madison (sic) to Mr Deripaska or Eagle Capital that Mr Berezovsky's claims were baseless; that's right, isn't it?

A. Well, none of the documents referred to Mr Berezovsky's claims in any respect. As far as I recall, I don't recall off the top of my head exactly what each and every one of the other documents said, but I think, broadly speaking, you're right. I don't think that we obtained a title warranty from any of Mr Abramovich's companies.

Q. And indeed, if you had got such a warranty or an indemnity from Mr Abramovich, is it fair to say that you would have been less concerned about getting warranties of historic beneficial ownership, Mr Hauser?

A. No. No, absolutely not.

Q. You see, if you had the benefit of a warranty that third party claims to the Rusal shares were baseless, or an indemnity against such third party claims, a warranty relating to present beneficial ownership of the 25 per cent stake in Rusal would most probably have been

sufficient for your purposes?

A. Absolutely not. Absolutely not.

MRS JUSTICE GLOSTER: Why do you say that?

MR MASEFIELD: Why do you say that?

A. We have to go back to what had happened in 2003 and 2004. Insofar as 2003 was concerned, my client had agreed to pay a substantial amount of money to Mr Abramovich in respect of half of the Rusal shares. The parties had been parties to a shareholders agreement and other arrangements that since 15 March 2000 had governed the way in which Rusal, however it was constituted, had been managed.

Most of the management responsibilities had fallen upon Mr Deripaska and Mr Deripaska's colleagues. It was Mr Deripaska who had managed Rusal from 15 March 2000 to the purchase of the first 25 per cent in the fall of 2003, and it was Mr Deripaska who thereafter continued to manage Rusal into June and July of 2004.

At the time we did the first deal in 2003, I was insistent that I wanted a release of all claims from Mr Abramovich based upon the previous management of Rusal. It was important that I had that because effectively we wanted to draw a line beyond which there would be no further claims. Once Mr Abramovich had sold his shares to Mr Deripaska, that was the end of it.

What had happened between 2003 and 2004 was that when we got into 2004, I was then told by Mr Patarkatsishvili's representatives for the first time that he was in fact a beneficial shareholder of Rusal. That raised the possibility that, as a beneficial owner, Mr Patarkatsishvili might have made claims relating to Mr Deripaska's management of Rusal all the way back to 15 March 2000.

So as far as I was concerned, the fact that I wanted a title representation and warranty back to 15 March 2000 was because I needed that in order to buttress the release that I had gotten in the first instance from Mr Abramovich in 2003, and then, critically, the second release that I received from Mr Patarkatsishvili in 2004.

If I hadn't had the representation and warranty as to beneficial ownership back to 15 March 2000 then it always raised the possibility that some third party might show up, claim to have had an interest some time during that period, and then had asserted a claim against Mr Deripaska relating to the management of Rusal at that time.

Q. But if you had a warranty or release in respect of third party claims that would have been sufficient for the purposes of title, and you could have had releases as

against management claims dealt with separately?

A. I did have releases -- I did have a separate document that released Mr Deripaska and all of his affiliates from management, and frankly any other claim at all. I got one of those in 2003 and another one in 2004. But in order for those releases to be regarded as comprehensive, I needed to have strong title representations and warranties back to 15 March 2000. If I didn't have that, then there was always the possibility that the releases that I had were not sufficiently comprehensive and there was someone else that was out there who hadn't released and who might then assert a claim against Mr Deripaska.

Q. But what I think we can agree, can we not, Mr Hauser, is that you did not get any warranty or representation from Mr Abramovich or his company, Madison, that Mr Berezovsky's claims were baseless?

A. No, I got that representation and warranty effectively from Mr Patarkatsishvili.

Q. You say effectively, but it was from a different --

A. Well, it was effectively in the sense it did not refer to Mr Berezovsky by name. It was couched in universal language so that it would, by definition, have included such claims.

MR MASEFIELD: My Lady, I've got no further questions.

MRS JUSTICE GLOSTER: Thank you very much, Mr Masefield.

Yes, Ms Davies.

Re-examination by MS DAVIES

MS DAVIES: Mr Hauser, just a few questions, if I may.

At the outset of his cross-examination, Mr Masefield asked you a few questions about your general approach in relation to agreements of the nature that we've been looking at today, and I'm not asking you in the questions that I'm about to ask you anything other than your general approach to negotiating these kinds of agreements. I make that clear.

But as a matter of your general approach to agreements, selling shares or merging business interests, would you be happy to allow your client to enter into an agreement which you believed to be factually inaccurate?

A. No.

Q. If you could take bundle H(A)18, at page 124 H(A)18/124, you should find the share purchase and sale agreement dated 15 March which both I and Mr Masefield asked you some questions about.

A. Yes.

Q. Now, Mr Masefield took you to clause 6.1.1 on page 131 of this agreement and specifically to the reference to "Other Selling Shareholders" in that clause.

For my Lady's reference, at [draft] page 42 of the transcript you referred to discussions that you had had with Mr Schneider in relation to other selling shareholders and to the possibility that Mr Abramovich had one or other parties that had interests of one sort or another, and said that you were focused -- the person you were focused on was Mr Shvidler.

A. Yes.

Q. Did you discuss with Mr Schneider the names of any other individuals in the context of your discussions about other selling shareholders?

A. No.

Q. You can put away bundle H(A)18. If you could be given bundle H(A)19 at page 22 H(A)19/22. This is the amended and restated share purchase and sale agreement dated 15 May 2000 which both I and Mr Masefield asked you some questions about, and in particular Mr Masefield asked you some questions about the definition of "Other P1 Shareholders" that we see on page 23.

He asked you, and for my Lady's reference, this is page 51 of the draft transcript anyway, whether that was the subject of discussion with Mr Abramovich's representatives and you said that it was.

A. Yes.

Q. Do you recall that evidence?

A. Yes.

Q. Now, in that context of your discussions with Mr Abramovich's representatives about other P1 shareholders --

A. I should say it was Mr Schneider that I talked to about this. It's maybe just easier to refer to him by name.

Q. In your discussions with Mr Schneider about the term "Other P1 Shareholders" were the names of any individuals discussed?

A. No.

The discussion at that stage was frankly simply to carry over the definition with I think some slight modifications of "Other Selling Shareholders" and rephrase it as "Other P1 Shareholders".

Q. Put that bundle away and be given bundle H(A)75 at page 228.001 H(A)75/228.001.

A. Yes.

Q. You should have the memorandum dated 14 June 2004 that both Mr Masefield and I asked you some questions about.

A. Yes.

Q. Again the reference for my Lady is page 73 of the draft transcript.

You were being referred to this memorandum, and in particular the references to X and Y that we see in this memorandum, and you explain that you'd been told by

Mr Streshinsky or Ms Arbatova at the meeting on 11 June that Mr Berezovsky did not have a beneficial interest in Rusal but you did not always believe what you were told.

A. Correct.

Q. Can you recall whether or not either Mr Abramovich's representatives or Mr Patarkatsishvili's representatives ever indicated to you, in the context of the 2004 transaction, that Mr Berezovsky had a beneficial interest in Rusal?

A. No. They didn't do that at all.

MS DAVIES: Thank you very much, Mr Hauser.

MRS JUSTICE GLOSTER: Thank you very much, Mr Hauser, for coming to give your evidence. You may be released.

(The witness withdrew)

MR SUMPTION: My Lady, that concludes the evidence on behalf of Mr Abramovich apart from Mr Bulygin's witness statement which your Ladyship will have read which I would ask to be treated as part of the record.

MRS JUSTICE GLOSTER: Very well. Thank you very much.

Yes, Mr Malek.

MR MALEK: My Lady, the next witness is Mr Anisimov and he will be giving evidence in Russian.

MRS JUSTICE GLOSTER: Fine.

What bundle is it for his --

MR MALEK: F1, my Lady. F1, tab 1.

MRS JUSTICE GLOSTER: Just a second, please.

MR VASILIIY ANISIMOV (sworn)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

THE WITNESS: (Not interpreted) Thank you.

Examination-in-chief by MR MALEK

MR MALEK: Mr Anisimov, can you hear us? Can you tell the court your full name, please.

A. Anisimov Vasiliy Vyacheslav.

Q. And it's right to say that you do not speak English?

A. I do not speak English, no.

Q. And it's also right that you do not read English?

A. No, I don't read English.

Q. Could Mr Anisimov be provided with his witness statement.

While that's being turned up, could you confirm that you do not have a mobile phone on you?

A. I have nothing on me, neither a mobile phone nor any other device, no other technical equipment.

Q. Could you please turn to your statement, which you will find in the Russian text at F1/01 at page 26 F1/01/26.

Do you have that in front of you?

A. Yes.

Q. And is that the first page of your statement?

A. Yes, that is the first page of my statement.

Q. And could you now turn to the end of that statement

which is F1/01 at page 52 F1/01/52.

Do you have that in front of you?

A. Yes.

Q. Now, the signed version is not I think in this bundle, but if you look on the screen next to you, you should see -- is your signature there?

A. No, it's not my signature on the screen, but in fact I have a hard copy with my signature in front of me.

Q. Can you confirm that that is your signature?

A. Yes, it's my signature right here on page 52 in the hard copy.

Q. Can you confirm that your witness statement is true?

A. My witness statement is true.

MR MALEK: Thank you.

MR SUMPTION: My Lady, I think it's convenient --

MRS JUSTICE GLOSTER: Sorry, I couldn't hear.

MR SUMPTION: I think it's convenient that I should ask any questions on behalf of Mr Abramovich before Mr Anisimov --

MRS JUSTICE GLOSTER: You're content with that, Mr Rabinowitz?

MR RABINOWITZ: I am.

Cross-examination by MR SUMPTION

MR SUMPTION: Mr Anisimov, do you know how relations were between Mr Abramovich and Mr Patarkatsishvili between

2000 and 2008? How did they get on?

A. Well, during the time that I was friends with Badri we often discussed Mr Abramovich and, as far as I remember, he always spoke very nicely, very kindly and favourably about Mr Abramovich. He liked him. He liked him, to be concise, until the very end, until a month before his death. We discussed it, I don't know why, but it sort of turned out that we discussed Abramovich, and Badri always had very nice memories, and he always spoke very nicely about Roman Abramovich.

Q. You said this is during the period that you knew Mr Patarkatsishvili. When did that period begin?

A. I met Badri in 1999 in the summer of '99.

MR SUMPTION: Thank you.

A. You're welcome.

MRS JUSTICE GLOSTER: Yes, who is going next?

Mr Rabinowitz.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Anisimov.

A. Good afternoon.

Q. You tell us you're a Russian businessman based in Moscow, is that right?

A. Yes, I mainly live in Moscow but very often I am in Switzerland and in Italy and occasionally I come to England.

Q. And I think that you say in your witness statement, and you have just said again -- perhaps I'll put the question this way.

Since 2000 you have been on good terms with Mr Abramovich, both from a personal and a business perspective, is that right?

A. Well, not quite so. I am on good terms with him but we don't have any joint business, and practically we've never had any business relationship with Abramovich. But we're on good terms, yes.

Q. Can you look, please, at paragraph 56 of your witness statement, you will find it in the Russian at page 42 F1/01/42 and in the English at page 15 F1/01/15.

A. I'm looking at it.

Q. You see here you are talking about Mr Abramovich, and around the third or fourth sentence you say that you tended not to discuss business with Mr Abramovich:

"... although I was (and still am) on good terms with him from both a personal and a business perspective."

So when I asked you whether you had been since 2000 on good terms with Mr Abramovich from both a personal and a business perspective, the answer to that was --

A. Okay, I got the question, I understand it. May I answer?

Q. Yes, please do.

A. Thank you. The thing is that when we talk about in terms of business, that doesn't mean we have joint business, that means you can come to a person and you can ask for his advice, and he was always very friendly, he'd always answer. He had good opportunities, he would recommend where I might turn, to which people I might turn who could assist me.

So that's not joint business that we would undertake together, because after the sale of my share in Krasnoyarsk assets we've never had any joint business, but that's what I meant.

Q. Okay. Are you still on good terms with Mr Abramovich?

A. Yes. Normal good terms. We don't often meet or see each other but we're on good terms, yes.

Q. Do I understand from your previous answer that you have never had any joint business interests with Mr Abramovich, is that what you're saying?

A. Well, I've already said that -- is this a question? This is a question, is it?

Q. It is a question.

A. Thank you. Well, we only had one joint business when we were selling Krasnoyarsk assets to Mr Abramovich, and the second time we met when 25 per cent of Rusal was sold off on behalf and on request of Badri. And

I don't -- didn't have any other business with him,  
I just can't remember anything else.

Q. Now, Mr Abramovich is obviously an extremely influential  
businessman in Russia, isn't he, Mr Anisimov?

A. Perhaps he is influential, I suppose. I suppose he is  
influential, yes, you could say so. What do  
I understand by the word "influential"? I know that  
he's on good terms with people in business, he is on  
good terms with state authorities. But I have never  
seen any influence. I mean, the word "influence" in  
Russian, it has a connotation, it has a slightly  
ambiguous connotation. I think he is an honest  
businessman, that's what I think.

Q. And no doubt you would want to preserve good business --  
good relations with Mr Abramovich, Mr Anisimov, because  
that might be useful to you in the future, correct?

A. You know, I am 60 years old and my relations are  
important to me when I have comfortable relations with  
people just as people, and I'm not seeking people with  
influence. At my age, you are seeking warmth from  
people --

Q. At my age as well.

A. -- you are not seeking influence et cetera.

Q. You also tell us at paragraph 67 of your witness  
statement, you'll find that at page 46 in the Russian

F1/01/46 and page 18 in the English version

F1/01/18, that you were in 2004 on good terms with Mr Deripaska, is that right?

A. Yes. Yes, that is so. I've known Deripaska for a long time. I met him before I met anyone else. I'd known him since '92/'93 I think. We didn't meet often, not at all, and in fact we have met very few times, but there's always been some respect. He was the most -- the youngest person in aluminium business, and I was the veteran, I suppose, in aluminium business, so we had good relationship. It's not a friendship but healthy, normal, good relationship as between people who are not military.

Q. Are you still on good terms with Mr Deripaska, Mr Anisimov?

A. You know, we're of different age, we're people of different age, and watching the process or the proceedings that Mr Deripaska has burdened himself with, nobody can be close to him.

The business that -- I mean, I fly a lot, but he must fly all the time, he must live in the aircraft. His business is huge and this life must be so hard, totally unrealistic. So we hardly ever meet, there's no friendship, we meet hardly ever, for a couple of minutes, each of us flies on our own plane, so it's

very, very infrequent. For a year or 18 months we may never meet.

Q. When you do meet you're still on good terms with him, is that right?

A. Yes, I'm on good terms with everyone who is present here. What do you mean? We don't visit each other in our homes, our families are not friends, I am not interested in his marital status or anything like that, just ordinary relationship between people. He hasn't done anything wrong, I've never done anything wrong vis-a-vis him, so, yes, a normal relationship.

Q. You see, at the same time as explaining your friendship and good relations with Mr Abramovich and Mr Deripaska, you also tell us, this is at paragraph 19 of your witness statement, you appear to be talking about some time in the mid-2000s --

A. (Untranslated).

Q. Sorry, paragraph 19, page 32 of the Russian F1/01/32, page 6 in the English F1/01/6.

So you've told us you have good relations with Mr Deripaska and good relations with Mr Abramovich. And you explain here, and I think you're talking about a period in mid-2000, you say you did not like or trust Mr Berezovsky, is that statement correct?

A. Yes, indeed.

Q. Is it still the case that you do not like Mr Berezovsky?

A. I don't like him.

Q. Despite your age. Forget about that one.

My Lady, that's probably...

MRS JUSTICE GLOSTER: Mr Anisimov, you mustn't talk to anyone about your evidence or about the case over the lunch break, do you understand?

A. Yes, I do understand. Thank you very much.

MRS JUSTICE GLOSTER: Two o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Mr Rabinowitz, I've just been given a bundle with the chronology and dramatis personae. You might not know, has it changed since the last version?

MR RABINOWITZ: I don't think so, my Lady. I don't know what bundle your Ladyship has been given and I haven't seen it so I'm slightly loathe to say anything about it.

MRS JUSTICE GLOSTER: It's just that I've been annotating my original one which I just put in a file, and if this is an up-to-date version or a different --

MR RABINOWITZ: I'm not conscious of it.

MRS JUSTICE GLOSTER: Perhaps somebody could tell me.

MR RABINOWITZ: I see Ms Davies is shaking her head.

MR SUMPTION: I think your Ladyship has just been given it

in a fancy bundle.

MRS JUSTICE GLOSTER: Right, okay. Then I will transfer it.

It's just that if it was updated -- perhaps somebody more junior than all of you here can let me know whether it has been updated.

MR SUMPTION: It's confirmed from behind me that it's the same document.

MRS JUSTICE GLOSTER: Very well, thank you.

MR RABINOWITZ: Just the fancy bundle then.

Mr Anisimov, you tell us at paragraph 2 of your witness statement, that's on page 27 of the Russian F1/01/27 and page 1 of the English version F1/01/1, that in the late 1990s you were heavily involved in the aluminium industry, that's correct, is it?

A. Yes.

Q. And you had a significant stake in the Krasnoyarsk Aluminium Plant and the Krasnoyarsk Hydroelectric Power Station, correct?

A. Yes, absolutely right.

Q. You had no interest in the Bratsk assets, or at least none that was sold to Mr Abramovich in February 2000, correct?

A. No, I never had anything to do with Bratsk.

Q. Okay. And you also tell us that you divested yourself of your aluminium assets and began to invest in the real

estate market in Moscow and New York in 2000, is that right?

A. Not quite, not quite.

Q. Do you want to explain why that is not quite right?

A. If necessary, yes, I can explain. I did not divest from Krasnoyarsk but the situation was such that other people created conditions for us that forced us out of this business and therefore we were forced to sell our assets, because the situation in Krasnoyarsk was very complex from all points of view. From the point of view of Governor Lebed and the authorities of Krasnoyarsk region there was pressure and there was a very difficult situation with the criminal gangs that were very strong in Krasnoyarsk. I would say that unbridled criminality reigned from '94 to '97. Seventy people were murdered in Krasnoyarsk.

MRS JUSTICE GLOSTER: Could I just understand, how did that impact on the production of aluminium, and how did it interfere with the business?

A. Well, I'll give you a couple of examples so it will be clearer. We had a case when my staff, they came to Krasnoyarsk, they were met in the airport, they boarded a bus, clearly these were criminal gang people. They were brought to a cemetery and they were shown the graves and said, "If you continue working in Krasnoyarsk

this is the fate that awaits you." And of course it impacts the psychology of normal people that are not connected with the criminal gangs.

And then another side was even sadder for us, because the governor, the governor ordered law enforcement authorities to come with raids to the plant wearing masks, and particularly when our main raw material, alumina, that was supplied by our enterprises, this alumina would stay at railway junctions for weeks and weeks and weeks, and they would find all kinds of pretexts why we couldn't unload it, they said that there would be bombs there or something, and the situation didn't allow us to operate.

We also worried about our personal safety, we worried for our lives, and that had a very negative effect on myself and the people who worked in our company, and this carried on for a long time.

MRS JUSTICE GLOSTER: Yes, I see, thank you.

MR RABINOWITZ: You mentioned the governor ordering law enforcement authorities to come with raids to the plant wearing masks, that was Lebed, was it?

A. Yes, it was General Lebed.

Q. Now, in fact I think we were at cross-purposes. I used the word you "divested" yourself of your aluminium business, because that's the word that in the English

translation of your witness statement is used. I didn't mean to suggest it had any connotations as to why you sold your interests, I just wanted to confirm with you that that is when you sold your interests?

A. Yes, naturally, I was forced to sell my shares.

Q. All right. Now, in addition to investing in the real estate market -- let me ask it this way: you did however with the money you received, part of the money, invest in the real estate market in Moscow and New York, is that right?

A. Yes, I was involved in real estate, and naturally I was looking for quieter spheres of investing my money, so we invested in New York and in Moscow and in Moscow region, invested in real estate, yes.

Q. But you also made a substantial investment in the Russian metals company MGOK, didn't you, Mr Anisimov, in 2004?

A. This was a while later when, in my view, Russia was more stable, the situation was more stable. And when we saw that there were some limits to criminality, limits to what was being done, then Mr Usmanov suggested I acquire Mikhailovsky GOK, or MGOK as you call it, and I took part, personally took part in acquiring Mikhailovsky GOK.

Q. And that was in 2004?

- A. Yes, it was 2004, you are right.
- Q. And is this right, MGOK subsequently emerged with Metalloinvest, is that right?
- A. Yes. I don't remember exactly, but I think a couple of years later, with another group, we managed to merge these assets and a group called Metalloinvest was born.
- Q. I think you tell us at paragraph 78 of your witness statement that that was in 2006 F1/01/21?
- A. Yes.
- Q. Now, following the merger between MGOK and Metalloinvest, you have held a 20 per cent stake in Metalloinvest, is that right?
- A. Absolutely right.
- Q. Are you aware that in October 2010 Reuters issued a report suggesting that a 20 per cent stake in Metalloinvest was worth about \$4 billion? If you're not aware of that, just say so.
- A. No, I didn't read the article, because the prices in metals business have a tendency of volatility, of jumping up and down. So there's no point in paying attention to any of these reports because nobody was about to sell anything, so no, I didn't read it.
- Q. Thank you.

You would presumably accept that your 20 per cent stake in -- the 20 per cent stake in Metalloinvest is

worth a very substantial amount of money, is that right?

A. I would very much like to think so.

Q. And you are currently in litigation with Mr Berezovsky in the English courts in the Chancery Division, that is right, isn't it?

A. Yes, well, I'm here so it must be right.

Q. I'm not going to trespass on the merits of that dispute and, in particular, whilst I do not accept the truth of your evidence on these matters, I'm not going to cross-examine you on evidence you have given in this case which is relevant only to that dispute. Do you understand?

A. Well, I don't understand it in great detail but I'm listening to you very attentively. You have your own opinion and naturally you are perfectly entitled to your opinion, although that is not so.

Q. I haven't expressed an opinion, Mr Anisimov, I'm just trying to explain to you about the things I'm not going to ask you about. I'm not going to ask you about evidence you have given which is relevant to that action but not this action.

A. That's your right.

Q. So I'm not going to get into the detail and the merits of either side's position in Metalloinvest, but can I just see if we can agree what in summary the dispute

there is about.

Let me put a proposition to you and then you can agree with it or not.

For those who want to follow this, this is all taken from the pleadings in that action, Mr Berezovsky's claim and Mr Anisimov's defence.

Now, in the Metalloinvest claim, Mr Berezovsky is saying that of your 20 per cent stake in Metalloinvest a quarter of that, or 5 per cent of Metalloinvest as a whole, belongs to him. Now, I know you don't agree with that but it's right, isn't it, that that is what he's claiming? Is that correct?

- A. I've read the documents, yes, and I can see that it is right.
- Q. And it's common ground in that action between you and Mr Berezovsky that the MGOK acquisition was made in part using monies received by Cliren, that's the company that was set up for Mr Patarkatsishvili, and derived from the proceeds of the second Rusal sale, that's the sale of the Rusal shares in 2004. Do you agree with that?
- A. I didn't quite understand the question because it was a bit long so I'd like to really, really understand what it is that you're aiming at.
- Q. Let me see if I can break it down.

In the Metalloinvest action --

- A. Yes, be so kind.
- Q. In the Metalloinvest action you and Mr Berezovsky both say that the acquisition of the MGOK shares was made using money received by Cliren, the company set up for Mr Patarkatsishvili, and derived from money obtained out of the sale of the 25 per cent of Rusal shares in July 2004.
- A. Yes, indeed. The funds came from the 25 per cent sale of Rusal shares which we, with my friend, agreed to split 50/50. Indeed 250 were then used to acquire Mikhailovsky GOK although the price was 1.65 billion on the whole.
- Q. Now, I'm not going to get into the two sides of the story, I just want to make sure that we agree about what is in dispute and not in dispute in that case.
- In that case Mr Berezovsky is saying, and again I know you don't agree with this, but what he is saying is that you agreed in 2004 to reinvest the proceeds of that Rusal sale in MGOK for and on behalf of both Mr Patarkatsishvili and Mr Berezovsky. I know you don't agree with what he is saying, but that is what he is saying, correct?
- A. Yes. I did not agree -- I do not agree with that but that's what he is saying.
- Q. Mr Berezovsky also says that you knew in 2004 and after

that that he, Mr Berezovsky, had a 50 per cent interest in the Rusal proceeds. Now, again, I know you don't agree with that but that is what he is saying in that claim. Is that right?

A. Well, I read it, I read it, and this is what I read. But clearly I don't agree with it.

Q. No. In that action you are saying this: first you say that Mr Berezovsky never had an interest in Rusal or the Rusal proceeds, is that right?

A. I claim that I have never seen or heard him to take part in any negotiations, he was never at any meetings, and these things were never discussed.

Q. So you say in that litigation that Mr Berezovsky never had any interest in Rusal or the Rusal proceeds?

A. Yes, that's what I say. I say that he didn't.

Q. And in that litigation you also say that even if Mr Berezovsky did have an interest either in Rusal or the Rusal proceeds, you were not aware of it, is that right?

A. It's all correct, but may I ask you a question? I don't quite understand what other -- what other court proceedings are you talking about? This is my first ever appearance in any court.

Q. I'm not talking about a court --

A. What kind of proceedings are we discussing? We're

discussing some other proceedings, and this is my first ever appearance in any proceedings.

Q. I'm just discussing that --

A. Maybe I'm just not understanding what you mean.

Q. No, Mr Anisimov, don't worry. What I'm saying is not that you've appeared in court and you have given evidence in any proceedings, I'm simply trying to identify the dispute between yourself and Mr Berezovsky and what is at the centre of it. Okay?

A. Okay.

Q. Given that this is what you and Mr Berezovsky are in dispute about, would you accept, Mr Anisimov, that you have a very real financial incentive in seeking to deny that Mr Berezovsky had any interest whatsoever in Rusal?

A. I don't quite understand the question. I never have any motives or -- to deny anything. I just know that Mr Berezovsky was not present in this process. I'm not denying anything, I'm just stating the fact.

MRS JUSTICE GLOSTER: I think you had better put the question again.

A. And I'm here in these proceedings because -- to deny this.

MR RABINOWITZ: Mr Anisimov, I'll ask the question again, and it's not your fault, there is obviously a language barrier between us.

What I'm asking you is this: in light of the fact that you and Mr Berezovsky are in a dispute about the MGOK shares, which turns on whether or not --

A. Oh, you mean future hearings? Because it's not quite clear. Now I understand.

MRS JUSTICE GLOSTER: In the Chancery actions.

A. Right, now I understand, because it's not happening yet. Thank you.

MR RABINOWITZ: Because of your involvement in those Chancery actions with this dispute, which turns on whether -- which depends on whether Mr Berezovsky had an interest in Rusal and whether you knew he had an interest in Rusal, do you accept that you have a very real financial incentive in seeking to deny that Mr Berezovsky did have any interest whatever in Rusal?

A. Once again, I repeat I have no interest or no motives to deny anything had I known it. Naturally I would not deny it if I knew it. But the thing is that I know that in the course of all the negotiations, and in the course of all my conversations with my close friend, Berezovsky's surname was never mentioned.

Q. Well, let's see if that's the case, Mr Anisimov, but I'm going to move on.

I want to ask you about the sale of the KrAZ assets in February 2000 and the second Rusal sale in June and

July 2004.

A. Go ahead.

Q. While you were involved in both transactions, you've explained in your witness statement -- this is at paragraph 9, page 27 of the Russian F1/01/27 and page 3 in the English F1/01/3 -- that your involvement was at a fairly high level, and that you delegated much of the detailed work to your assistants, Mr Mark Buzuk and Mr Ivan Streshinsky, is that right?

A. Absolutely correct.

Q. And both Mr --

A. On the first deal the main person, my main adviser, was Mr Buzuk, and Mr Streshinsky assisted him. As far as the second deal is concerned, only Mr Streshinsky was assisting me because Mr Buzuk by that time was not employed in the company any more.

Q. You tell us that you had full faith in both Mr Buzuk's and Mr Streshinsky's ability and that you trusted them to get the details right, is that correct?

A. Absolutely correct, because those people were very professional, and I think that at that time I had the strongest teams of advisers in Russia in this business.

Q. And it's also clear from the evidence you give about the second Rusal sale in June/July 2004 that although you had delegated the detail of that transaction to

Mr Streshinsky, he kept you updated on progress of the transaction on an almost daily basis, is that right?

- A. Yes, with a small explanation: I was involved in business and generally I'm a very active person. By that time we have -- had been working together with Mr Streshinsky for a long time and naturally I fully trusted him, and, yes indeed, he just showed me some documents and I just asked him, "Is everything okay?" He said, "Everything okay." So I trusted him completely. He went away and continued working.
- Q. You tell us at paragraph 73 of your witness statement, that's at page 20 in the English F1/01/20 and page 48 of the Russian F1/01/48, that you would ask him --
- A. (Untranslated).
- Q. Page 48 of the Russian. So you say this, that you would ask him from time to time if there were any important developments or problems with the deal that you needed to know and, if there were, presumably he would tell you?
- A. Yes. I confirm that.
- Q. Is that the way your relationship with Mr Streshinsky normally worked, Mr Anisimov, that you would delegate the detail to him, but he would then proceed to keep you updated of important developments?
- A. Yes, absolutely.

- Q. And you trusted that Mr Streshinsky would bring important matters to your attention, is that right?
- A. Yes, I think so, yes.
- Q. And I think you may already have given a partial, at least, answer to this, Mr Anisimov, but would you say having employed Mr Streshinsky over a number of years that he is a careful and diligent lawyer?
- A. Well, I wouldn't characterise him like that. He's not a lawyer.
- Q. Sorry, a careful man?
- A. Yes, he is, indeed he is careful, professional, that's the most important thing, and he understands what he's dealing with and what he's doing.
- Q. And he's fluent in Russian and he has a reasonably good grasp of English and western business concepts, is that right?
- A. Yes, he had worked for many years with my company in Switzerland. I think he's not fluent but he speaks English well, he speaks Russian, and he's worked a lot in contact with western companies.
- Q. Now, I'd like to move on to consider with you the sale of your KrAZ assets in February 2000. You tell us at paragraph 37 of your witness statement, that's at page 37 in the Russian F1/01/37 and page 11 in the English F1/01/11, that when you came to consider

divesting yourself of the KrAZ assets in the course of 1999 you got in contact with Mr Patarkatsishvili, correct?

A. Yes, that's true.

Q. And you say it was Mr Patarkatsishvili who suggested that you should approach Mr Abramovich to see if he would be interested in buying, is that right?

A. Yes. Yes, it did happen.

Q. And you also say that you did then make contact with Mr Abramovich, and that Mr Abramovich appeared reluctant at first to make the acquisition, correct?

A. Yes, absolutely right.

Q. But you say that subsequently Mr Abramovich agreed to enter into negotiations in which you recall yourself and your representatives, Mr Abramovich and his representatives and Mr Patarkatsishvili all being involved, along with Mr Chernoi and Mr Reuben, is that right?

A. You know, that was quite a while ago, but approximately what you are saying reflects the truth. Badri and Mr Chernoi and Mr Reuben, although we discussed different aspects with different people, because Chernoi and Reuben also owned Bratsk assets, so often we talked -- the negotiations on Bratsk enterprise did not involve us very often.

- Q. And that reflects your witness statement where you very fairly say you were not present at all the negotiations, and in particular you weren't present at the negotiations that focused on the sale of the Bratsk assets in which you had no interest, is that right?
- A. Yes, that's correct. Completely correct.
- Q. It's obviously likely that Mr Chernoi and Mr Reuben, or their representatives like Mr Bosov, would have been present at those meetings involving Bratsk, is that right?
- A. In Krasnoyarsk and in Bratsk the shareholders counted Chernoi and Reuben. And their share, if I remember correctly, Mr Bosov was simply managing those assets, or maybe perhaps just on Krasnoyarsk. I don't remember correctly.
- Q. So you accept that there would have been meetings which you did not attend?
- A. Perhaps yes, I suppose so, yes.
- Q. Now, can I ask you then to look at paragraph 43 of your witness statement, page 38 of the Russian F1/01/38, page 12 of the English F1/01/12. You explain there that in February 2000 the sale of the KrAZ assets was agreed, and that you also say the agreement dated 10 February was drafted, so far as you're aware, by your in-house team and Mr Abramovich's in-house team, is that

right?

A. Yes, all correct.

Q. And from your side, again, that would have included Mr Streshinsky and Mr Buzuk?

A. Most likely Mr Buzuk was involved, because Mr Streshinsky reported to Mr Buzuk and I would imagine it was Mr Buzuk. I can't be completely certain but I think it must have been Mr Buzuk.

Q. But Mr Streshinsky was, I think you already told us, involved in the February 2000 sale?

A. He was involved, but once again the director general of my company was Mr Buzuk. Mr Streshinsky dealt with the financial aspects and he reported to Mr Buzuk. Although further on I had closer relationship with Mr Streshinsky, but at that time the most important person for the business was Mr Buzuk.

Q. I don't think we're disagreeing about this but your own evidence, Mr Anisimov, is that Mr Streshinsky was involved in the KrAZ assets, that's what you say at paragraph 9.

A. Yes, yes, yes, he was involved, he was involved. I'm not denying it. I'm just saying that Mr Streshinsky was less involved than Mr Buzuk in this deal because Mr Streshinsky was a deputy for Mr Buzuk.

Q. Now, can we just look, please, at the agreement that was

made at that time. It's in bundle H(A)70, and you will be given this Mr Anisimov. Bundle H(A)17, page 38 H(A)17/38 for the Russian and page 38T in the English H(A)17/38T. You will be given, I'm sure, the Russian.

A. Thank you. Yes, I can see it now.

Q. Thank you, Mr Anisimov. If you go to page 43, this is only in the Russian, there's a signature page with signatures, and can you confirm that your signature is the signature under "Party 5", please?

A. Yes, this is my signature.

Q. And just looking at the signatures under "Party 1", there are three signatures there, and you may not be able to say, but insofar as you are aware can you confirm that those are the signatures of Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili, please?

A. Honestly, it was a long time ago, but I think these are their signatures. I don't remember where we were signing this document, whether we -- this document was bought to each one of us in turn. But I knew, and I know, that these signatures existed.

We concluded this agreement, it's like a protocol of intent, that people would like to sell their assets, no more than that.

Q. You say in your witness statement, Mr Anisimov, this is at paragraph 44, page 12 of the English F1/01/12,

page 39 of the Russian F1/01/39. Don't put that away, but if you take your witness statement, in the Russian page 39 and in the English page 12, paragraph 44, do you see that you say there that party 1 and each of Mr Abramovich, Mr Patarkatsishvili and Mr Shvidler is defined in this agreement as the purchasers.

And then you say:

"As far as [you were] concerned at the time, as a result of their signature on this document, and as a consequence of the way they acted at the meetings which I attended, there was no reason for me not to believe that they had each acquired some form of interest in the KrAZ assets as a result of the sale."

Is that right?

- A. Well, it's just a small part of my explanation because, in fact, yes I confirm it, but at the same time I never knew what share, how much and what agreements existed between Abramovich and Shvidler and my friend Patarkatsishvili.
- Q. Now, just focusing on the part of that statement where you explain that, in part as a result of the signature but also as a consequence of the way they acted at the meetings you attended, there was no reason for you to believe that they had -- for you not to believe that they had each acquired some interest.

Presumably you formed this view as a result of the way in which they did act at those meetings, and what I wanted to ask you was this. What was it about the way that they acted at these meetings that made you consider that they were the acquirers of these interests?

- A. You know, honestly speaking, regarding their behaviour, they behaved like normal people. They were given the documents, they signed them, they confirmed that yes, this document exists. And for me the most important thing was not this. For me the most important thing was to get my money, because I had other plant in the Urals and I didn't really pay much attention to their behaviour, everything was very calm.

I knew Mr Shvidler, I knew my friend Badri, they nicely, calmly signed the documents, the documents on the table, we signed the document. I just don't remember where it took place. It's a long time ago.

- Q. Never mind about where it took place, that probably doesn't matter very much. What I was asking you about is this. First, I understand that the important thing for you was getting your money and selling the shares, but in your witness statement you have explained that as a result of their signature on the document, but also as a consequence of the way they acted at the meetings that you attended, you formed the impression that they were

the acquirers of the assets.

What I want to ask you again is what was it about the way that they conducted themselves at these meetings that led to you forming the impression that they were the acquirers of the assets?

- A. You know, I of course can't remember the details, but on the whole I think I understand what was going on. The times were hard, we had little time left. My friend Badri and Mr Shvidler were confident people, self-assured people. So to read more into this, to try and read into this that there were some kind of actions, no, there weren't any specific behavioural actions. They just calmly signed these documents and that's it. And indeed I didn't quite know what kind of arrangements might have existed between Abramovich, Shvidler and Badri, and to be honest I wasn't all that bothered at that time.
- Q. Now, just looking at the agreement itself, Mr Anisimov, which you have in bundle H(A)17, which is purple -- that's the one.

If you look at the -- yes, on that page, if you stay on that page, if you look at the opening words of the agreement H(A)17/38T, do you see that it says that Roman Abramovich, Eugene Shvidler, Badri Patarkatsishvili and the companies represented by

them are to be called party 1? Do you see that?

A. Yes, I can see that.

Q. Do you recall that there were four such companies which were in fact party to the various underlying sale and purchase agreements that acquired the aluminium assets?

A. No, I don't remember the details.

Q. Let me mention the names and see if you remember them. Runicom Fort Limited, Palmtex, Galinton and Dilcor, do you remember any of those companies?

A. Runicom I remember but I don't remember any of the others.

Q. Did you or do you now or did you at the time -- let me ask that question first. Did you at the time know which of those companies Mr Abramovich was representing?

A. No. I wasn't getting involved in these details, no. I didn't know.

Q. So I take it you didn't know --

A. When you see a person in front of you and you know he's Abramovich, he is a reasonably well-known figure, this is a deal, assets are being acquired, I wasn't really bothered which companies would eventually own the shares.

Moreover, this was the first part of our agreement with no legal force. This was just a -- we could have actually agreed all that orally and then go on with

the contract. But because there were -- because Bratsk was involved we drew up a document, Buzuk from our part, Mr Streshinsky must have been helping him. And from their side I don't even remember who was dealing with drawing up this document.

Q. I take it that your answer is the same in relation to which of the companies Mr Shvidler or Mr Patarkatsishvili was representing of the four companies I've identified?

A. Absolutely, I've no idea. You're quite right, I just don't remember. Eleven years ago.

Q. No, I understand, Mr Anisimov.

Is it also the case, Mr Anisimov, that you would not know who was behind any of these companies in the sense of being the ultimate owner of those companies?

A. Naturally I didn't.

Q. Now, I want to move on to a slightly different topic. You say at paragraph 10 of your statement that you established a very close relationship with Mr Patarkatsishvili and that you were like family to each other and that you trusted each other completely. Paragraph 10 you'll find at page 29 of the Russian F1/01/29, page 4 of the English F1/01/4. Is that right?

A. Yes, I remember it even without referring to the page.

Q. Do you recall advising Mr Patarkatsishvili in the spring of 2000, following the KrAZ assets sale, about moving his assets offshore and setting up a Liechtenstein anstalt?

A. No, I don't remember this.

Q. Okay, let me see if I can show you a document which will assist your recollection. Can you please go to --

A. It's all possible. It was all 11 years ago.

Q. No, absolutely.

Can you please be given bundle H(A)18, opened at page 200.001 H(A)18/200.001.

A. This is in English, isn't it?

Q. It is in English and there isn't a translation of this. It may be that I need to ask --

A. Sadly I don't read English.

Q. No, I understand. The translator will help you with any assistance that you need in understanding what the document says, Mr Anisimov.

What you have in front of you, Mr Anisimov, is a fax addressed to Mr Streshinsky, who was your person, employee, from a company called Syndikus Treuhandalstalt, and it's dated 27 March 2000. If you look at the bottom of the page you will see that this is from -- sorry, the company has a Liechtenstein address, okay? The translator can help you with that if you need

help.

A. Yes, I can see that.

Q. Thank you.

A. I mean, I know English letters.

Q. Okay. Are you aware of the services that Syndikus Treuhandalstalt provides, Mr Anisimov?

A. No.

Q. Well, would it surprise you to learn, given Mr Streshinsky's involvement, that it's a company which specialises in private client advice and offshore structures?

A. Well, nothing can surprise me because this is what Liechtenstein was created for, to set up various offshore structures, surely?

Q. I'm sure they'll be pleased to hear that, Mr Anisimov.

A. I think they know it all without us.

Q. If you look -- well, I'm going to tell you what the beginning of the fax says, and the translator will help you with this, but I will read out what it says and the translator will then translate it for you. It says:

"Dear Mr Streshinsky.

"Reference is made to our meeting of last Thursday and to our telephone conversation on Saturday. We may inform you that we have already ordered all companies, and most of them have just arrived. In the meantime, we

have examined all documents given to us."

Just pausing there, Mr Anisimov, what Syndikus, I'm not going to try the second name again, what Syndikus appear to have been doing is setting up companies at Mr Streshinsky's request, okay?

A. Well, I suppose so. I cannot comment it really.

Q. The fax then goes on as follows:

"As you know, we have our due diligence, and we would like to have the following additional documents or inquiries."

So they seem to be carrying out some sort of money-laundering checks, would you agree, Mr Anisimov? That's what they seem to be doing?

A. Well, I suppose so. All banks are meant to do this because money-laundering is not good.

Q. No. If you then look at the first item they have asked for, what they've asked for is this:

"Valuation Report of Bratsk Aluminium Plant ..."

And they say this:

"... (same as we have got from KRAZ and KrGES)."

And they ask this question:

"Who has originally established these reports?"

In other words, who has made these reports?

So it looks as if this is in some way connected with the aluminium assets, correct, with aluminium

acquisitions?

A. I don't really understand. I have never seen this document before, I don't even understand what we're talking about.

Q. Well, you may not have seen it before, Mr Anisimov --

A. I have never seen it.

Q. -- but even without seeing it you could answer the question that I asked.

Given the reference to KrAZ and KrGES, and indeed a reference to Bratsk Aluminium Plant, would you accept that what they are looking at has got something to do with the assets that you sold or you were part selling in February 2000?

A. I can agree or disagree, but the point is that I have never seen this document. Moreover, it's addressed to Streshinsky. It deals with Bratsk and KrAZ. I simply cannot comment on this document because I don't really understand what it's all about. Perhaps they heard about something and they wrote a letter to Streshinsky. Maybe they wanted to create another stiftung of theirs. I just don't know. I don't understand the questions.

Q. Well you have already explained that you haven't seen the document before, and we can all see that it's written to Mr Streshinsky, Mr Anisimov. And if you are unable to answer the questions I ask you by reference to

this document because you simply are unable to answer them, that is fine.

But you can plainly answer the question I just asked you about KrAZ and KrGES, those were part of the assets that you had sold, that's the Krasnoyarsk plant and the Krasnoyarsk hydroelectric power station, is it not?

A. I did indeed sell them, and I don't quite understand -- I don't quite understand what you're aiming at. Can you formulate your question more specifically?

Q. Mr Anisimov, it doesn't really matter what I'm aiming at. If you're able to answer the question that I'm asking you then it would be helpful if you did that. Don't worry about what I'm aiming at, please.

Anyway --

A. Could you please formulate the question again.

Q. All right.

The references to KrAZ and KrGES are a reference to the Krasnoyarsk Plant and the Krasnoyarsk Hydroelectric Power Station?

A. Yes. I confirm that when I read KrAZ and KrGES, yes, this is a reference to these two enterprises.

Q. Mr Anisimov, I'm not trying to trick you, I'm just trying to get your assistance on something, and --

A. I'm not afraid of being trapped, and I'm very grateful, and I confirm that, yes, I'm reading here KrAZ, this is

KrAZ, and I'm reading Krasnoyarsk GES, and yes, these are those plant that you referred to. I don't think there are other companies called KrAZ and KrGES in the world.

Q. No. Well, that does help us, thank you.

Could I ask, please, don't put bundle H(A)18 away, but could you also be given bundle H(E)2 opened at tab 21 H(E)2/21/1.

My Lady, there is an English translation of this document right at the back of H(E)2 file, the reference is H(E)2/21/1T.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Do you have there, Mr Anisimov, a document, it's in Russian obviously, the one you're looking at, entitled "Krasnoyarsk GES"?

A. Yes, yes, I can see it.

Q. And it's also entitled "Explanatory note to the analytical materials regarding financial and business activities", correct?

A. Yes.

Q. Have you seen this document before, Mr Anisimov?

A. Never.

Q. Do you want to just have a look at it, just page through it, because you may not be able to tell that just by looking at the first page.

- A. Just to leaf through it? Please tell me what I'm looking for, it's quite a hefty document.
- Q. Well, just to see if you recognise -- I don't want you to give an answer on the basis of whether you've seen a document just by looking at the front page.
- A. There are so many documents of this nature in our company that it's absolutely unrealistic for me to answer whether I'd seen one or not.
- What should I look at specifically? Lots of pages here.
- Q. Let me ask you this: do you think this did come from your company or from someone within your company?
- A. I can't tell you.
- Q. Can you answer this: do you think Mr Streshinsky might have authored this document?
- A. Unlikely. I think it's unlikely, I'm not sure, but I think it's unlikely, because Krasnoyarsk power station -- I mean, we had few shares, a small share in Krasnoyarsk GES. Perhaps we took part in preparation, but we asked someone to deal with it, but I'm not sure at all.
- Q. You say you had a small share in Krasnoyarsk GES --
- A. In the hydroelectric power station, yes.
- Q. Are you able to identify who else, other than Mr Streshinsky, might have been able to produce this

sort of report in your company?

- A. In my company? I don't know, I can't tell you. I'm looking at surnames, I don't see a single surname of our staff, and I don't quite understand the point of this document, to be honest.

It's an analytical note. Well, that's perfectly normal. Many, many documents like that are drawn up for each enterprise. There's nothing -- I don't understand the point of it. Maybe you would explain it to me and then I could explain in greater detail.

- Q. Mr Anisimov, you can put that to one side. We'll get to the point about this in a moment.

Can you please be given another document which you'll find at H(E)3, tab 22, please H(E)3/22/1.

Again your Ladyship will find the translation of this document in the very last document of the bundle at H(E)3/22/1T.

MRS JUSTICE GLOSTER: Well, I only seem to have the first page of it.

MR RABINOWITZ: That's all your Ladyship needs to have.

- A. Thank you.

- Q. Now, again, Mr Anisimov, this is as you see entitled "Krasnoyarsk Aluminium Plant", and it's an explanatory note to the analytical materials regarding financial and business activities, dated 1999. Can you tell us

whether you've seen this document before, Mr Anisimov?

A. No, I don't remember. I don't remember. I'm looking through it and I think it's more to do with some kind of arbitration proceedings perhaps, perhaps somebody was undertaking an analysis.

I can see the document. I've never seen it before.

Q. And you can't help us with who might have authored it, is that right, whether it was Mr Streshinsky or someone else?

A. Sadly, no. Sadly, I can't. Unlikely -- I think unlikely that it was Mr Streshinsky, in my opinion. But I think we should ask him, we should ask Mr Streshinsky, I think he might come after all. He is having a visa problem but hopefully it will be sorted out.

Q. Very well. You can put -- thank you for that. You can put away H(E)3, thank you, and can you go back then to the document we were looking at, H(A)18 at page 200.001 H(A)18/200.001.

A. So we're coming back to the same document, right?

Q. I'm afraid so.

A. Why? Why are you afraid? Why unfortunately?

Q. Never mind.

MRS JUSTICE GLOSTER: It's not for you to ask the questions, Mr Anisimov.

MR RABINOWITZ: The document that you have at 200.001 refers

to valuation reports from KrAZ and KrGES, and the question which was asked is: who has originally established these reports? You're not able to assist us as to whether that reference might be a reference to the two documents we've just looked at, Mr Anisimov, or are you?

A. No, I don't know.

Q. All right. If we look at the next bullet point in this document, and again you may need assistance from the translator, I will read it to you and it will be translated for you.

A. I'd be grateful.

Q. "We need the enclosed declaration signed by the client (Mr P), that he executes the business for himself and that no members of the government, parliament, or any politician people are involved."

Now, as to whether -- as to who Mr P is, Mr Anisimov, if you go over the page you can see there was a second page of this document from Syndikus Treuhandalstalt, and it's a declaration to be signed by a Mr AP. That, would you accept, is very likely to have been Mr Patarkatsishvili?

A. Well, to be honest, I can't speculate. I can see that it says "AP", I can see the document, but I had never seen this document before, and I don't quite understand

what I have to do with it. I can't comment.

Q. Mr Anisimov, all you actually have to do is to answer my questions if you can. Okay? If you can't then you should just say so, please.

A. In which case, can I hear the question, please.

Q. All right. My question I think to you was whether you thought -- sorry, let me just see what the question was.

Would you accept that the reference to AP is very likely to have been a reference to Mr Patarkatsishvili?

A. Possibly. Possibly.

Q. Well, who else who had a connection to the KRAZ assets in March 2000 do you think that might have been a reference to if it wasn't to Mr Patarkatsishvili?

A. Well, I'm saying possibly. I can't speculate so I think I've assisted you and I answered, I think, that possibly, yes, it might have been Badri.

Q. Thank you for that. Then if you skip down to the next bullet point H(A)18/200.001, you see -- well, you won't see, I'll tell you what it says. It says:

"How is the relation between Sibneft and the four intermediary companies (subsidiaries or affiliated companies)?"

So would you accept that what appears to have happened is that they've been provided with something that has meant that they understand that there's a link

between Sibneft and what they refer to as "the four intermediary companies"?

A. I cannot speculate so I can't answer, can't comment.

Q. Okay. Do keep that open but can I ask you, please, to be given bundle H(A)17, opened at page 37.002 H(A)17/37.002.

This is a diagram -- do you have it?

A. (Untranslated).

Q. This is a diagram, Mr Anisimov, showing the February 2000 aluminium acquisition. And do you see in the middle of the page there is a circle called "Sibneft"? It's not really, but it's a sort of circle.

A. Yes.

Q. Below that there is a further circle called "Intermediary" in which there are four companies?

A. Yes. Yes, I can see.

Q. And would you accept that it may be that what Syndikus Treuhandalstalt have is this diagram, and that is what has given rise to the question they're asking Mr Streshinsky?

MRS JUSTICE GLOSTER: Well, isn't that speculation, Mr Rabinowitz?

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: I mean, from what Mr Streshinsky was doing at the time, are you in a position to comment?

A. I can't comment because I didn't know about it.

MR RABINOWITZ: All right.

MRS JUSTICE GLOSTER: Did you know Mr Streshinsky was dealing with Treuhandalstalt, whatever they were called?

A. No, we did work, we did work with Liechtenstein, had been for a while, but to a limited extent.

On this subject I cannot comment. My private life has nothing to do with this so it's very difficult for me to comment because it's all mixed up in here, Sibneft, KrAZ, KrGES, all mixed in, I just don't understand it.

MR RABINOWITZ: Can I ask you this, Mr Anisimov, have you seen this diagram before?

A. No.

Q. So you don't know who would have authored it?

A. I don't know.

Q. All right.

A. If I had known I would have told you. I can't see any great mystery here or any need to keep a secret.

Q. And you can't help us as to whether Mr Streshinsky was in fact assisting Mr Patarkatsishvili with Syndikus Treuhandalstalt at this time?

A. I simply don't know. I would be delighted to help but I just don't know. The only thing I know is that Streshinsky knew that Badri was my friend, and if Badri

had asked Streshinsky for any assistance, Streshinsky would have assisted him.

Do I still need this folder?

Q. You can put that folder away I think.

A. Thank you.

Q. Let me ask you this, Mr Anisimov, do you recall in March 2000 offering to help Mr Patarkatsishvili to get certain agreements notarised relating to commission that he was to be paid, arising out of the aluminium transactions?

A. No, I don't remember.

Q. Let me again show you a document and see if you can help us with this.

A. Please.

Q. H(A)18, page 155 in Russian H(A)18/155, and 161 in English H(A)18/161.

A. 155?

Q. 155 in Russian.

Now, you should have there a document entitled in Russian "Material Evidence Examination Protocol", do you have that?

A. What I see is the protocol of 3 February 2000.

Q. Right, sounds like...

A. Well, I'm looking at what I've been given.

Q. Above that, is the heading of the document "Material

Evidence Examination Protocol"? No?

MRS JUSTICE GLOSTER: Do you want me to take the break,

Mr Rabinowitz, so you can find the document?

A. It's 0017 but it's a different document.

MR RABINOWITZ: That might be wise.

MRS JUSTICE GLOSTER: Right, I'll take the break for ten

minutes so that you can find the document.

(3.08 pm)

(A short break)

(3.25 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr Anisimov, I hope you now have the correct

document in front of you. Is it headed "Examination

Protocol" and then below it, it says "Moscow, 16 March"?

A. Yes.

Q. Now, just so you know what it is, this is the Russian public notary's document which formally notarised one of four commission agreements that Ms Panchenko, who is one of Mr Abramovich's people, drew up for Mr Patarkatsishvili in the year 2000.

What I wanted to ask you was this, Mr Anisimov. If you look down the document, you I think on the Russian version will see a signature for someone called Ms Tatyana Vladimirovna Zaitseva?

A. Yes, I can see that.

- Q. Ms Zaitseva, we know from documents you have disclosed, was an employee of Coalco, your company, is that right?
- A. Absolutely right.
- Q. Can I ask you about this, Mr Anisimov: Dr Nosova, who works with Mr Berezovsky, has given evidence in which she says she remembers you providing advice to Mr Patarkatsishvili at around this time. She thinks that the meeting that she was aware of happened in the late spring of 2000. Do you have any recollection of that?
- A. No.
- Q. If I can just show you what Dr Nosova says and then ask you to comment on it. It's at bundle D1. In the Russian you'll find it at D1R, tab 9. Page 158 of the English D1/09/158 and page 135R in the Russian D1R/09/135R. Paragraph 249.
- Can I ask you to read that to yourself, please, Mr Anisimov.
- A. I've read it.
- Q. Thank you. Now, although I think Dr Nosova's timing may be a little out, do you remember now a meeting with Mr Patarkatsishvili in the early part of 2000 in which you offered to advise him with regard to establishing offshore structures in Liechtenstein?
- A. No, I don't remember it.

- Q. Can I just show you a document and ask you whether you've seen this before. Can you please be given bundle H(A)18 at page 221.003 in the Russian H(A)18/221.003, 221.003T in the English H(A)18/221.003T.
- A. I have it in front of me.
- Q. Can you say whether you recall seeing this document before?
- A. No. I've never seen it before.
- Q. Very well. You can put that away then, Mr Anisimov.
- A. Thank you.
- Q. Now, you tell us at paragraph 48 -- let's just wait for you to get rid of some of these documents.
- You tell us at paragraph 48 of your witness statement that Mr Patarkatsishvili and his family had a holiday home in Baden Baden and that you recall visiting Baden Baden on occasions, is that right?
- A. I've never been to their house but I have been to Baden Baden. I stayed in a hotel.
- Q. I would like to take you to an attendance note made by a solicitor, Mr Moss of Reid Minty, in 2001, of the meeting he attended with Mr Patarkatsishvili in Baden Baden at which he recalls you being present, Mr Anisimov. Before I show you that note, can I just put the meeting into context for you and tell you -- you

probably know this -- Stephen Moss, Mr Moss and his colleague Christine Minty were instructed -- they were English solicitors, and they were instructed on behalf of Mr Berezovsky and Mr Patarkatsishvili in the summer of 2001 to represent their interests in a transaction which we have been calling the Devonian transaction.

Mr Berezovsky's case is that the Devonian transaction involved the sale by Mr Berezovsky and Mr Patarkatsishvili of their shares in Sibneft to a company called Devonian which was owned and controlled by Sheikh Sultan, okay?

- A. I am not reading anything, I'm just listening to you, and I'm listening very attentively.
- Q. Thank you very much. Mr Berezovsky's case is that there was also a back-to-back transaction between the sheikh and Mr Abramovich under which the sheikh would sell these Sibneft interests on to Mr Abramovich, okay? I'm not asking you to agree with whether that is right or wrong, I just want you to understand the context in which this meeting took place.
- A. Thank you very much.
- Q. And then Mr Moss of Reid Minty had come into the transaction to act for Mr Berezovsky and Mr Patarkatsishvili after Mr Curtis, who was the solicitor who had been acting for them, had said he

couldn't continue to act for them because he was acting for the sheikh in the transaction, okay?

A. Right.

Q. Can I then just show you the attendance note that I mentioned, it's at bundle H(A)35, page 70 H(A)35/70. You have there in fact at H(A)35 an email to which the attendance note was attached.

A. It's in English, isn't it?

Q. It is.

A. There is no Russian, or is there?

Q. No, there isn't Russian.

Now, it's an email from Ms Minty to Mr Jacobson who was the lawyer from Curtis & Co, and it was sent on 5 June 2001. You can see the date next to the name "Christine", do you see that?

A. Yes, I can see "5.6.01".

Q. Thank you. What Ms Minty is saying in this email to Mr Jacobson is that -- she's talking about the warranties in the Devonian agreement that Mr Berezovsky and Mr Patarkatsishvili were signing or making with the sheikh. And she says that she doesn't understand why Mr Berezovsky and Mr Patarkatsishvili should be giving any warranties. She says:

"... because your client [that's the sheikh] will already have received the money for the beneficial

interests and will not therefore be at risk and the ultimate purchaser knows the full circumstances and should not require warranties."

So she's making a legal point, you don't have to be worried about the legal point she's making, about whether or not Mr Berezovsky and Mr Patarkatsishvili should be giving warranties.

Then she also makes the point that what she is saying is subject to discussions between Mr Curtis and Mr Stephen Moss. She makes the point that she will not have the opportunity to go through the agreement with Mr Moss until tomorrow when he gets back from Germany.

Now, what she's referring to is the fact that Mr Moss, her partner, was visiting Germany on 5 June 2001 to see Mr Patarkatsishvili, okay?

A. Right.

Q. Thank you. Now, can I ask you next, please, to go to page 161 where you will find --

A. Of the same document?

Q. Of the same file H(A)35/161. Because what we have at page 161 is an attendance note made by Mr Moss from Reid Minty of his trip to Baden Baden to see Mr Patarkatsishvili. I will read parts of it to you so that it can be translated to you. He starts by saying:

"SM [that's Mr Moss] meeting Joseph Kay at [London

Heathrow] and starting analysis of the retainer letter the PoA and then the draft sale agreement emailed to me last night."

There's then a discussion about Mr Kay reading the retainer letter, and Mr Moss says he explained to Mr Kay why that was done. We don't need to be concerned about this.

What Mr Moss then says is this:

"We landed at Stuttgart and then drove to Baden Baden, where we met Badri [Patarkatsishvili] and Vassili Asinov [he says], who [Mr Kay] explained --"

A. It must have been me.

Q. It must have been you, indeed. I'm sure we all get more used to Russian names the longer we are involved.

He met you and Mr Patarkatsishvili:

"... who [Mr Kay] explained was [Mr Patarkatsishvili's] oldest friend and advisor."

I think you accept that that is clearly a reference to you, Mr Anisimov?

A. Well, I can't speak for him. Maybe it's a reference to me, I don't know.

Q. But the fact that you are introduced, the person was introduced as Mr Patarkatsishvili's "oldest friend and advisor", suggests that it's very likely to have been you, correct?

- A. Well, I was his friend. I wasn't his adviser. We talked and asked each other's advice, but it can't be said that I was his adviser.
- Q. All right. Now, you say in your witness statement that you have no recollection of this meeting but I don't think anyone is suggesting that Mr Moss has deliberately created a false document and made this meeting up, so I suggest that it does look as if you were in Baden Baden on this occasion and that you were assisting Mr Patarkatsishvili, even though you cannot at this distance in time remember the meeting. Would that be fair?
- A. Not quite fair, because I went there on holiday mainly. It's a beautiful place. This is an ancient playground of the Russians, the Russians have always liked going there, we love going there. There's a lovely spa, I remember the hotel very well, we had lunch there. We spent time there with Badri and we've(?) had any meetings.

But I really don't remember what they talked about, especially as I don't speak English, it would have been difficult for me to remember. They might have asked me something, I might have answered something, but I don't remember any details at all, because Badri was a very -- a real friend, a real friend, and he -- and when you

were with him he made you derive pleasure from contacts with him, and I just don't remember any details about Baden Baden.

Q. Right, well maybe we can recollect some of the details when we read through the note.

Mr Moss records --

A. With pleasure.

Q. Thank you. Mr Moss records that:

"Numerous discussions then took place throughout the meeting relating to the trust arrangement, the involvement of Roman A [who is Mr Abramovich] and Sheikh S[ultan]."

But again you say you have no recollection of that?

A. First of all, I didn't see Roman A there, nor did I see the sheikh in Baden Baden. I have seen Roman with my own eyes several times but I have never seen the sheikh. I had many visits to Abu Dhabi and to Oman, and I know many sheikhs, but I don't know which sheikh you're talking about here.

Q. No, Mr Anisimov, Mr Moss is not suggesting that they were there, either Roman or any sheikh at all. He is simply recording the fact that there was a discussion which involved references to Mr Abramovich and the sheikh, okay?

A. I can't -- I can't say that. It must have taken place,

Mr Moss is a lawyer, it must have taken place.

Q. We can skip a couple of paragraphs. I just want to pick up the note about five lines down from the first break.

I'm going to read an extract. If you find it easier, Mr Anisimov, to have this translated for you by the translator rather than just getting the translation of my reading it, then do please say so.

A. So far I'm happy with the interpreting and the translation so thank you.

Q. That's very kind, thank you.

What Mr Moss goes on to record is this. He says this about the meeting:

"We then moved to the structure of the agreement [and he's talking about the Devonia agreement] and the warranties, which I read out, and [Joseph Kay] translated to [Mr Patarkatsishvili] and VA [Mr Anisimov]. They questioned me on why [Mr Abramovich] was not a party to the agreement, as the recitals stated that there was a selling on of the interests, and I said that as far as I knew, [Sheikh Sultan] would have his own agreement with [Mr Abramovich]."

Again that's what Mr Moss records but you say you have no recollection of that?

A. I really don't remember anything because Sibneft was of

no interest to me in any shape or form. Well I just don't remember, I can't invent, can I, so I have to say that I don't remember. I'm not inventing anything, I'm telling you the truth. They must have been saying, they must have been discussing, they must have been using these words, but I don't remember.

Q. All right. Mr Moss's attendance note then goes on and he says this:

"As I explained the effect of the warranties, and [the sheikh's] entitlements, [Mr Anisimov] posed a series of questions about hypothetical agreements to work as a partner with [Sheikh Sultan] in buying shares in Sibneft, and also on verbal call options given to [Mr Abramovich] to sell at a price... agreed."

That's what Mr Moss records, that you were indeed involved in the discussion, but you say you have no recollection of this?

A. Absolutely don't remember anything, and I'm absolutely convinced of one thing only, that I could not have been saying these things, especially about shares of a company I had nothing to do with.

Q. Well, no one else has suggested Mr Moss's note is fabricated, but let me just carry on and see what he says, carry on with the note.

A. I'm not saying it's been fabricated. It must have

happened, they must have been talking.

Q. And if his note is right, you must have been involved in these discussions, Mr Anisimov. That's what he records, is it not?

A. You know, I am often present at discussions with which I have nothing to do, and if I have nothing to do with the subject, and it must have taken place as far as I understand in a restaurant, it wouldn't have been official negotiation. One is eating, the other one is talking, and I don't speak English so I'm not sure that anybody was interpreting it for me. They might have asked me questions, I don't want to contest that, but on Sibneft subject I don't remember anything, I had nothing to do with it.

Q. Well, Mr Moss records that Mr Kay was translating for you, and indeed for Mr Patarkatsishvili, so --

A. Maybe he was translating, but it's probably not quite right or ethical to insist that he was interpreting for me and for Badri. Maybe, as Badri wasn't completely fluent in English, he was interpreting for Badri, but it wasn't interesting for me so I wasn't listening. I have enough -- I have enough subjects to mull over in my mind and to think about. I just wasn't listening. I mean, this subject really cannot be developed much further because I really don't remember. If I could remember

I would have told you what happened because there's nothing here that I would not have told you. If they were discussing it, I would have said, yes, I remember.

I mean, we can twist and turn it, and I listen to you with pleasure, I have no opposition to this. And it must have happened, I just don't remember their faces. I remember Badri, because I will never be able to forget Badri, but I don't remember who Mr Moss was. I can't put a face to a name. If he was there, well, he must have been there.

Q. I just want to read what else Mr Moss has recorded. He says this:

"Before I could answer either of these [and he's talking about your questions] however, after heated discussion between all 3 [and he's referring there to yourself and Mr Kay and Mr Patarkatsishvili], we went back to a line by line analysis of the warranties schedule. I explained the effect of each one, indicating the liability if [Mr Patarkatsishvili] didn't have good title, if there were ... encumbrances, how [Sheikh Sultan] could claim damages if any lien had been created over the beneficial interest etc, how [Sheikh Sultan] could sue if any claims were made, and reading [out] each warranty ... and explaining each one. [Joseph Kay] would translate, there would then be

a discussion in Russian, [Joseph Kay] would explain that [Mr Patarkatsishvili] was satisfied of its effect, and we would move on."

A. Well, maybe I misheard you. It says "between [the] 3", now I was number four. I was not part of the discussion.

Q. In fact you were number three, or one or two, Mr Anisimov, because Mr Moss was number four.

A. I won't argue, I'm just saying that I did not take any part in this process of negotiations.

Q. You see, if Mr Moss's note is accurate then you appear to have attended this meeting at which the Devonia agreement was gone through line by line, translated for the benefit of you and Mr Patarkatsishvili, with Mr Patarkatsishvili agreeing to particular warranties. But you now say you have no recollection of it, Mr Anisimov?

A. Well, I have a request. If I don't remember, why should I agree with your statement that this was like that? Badri knew English to some extent, they must have been talking in English, I just don't remember.

Moreover, the subject matter was of no interest to me at all, at all.

Q. Was the fact that your friend, or old friend, Mr Patarkatsishvili, was to receive a very, very

substantial sum of no interest to you, Mr Anisimov?

A. I would have been delighted and -- I would have been delighted for him to receive money, to be content, but if I -- but I can't advise if I am not aware of these matters, if I don't know this subject. How can I advise? If at that time I was asked, I would have brought my team, my advisers, they would have taken part in this -- in these negotiations. Moreover, there's a sheikh involved. For me, a sheikh is a sheikh and we are separate entities, it's a different life, different life.

Q. Would Mr Patarkatsishvili not have told you that he was going to receive a large sum in respect of his Sibneft interests given that you were his close friend?

A. On the whole I knew that he was receiving some kind of money, but if somebody is not telling you something perhaps it's not terribly ethical to enquire.

I just don't remember this meeting, that's the problem.

Q. All right. I'm going to show you the Devonian agreement, which is what Mr Moss records was discussed there, but you presumably will say it's in English and you don't recognise it, is that right?

A. Well, I think you shouldn't answer for me. If you ask me a question and show me the document, I'll answer.

- Q. All right, I will show you the document. Go, if you would, to bundle H(A)35 at page 88 H(A)35/88.
- A. Yes, I can see it.
- Q. So this is a version of the agreement that Mr Moss says he went through with you and Mr Patarkatsishvili and Mr Kay at the meeting in Baden Baden. You can see from the front page that it is an agreement between Mr Berezovsky and Mr Patarkatsishvili and Devonia Investments Limited and Sheikh Sultan. Do you see that?
- A. Yes, I can see the page.
- Q. And the agreement --
- A. I can see all the pages.
- Q. And the agreement, as the front sheet makes clear, relates to the:
- "... sale and purchase of beneficial interests in part of the issued share capital of Sibneft."
- Do you see that?
- A. Yes, I can see that.
- Q. If you go to page 106 H(A)35/106.
- A. 106, just a minute. We're almost there. Right, we're there.
- Q. Thank you. You see these are a list of the warranties that Mr Moss, in his attendance note, says he went through individually and had translated for the benefit of the others at the meeting, you and

Mr Patarkatsishvili. I can take you through these warranties if you think that may help with your memory, Mr Anisimov.

- A. Well, after all the documents I've seen today, that you've just shown me, I can be perfectly convinced that I have never seen these documents before and it's useless to discuss them, because it is impossible at a table in a restaurant you discuss anything of this nature. And that's not even the point. The point is I had never seen them. This is a serious document and notwithstanding anything, Badri was my closest friend. He might have drawn up this document somehow differently. I just don't remember them.

MRS JUSTICE GLOSTER: When you say you were having lunch in the restaurant, you positively remember that, or you're speculating that you were having lunch?

- A. I'm speculating, trying to remember or reconstruct. When we met in Baden Baden what we did is we took walks, went to restaurants and we slept. That's all we did. We walked, ate and slept. Each of us had our own apartments and we could actually negotiate in our apartments, but for a detailed discussion like this, to take this in a restaurant. Well, I remember, I remember that we went to restaurants, I remember that we went to our apartments, but now that I've seen the documents of

this nature, and naturally, naturally they couldn't have happened. I would not have forgotten a meeting like this.

If I had been asked about large amounts of money, about Sibneft, if I had been asked to give my advice by Badri, I could not have forgotten.

I could have given my advice if I had seen the documents. I just simply hadn't seen them.

MR RABINOWITZ: You see, Mr Anisimov, I have to suggest to you that you did see this document and there was such a meeting because that is what Mr Moss has recorded in his note as having happened. Do you want to comment on that?

A. Well, I am not -- I cannot argue with Mr Moss. I'm saying, yes, I was in Baden Baden, yes, I did meet with Badri, we spent time together, but I don't remember Mr Moss, and that is the main problem.

It's a good thing that I'm so impressive that he remembered me but I don't remember him.

Q. Well, the difference between you and him, in that regard, Mr Anisimov, is that he made this note at the time, whereas you are now having to recollect it some ten years later. Okay?

A. So quite right, quite right, that's the whole point. I'm just saying one thing: if this amount of documents

that you're showing me was there, it's a serious job. It's not -- I mean, it doesn't matter whether a person is your friend or not, if the business is as serious as this, I just don't remember this document. There were some conversations, he had several meetings, he is a very gregarious person. But I don't remember a lawyer and I don't discuss -- remember discussing this subject.

Most likely it did not happen. I'm convinced I did not discuss this subject. There might have been other discussions on other subjects but I don't remember which.

- Q. You see, don't be put off by the number of pages, Mr Anisimov. What Mr Moss says --
- A. I'm not put off.
- Q. -- is that he took you through the warranties, which are the ones we see on page 106 H(A)35/106, and he had them translated for you, and that's only just over a page that he would have had translated for you. So --
- A. I don't think that's right. They might have been translating for Badri, yes, I can't contest that, but for me what's the point? What have I got to do with this? Nothing.
- Q. Well, you were at this meeting, as Mr Moss records. Just let me tell you what the warranties say, Mr Anisimov, because the warranties at schedule 3 make

it clear that both Mr Berezovsky and Mr Patarkatsishvili were involved in this transaction to sell interests in Sibneft, and at warranty 3, there is a warranty that they were entitled to sell and transfer their beneficial interests in these shares in Sibneft to Devonian.

Okay? Now, my question to you is this --

A. Yes, I'm awaiting your question.

Q. If you did attend this meeting in Baden Baden on 5 June 2001, as Mr Moss's attendance note suggests, and if, as Mr Moss's note suggests, you did go through these warranties with Mr Patarkatsishvili you would have understood that Mr Berezovsky and Mr Patarkatsishvili were warranting that they had ownership interests in Sibneft as at June 2001. That's to say, that they had an interest in Sibneft as at that time. Do you understand?

A. Well, I understand what you've just said and I understand what you mean but, unfortunately, I can't help you with this because I was not involved, I don't remember the subject, I didn't hear it.

I was exercising my memory because in the course of the proceedings I was told that I was in Baden Baden, and yes, indeed, I looked at the documents and I had visited Baden Baden several times. I went there alone, and also I met Badri there, but I -- for a detailed

discussion like this to happen and for me not to remember it, this is unlikely. My memory is not ideal but things like this are not forgettable.

So, I don't know, maybe he was translating for Badri, maybe they were scribbling something, although I don't remember that either. To be honest, you know, money likes silence or quiet, maybe they were discussing it quietly. At some point I might have been sitting there. But there's no point in trying to get something out of me, I simply don't remember it. I mean, I'm saying to try and get it out of me in a good sense, you know.

Q. That's very kind, Mr Anisimov, and generous. But you see, if Mr Moss's note is correct in recording what he does record then it would not be true to say that you do not know and have never known what arrangement Mr Patarkatsishvili and Mr Berezovsky had regarding Sibneft; that is right, is it not?

MRS JUSTICE GLOSTER: Well, there's quite a lot of hypothesis there, is there not, Mr Rabinowitz?

A. Please could you put your question again. We cannot speculate. We're in court, aren't we?

MR RABINOWITZ: You see, Mr Anisimov, at paragraph 48 of your witness statement you suggest in the context of this meeting that you do not know and have never known

what arrangements Mr Patarkatsishvili and Mr Berezovsky have had regarding Sibneft. I suggest to you that that is simply not true.

A. Sorry, I got a bit mixed up. Is that in my own witness statement? What should I read? Just refer me to something.

Q. Yes, it is. If you go to page 40 on the Russian version F1/01/40, page 13 in the English version F1/01/13.

A. I beg your pardon, I'm just trying to find the page. So paragraph 48, right, okay.

Q. You suggest there, in the context of this meeting, that you do not know, and have never known, what arrangements Mr Patarkatsishvili and Mr Berezovsky have had regarding Sibneft. And I suggest to you, in light of what Mr Moss has recorded, that what you say there is not true.

A. Well, I don't agree with you because I'm telling you things as they are. I'm not giving you any hypothetical suggestions that I'm hearing from you today.

I beg your pardon, perhaps you are not happy with my answer but this is as it is.

Q. It doesn't matter whether I'm happy or not, Mr Anisimov.

Can I ask you, please, to go to bundle H(A)39 at page 38, please H(A)39/38.

MRS JUSTICE GLOSTER: Can we put H(A)35 away now?

MR RABINOWITZ: You can, my Lady.

A. Page?

Q. 38. It's a document in English.

A. Thank you.

Q. Now, this, in case you don't recognise it, it contains your signature at the bottom. It's a declaration --

A. My signature? I don't see my signature, maybe I'm looking at the wrong page.

Q. Page 38, volume 39. You've been given the wrong bundle I think.

A. It happens. This one I don't need.

I can see it now.

Q. This is a declaration that you made for the US visa immigration authorities four months after your meeting in Baden Baden, as recorded by Mr Moss.

A. This must be linked with visa application, yes?

Q. No, I'm just trying to place it in time, Mr Anisimov. It's October 25, 2001.

Do you remember making this declaration at all?

A. I don't remember the details of course, but I understand that the American Embassy asks us to prepare these documents and we provide them. At that time not everybody was granted US visas so they were asking more details, detailed disclosure, about oneself.

Q. And you declare and warrant the following things to be true and correct, the things which are set out in this

statement, and one of the things that you say here is that you state categorically that last year I have sold all my shares in Krasnoyarsk Aluminium Plant and Krasnoyarsk Power Station, and you say that you sold them to the shareholders of Sibneft in February 2000.

A. All -- all correct. That's exactly what I wrote, and that's exactly how it is. I sold everything and I wrote the whole truth here.

Q. The people you were referring to as the persons to whom you'd sold the shares in Sibneft were Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich, correct?

A. No, I'll try to explain if I may. I'll explain -- I'll try to explain how we fill in these forms, if I may.

Thank you.

The thing is that when we make references to shareholders in Russian practice, until '99 I was always a single owner, a single shareholder everywhere. But at that time it was all a bit worrisome, and my company always wanted to show that I was not the only shareholder of my company, and there were many -- very often people wrote "shareholders of Sibneft" et cetera, and I never knew who were the shareholders of Sibneft.

But to a greater extent that had to do with our personal safety and security. I truly didn't know whether there were any shareholders of Sibneft there or

not. I just wrote it as we wrote in contracts,  
"shareholders in Sibneft," and that's it.

Q. What I would suggest to you, Mr Anisimov, is that following your involvement in the meeting at Baden Baden in July 2001 you knew that Mr Berezovsky and Mr Patarkatsishvili had been shareholders in Sibneft but had now sold their shares to Mr Abramovich?

A. I don't agree with you. I didn't know it, and to be honest I wasn't interested in it.

Q. And that is why, when you referred just four months later in your visa declaration to the US immigration authorities, to a sale in February 2000 to the Sibneft shareholders, the people you had in mind were Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich. That's right, isn't it?

A. No, that's not right. I would have written it, "I sold them to Abramovich, Berezovsky and Badri." But because I didn't know who was who I just wrote "shareholders of Sibneft".

Q. All right, you can put this away.

I have one more document to take this witness to, my Lady, and I can try to finish, if that is --

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: Can I ask you, Mr Anisimov, to go to --

A. This one I can put away, yes?

Q. -- the document that your Ladyship will find on Magnum at H(A)92 at 42.001 H(A)92/42.001. I don't know if there's yet been a hard copy put in the bundles but if there hasn't we can hand one up.

It looks like there has been.

This is an email from a Mr Sergey Gorin at Coalco, so he's one of your employees, is he not, Mr Anisimov?

A. Yes, he's one of the employees that reported to Mr Streshinsky.

Q. And can you tell us what is his position in Coalco in -- at least what was his position in 2005, do you remember that?

A. I think that it was not a very important position at that point in time, because at that time I've never even had any dealings with him.

Q. What Mr Gorin is doing is he's sending this email to various people at an organisation called MeesPierson Intertrust regarding the subject of "Completed Clients' Forms."

He explains in his covering email that the client form had been completed by Coalco, your company, and pre-approved, he says, by the UBO. Now, the UBO is short for ultimate beneficial owner. If you go to page 42.003 in the document which is attached to this email H(A)92/42.003, you can see the second shaded

block says "UBO", and then above it, it says:

"UBO is the Ultimate Beneficial Owner of the structure."

The ultimate beneficial owner here is Mr Patarkatsishvili, your friend, okay?

A. I can see it.

Q. The document that Mr Gorin has completed and Mr Patarkatsishvili has approved is -- it's a source of wealth check. You can see that if you go to page 42.002, okay?

A. Yes, I can see it.

Q. Can I ask you, please, to go to 42.003 where we can see what Mr Gorin and Mr Patarkatsishvili have put in here.

If you look -- sorry, if you go -- sorry, could you go to page 42.005 H(A)92/42.005?

MR MALEK: I wonder if we can have a copy of that because it's not on Magnum as far as we can see.

MRS JUSTICE GLOSTER: I can't find it. It's on the screen but --

MR RABINOWITZ: Can we hand up a hard copy, my Lady.

MRS JUSTICE GLOSTER: It's fine for me because I can read it on the screen here but I'd be grateful if it could go into the Magnum.

MR RABINOWITZ: We had been told that it had gone into Magnum but we will ensure that it does do so. (Handed)

So are you at page 42.005?

A. Yes.

Q. Okay. If you look under the second shaded box, you see box 3, "Source of Wealth/Source of Funds," do you see that? The compliance questionnaire is in effect asking what is the source of wealth?

And if you go over to page 42.006 H(A)92/42.006 you can see that Mr Gorin with Mr Patarkatsishvili has ticked "Other", and what they have put there as being the source of Mr Patarkatsishvili's wealth is:

"Sale of various oil and metals assets in Russia, including shares in... Sibneft, a major Russian oil-producing company, and... Rusal, the biggest Russian aluminium producer."

Now, can I ask you this, Mr Anisimov, were you aware that Mr Gorin was assisting Mr Patarkatsishvili in relation to the completion of these forms?

A. No, I wasn't.

Q. So no one reported back to you on what was being put in this document?

A. No, nobody reported to me. This is the first time I see this document.

Q. You see, Mr Anisimov, I have to suggest to you that both you and indeed everyone in your organisation -- not everyone but certainly Mr Gorin and Mr Streshinsky,

understood both in 2001 and indeed in 2005 that Mr Patarkatsishvili, like Mr Berezovsky, had sold an interest in Sibneft. Do you dispute that?

A. I don't dispute it, I just don't know it. I don't know who wrote what, and I don't know why they wrote it, and who was telling them to write it. But I think Mr Streshinsky will be able to give evidence and he'll explain.

MR RABINOWITZ: Mr Anisimov, thank you very much. I don't have any more questions for you. Thank you.

A. I'm very grateful to you too. Thank you.

MR MALEK: No re-examination, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming to give your evidence.

A. Thank you. It was a pleasure.

MRS JUSTICE GLOSTER: Right. Mr Malek?

MR MALEK: As far as the timetable, Mr Buzuk will be giving evidence tomorrow morning. I've spoken to my learned friends and they've indicated that the cross-examination is going to be fairly short, in the region of about 20 minutes to 30 minutes.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: And then there's nothing else for the rest of the week.

MRS JUSTICE GLOSTER: We're not having Mr Streshinsky this

week then?

MR MALEK: It's on Monday, my Lady.

MRS JUSTICE GLOSTER: That will be on Monday. So I won't be sitting in this case basically Wednesday afternoon -- you may leave the witness box if you wish to.

THE WITNESS: Thank you.

(The witness withdrew)

MR MALEK: That's correct, my Lady.

MRS JUSTICE GLOSTER: Mr Streshinsky isn't available this week?

MR MALEK: No. He had meetings, it's always been like that, so it's Monday, my Lady.

MRS JUSTICE GLOSTER: Right. Very well. Well thank you very much.

10.30 tomorrow morning? 10.30.

(4.15 pm)

(The hearing adjourned until

Wednesday, 23 November 2011 at 10.30 am)

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Wednesday, 23 November 2011

(10.30 am)

MR MALEK: My Lady, the next witness is Mr Buzuk. You will find his statement at F1, at tab 3 F1/03/95.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: Can I call Mr Buzuk.

MRS JUSTICE GLOSTER: Yes.

Is Mr Buzuk giving evidence in Russian?

MR MALEK: Yes, he is, my Lady.

MR MARK BUZUK (affirmed)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

Examination-in-chief by MR MALEK

MR MALEK: Mr Buzuk, could you give the court your full name, please?

A. (Not interpreted) Just a second, I change the channel.

Q. Can you give the court your full name, please?

A. (Interpreted) Mark Buzuk.

Q. Can you confirm that you do not have a mobile phone on you?

A. I do not have a mobile phone on me.

Q. I understand that you wish to give your evidence in Russian although you have a good understanding of English, is that correct?

A. Yes, I would like to give evidence in Russian.

Q. Could Mr Buzuk please be provided with volume 1, tab 3,

opened up at page F1/03/95.

Do you have that in front of you, Mr Buzuk?

A. Yes, I can see the document.

Q. I understand there's one correction that you would like to make which you will find at F1/03 at page 131 F1/03/131, is that correct?

A. Yes, I cannot find this page. One second, please.

Yes, this amendment is correct.

MRS JUSTICE GLOSTER: Can we have the English, please?

MR MALEK: It's F1/03/131.

MRS JUSTICE GLOSTER: That's in Russian.

MR MALEK: Ah, the one I have is in --

MRS JUSTICE GLOSTER: My F1 only goes to 103 in the hard copy and I don't have a corrected version.

MR MALEK: Could I hand up my version?

MRS JUSTICE GLOSTER: Yes, please do.

(Handed)

Thank you.

MR MALEK: Mr Buzuk, could you now turn to F1/03/103.

A. Sorry, what page was that? 103?

Q. F1/03 at 103, do you have that in front of you?

A. Yes. Yes, this is correct.

Q. Can you confirm that that is your signature?

A. Yes, that is my signature, this is correct.

Q. Can you also confirm that you believe the facts stated

in your statement are true?

- A. I confirm that the facts stated in my statement are true.

Cross-examination by MR MASEFIELD

MR MASEFIELD: Good morning, Mr Buzuk. My name is

Mr Masefield and I'm one of the counsel instructed by Mr Berezovsky.

Mr Buzuk, you tell us that you were closely involved in Mr Anisimov's aluminium business between 1997 and 2000, correct?

- A. Yes, this is correct.

Q. And you say you were closely involved in the sale of Mr Anisimov's aluminium assets in February 2000, yes?

- A. Yes, I had direct involvement in the sale of all of Mr Anisimov's aluminium assets.

Q. I'm sorry, I didn't hear that response.

THE INTERPRETER: "Yes, I had a direct involvement in Mr Anisimov's sale of all of his aluminium assets."

Q. I'm grateful.

Mr Anisimov's aluminium interests, which were sold in February 2000, were the KrAZ asset interests, that is to say Krasnoyarsk Aluminium Plant, Krasnoyarsk Smelter, Krasnoyarsk Hydroelectric Plant and the Achinsk Alumina Refinery, is that correct?

- A. Yes, this is correct.

Q. Mr Anisimov did not have any interests in the Bratsk aluminium plants, or at least none that were included in the February 2000 sale?

A. Mr Anisimov did not have a share in the Bratsk plant which all these shares were included in the sale -- well, it was a different seller that was selling Bratsk Aluminium Plant. That was not Mr Anisimov.

Q. I'm grateful.

And the people who held the interests in the Bratsk Aluminium Plant at that time, and who were also involved in the sale in February 2000, were essentially the Trans-World Group, weren't they, Mr Buzuk? That's to say the Reuben brothers and their partners?

A. Trans-World was selling their own share in Krasnoyarsk assets at the same time with us.

Q. And they were also the owners of the Bratsk Aluminium Plant at that time?

A. Yes, they were the owners of the plant.

Q. Now, at paragraphs 35 to 36 of your witness statement F1/03/103, Mr Buzuk, you explain why, in your view, the sale price of 125 million which Mr Anisimov received for his one third share of the KrAZ assets was a significant undervalue, and you also say what Mr Anisimov told you about his understanding with Mr Patarkatsishvili. Now, those issues arise in

relation to the Metalloinvest action which is going to be heard next year, Mr Buzuk. They are not, however, issues which the court needs to resolve in relation to the Abramovich action, which is why I'm not going to ask you any questions about that today. Do you understand?

A. Yes, I understand what you said.

Q. Now, at paragraphs 13 to 15 of your witness statement F1/03/97, Mr Buzuk, you explain how it was that the KrAZ assets had come under pressure in the late 1990s as various groups tried to obtain control of the KrAZ assets effectively by means of extortion. Is that right?

A. Sorry, could you please explain your question? How do you mean?

Q. At paragraphs 13 to 15 of your witness statement F1/03/97 you say that the KrAZ assets had come under pressure in the late 1990s, that's correct, isn't it?

A. KrAZ's business in the period before our sale indeed was under external pressure, this is correct.

Q. And you say as well that there were six different groups that were interested in the KrAZ assets, is that correct?

A. If I recall correctly, I am saying that there were at least six various groups that were interested in purchasing KrAZ assets.

Q. And you tell us that those groups tried to obtain control of the KrAZ assets effectively by means of extortion, is that also correct?

A. No, I'm saying there that also in some cases there were situations that were of criminal nature. That doesn't mean that all the groups that took part were involved in extortion.

Q. But some of them were; I think that's your evidence in the first sentence of paragraph 14 F1/03/98?

MRS JUSTICE GLOSTER: Mr Buzuk, could you face me, please, when you're giving your answers, not counsel.

A. I beg your pardon, I shall do.

MR MASEFIELD: I'm grateful. And the question I asked you -- I think actually we have the answer to that.

You explain at paragraph 15 of your witness statement F1/03/98 that aluminium production is a continuous process and that:

"... once ... production is stopped at [a] ... plant, it cannot be started again without incurring vast expense."

Is that correct?

A. Yes, this is correct and I'm saying that in paragraph 15.

Q. And you also tell us at paragraph 14 F1/03/98 that as a result in part of the actions of the local governor in

the Krasnoyarsk region, the supply of alumina to the Krasnoyarsk Aluminium Plant was put at risk, as was the supply of electricity, is that correct?

A. The situation with alumina supply and electricity supply was more complicated than simply the decisions of the local government, but certainly part of the decision of the local government, and Governor Mr Lebed, did -- were conducive to serious risk being posed for the KrAZ business.

Q. And you've just said in your answer that the local governor, who you're referring to in paragraph 14 at the time, was General Lebed, that's correct, isn't it?

A. Yes, that's correct.

Q. And the evidence that you give at paragraph 14 of your witness statement provides a clear example, does it not, Mr Buzuk, of why it was important to have good relations with the local governor, and the sort of spanner that could be thrown in the works if you were not in favour with the local governor, yes?

A. Sorry, could you please clarify the question? I do not quite understand how you mean.

Q. It was important to have good relations with the local governor, that's right, isn't it? Because otherwise the local governor could cause the sort of disruption that you have set out in paragraph 14?

- A. I'm not saying that it's important to have a good relationship.
- Q. Well, if you didn't have good relations with the local governor then, as we can see from paragraph 14, pressure could be brought to bear upon the plant?
- A. Yes, it could have been, but it doesn't have a direct causal -- cause and effect link. I simply cannot understand your assertion. From my point of view one does not follow from the other.
- Q. Let me ask you this, Mr Buzuk, were you aware at the time -- I'm talking about 1999 -- you may not have been aware, but were you aware at the time that Mr Berezovsky enjoyed good political relations with General Lebed?
- A. At that point in time I did not know that and I did not place any importance in that. I didn't know that he had some special good relationships with General Lebed.
- Q. Well, if you didn't know it you couldn't have placed any importance on it, but I think I can move on.

Now, at paragraphs 18 to 34 of your witness statement F1/03/99, Mr Buzuk, you deal with your recollection of the February 2000 sale of the aluminium assets, and you very fairly say at paragraph 20 of your witness statement that, as the events in question happened 11 years ago, you cannot recall precisely how many meetings took place and who attended each meeting.

Is that correct?

A. Yes, this is correct.

Q. And you also say at paragraph 7 of your witness statement F1/03/96 that at this distance in time you cannot remember all the details of the sale. Is that also correct?

A. Yes, I do say in paragraph 7 that I do not recall all the details of the sale.

MR MASEFIELD: Sorry, for some reason Madam Translator's answer isn't coming through. I can see it on the screen.

MRS JUSTICE GLOSTER: Are you on the right --

THE INTERPRETER: Sorry, yes. Can you hear me now? This is the interpreter.

MR MASEFIELD: Yes, I've got that now, thank you.

Would you also accept, Mr Buzuk, that you may not have been present at each and every single one of the meetings which culminated in the sale of the aluminium assets in February 2000?

A. Possibly I was not present at every meeting that led to the sale.

Q. I'm grateful for that. And to take an obvious example, you were more closely involved in the sale of Mr Anisimov's KrAZ assets, and you probably had little, if no, involvement with the sale of the Bratsk aluminium

assets that were being conducted by the Trans-World Group?

A. I was not involved with Bratsk sale because I had nothing to do with Bratsk and with Trans-World.

Q. And therefore you wouldn't have attended the meetings at which the sale of those assets were discussed?

A. Is that a supposition? I don't know what meetings they had. Did they have any other meetings? What is the question?

Q. I think we can move on.

Mr Buzuk, you tell us that you do recall a particular meeting which took place over dinner in the canteen at Sibneft, and you deal with this at paragraph 23 of your witness statement F1/03/100. You tell us there that you have a clear recollection of the meeting at which a number of people were present, including Mr Abramovich and Mr Patarkatsishvili as well as yourself. Is that right?

A. Yes, I am saying this in 23rd paragraph.

Q. And you say you:

"... clearly recall that after dinner Mr Abramovich asked Mr Patarkatsishvili why he should purchase the KrAZ assets and ... Mr Patarkatsishvili said something like 'I want you to buy'."

You clearly recall that, do you, Mr Buzuk?

- A. Yes, I recall that there was such a conversation after dinner.
- Q. And you also tell us that, following that meeting, yourself and Mr Streshinsky and Mr Abramovich's representatives worked around the clock and finalised the documentation for the sale of the KrAZ assets within around 48 hours, correct?
- A. Yes, that was, yes, about like this. We were working quite fast and we were preparing documentation quite fast.
- Q. Did you get the impression from that incident, Mr Buzuk, that it was Mr Patarkatsishvili rather than Mr Abramovich who was more eager to drive this deal forward?
- A. Well, whether he was eager more or less, I don't know about that. I knew that he wanted for the deal to happen and Abramovich first was -- had doubts, but then he made a decision and everything was propelled forward.
- Q. I'm grateful.

Now the main documentation in relation to the sale of the KrAZ assets was an agreement dated 10 February 2000, which you refer to in paragraph 26 of your witness statement F1/03100, and you refer to it as "the KrAZ Agreement".

Can we briefly turn that document up. Please can

you be given bundle H(A)17 and turn within that to page 38 if you want the Russian H(A)17/38, and page 33 if you want to see the translation in English H(A)17/33.

Do you have there the agreement of 10 February 2000 that you are referring to in paragraph 26 of your witness statement, Mr Buzuk?

A. Yes, I can see that.

Q. And you tell us that this document was a joint collaborative effort between Mr Anisimov's team and Mr Abramovich's team, is that correct?

A. Yes, this is correct.

Q. And you tell us that from your side the documentation was drafted by Mr Streshinsky and Mr Anisimov's in-house counsel, and then you reviewed it and provided comments on it, correct?

A. Yes, this is correct.

Q. And you say that you cannot now recall whether or not you were present at the final signing of this document, is that also correct?

A. I do not recall that. Yes, that's right, I do not recall that.

Q. And you say -- this is paragraph 33 of your witness statement, Mr Buzuk, if you want to look at it F1/03/102 -- that because you are aware of the

involvement of Mr Patarkatsishvili in the negotiations, and because Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili were all recorded in this agreement as purchasers, you assumed that they were purchasing the KrAZ assets together. Is that right?

A. May I read paragraph 33?

MRS JUSTICE GLOSTER: Yes, please.

A. I'm not sure I am saying this the way it was spoken to me. (Pause)

MR MASEFIELD: What you say at paragraph 33, picking it up seven lines from the end of the paragraph:

"Consequently, I was aware that Mr Patarkatsishvili was involved with the sale of the KrAZ assets and, because Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili were all recorded in the KrAZ Agreement as purchasers, I assumed that they were purchasing the KrAZ assets together."

A. Yes, this is correct. This is what I say in point 33.

Q. And you then go on to say:

"However, I did not know and was not provided with details of Mr Patarkatsishvili's role in relation to the sale of the KrAZ assets or details of the relationship between Mr Abramovich and Mr Patarkatsishvili."

It follows logically from that, does it not, Mr Buzuk, that none of Mr Abramovich's representatives

ever told you that Mr Patarkatsishvili was not in fact one of the purchasers?

MRS JUSTICE GLOSTER: Well, rather than asking him some question of logic -- just a second -- why don't you just put the question directly to him?

MR MASEFIELD: Yes.

None of Mr Abramovich's representatives ever told you that Mr Patarkatsishvili was not in fact one of the purchasers?

A. I never discussed with representatives of Mr Abramovich who physically and personally is the purchaser.

Q. So there was no discussion about Mr Patarkatsishvili's position, and there was no discussion also, do I take it, about Mr Shvidler's position?

A. Sorry, could you please clarify the question? Did I speak with Abramovich's people, who is the purchaser, who is purchasing?

Q. The question I had was: did they tell you that Mr Patarkatsishvili or Mr Shvidler were not in fact purchasers?

A. No, no one told me that, that someone was in fact a purchaser or was not in fact a purchaser. This was never discussed.

Q. I'm grateful.

Looking at the agreement that we have in

bundle H(A)17, you have the Russian at page 38 H(A)17/38 and the English at page 33 H(A)17/33, and focusing on the opening words, Mr Buzuk, do you see that it says:

"Roman Abramovich, Evgeniy Shvidler, Badri Patarkatsishvili and companies represented by them (hereinafter, 'Party 1') ..."

Do you see that wording?

- A. Yes, I can see that.
- Q. So certain companies were also included within the scope of party 1, that's what the definition says, correct?
- A. It rather says "represented by them". I am not sure that they were included within party 1.
- Q. That may be a matter of submission for her Ladyship, but let me ask you some questions about those companies, Mr Buzuk.

We know from the related share purchase and sale agreements that were also dated February 2000 that there were four such companies who we say were included within the scope of party 1 and who were the purchasers of the aluminium assets. Do you remember that there were four companies, Mr Buzuk? It may be that you don't at this distance in time.

- A. I do not recall the exact number of companies, but if you would show me some documents I will be able to tell

you whether it's the same share sale and purchase agreements or if there are any different sale and purchase agreements.

Q. I'm not sure we need go to the documents, but let me just tell you the company names, Mr Buzuk. The names of the companies that appear on the share purchase and sale agreements are Runicom Fort Limited, Palmtex Limited, Galinton Associated Limited and Dilcor International.

Do those names help trigger any recollection, Mr Buzuk?

A. Runicom certainly associates with Mr Abramovich, but with regard to any other company names I simply do not recall.

Q. And do you recall whether it was ever explained to you at the time which of the four companies Mr Abramovich was representing?

A. Sorry, could you please ask the question again?

Q. Do you recall --

A. We were given -- let me explain. This is a term sheet, this agreement is a term sheet. Based on the term sheet we have prepared agreements, and the practice that the sellers and the purchasers had several companies, it's a fairly standard practice, especially taking into account the details of anti-monopoly law of Russian Federation of that time not to get lots of licences and

to be able to split the share packages down and to be able to work further. This is how the process operated.

- Q. I'm not suggesting, Mr Buzuk, that it may have been unusual. I'm simply asking you a factual question, which is whether it was ever explained to you at the time which of the four companies Mr Abramovich was representing. If you can't recall or you don't know, you can say so.
- A. How do you mean Mr Abramovich represented? Maybe it's a matter of interpretation, because a director or a solicitor or a lawyer can represent a company. How do you mean Mr Abramovich represented a company?
- Q. I'm asking you quite a straightforward question. I'm not worried about the capacity in which he was representing them. Did you ever find out from Mr Abramovich's representatives which of the four companies he was representing? If you don't know, you can say so.
- A. (Not interpreted) Sorry, maybe a problem with translation. To own or to represent, what verb use?
- Q. To represent. I'm talking about control rather than ownership for the moment.
- A. (Interpreted) Could we please go back to Russian. Thank you.

In my understanding they have provided a set of

company -- as I understand, they have given their companies for the deal. I have never discussed with them the nature of relationship between us -- between them, between the companies, et cetera, and so on and so forth.

Q. Thank you for that answer, Mr Buzuk.

Were you ever told the identity of the ultimate beneficial owner or owners behind the four companies?

A. No.

MR MASEFIELD: Thank you very much, Mr Buzuk.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much.

MR MALEK: No re-examination, my Lady.

MRS JUSTICE GLOSTER: No one else has any questions?

MR SUMPTION: No.

MR ADKIN: No, my Lady.

MRS JUSTICE GLOSTER: Very well. Thank you very much, Mr Buzuk, for coming to give your evidence. You may be released.

THE WITNESS: (Not interpreted) I can go?

(The witness withdrew)

MRS JUSTICE GLOSTER: Right, Mr Malek?

MR MALEK: The next witness is going to be on Monday, Mr Streshinsky.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: Your Ladyship will find his statement at F1,  
tab 2 F1/02/55.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: We notice that there were a number of  
cross-references to the bundles that were omitted so  
we're loading it on to Magnum at the moment and we'll  
get an updated --

MRS JUSTICE GLOSTER: Can you let me have a hard copy,  
because with statements I do like to use them in hard  
copy.

MR MALEK: Yes, we'll get that to your Ladyship today.

The other matter I should mention in relation to  
Mr Streshinsky is that there is a visa problem and it  
seems likely to us that he will be giving his evidence  
from Moscow on Monday. That means, of course, that we  
have to make an application to your Ladyship on paper,  
which we will do today.

MRS JUSTICE GLOSTER: Can I not dispense with that or does  
there need to be some record? It's not enough if I just  
say in the transcript, provided there are no objections?

MR MALEK: There are some requirements so I think it's  
probably necessary for us to do so, but if we can check,  
but if we can satisfy --

MRS JUSTICE GLOSTER: What are the requirements, and you can  
tell me and I can decide whether they're satisfied or

not.

MR MALEK: If --

MRS JUSTICE GLOSTER: I've got a White Book here.

MR MALEK: Yes, if your Ladyship turns to the  
Commercial Court Guide, which is probably the best way  
to find the relevant passage. It's in --

MRS JUSTICE GLOSTER: Volume 2, page?

MR MALEK: It's H3, which deals with evidence by video-link,  
which is at page, bottom numbering of part 2 at 349.

MRS JUSTICE GLOSTER: So where do I find --

MR MALEK: H3.2 requires us to prepare a memorandum dealing  
with matters set out in the video conferencing guidance.

MRS JUSTICE GLOSTER: Let's look at annex --

MR MALEK: Then if we go to appendix 14 --

MRS JUSTICE GLOSTER: Yes, where's that?

Yes, I have it. It reproduces the annex 3, see  
volume 1, blah blah.

It just struck me that if you tell me why I can make  
an order now and you can simply draw it up.

MR MALEK: My Lady, I don't know whether -- I've actually  
got a hard copy of the Commercial Court Guide so  
I haven't got appendix -- the reference there. Has your  
Ladyship --

MRS JUSTICE GLOSTER: Yes, I'm just looking at -- it's  
sending me to 32PD.33, and if somebody will tell me

where that is.

MR MALEK: That would be in volume 1 at --

MR ADKIN: Page 974, my Lady.

MRS JUSTICE GLOSTER: Thank you.

Well, there's a whole lot of stuff here. What do I need to look at?

MR MALEK: The one that really matters is paragraph 4 which requires us to check that there can be no objection to evidence being taken from Russia in this way, and that's a point that we're checking at the moment. But subject to that point, in my respectful submission, your Ladyship can dispense -- we've had video conferencing here, it works very well. My understanding is that there is a bridge and we will work with the solicitors on this matter to deal with it.

MRS JUSTICE GLOSTER: And there's no objection?

MR RABINOWITZ: My Lady, if Mr Streshinsky can't get a visa then there's no objection. I should just mention this: it would be very helpful to know as soon as possible if this is going to happen because obviously we would need someone to go there and we would have to apply for a visa, but we will probably do it anyway just in case, but it would be helpful to know one way or the other as soon as possible.

MR MALEK: The latest indication we got this morning was

that we couldn't be given a guarantee that it would be done in time, so we're proceeding on the basis that on Monday it will be by video conference. If the position changes we will of course notify the court and the parties.

MRS JUSTICE GLOSTER: Yes, well, if Mr Rabinowitz's side has got to make arrangements for someone to be there ...

MR RABINOWITZ: I think we should do it in any event, just in case, on the same basis.

MRS JUSTICE GLOSTER: Okay, I will leave you to liaise about that. But in principle, the reason he can't obtain a visa is a time issue, there's no other reason?

MR MALEK: Yes, that's correct.

He's applied -- part of the process has been completed but there is a further part that needs to be done, and there is no guarantee that that will be done on Monday.

MRS JUSTICE GLOSTER: Okay. Well, subject to your being satisfied that there's no problem, so far as Russia is concerned, in having evidence taken on video-link for a foreign court I'm content to make an order.

MR MALEK: We're obliged to your Ladyship.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: When your Ladyship rises, since we're not going to be here I think until Monday, we probably need

to fix a time for Monday, for Mr Streshinsky.

MRS JUSTICE GLOSTER: Oh, for Mr Streshinsky, yes.

MR MALEK: 10.15, my Lady.

MRS JUSTICE GLOSTER: And then thereafter on Monday?

MR SUMPTION: It's experts, my Lady, starting with the  
Russian law experts.

MRS JUSTICE GLOSTER: Yes, and we're starting with  
Dr Rachkov straightaway?

MR SUMPTION: Yes, and then Mr Rozenberg and then  
Professor Maggs. I understand that Professor Maggs is  
likely to be relatively short because my learned  
friend's understandable line is that he's not going to  
repeat to each witness, who says much the same thing,  
exactly the same as he said to the last one.

MR RABINOWITZ: My learned friend asked me this yesterday,  
and I can confirm it to your Ladyship, Dr Rachkov's  
evidence will be given in English, he's content to give  
his evidence in English. He does want and indeed he  
will have a transcript so he can just be sure that he  
understands things before he answers them. Again, as  
I understand, the same is true for Dr Rozenberg?

MR SUMPTION: Yes, it is.

MRS JUSTICE GLOSTER: So far I have looked at the experts,  
to the extent that I have looked at them, on Magnum.

MR RABINOWITZ: Bundle G.

MR SUMPTION: It's G(A)1, G(A)3 and G(A)6 that your Ladyship will need for the actual reports.

MRS JUSTICE GLOSTER: I'm just wondering whether I want them in hard copy. I don't think I've been given them in hard copy.

MR SUMPTION: Would your Ladyship like to be given them in hard copy?

MRS JUSTICE GLOSTER: I think probably I would actually. I just find working on the witness statements easier in the hard copy as compared to the documents.

MR SUMPTION: There are very voluminous exhibits, which are essentially authorities legislative and judicial. Does your Ladyship wish to have those in hard copy?

MRS JUSTICE GLOSTER: No, I would rather have those on Magnum.

MR SUMPTION: Very well. In that case your Ladyship will get G(A)1, G(A)3, G(A)5 and G(A)6, which are respectively Rachkov, Rozenberg, Maggs and joint memorandum.

MRS JUSTICE GLOSTER: Yes, that would be very helpful. The only thing that is sometimes difficult to look at on Magnum is where there are schedules in A3, or tables that are very extensive, and you have to scroll --

MR SUMPTION: From recollection, I don't think there are any of those.

MRS JUSTICE GLOSTER: Okay, if I could just have the witness statements in hard copy that would be very helpful.

MR SUMPTION: Yes.

MR ADKIN: My Lady you mentioned there was a question mark next to Maggs.

MRS JUSTICE GLOSTER: Yes, because I am very conscious that I haven't actually given you permission to call him yet.

MR ADKIN: I think you gave us permission, my Lady, subject to Mr Rabinowitz's right to object on grounds of admissibility or irrelevance or so on.

MRS JUSTICE GLOSTER: Or duplication.

MR ADKIN: Or duplication, possibly. He does not object so we do propose to call him, but we understand that your Ladyship is not going to want to hear any duplicative material.

There is one further point I should make about Professor Maggs which is that, as a result of the expansion of the overlap issues, your Ladyship will recall there's a new overlap issue, we have put in a second report of Professor Maggs which deals with that expanded -- the Russian law topics that arise out of that expanded overlap issue, and that is at G(A)5/2, and we'll make sure that your Ladyship has both of Professor Maggs' reports.

Going forward, there was also a question mark over

Professor Bean, who is our Russian contemporary history expert, for the same reasons. I also understand, again along the same lines, from Mr Rabinowitz, that that question mark can now be removed.

MR SUMPTION: My Lady, on the historical evidence, your Ladyship left that on the footing that the evidence could in principle be called without prejudice to the right of any party to say that it was inadmissible. We do believe that very large parts of it are in fact irrelevant and inadmissible, but it will take less time to deal with that by way of cross-examination than to make formal submissions on the point so that we --

MRS JUSTICE GLOSTER: Right. I don't want to be burdened by what I regard, or what either of the parties or any of the parties regard as irrelevant material, because I then waste my time reading it.

MR SUMPTION: Quite. I have to say we're going to be extremely selective in which parts we deal with. We're not going to cross-examine at length, or in most cases at all, on things that we regard as not mattering a row of beans. But it's only going to extend things unnecessarily if we start having an argument about admissibility and principle before the evidence as opposed to in final submissions.

MRS JUSTICE GLOSTER: Fine.

MR RABINOWITZ: My Lady, we are content with that approach.

We are also going to be selective. We are conscious of the fact that your Ladyship does not want to be burdened with things that don't or no longer matter.

MR ADKIN: My Lady, we take the same position as Mr Sumption.

MRS JUSTICE GLOSTER: Very well. Okay, well you'll let me have the statements but not the exhibits.

MR RABINOWITZ: Just on that, we talked, I think, your Ladyship, about the Russian law bundles. Your Ladyship's comment goes equally, presumably, for the history bundles, then, does it? You would like those in hard copy?

MR SUMPTION: Those exhibits are even more oppressive.

MRS JUSTICE GLOSTER: Yes, I don't need the exhibits to the history, thank you very much. Unless they're pictures of course.

MR RABINOWITZ: We can manage some pictures, we can even draw some pictures for your Ladyship.

MRS JUSTICE GLOSTER: Very well. 10.15 on Monday then. Thank you very much.

(11.12 am)

(The hearing adjourned until  
Monday, 28 November 2011 at 10.15 am)

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Monday, 28 November 2011

(10.15 am)

MR MALEK: My Lady, it's Mr Streshinsky next.

MRS JUSTICE GLOSTER: Yes.

MR VLADIMIR STRESHINSKY (sworn)

MRS JUSTICE GLOSTER: Please sit down, if you would like to.

Examination-in-chief by MR MALEK

MR MALEK: Can you give the court your full name, please?

A. My name is Vladimir Streshinsky, I'm known as Ivan Streshinsky.

Q. As I understand it, you're happy giving evidence in English but you would like to have the ability to use a translator if there's any difficulty, is that correct?

A. Yes.

Q. Could you please be provided with bundle F1, tab 2, opened at page 55 F1/02/55.

Do you have that in front of you?

A. Yes.

Q. Is that the first page of your statement?

A. That's right.

Q. Could you now turn to page 93, which is the last page, and confirm that that is your signature?

A. Yes, that's my signature.

Q. And do you confirm the facts stated in your statement to be true?

A. Yes.

Q. And you confirm that you do not have a mobile phone on you?

A. Yes.

MRS JUSTICE GLOSTER: Right. Who is going first?

Mr Sumption, you're not cross-examining?

MR SUMPTION: I'm not cross-examining or doing anything for the moment.

Cross-examination by MR MASEFIELD

MR MASEFIELD: Good morning, Mr Streshinsky. My name is Mr Masefield and I'm going to be asking you some questions today on behalf of Mr Berezovsky.

I'm not going to be asking you about matters which relate solely to the Metalloinvest action, Mr Streshinsky, for example whether you're aware of an agreement between Mr Anisimov and Mr Patarkatsishvili in the summer of 2004 to split the Rusal proceeds between themselves on a 50/50 basis. And I'm not going to be asking you whether the sale of the KrAZ assets by Mr Anisimov in February 2000 was at a significant undervalue.

Indeed, I'm not going to be asking you any questions about your involvement in the 10 February 2000 sale of the KrAZ assets at all because we've already covered that ground quite extensively with some of the other

witnesses, including Mr Anisimov and Mr Buzuk. What I want mainly to focus on with you is your involvement in the second Rusal sale transaction which took place in the summer of 2004, and in particular I'd like to ask you some questions about the events of June and July of 2004, okay?

Before I do that, I want to ask you a few questions about your personal career and your present relationship with certain people connected to the litigation. Now, you tell us you were introduced to Mr Anisimov and joined his company, Coalco International, in about 1994, is that right?

A. That's right.

Q. And you continued to work for Coalco and Mr Anisimov up until quite recently, until 2009?

A. That's right.

Q. And so you worked for Mr Anisimov and Coalco for a period of about 15 years, didn't you, Mr Streshinsky?

A. That's right.

Q. You say that during your time with Coalco you worked closely with Mr Anisimov and became one of his most senior advisers?

A. That's correct.

Q. You tell us that you developed a good working relationship with Mr Anisimov, that's that, is it?

A. That's right.

Q. You may want to give your answers to her Lady.

Presumably Mr Anisimov came to regard you as someone he could trust, a faithful and loyal employee?

A. That's right.

Q. And although you're no longer employed by Coalco, it's right to say, isn't it, Mr Streshinsky, that you still enjoy a good business relationship with Mr Anisimov?

A. I do not have business relationship with Mr Anisimov.

Q. Well is that right, Mr Streshinsky? You're a director of his two Russian real estate companies, Riniole Investments and Coleridge Trading Ltd?

A. That's not true any longer.

Q. That's not true any longer. When did you cease to be a director?

A. I think I ceased to be a director last year.

Q. Because looking at paragraph 8 of your statement, Mr Streshinsky, you say that at Mr Anisimov's request you were a director of two of his Russian real estate companies F1/02/55.

A. Okay, I'm sorry, I was director of these two companies because these two companies were holding a piece of real estate in the centre of Moscow, so when this piece of real estate was sold, I don't know exactly, I believe maybe in the course of this year, I ceased to be

a director of this these two companies.

Q. And that was earlier this year, was it, Mr Streshinsky?

A. Probably in the summer.

Q. Thank you. And you tell us that in terms of your current business affairs you're the chief executive officer of the Russian telecoms company, OJSC Telecominvest, is that right?

A. That's correct.

Q. Can you confirm that Mr Usmanov has a substantial interest in OJSC Telecominvest?

A. That's correct.

Q. And Mr Usmanov is also Mr Anisimov's partner in Metalloinvest, isn't he, Mr Streshinsky?

A. That's correct.

Q. Mr Usmanov has a 50 per cent stake in Metalloinvest and Mr Anisimov has a 20 per cent stake in Metalloinvest?

A. That's correct.

Q. And indeed, until recently, you served as a director of Metalloinvest, did you not, Mr Streshinsky?

A. I think I served as a director in Metalloinvest maybe up until 2009.

Q. I'm grateful. Would you say that you still enjoy good business relationships with Mr Anisimov and Mr Usmanov, Mr Streshinsky?

A. I enjoy a good business relationship with Mr Usmanov and

I have no business relationship with Mr Anisimov.

Q. What relations do you currently enjoy with

Mr Abramovich, Mr Streshinsky?

A. None whatsoever.

Q. You see, one of Mr Abramovich's most senior assistants,

Ms Panchenko, has already told the court that she

discussed her evidence with you, Mr Streshinsky, in

a telephone conversation which took place earlier this

year. Is that right, Mr Streshinsky?

A. That's correct. I spoke to Irina Panchenko some time in

summer this year.

Q. When in the summer did that conversation take place,

Mr Streshinsky?

A. I don't remember exactly, probably June or July.

Q. Do you recall who else participated in that telephone

call, Mr Streshinsky?

A. Nobody else.

Q. Just yourself and Ms Panchenko?

A. That's correct.

Q. And who had asked you to participate in that telephone

call?

A. She called me.

Q. She called you out of the blue with no warning?

A. Yes.

Q. What was the purpose of the telephone call,

Mr Streshinsky?

A. She wanted to reconcile the events of summer 2004 with me because I believe my evidence has become available in the internet or, you know, in the court filings.

Q. So you discussed your evidence and her evidence on that occasion?

A. I did not read her evidence so I discussed only my recollections of the events.

Q. And were there other occasions, apart from that particular telephone call, where you discussed your evidence with any other witness in this case,

Mr Streshinsky?

A. Witnesses? Well, I discussed my evidence with Mr Anisimov, probably last time it was at the beginning of 2010.

Q. And anybody else apart from Mr Anisimov? Have you spoken to Mr De Cort?

A. No, I have not spoken to Mr De Cort.

Q. Have you spoken to Mr Tenenbaum?

A. No.

Q. Mr Hauser?

A. No.

Q. Very well.

I would like to move on, if I may, to the sale of the 25 per cent shares in Rusal which took place in the

summer of 2004. Now, you were involved in that transaction, weren't you, Mr Streshinsky?

A. Yes.

Q. You tell us that in early June 2004, Mr Anisimov instructed you to assist in the structuring and documenting of the sale of a 25 per cent interest in Rusal from Mr Patarkatsishvili to Mr Deripaska, is that correct?

A. Yes, it was either end of May or beginning of June.

Q. You were also told by Mr Anisimov that Salford Capital Partners Inc would be assisting you in preparing the transaction documents?

A. That's correct.

Q. And you therefore made contact with Salford in the first week of June 2004, and in particular you got in touch with Mr Vladimir Ashurov and Ms Ksenia Arbatova?

A. That's right.

Q. You tell us that Mr Ashurov attended a meeting with Mr Deripaska's representatives on Friday 4 June 2004?

A. That's correct.

Q. Following this meeting with Mr Deripaska's representatives, which took place on that Friday, on Wednesday 9 June 2004 you received an email from Mr Mishakov attaching a schematic diagram of the transaction, together with a Bryan Cave memorandum of

the same date which had been prepared by Mr Hauser, do you remember that?

A. Well, it must have been the case, yes.

Q. Please could you be given bundle H(A)74 and we can look at the document at page 218 H(A)74/218. Do you see there a covering email to yourself, Mr Streshinsky?

A. That's right. Yes, I see.

Q. From Mr Mishakov?

A. Yes.

Q. We can see from the attachments that it included Mr Hauser's memorandum of 9 June and Mr Anisimov's schematic diagram also of 9 June, do you see that? We have the attachments on the next few pages, but just looking back at the email, do you see the attachments?

A. Yes.

Q. And if we turn on to page 219 H(A)/74/219, we can see Mr Hauser's memorandum of 9 June 2004, do you have that document?

A. Which page?

Q. 219, you're on the right page.

A. Yes, yes, I'm on that page.

Q. We've looked at this document already with some of the other witnesses, Mr Streshinsky, and I'm not going to take up further time by going through it all with you, but we can see from the memorandum that Mr Hauser talks

in a number of places about ultimate beneficiaries, in the plural, who he refers to as BB.

A. Mm-hm.

Q. We can see that for example in bullet point 1 on page 219, do you see that?

A. Yes.

Q. If we turn over the page, to page 220 H(A)74/220, just below bullet point 6, the italicised portion, there's a reference there again to each of BB, and to include an insurance that:

"... BB were the only persons who have ever been beneficially entitled to the Shares."

Do you see that, Mr Streshinsky?

A. Which point?

Q. It's just below point 6, the italicised passage?

A. It's a release, yes?

Q. Yes. And you see a reference there to:

"... BB were the only persons who have ever been beneficially entitled to the Shares."

A. Yes.

Q. If we turn on in the bundle to page 223 H(A)74/223, we can see Mr Anisimov's schematic diagram which you were also sent. Do you have that? That's the right page, Mr Streshinsky. We can see that Mr Anisimov refers in his diagram to the "Beneficiaries' Company", do you see

that at the top of the page?

A. Yes.

Q. Looking down at the notes, for example note number 6, Mr Mishakov makes reference to the beneficiaries B&B, do you see that?

A. Yes.

Q. So when you received this memorandum, this schematic diagram, Mr Streshinsky, you would have seen that Mr Deripaska's representatives understood that there were two ultimate beneficial owners of the 25 per cent stake in Rusal, correct?

A. Yes, that might be the case that there were two beneficiaries.

Q. And you forwarded this memorandum and the schematic diagram the same day to Yuri Fartashnyak, do you remember that, Mr Streshinsky?

A. I don't remember that but I know the name.

Q. Who was Mr Fartashnyak?

A. He was a consultant lawyer who consulted us on a number of transactions.

Q. He was an internal lawyer or external lawyer?

A. External.

Q. Who was he a lawyer with, which firm?

A. He didn't work in any firm.

Q. He was an independent --

A. Moscow, independent.

Q. If you put away bundle H(A)74 and take up bundle H(A)75, and turn within H(A)75 to page 99T H(A)75/99T, do you see there a page with a string of emails, Mr Streshinsky?

A. Yes.

Q. I'm afraid it's a little bit hard to read the text but bear with me. If you look at the very bottom of the page, it stems -- on page 99T, right at the bottom, about seven lines up from the bottom, we can see an email from Ksenia Arbatova with a subject "Document Diary for Documentary Closing", do you see that?

A. Yes.

Q. I don't think we need to turn that document diary up, Mr Streshinsky. It's at H(A)75/37 and we've looked at it with other witnesses. But you can take it from me that the document diary that Ms Arbatova prepared also made reference to two ultimate beneficiaries who she refers to in that document diary as B1 and B2, do you remember that?

A. Can I see that?

Q. If you want to have a look at it briefly, it's back at page 37 in this bundle H(A)75/37.

A. Page 37?

Q. Correct.

A. This one, yes, the document diary.

Q. Do you have there the document diary?

A. Mm-hm.

Q. We can see, if you look at the column "Parties", there is reference in the second column to various parties who are going to be executing the documents.

If we look down to the third box to item 3, there's going to be a personal guarantee to be executed by B1, and then there's going to be another guarantee to be executed by B2; do you see that, Mr Streshinsky?

A. Yes.

Q. Over the page, in the last box, we can see that it was envisaged by Ms Arbatova that a general power of attorney would be issued by B2 in favour of B1, do you see that?

A. I see that.

MRS JUSTICE GLOSTER: Did you see this document at the time?

A. I don't remember seeing this particular document but I've seen it during the preparation for my witness statement.

MR MASEFIELD: If we turn back to 99T, to the email string, Mr Streshinsky, we can see that Ms Arbatova forwarded the document diary to you, that's the email right at the bottom of page 99T, so it seems that you were sent the document diary on 10 June 2004.

A. Okay. I don't deny it.

Q. If we look at the next email up on page 99T, we can see that there is an email from Mr Mishakov to you of 9 June 2004, attaching the Bryan Cave memorandum and the schematic diagram that we've just looked at, do you see that? It's the one immediately above Ms Arbatova's email on page 99T H(A)75/99T.

A. Mm-hm. Okay.

Q. Then immediately above that we can see that you forwarded those documents to Yuri Fartushnyak at 8.59 pm on Thursday 10 June 2004, and immediately above that forwarding email we have Mr Fartushnyak's response, and we can see that Mr Fartushnyak says he's read through the documents that you've forwarded, and he then goes on to make a number of short points. His third point is this:

"Thirdly, it seemed to me that X and Y must provide a joint and several guarantee on behalf of the seller. But will they be willing to do that?"

Do you see that, Mr Streshinsky?

A. Yes.

Q. So Mr Fartushnyak was clearly under the impression that there were two ultimate beneficiaries, wasn't he?

A. Well, he was based on the documents which he was presented.

Q. Indeed, and those documents refer to X and Y and B&B and B1 and B2?

A. That's correct.

Q. And then Mr Fartushnyak says:

"Finally I recommend consulting with an English lawyer as there might be some 'sticking points' related to this."

Do you see that?

A. Yes, I see that.

Q. We can see that you then forwarded Mr Fartushnyak's recommendation on to Ms Ksenia Arbatova the same day, that's the email at the top of the page?

A. That's correct.

Q. And Ms Arbatova, we know, lost no time in taking up Mr Fartushnyak's advice and instructing an English lawyer. We can see that if we turn on in the bundle to page 228.023 H(A)75/228.023. I'm afraid the numbering is a little complicated.

Do you see there an email starting about halfway down the page from Ms Arbatova to Lynn McCaw of Leboeuf, Lamb, Greene & McRae, dated 11 June 2004?

A. Mm-hm.

Q. And we can see that Ms Arbatova says:

"Following our telephone conference, attached please find the drafts of the transaction documents. I also

attached the transaction description and documents diary for your convenience."

Do you see that, Mr Streshinsky?

A. Yes.

Q. We'll turn to look at Ms Arbatova's transaction description in a moment, Mr Streshinsky, but before we do please can you confirm that you were aware of the fact that Salford had instructed Leboeufts around this time?

A. Yes.

Q. And we know that you were aware of that because you sent an email in Russian to Mr Ashurov on Sunday 13 June in which you approved the instruction of Leboeufts, do you remember that?

A. Yes.

Q. We have Ms Arbatova's transaction description in this bundle at page 228.071 H(A)75/228.071, if we could turn that up. Although this document appears on its face to be dated 28 March 2011, that is in fact due to the automatic date insertion in the document and merely reflects the date when this document was printed, okay?

But it's pretty clear from the email I've taken you to and to Leboeuf's response, which I'm coming on to, that this is the transaction description document which was sent by Ms Arbatova to Leboeufts on 11 June 2004. So

at the time when Ms Arbatova sent this, it was one week after your initial meeting with Mr Deripaska's people on 4 June 2004?

A. It was, what, 11th?

Q. 11 June, and indeed it was the same day as a second meeting that you had with Mr Deripaska's people which also took place on 11 June 2004. Do you remember that second meeting on 11 June?

A. Yes, there was a meeting on 11 June.

Q. Do you recognise this memorandum which Ms Arbatova prepared, Mr Streshinsky?

A. No, I don't think I've seen this memorandum.

Q. You don't think that Salford provided you with a copy of it at the time, even though you were endorsing their instruction of Leboeuufs?

A. I don't think I've seen this memorandum.

Q. Can we just look at it very briefly. If we look in particular at the second paragraph of this memorandum, we can see what Ms Arbatova's and Salford's understanding was at the time. Ms Arbatova says this:

"The current situation is as follows: the Shares are held by [Roman Abramovich] who holds them (through the structure where [Roman Abramovich] is a beneficiary or a shareholder of P that owns M which owns the Shares), in favour, under informal agreements and arrangements, of

BB (please see below), who are the final and ultimate beneficial owners of the Shares."

Do you see that, Mr Streshinsky?

A. Yes, I see that.

Q. The reference in parenthesis to "please see below" appears to be a reference to the first numbered paragraph where BB are identified as the ultimate beneficiaries of company B. Do you see that, Mr Streshinsky?

A. Yes.

Q. Now, did this understanding which Salford clearly had of the situation as at 11 June 2004 also reflect your understanding at that date? Did you also understand at 11 June 2004 that the shares were held by Mr Abramovich in favour of BB as a result of informal agreements and arrangements?

A. At that moment I simply had no information about the particulars of the holding of the shares, so I need to turn your attention to the fact that on the -- we had a first, initial meeting on 4 June, that was with Ms Arbatova, possibly Mr Ashurov and Mr Mishakov. On 3 June, there was an article in Moscow newspaper saying that Mr Berezovsky is involved with the Russkiy Aluminium.

So when we came to the meeting on 4 June, we were --

so Mr Mishakov said that, if that is the case, we have to basically use two beneficiaries in these documents. So we were all attempting to meet with Mr Abramovich's party because they were the ones who knew the exact details of how the shares were held.

Q. Mr Streshinsky, we will come on to other documents in a moment which show that your information about Mr Berezovsky and his interest went much further than what was being said in the newspaper articles, but you say you had no information?

A. I had no information about Mr Berezovsky holding the shares of Rusal.

Q. Is that really your evidence to the court, Mr Streshinsky, you had no background information?

A. I had no background information that Mr Berezovsky was the owner of --

Q. We'll come on to those documents in a moment.

MR MALEK: I think it's fair for the witness to be able to finish his answer before another question is asked.

MR MASEFIELD: Sorry, Mr Malek.

MRS JUSTICE GLOSTER: Yes, can you finish your answer, please, Mr Streshinsky.

A. To finish my answer, we were trying to get the information from Mr Abramovich's party, because this was the party who was holding the shares, and they knew the

details of how the shares were held. At that moment in time, I was trying to progress the deal as much as possible, so we were proceeding with the transaction documents without having full details of the ownership.

MR MASEFIELD: You see, Mr Streshinsky, you'd been working on this transaction alongside Salford for over a week by this point, hadn't you?

A. Yes.

Q. You'd also been liaising with Mr Deripaska's representatives, you'd met them twice?

A. Yes, I met Mr Mishakov.

Q. And Salford's understanding, as we see reflected in this memorandum, was that Mr Abramovich was holding shares for and on behalf of BB. We see that in the second paragraph, don't we?

A. That's right.

Q. And the understanding of Mr Deripaska's representatives, Mr Hauser and Mr Mishakov, was also that Mr Abramovich was holding the shares for and on behalf of BB, or B&B?

A. That's correct at that point in time, yes.

Q. Was that not also your understanding at this time, Mr Streshinsky, that Mr Abramovich was holding the shares for and on behalf of BB?

A. I have no -- I didn't have any specific knowledge of that but I could assume that.

Q. We don't see you writing to Mr Deripaska's representatives or to Salford correcting their understanding that there are two beneficiaries?

A. Yes, because I didn't know. I --

Q. We don't see you writing back to Mr Fartushnyak following the receipt of the email we've just looked at, telling him that he's got it wrong and there are not in fact two beneficiaries, X and Y?

A. Yes, I didn't know at that point in time.

Q. Well, let's have a look at a few more documents, Mr Streshinsky.

Now do you recall that Ms Arbatova's email of 11 June 2004, which attached this transaction description document, also referred to a telephone conference which Ms Arbatova had had with Ms Lynn McCaw of Leboeufts?

A. No, I don't recall.

Q. If we go back to the document, it's page 228.023  
H(A)75/228.023.

Do you see the email starts halfway down the page:  
"Following our teleconference ..."

We can see what Ms Arbatova had explained to Ms Lynn McCaw of Leboeufts during that telephone conference if we turn on in the bundle to page 228.021, sorry, it's back two pages, H(A)75/228.021. You need

to go back two pages, Mr Streshinsky, my apologies.

Do you see there, Mr Streshinsky, an attendance note that's been drawn up by Ms Lynn McCaw and dated 14 June 2004, do you have that document?

A. Mm-hm.

Q. We can see just below the list of attendees that the purpose of the attendance note is said to be:

"Report to D Waldron (Money Laundering Reporting Officer at [Leboeufs] regarding money-laundering issues."

Do you see that? It's in the top half of the document, just before the bold line --

A. Oh, yes.

MRS JUSTICE GLOSTER: Did you see that document at the time?

A. No.

MR MASEFIELD: We can see, just below the list, we can see that Ms McCaw's note starts by saying:

"[Lynn McCaw] was called on Friday 11 June by Oleg Berger (OB) from [Leboeufs] Moscow to act on this matter. She also had a conversation with Vladimir Ashurov ... and Ksenia Arbatova ... of Salford. She received eight documents from [Ksenia Arbatova], but the identity of the parties to these agreements are not clear from these documents."

Then we can see what Ms McCaw appears to have been

told by Mr Ashurov and Ms Arbatova, she explains:

"Bryan Cave, the law firm acting for the purchaser (i.e. Oleg Deripaska...) set up for Roman Abramovich ... and [Oleg Deripaska] a company called Rusal. Apparently, [Oleg Deripaska] understood that he was dealing with [Roman Abramovich], but ... Berezovsky ... was behind [Roman Abramovich]. 25% of [the Rusal Aluminium] shares was sold to [Oleg Deripaska] in 2003. The remaining 25% is to be sold to OD. The share sale is supposed to end up with all the shares to be owned by OD through a holding company."

Now, does that passage also reflect your understanding at the time, Mr Streshinsky --

A. No.

Q. So you do not recall being told by --

MRS JUSTICE GLOSTER: Sorry, I didn't hear your answer.

A. No.

MR MASEFIELD: You don't recall being told by Mr Deripaska's representatives that Mr Deripaska understood that he was dealing with Mr Abramovich but that Mr Berezovsky was behind Mr Abramovich?

A. I do not recall that Mr Berezovsky -- I was told that Mr Berezovsky was behind Mr Abramovich.

Q. Are you able to explain where this information -- which Lynn McCaw of Leboeufs -- has come from if not from

Salford and from the meetings that you had just both attended with Mr Deripaska's representatives?

A. I have no idea. I was assisting Mr -- I was assisting Mr Patarkatsishvili in selling the 25 per cent of Rusal.

Q. And you attended two meetings on 4 June and 11 June with Ms Arbatova and Mr Deripaska's representatives, correct?

A. Yes. So, at least we knew that Mr Patarkatsishvili was involved, he was there, but we didn't know exactly whether Mr Berezovsky was there. So he might have been a partner of Mr Patarkatsishvili, he might have -- Mr Patarkatsishvili might have held the shares of beneficial interest in trust for Mr Berezovsky, but we didn't have any information on that.

Q. You say that, but what Ms Arbatova appears to have information on is that Deripaska understood he was dealing with Mr Abramovich but Berezovsky was behind Mr Abramovich. You say you weren't aware of that?

A. No, I was not aware of that.

Q. And we can see further down this attendance note that Lynn McCaw is asking the money-laundering officer, David Waldron, how much investigation they need to do on where the shares come from and who the client is, do you see that?

A. Yes.

Q. We can see over the page David Waldron's advice

H(A)75/228/022. He says that:

"Salford is an investment fund set up by BB and someone else."

Do you see that?

A. Mm-hm.

Q. He said that he thought Leboeuvs needed to be careful. He goes on to say that he thinks due diligence needs to be done, he does not think that Leboeuf should simply rely on Bryan Cave, Mr Hauser's firm, for their money-laundering due diligence, do you see that?

A. Yes.

Q. Do you recall being made aware at the time that Leboeuvs had raised money-laundering concerns and wanted to conduct proper due diligence of their own before proceeding with the transaction?

A. No.

Q. I'll come on to that in a moment, Mr Streshinsky.

Now Ms McCaw of Leboeuvs issued a memorandum setting out her initial advice to Salford on 14 June 2004, and we have that advice earlier in the bundle at page 214 H(A)75/214. Please could you turn that up.

Do you have there a memorandum of advice from Lynn McCaw dated 14 June 2004?

A. Yes.

Q. You tell us that you received this memorandum of advice

from Leboeufts via an email from Ms Arbatova on  
15 June 2004?

A. Yes.

Q. And presumably you would have read this memorandum of  
advice from Leboeufts at the time?

A. Yes.

Q. We can see from her memorandum that Ms McCaw says that  
she's received the eight documents she's been sent,  
those were the draft agreements, together with  
Ms Arbatova's "most helpful diagram and document diary",  
do you see that?

A. Yes.

Q. It's the opening paragraph.

Then Ms McCaw says:

"My understanding is -- and please advise if this is  
incorrect -- that [Leboeufts] is solely advising Salford  
in this transaction and that Salford is acting as  
financial advisor to BB. I understand that Salford is  
not advising Eagle, Deripaska, Abramovich or Madison.  
Nor is Salford advising Rusal Holdings or OJSC Russian  
Aluminium. However, Salford regards itself as 'honest  
broker' in that it would like to achieve a position  
which is satisfactory to all concerned.

"Despite Ksenia's extremely helpful memorandum,  
I have found it extremely difficult to follow the

documentation since it is frequently unclear who is being referred to and there are many blank spaces where parties have not been identified.

"However, for the purposes of this summary, I have assumed that X, Y, 'Vendor', and 'B' are in some way related to BB."

Do you see that, Mr Streshinsky?

A. That's right, yes.

Q. Then if we jump over the page we can see halfway down, about three paragraphs up from the heading --

A. Next page?

Q. It's the second page, about three paragraphs up from the heading "Document No" we can see this H(A)75/215:

"As you know [Leboeuufs] is required by money-laundering prevention laws to follow an extensive checking procedure on a transaction by transaction basis even when existing clients such as Salford are involved. This will take some time."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. So it looks like you would have realised, if you read through this memorandum at the time, that Leboeuufs were going to have to carry out money-laundering checks?

A. That must have been the case at the time.

Q. I'm grateful.

Then the remainder of Ms McCaw's memorandum proceeds to work through the various drafts of the transaction documentation which she describes variously, and we can see this on page 216 H(A)75/216, as seriously inadequate, circular, complex and opaque. They are some of the adjectives that you have picked out and refer to in your witness statement.

A. That's right.

Q. She concludes by saying on page 222 H(A)75/222 that she hopes her advice is of use to Salford in its further advice to BB. Do you see that, Mr Streshinsky?

A. Yes.

Q. Now, matters didn't rest there, did they, Mr Streshinsky? Leboeuufs, as Ms McCaw had mentioned, were now obliged to carry out their money-laundering checks, do you remember that?

A. Yes, I've seen this in this memorandum. I don't remember focusing on that at the time.

Q. Well, let's come on to some more documents in a moment.

If we turn on in the bundle to page 293.001 H(A)293.001 you can see there there's a further memorandum that one of Ms McCaw's colleagues, James Morgan, sent to Ms Arbatova of Salford on 15 June 2004; do you see that, Mr Streshinsky?

A. I see that.

Q. We can see that various client identification documents are being sought both in relation to Salford Continental and in relation to Mr Berezovsky, do you see that, Mr Streshinsky?

A. Yes.

Q. Then over the page at 293.002 H(A)75/293/002, we can see that Leboeuvs, quite properly, were also seeking various bits of transaction information, do you see that?

A. Yes.

Q. And if we drop down to the penultimate bullet point, we can see that the information which Leboeuvs were asking for included information concerning the connection between Mr Abramovich and Boris Berezovsky, BB:

"... including why and how the 25 per cent indirect holding in [Rusal Holding] is held by [Mr Abramovich] for [Mr Berezovsky], and why transfer of shares is to be for nominal value ..."

Do you see that?

A. Yes, I see that.

Q. Do you think that Salford passed on these requests for further information to you, Mr Streshinsky?

A. No, I have never seen this document.

Q. Surely you would have been told about these requests that Leboeuvs had raised and asked to assist in

answering them?

A. No, I haven't been asked.

Q. So you didn't receive these requests?

A. No, I didn't.

Q. And you didn't inform Mr Anisimov that Leboeufs and Salford had raised these money-laundering requests?

A. No.

Q. You see, the day after Leboeufs had raised these requests for further information regarding Mr Berezovsky and the relationship with Mr Abramovich, we know that on 16 June 2004 you gave an instruction to Salford on behalf of your principal asking them to suspend work on the transaction?

A. That's right.

Q. Do you recall that?

A. That's right, that's correct.

Q. Let's turn up the document. If you put bundle H(A)75 away and please could you be given bundle H(A)76 and turn within that to page 13 H(A)76/13. Now, this is a memorandum that was drawn up by Salford and sent to you on about 17 June 2004. There is a Russian version which we have as well in the bundle starting on page 42 H(A)76/42. I don't know which version you would prefer to work from, but if you're happy with the English, why don't we stick with the English at page 13.

MRS JUSTICE GLOSTER: Are you happy to work with the English, Mr Streshinsky?

A. I just don't remember seeing this one so maybe I need to look at the Russian one.

MR MASEFIELD: It's a document that's come from Mr Anisimov's disclosure, Mr Streshinsky, and we'll see that matters are addressed there closely on the transaction.

A. The document in Russian is where?

Q. It's at page 42 in the bundle.

A. The same bundle?

Q. Yes.

A. Mm-hm.

Q. Do you recall receiving this memorandum from Salford at the time, Mr Streshinsky?

A. No, I don't, but I must have received it.

Q. Are you happy to work from the English version, Mr Streshinsky?

A. Okay.

Q. If we turn back to page 13 H(A)76/13, we can pick it up in the third paragraph, just before the heading, Mr Streshinsky.

A. Okay.

Q. The third paragraph down, we can see that Salford write:

"At present the process of negotiating the

transaction is haphazard, chaotic and uncoordinated which may lead to goals entirely different from those initially attended being obtained. The poor organisation of the process may excessively complicate the transaction structure and make a 'Western-style transaction' impossible. There is a significant risk of a 'Russian-style transaction' being carried out, which does not provide the seller with adequate guarantees that the funds are legitimate and that payment will be made in full."

Then dropping down the page to the section headed "Process and Results. Negotiations". We can see that it says:

"The first negotiations on the transaction were conducted with Coalco representatives on 2 June 2004. At that time Salford's role in the transaction was not clearly defined and amounted to providing assistance to Coalco, as the representative of the Beneficiary, in the technical structuring of the transaction and support for its infrastructure (the setting-up of companies, etc).

"The transaction has evolved significantly from the time of the first round of negotiations to the present day. The transaction structure has been modified during the negotiations. Two meetings were held with the representative of the buyer, and the second of these

meetings, attended by the buyer's external consultants, determined the final structure of the transaction (to date, at least).

"At the 11 June meeting, the buyer's legal adviser (the international law firm Bryan Cave) provided drafts of eight transaction-related documents, which we and our legal advisers [Leboeuvs] have analysed. The main results of this analysis is set forth in this memorandum and [Leboeuvs'] memorandum dated 14 June."

Then we see this:

"On 16 June we were given the principal's instruction to suspend negotiations and work on the transaction. At the time of the suspension, we had held intensive consultation with Leboeuf ([Leboeuf's] participation in the transaction depends on the successful completion of due diligence in respect of the transaction participants) and the intermediary bank supporting the creation of the technical infrastructure for the transaction."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. Was it you that gave Salford the instruction to suspend negotiations and the work on the transaction?

A. Yes.

Q. And who was the principal on whose behalf you gave that

instruction to Salford, Mr Streshinsky?

A. It was by instruction of Mr Anisimov.

Q. Do you say that it was just a coincidence,

Mr Streshinsky, that the instruction to Salford and Leboeufs to suspend their work on the transaction came the very day after Leboeufs had started to raise requests for further information about Mr Berezovsky?

A. Since I have not seen the request for information about Mr Berezovsky I cannot say anything about this.

Q. Well, you say you haven't seen it, but I suggest to you that Salford passed on the requests that had been raised by Leboeufs with them, passed them on to you, and you then spoke to Mr Anisimov and he told you that they should down tools.

A. No. In fact, this was a different -- the motivation to stop cooperating with Leboeuf and Salford was entirely different. I considered this was my initiative, my personal initiative because --

MRS JUSTICE GLOSTER: What, to suspend instructions?

A. To suspend Salford and Leboeuf, because I considered that Mr Patarkatsishvili had too many advisers acting, and this was really a chaotic moment at that time so -- I also found the memorandum which Leboeuf wrote on 14 June very lengthy and unhelpful because it was focusing on the matters which I didn't consider to be

important at that time, so I told Mr Anisimov that either I will be running the transaction and I will be responsible that this transaction is going to be closed, or Salford. He probably spoke to Mr Patarkatsishvili and that was their joint decision.

MR MASEFIELD: Why did you decide that you would go with the services of Akin Gump and Mr Faekov, who appear to have done little or no work on the transaction at this stage, and to stop the work that Leboeuufs had been doing which was much more substantial?

A. Because I know Mr Faekov is very able lawyer, he was both Russian lawyer and English lawyer, so it was -- we made number of deals with Mr Faekov together in the past so it was very comfortable for me to work with Mr Faekov.

Q. Are you aware that Ms Lynn McCaw is a very senior partner at Leboeuufs, she has over 30 years' experience in M&A, she is thought to be one of the best M&A lawyers in England?

A. I don't know her.

Q. We can see that in fact set out by Salford in the memorandum a bit further on. They go on to say this:

"The suspension of work may have an adverse effect on the quality of the services we provide and on the motivation of our employees ([Leboeuufs] has currently

put at our disposal the services of one of the best M&A lawyers in England, and the intermediary bank has demonstrated its readiness to provide the required services in an extraordinarily short timeframe)."

MRS JUSTICE GLOSTER: Where are you reading from?

MR MASEFIELD: It's the second paragraph from the end of page 13, my Lady.

MRS JUSTICE GLOSTER: Thank you.

MR MASEFIELD: "Nonetheless, we hope that it will be possible to resume the work."

Then the paragraph at the bottom of the page:

"On 17 June we received proposals from [Leboeuvs] on simplifying the document structure of the transaction. These proposals basically boil down to the possibility of drawing up all the current arrangements regarding the mutual obligations of the parties by preparing three documents (including the sale and purchase agreement) instead of eight."

So Leboeuvs had in fact proposed something that would cut through the opaque, circular and complex transaction and reduce it just down to three documents, that's right, isn't it, Mr Streshinsky?

A. I don't know what Leboeuf proposed.

Q. Well, you do, because we've seen the memorandum of advice that they sent to you on 14 June.

A. Yes --

Q. Which you said you had seen?

A. Yes, I had seen that, and I've seen that they've characterised the documents as ambiguous, circular, unclear, et cetera, but I have not -- I don't remember there were any proposals in that memorandum of how to overcome that.

Q. I'm not sure we need to pursue that for the time being.

Can we turn on in this Salford memorandum to page 4 on the internal numbering, which we have at page 16 of the Magnum system H(A)76/16.

A. Okay, 4.

Q. We can see at the top of the page Salford say this:

"According to the information at our disposal, the buyer's external consultants have held preliminary consultations with representatives of the nominee shareholder ..."

So that would appear to be a reference to Bryan Cave, the buyer's external consultants, talking with Mr Abramovich's representatives, the representatives of the nominee shareholder, is that right?

A. Well, I see what's written here.

Q. And Salford go on:

"... and based on the results of these

consultations, the risks should be distributed between the beneficiary and the nominee shareholder as follows ..."

We can see that Salford then set out the representation sought. The first bullet point deals with the representations and warranties to be provided by the nominee holder, that is to say Mr Abramovich, of which the first, we can see, is:

"During the period from March 2000 up to the transfer of the shares to the beneficiary, the beneficiaries were the owners of the beneficiary interests in the shares."

Do you see that, Mr Streshinsky?

A. I see that.

Q. Then if we drop down to the next rounded bullet point that deals with the representations and warranties to be provided by the beneficiaries. Do you see that?

"Coverage of risk by the beneficiaries"?

A. Mm-hm.

Q. Of which the first is:

"As far as the beneficiaries are aware, during the period from March 2000 up to the transfer of the shares to the beneficiaries, the beneficiaries were the sole owners of the beneficiary interests in the shares."

Do you see that passage, Mr Streshinsky?

A. Yes.

Q. So as at 17 June 2004, when this memorandum appears to have been written by Salford, Salford appears still to have been under the impression that there were two beneficiaries who were interested in the 25 per cent stake in Rusal, correct?

MRS JUSTICE GLOSTER: Well, he can't give his evidence as to what Salford thought or didn't think unless he knew that from his own knowledge.

MR MASEFIELD: My Lady, I'll move on.

MRS JUSTICE GLOSTER: We can all read what the document says and you can make such submissions as you wish in due course about it.

MR MASEFIELD: We can, my Lady.

Was that still your understanding at the time, Mr Streshinsky, that there was more than one beneficiary involved in the transaction? Was that your understanding at 17 June 2004?

A. Up until the meeting with Mr Abramovich's side, yes, I assumed that this could be the case.

Q. I'm grateful for that, and we'll come on that meeting in a moment.

Then if we look over the page H(A)76/17.

A. 76/17, yes.

Q. We can see a heading about halfway down which is called

"5. Status", do you see that?

A. 76/17?

Q. There's a heading "5. Status". The first heading below that is "Engagement of [Leboeuufs]".

A. Yes.

Q. We can see that Salford say:

"In connection with the complex nature of the transaction, its risk, specific aspects to the participants to the transaction, the lack of clear economic grounds for the price and the political risks, we think it is absolutely essential that our client be represented in further negotiations on the transaction by an international law firm.

"Recognising this necessity but at the same time playing a fairly limited role in the transaction, Salford, not having any other opportunity on the part of the seller of the former shareholders of the holding company, was forced to use the services of its standing external consultant. Due to the general tightening of control rules and the political risks determined by the personal histories of the participants, [Leboeuufs] was forced to commence a review of the lawfulness of the transaction and the origin of the funds, as a part of which [Leboeuufs] submitted a query to which Salford must respond."

Do you see that, Mr Streshinsky?

A. Mm-hm.

Q. So Salford is saying here that it's going to be necessary to respond to the money-laundering queries that Leboeuvs have raised, yes? That's what they're saying?

A. Yes, they said that they were:

"... forced to commence a review of the lawfulness of the transaction and the origin of the funds ..."

Yes.

Q. Then if we look over the page to page 6 on the internal numbering, page 76/18 H(A)76/18, we can see that about halfway down and just before a number of bullet points Salford say this:

"At this stage to successfully complete the transaction we believe that the following steps must be taken ..."

Do you see that?

A. Yes.

Q. And if we drop down to the fifth bullet point we can see that it's recommended by Salford that there be completion of the Leboeuvs money-laundering review, do you see that?

A. "Completion of the LLGM review."

Yes.

Q. So even though their activities have been suspended, Mr Streshinsky, we can see that Salford were recommending that they be reinstated and, amongst other things, that Leboeuks should be allowed to complete its money-laundering due diligence, that's what this document shows?

A. Okay.

Q. We can see what the outcome of that was, Mr Streshinsky, if we turn on in bundle H(A)76 to page 61 for the Russian H(A)76/61 or 61T for the English H(A)76/61T.

Do you see there an email from yourself, Mr Streshinsky, to Mr Mishakov, Mr Deripaska's representative, dated 17 June 2004?

A. Right.

Q. We can see you've written to Mr Mishakov:

"Stalbek, following our phone conversation today I am confirming in writing that the decision has been taken to refuse from the services of Lebeff and that all information is to be directed via me."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Now tell me this, why had you been involved in a telephone conversation with Mr Deripaska's legal representatives regarding whether or not Leboeuks should be taken off the transaction?

A. I do not recall this telephone conversation, but I assume that I told Mr Mishakov that if we want to continue to put the transaction forward and actually execute it quickly, the company Leboeuf should be off the, you know, should go outside of the transaction. So I should be responsible for the transaction.

Q. And was the reason for that you were concerned that the money-laundering queries that Leboeuvs had raised would drag out the process?

A. No, I did not focus on money-laundering queries at all at that time.

Q. You say that, but I suggest that is in fact the reason why Leboeuvs were sacked?

A. I disagree.

Q. Well, let's come on to see what happened next when you speak with Mr Abramovich's representatives and then your communications with the First Zurich Bank, Mr Streshinsky.

On 17 June 2004, you sent two emails to Ms Khudyk suggesting ways in which it might be possible to restructure the transaction, do you remember that, Mr Streshinsky?

A. Yes.

Q. If we could turn those emails up. The first email you sent to Ms Khudyk we have in Russian at page 23 within

this bundle, if you could turn that up, please  
H(A)/76/23.

A. In this, the same bundle?

Q. Yes.

A. Yes.

Q. Do you see there an email from yourself to Ms Khudyk on  
17 June 2004 timed at 10.05BST, do you see that?

A. Yes.

Q. We can see that it attaches a document called "Coalco  
Letter 17 June 04". It's not over the page in the  
bundle, I'm afraid the bundle is not very well ordered.  
But do you see the reference to the attachment, "Coalco  
Letter 17 June 04"?

A. What?

Q. If you look in the email heading, Mr Streshinsky,  
underneath the subject "Letter" it says "attachments",  
do you see that?

A. "Coalco Letter", okay, yes.

Q. As regards the text of the email which we have in  
Russian, I believe we have the translation of that at  
page 53 in the bundle H(A)76/53, but could you please  
confirm that for me, Mr Streshinsky.

MRS JUSTICE GLOSTER: The translation bundle or --

A. Do you want me to translate this?

MRS JUSTICE GLOSTER: No, just a second.

Could you tell me, is it in the T bundle on Magnum  
or in the ordinary bundle?

MR MASEFIELD: It's in the ordinary bundle, my Lady. If you  
turn on in the bundle to page 53, H(A)76/53, we have  
a text of email.

And looking back at the Russian, which you have at  
23, is that a translation of the email that you have at  
page 23?

A. Okay.

Q. It is a translation --

MRS JUSTICE GLOSTER: Can you confirm it is, Mr Streshinsky?

A. Yes, one second.

Okay, yes.

MR MASEFIELD: So you can confirm that that is the  
translation of the document we have at page 23?

A. That is the translation, yes, that's right.

Q. I'm grateful.

And as regards the attachment, we have that at  
page 38 in the Russian H(A)76/38 and 38T in the  
English H(A)76/38T. If you could turn that up. If  
you're happy working from the English, I suggest we work  
from the purple page 38T.

A. Yes, I see this, yes.

Q. Can you confirm that you were the author of the Russian  
document which we have at page 38 of the Russian text?

A. We were drafting it together with Mr Faekov.

Q. I'm grateful.

We can see from the first paragraph of your letter that you are proposing to simplify the transaction, yes?

A. Yes.

Q. And that you then deal with dividends and shares separately under parts A and parts B, yes?

A. Yes.

Q. And under the heading "Dividends" we can see that you've written:

"BP (an individual) and B (a company with B as the sole shareholder) on the one hand, and M on the other hand, shall conclude the Deed of Accounting and Release which would approximately state the following ..."

Pausing there, BP was clearly a reference to Mr Patarkatsishvili, wasn't it, Mr Streshinsky?

A. That's right.

Q. And B company, that was a reference to a company which ultimately became Cliren?

A. That's correct.

Q. You tell us as much at paragraph 87 of your witness statement F1/02/77. The reference to the sole shareholder of B company, which you describe in parenthesis simply as B, you say, do you, that that reference was a typo?

A. That's correct.

Q. And you say that you understood that Mr Patarkatsishvili was the sole shareholder of B company and this therefore should have been a reference to BP rather than to B?

A. That's correct.

Q. Is that really your evidence, Mr Streshinsky?

A. Yes. Yes.

Q. You see, Mr Streshinsky, I suggest to you that the reference to B in parenthesis was not a typo at all. It was a reference by you to Mr Berezovsky, was it not?

A. No. No.

Q. Let's go on to have a look at what you say in this document, Mr Streshinsky. Have a look at what you say in paragraph 1, you say this:

"The parties acknowledge that according to the agreements dated 10 December 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery..."

Do you see that, Mr Streshinsky?

A. Yes.

Q. We know for a fact that B company, Cliren, did not participate in the sale of the shares for those plants on 10 February, or in the establishment and

capitalisation of Rusal; that's right, isn't it?

A. That's correct.

Q. And you knew that full well, didn't you, Mr Streshinsky?

A. Yes.

Q. That Cliren didn't participate?

A. I knew, of course.

Q. You had been involved yourself in the February 2000 sale, and you also knew that Cliren was, until very shortly before this second Rusal sale transaction, a Coalco company?

A. That's correct.

Q. So when you say in paragraph 1 that BP and B participated in the sale of KrAZ shares and in the formation and capitalisation of Rusal, you were not referring to Cliren, were you, Mr Streshinsky?

A. No, I was not. But when we were talking on 17 June about the structure of the transaction, there was no decision that company Cliren would be participating in the transaction. So that was only subsequently when we have chosen company Cliren to participate.

Q. The timing when you decide Cliren does not matter, Mr Streshinsky, because you say that BP and B participated in the sale of KrAZ shares, and you weren't referring to a company at all there, were you, Mr Streshinsky?

A. I was referring to the company. The idea was that Mr Patarkatsishvili and his company would be the parties to this transaction.

Q. In paragraph 1 you're referring to the historical participation of BP and B on the sale of the KrAZ shares. Which company do you say you were referring to at paragraph 1, Mr Streshinsky?

A. Well, the idea was that Mr Patarkatsishvili would be represented in the agreements by a company, because that is an additional layer of protection for any individual against liabilities.

Q. You see, the people you are referring to in paragraph 1 was not a company at all, Mr Streshinsky, it was a reference to Mr Patarkatsishvili and Mr Berezovsky, that's the truth of the matter?

A. No. No.

Q. And that shows that the reference to B as the sole shareholder, in the immediately preceding paragraph, is not, as you now seek to suggest, a typo but it was also a reference to Mr Berezovsky.

A. Okay, can I explain the reasons --

Q. Please.

A. -- why I believe this was a typo?

MRS JUSTICE GLOSTER: Yes, you may.

MR MASEFIELD: Please do.

A. If Mr Berezovsky would be involved, it would be clear that he should have been involved on the same basis as Mr Patarkatsishvili, so Mr Patarkatsishvili here as a physical person, and it's called here B as a company. So either Mr Patarkatsishvili would be a shareholder of B together with Mr Berezovsky, if that would be the case, or Mr Patarkatsishvili would be participating in this deal, Mr B, Berezovsky, would be participating in this deal, and their company would be participating in this deal.

So because -- as the structure of transaction assumed that Mr Patarkatsishvili had to guarantee the obligations for the company, it would be inconceivable to think that Mr Patarkatsishvili would be guaranteeing the obligations of company B, which was owned by Mr Berezovsky. And also it would be inconceivable to think that the buyers of the shares would want just the guarantee from Mr Patarkatsishvili and wouldn't want the guarantee from Mr Berezovsky.

Q. Mr Streshinsky, that's entirely right, and that is why Ms Arbatova in her document diary had suggested that it was going to be necessary to obtain a power of attorney from Mr Berezovsky so that Mr Patarkatsishvili could execute documents on Mr Berezovsky's behalf; do you remember that?

- A. Yes, I remember the diary, you showed that to me.
- Q. You see, what I suggest you were in fact proposing in this document, Mr Streshinsky, was that the identity of the second beneficiary, Mr Berezovsky, should be obscured by naming Mr Patarkatsishvili as one of the beneficiaries in the transaction and then interposing a shelf company, B company, as the other beneficiary in the transaction behind which would stand Mr Berezovsky. That, I suggest to you, is the much more natural reading of what we have at page 38T H(A)76/38T.
- A. That's not correct, because the buyers requested personal guarantees from the beneficiary so we would not be able to shelter anyone in this transaction.
- Q. Well, we'll come on to a number of other documents in a moment, Mr Streshinsky, which make it plain that even after this you were aware of Mr Berezovsky's interest in Rusal. But let's stay with this letter for the time being.

You then go on in paragraph 1 to say this, I'm reading from about five lines from the end:

"... and at the time of the establishment of [Rusal Holding] they became and still are beneficiary owners of 25 per cent of shares in [Rusal Holding] who, among other things, have the right to receive all dividends payable on the above 25 per cent shares in [Rusal

Holding] and the right to receive such shares, whereas [Madison] was and still is the nominal holder and trustee of such shares, and holds them for the benefit of B/BP."

A. That's correct.

Q. So your understanding at this stage was clearly that there was a trust relationship between Mr Abramovich and whom ever "B/BP" might be?

A. Yes, that was our understanding.

Q. And that was also the understanding of Salford and Leboeuufs and Mr Deripaska's representatives, wasn't it, Mr Streshinsky?

A. That was.

Q. In the documents we've just looked at, yes?

A. Yes, that was.

Q. But Mr Abramovich's representatives were not happy about the trust description and structuring the transaction in this way, do you recall that?

A. Yes -- well, I mean, not that they were unhappy. They said that this was not correct.

Q. Well, let's come on to the document. Can we turn on in the bundle to H(A)76/65.

A. Yes.

Q. You should have there an email from yourself to Ms Khudyk of Millhouse Capital, do you see that?

A. Yes, I see that.

Q. We can see that this is a further email that you've sent on 17 June 2004 attaching a second version of your 17 June 2004 letter?

A. Yes.

Q. You see the attachment line "Coalco Letter 2"?

A. Yes.

Q. And we have the attachment a little earlier in the bundle, Mr Streshinsky. We have the Russian version at 51 H(A)76/51 and the English version at page 51T H(A)76/51T.

A. Yes.

Q. Can you confirm that you are the author of the Russian document that we have at page 51, Mr Streshinsky?

A. I confirm that we were drafting it together with Mr Faekov.

Q. And we can see the document starts by saying:

"As we discussed on the telephone, in order to abide by the assurance to banks that you made previously, we attach the following alternative structure ..."

A. That's correct.

Q. So it looks from this document as though you've had a telephone conversation with somebody on 17 June 2004?

A. That's right.

Q. Do you remember that telephone conversation,

Mr Streshinsky?

A. I don't clearly remember the conversation.

I remember --

Q. Do you recall whether it was Ms Panchenko that you spoke to?

A. I think it was either Panchenko or Khudyk.

Q. And in the course of preparing your evidence and coming here today, Mr Streshinsky, have you talked to anyone else about that telephone conversation?

A. No.

Q. I'm grateful.

Now, do you recall, Mr Streshinsky, being told what we can see you recorded here, that you needed to draw up an alternative transaction structure which would be consistent with the assurances or representations that Mr Abramovich's people had previously made to banks?

A. Well, I assume that -- when we sent this first letter to Ms Khudyk, they called us and they told us that we did not understand them, and that they did not have any relationship of trust. They explained to us that when opening the account of the company, like Rusal, or companies which they were holding, you have to put in the bank a certain form A, which is identification of beneficial owner, and no matter whether there's a trust behind or a physical person behind, you would have to

disclose that whoever is beneficial owner would be the beneficial owner, so for the bank documentation.

So they told us that there was no trust relationship between Mr Patarkatsishvili and Mr Abramovich.

Q. You see, that is not reflected in what we see in the opening words of this letter, Mr Streshinsky. What is reflected is that you've had a conversation with Mr Abramovich's representatives in which they have said that it needs to be reorganised to abide by the assurances to the banks. So they are proposing a different structure which will be consistent with what has previously been said to the banks.

A. Well, they were -- Mr Abramovich's side was the only party who knew what was the real ownership structure. So they told us that there was no trust arrangement, that the shares were not held in trust for Mr Patarkatsishvili.

Q. You see, Ms Panchenko believes that it was most probably her that you spoke to on 17 June 2004, and for the record we have Ms Panchenko's evidence in relation to this at Day 27, page 8, line 14 to page 10, line 16, but I don't think we need to turn it up.

What Ms Panchenko says is that it was most probably her that called you on the 17th, and that during the conversation which she had with you, Mr Streshinsky, one

of the arguments that she used was that in her capacity as financial director of Rusal she had made various statements to the outside world, including to the banks, to the effect that Mr Abramovich was the owner of the 25 per cent shareholding.

Now, do you recall a conversation with Ms Panchenko along those lines, Mr Streshinsky?

A. I don't recall it particularly but I think it's possible that she told me that. And I would like just to reiterate that even more so, that Ms Panchenko was the financial director of Rusal so she was responsible for the account opening for Rusal, and she had to declare in the forms A who was the beneficial owner of Rusal.

Q. She was also the person who, as financial director of Rusal, would have been making statements to the outside world, including banks, and she says that was one of the arguments that she used when she spoke to you as to why the transaction structure should be changed.

A. So?

Q. You don't have any clear recollection of this conversation?

A. No, I don't have a clear recollection of this conversation.

Q. There is certainly no suggestion in the letter that you had misunderstood the position. You don't say "We

understand we've got it completely wrong." You don't write that, do you, Mr Streshinsky?

A. Yes, there was nothing in this letter like that.

Q. And do you recall Ms Panchenko telling you a further reason why the transaction should be structured differently, namely that Mr Abramovich did not want further to document the existence of Mr Berezovsky or Mr Patarkatsishvili's beneficial ownership; do you recall that, Mr Streshinsky?

A. I don't recall that but that might have been the case.

Q. It might have been the case. You see, very shortly after this, on 17 June 2004, in compliance information that you were providing to First Zurich Bank, you said that you had been told by Mr Abramovich's people that they did not want to document the existence of the beneficial ownership relationship with Mr Patarkatsishvili, do you remember that?

A. Yes.

Q. So do you think you might have been told on this occasion by Mr Abramovich's people that they didn't want to document the existence of beneficial ownership?

A. Well, that was -- our position was always, and we always thought, that Mr Patarkatsishvili was the beneficial owner of this 25 per cent during this transaction. And in the compliance memo which you referred to, we wrote

that the position of Mr Abramovich was different.

- Q. And it was different because they had made it clear to you that they did not want to document the existence of Mr Patarkatsishvili's beneficial ownership; do you remember that?
- A. I do not remember whether they had made clear to me or it was -- I concluded this on the basis of all the discussions which I had, the information.
- Q. Well, we'll come on to the document in a moment, Mr Streshinsky. But sticking with the document which we have at bundle H(A)76/51T for the time being, Mr Streshinsky, if we look down to "Part A. Dividends", we can see that you have left unchanged the opening words which state:
- "BP (an individual) and B (a company with sole shareholder B) ..."
- Do you see that?
- A. Yes, it was the same typo. We just changed the first paragraph, I think, the point 1.
- Q. So you say that despite going back to this document and substantially rewriting various parts of it, you had not picked up and corrected what you say was an obvious error in this passage?
- A. I don't think we have substantially rewrote the document, we just -- I think we just rewrote the point 1

in this document.

MR MASEFIELD: My Lady, that might be a convenient moment.

MRS JUSTICE GLOSTER: No, I'm going on for a few minutes.

MR MASEFIELD: I'm grateful.

If we then look further down at bullet point 1, we can see that the first four lines of this document have not changed. You still refer to BP and B participating in the sale of the shares of KrAZ, don't you?

A. Yes, I see that.

Q. We can see that following your conversation with Ms Panchenko about the representations made to banks, the last five lines of paragraph 1 have changed. And what you now propose is that the parties acknowledge not the existence of any trust relationship but that:

"... in creating [Rusal Holding] [Madison] undertook to pay to BP and B sums equal to the sums received as income from the 25 per cent of shares in [Rusal Holding], including dividends from said 25 per cent of the shares, and sums/property received upon any sale of such 25 per cent of shares."

Then in parenthesis:

"(Thus, this was exclusively a liability right, rather than a trust or proprietary right -- attorney's comment.)"

Do you see that?

A. Yes.

Q. When you refer there to an attorney's comment, whose comment was it that you were referring to, Mr Streshinsky?

A. That was explanation of Mr Faekov.

Q. That was Mr Faekov of Akin Gump who had suggested that, was it?

A. Yes.

Q. I'm grateful.

Now, you tell us that one of your responsibilities in relation to the second Rusal sale transaction was to ensure that Cliren, the party that was to be a party to this transaction, had a bank account into which the monies due from Eagle and Madison could be paid, do you remember that?

A. Yes.

Q. You tell us F1/02/81 that you liaised with both First Zurich Bank and Parex Bank, and originally you had hoped that First Zurich would hold the bank account, but that due to difficulties with First Zurich getting comfortable with the transaction you ultimately used Parex Bank, correct?

A. Correct.

Q. I would like to look with you at some of the communications that you had with Zurich Bank and its

lawyers, Secretan Tryanov, around this time,  
Mr Streshinsky. You can put away bundle 76 but please  
can you be given bundle 77.

MRS JUSTICE GLOSTER: What paragraph of his witness  
statement are you dealing with at the moment?

MR MASEFIELD: My Lady, it's paragraph 96, which we have at  
F1/02, page 81 F1/02/81. Does your Ladyship have  
that?

MRS JUSTICE GLOSTER: Yes, go on.

MR MASEFIELD: You can put away bundle 76, and if we turn in  
bundle H(A)77 to page 97, please H(A)77/97.

Do you see there an email, Mr Streshinsky, from  
yourself to Mr Escher dated 23 June 2004?

A. Yes.

Q. And can you confirm that Mr Escher was your contact at  
First Zurich Bank whom you had known for a number of  
years?

A. Yes.

Q. We can see that you've filled in the subject line "For  
Your Info", and you've attached a document called "RH  
Transaction History", do you see that?

A. Yes.

Q. If we turn back in the bundle to page 95 H(A)77/95, do  
you see there the document which I think is the  
attachment. It's a draft document dated 23 June 2004,

we see that in the top right corner; yes?

A. Yes.

Q. And it's stated to be "Highly confidential. Not to be disclosed externally"?

A. Yes.

Q. And called "Rusal Holdings Share Sale Compliance Information -- Transaction Structure and Background".

Do you have that document?

A. Yes.

Q. And you tell us that you prepared this draft memorandum and sent it to Mr Escher on 23 June 2004, is that right?

A. No, that was done by Mr Faekov.

Q. It was done by Mr Faekov?

A. Yes.

Q. Did you assist him in the drafting of it, Mr Streshinsky?

A. I don't think so but I probably read it.

Q. Where would Mr Faekov have got the information which is contained within this memorandum, apart from you, Mr Streshinsky?

A. Because of his involvement in the process.

Q. Would his involvement and instructions have come primarily from you, Mr Streshinsky?

A. Yes.

Q. I'm grateful. The draft memorandum starts by saying:

"This note is prepared by [B corp] ('Seller') to [name of bank] ('Bank') in connection with the Seller's request to open an account for receipt of funds due to the seller in respect of:

"(i) the settlement of certain disputes with ... ('Madison') ... and

"(ii) the sale of 25 per cent of [Rusal Holding] to Eagle ...

"The contemplated transaction and the information herein are highly confidential and are provided to the Bank for compliance purposes only on the condition and understanding that the Bank will keep all the details herein strictly confidential."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Then you go on in section 1 briefly to outline the transaction structure, but then dropping down to section 2, entitled "Background", you say this:

"Ownership and Control.

"The Seller is own by [BP] ('BP') as the direct 100 per cent shareholder.

"Madison is indirectly owned and controlled by M ... Capital, the ultimate beneficial shareholder of which is R... A. A ...

"ECG is indirectly owned and controlled by Bas ...

the ultimate beneficial shareholder of which is owned and controlled by bass, the ultimate beneficial shareholder of which is O... V.D ..."

Pausing there and filling in the blanks, "BP" was a reference to Mr Patarkatsishvili?

A. That's correct.

Q. "M Capital" was meant to be a reference to Millhouse Capital?

A. "M" -- I think it --

Q. "Madison is indirectly owned and controlled by M ... Capital ..."

A. It's possible, yes. Yes.

Q. "RAA" was meant to be a reference to Mr Abramovich?

A. Yes.

Q. "Bas" was meant to be a reference to Basic Element, Mr Deripaska's group, correct?

A. Yes, I think so.

Q. And "OVD" was meant to be a reference to Mr Deripaska?

A. That's correct.

Q. Then if we turn over the page to page 96 H(A)77/96, you say this:

"2000 Purchase and Negotiations.

"Under an agreement dated 10 February 2000 between BP, RA and others (the '2000 Agreement', the original of which can be presented), BP, jointly with RA and [blank]

agreed to purchase from a number of sellers shares of..."

And then you list out the KrAZ, Bratsk and Achinsk assets, do you see that?

A. Mm-hm.

Q. When you referred in the first line to BP, RA and others, Mr Streshinsky, who do you say were the others to whom you were referring?

A. Mr Shvidler.

Q. Mr Shvidler is one of the others to whom you were referring but who was the other person included within the definition of "others", Mr Streshinsky?

A. It's written here, "BP jointly with RA" and in brackets --

Q. In the line above, Mr Streshinsky, it says "BP, RA and others" in the plural.

A. It doesn't say others, it's a bracket with --

Q. No, if you look at the line above, Mr Streshinsky:

"Under an agreement dated 10 February between BP, RA and others ..."

Do you see that?

A. Yes.

Q. So who were the others that you were referring to? You've named Mr Streshinsky. Who was the other person?

A. That was Mr Shvidler.

- Q. And who was the other person?
- A. There was no other person.
- Q. Let me ask you this, Mr Streshinsky, why was there any sensitivity about naming Mr Shvidler in this highly confidential memorandum? Can you explain that to the court?
- A. Because Mr Shvidler was not mentioned in this. So the way I think this draft was done is that Mr Faekov was -- drafted the paper, and I removed the names, so -- and since Mr Shvidler was never mentioned previously in this paper so I just crossed him out because he was not defined as a person.
- Q. You see, you were prepared to indicate, at least by way of their initials, that Mr Patarkatsishvili and Mr Abramovich had been involved as purchasers.
- A. Yes, I knew that Mr Patarkatsishvili, Abramovich and Shvidler were involved in the purchase.
- Q. And we also know from other documents that we're coming on to that you in fact sent the 10 February 2000 master agreement to Mr Escher at First Zurich Bank, and the 10 February master agreement expressly identifies Mr Patarkatsishvili, Mr Abramovich and Mr Shvidler as the purchasers of the KrAZ assets?
- A. Yes.
- Q. So that suggests the fact that there was in fact no real

sensitivity about identifying Mr Shvidler as one of the purchasers?

A. Well, I mean, there was no real sensitivity about

(inaudible). It was just for convenience sake, I put his name away I think.

Q. I agree with you there wasn't sensitivity about naming Shvidler as one of the purchasers. You see, what I suggest to you is that one of the other purchasers whom you had in mind, and in relation to whom there was real sensitivity, was Mr Berezovsky and indeed that's plain from documents that we'll come to in a moment, but you deny that, do you?

A. I disagree with you.

Q. You disagree with me?

A. Yes.

MR MASEFIELD: My Lady, do you want to pause there or shall we go on?

MRS JUSTICE GLOSTER: No, I'm going on. I will decide when I am going to pause, Mr Masefield.

MR MASEFIELD: I am grateful.

Then you go on to say that at the time of the 2000 acquisition, the aluminium assets were transferred to Mr Abramovich and his companies on the understanding that a prorata portion was being held for the benefit of Mr Patarkatsishvili, the legal form of the shareholding

to be agreed. Do you see that?

It's the second paragraph down H(A)77/96:

"... they were transferred to RA and his companies, on the understanding that a pro-rata portion is being held for the benefit [of Mr Patarkatsishvili], the legal form of the holding to be agreed."

Do you see that?

A. Yes.

Q. Then you say:

"In March 2000 [Mr Abramovich] has agreed with [Mr Deripaska] to form [Rusal] ..."

And Madison subsequently became a 50 per cent shareholder of Rusal Holding. Do you see that?

A. Yes.

Q. Then we see that you say this:

"At the same time, BP, Madison and RA negotiated as to the exact portion of the shares due to BP and as to BP's legal rights to such shares. The position of BP is that BP, being one of the purchasers, is the beneficial owner of 25% of shares of the Producer Shares (and/or of the respective portion of RH), whereas the position of RA was unclear: RA admitted that BP does have some sort of rights or entitlement in relation to the purchase of the Producer Shares (for example, on more than one occasion RA and his companies paid over to BP a pro-rata

portion of dividends on the Producer Shares), but at the same time did not want to document BP's beneficial ownership."

Do you see that, Mr Streshinsky?

A. Yes, I see that.

Q. That last comment, that Mr Abramovich's representatives did not want to document BP's beneficial ownership, was that something that you'd been told by Ms Panchenko in her conversation on 17 June, Mr Streshinsky?

A. I do not remember precisely what was told. That was my understanding of the situation. I thought that Mr Patarkatsishvili, by virtue of participating in the 10 February agreement, 10 February 2000 agreement, was beneficial owner of certain portion of shares of Rusal, but I didn't have any exact information.

Q. Well, I think you've said earlier that your recollection of that 17 June conversation isn't perfect.

A. Isn't perfect.

Q. It isn't perfect?

A. No.

Q. And we've now had disclosure, just ten days ago, of some further documents from Mr Abramovich which shows that on 16 June, so the day before your conversation with Ms Panchenko, there were internal discussions in which Ms Panchenko was told there should be no warranties

about beneficial ownership because Mr Tenenbaum did not want to further document BB's beneficial ownership.

I don't think we need to turn that up but the reference for the record is H(I) tab 4, page 17 H(I)/04/17. What I suggest to you happened -- and see if this jogs your memory, Mr Streshinsky -- was that in the telephone conversation with Ms Panchenko on 17 June 2004, she explained to you that they did not want to further document BB's beneficial ownership and that is what we therefore see reflected here in your compliance information to the Zurich bank. Is that possible?

A. That's possible.

Q. You go on in your memorandum to say this, I'm looking down towards the bottom of the page H(A)77/96, just before numbers (i) and (ii):

"In 2003-2004, the parties reached agreement (to be recorded in the Deed of Settlement), that as settlement for BP's participation in the acquisition of the Producer Shares, Madison will:

"(i) pay to the Seller a cash consideration (being accumulated dividends not yet paid over to BP); and

"(ii) transfer to the Seller 25% of the shares of RH (certain waivers of pre-emptive rights will be obtained by Madison in order to effect this).

"Since BP is unwilling to remain a minority shareholder of RH, he has simultaneously agreed with ECG (a majority shareholder of RH) that after he acquires the RH Shares, he will sell them to ECG, and the benefit of warranties of title to the RH Shares will flow from Madison directly to ECG. The purchase price is \$ [blank]."

You subsequently filled in some of these blanks with your friend Mr Escher of First Zurich Bank over the telephone, didn't you, Mr Streshinsky?

A. I don't remember that.

MRS JUSTICE GLOSTER: Are you going to go to another document?

MR MASEFIELD: We are, my Lady.

MRS JUSTICE GLOSTER: Right, I'll take the break now.

MR MASEFIELD: I'm grateful.

MRS JUSTICE GLOSTER: Ten minutes.

You're not to talk to anybody about your evidence, please.

THE WITNESS: Okay, thank you.

(11.45 am)

(A short break)

(11.57 am)

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

MR MASEFIELD: Mr Streshinsky, First Zurich Bank had to

conduct their own money-laundering checks and due diligence, and to that end Mr Escher engaged the professional services of a well-known and highly respected Swiss firm of avocats called Secretan Tryanov.

Do you remember that?

A. I didn't know about the involvement until I get the memo from this Secretan Tryanov.

Q. You got the memo from Secretan Tryanov around 24 June 2004?

A. Yes.

Q. We have Secretan Troyanov's advice, the memo that you're referring to, at page 75 in the bundle H(A)77/75.

A. 75, yes?

Q. Yes, please, if you could turn that up. We have for the record Mr Escher sending this document to you under a covering email on 24 June which is at page 133 but I don't think we need to turn that up.

A. Yes.

Q. Looking at page 75, we can see that the report is dated 23 June 2004 and is entitled "Re: Anti-Money Laundering Due Diligence" do you see that?

A. Yes.

Q. It's addressed to Mr Escher of First Zurich Bank.

If we glance on to page 82 H(A)77/82, we can see that it's been compiled by Mr Eric W Fiechter who is one

of the managing partners and the counsel at Secretan Troyanov. Do you see his signature on page 82?

A. Yes.

Q. Then turning back to page 75 H(A)77/75, we can see that Mr Fiechter says that on 17 June 2004, this is the first paragraph, he was requested by Mr Escher to review the possibility of First Zurich Bank opening a bank account, the beneficial owner of the funds to be deposited on the account being Mr Patarkatsishvili. Do you see that?

A. Yes.

Q. Mr Fiechter says:

"You provided us with a brief description of the involved persons/background and of the transaction which would generate the funds that would be wired on to the account that the Bank may accept to open."

Do you see that?

A. Yes, I see that.

Q. So it's clear from that, is it not, Mr Streshinsky, that Mr Escher and Mr Fiechter have been in communication with each other and Mr Escher has provided Mr Fiechter with a brief description of the people involved, yes?

A. Yes.

Q. And I suggest that Mr Escher's brief description which he supplied to Mr Fiechter came from the conversations

that Mr Escher had previously had with you filling in the blanks on your compliance information memorandum.

That's right, isn't it?

A. That was one of the documents which I provided to Mr Escher.

Q. And the document which we saw you had provided included a number of blanks and you filled in those blanks with Mr Escher?

A. Well, can we go back to this document?

Q. We can. The document is page --

MRS JUSTICE GLOSTER: Where is the page where the blanks are filled in?

MR MASEFIELD: Page 95 H(A)77/95.

We don't have the blanks filled in in manuscript, my Lady. What I'm suggesting to the witness is that he explained to Mr Escher who the various parties involved were.

Because if we look at page 95, the compliance document you had prepared, that refers to people -- do you have page 95?

A. Yes.

Q. That refers to the people at the bottom of the page by way of initial only so there's reference to "BP", "RAA", "OVD". We've looked at that.

A. As you can see, this paper was provided when

Mr Fiechter's memorandum was already done.

Q. I'm not sure that's right, Mr Streshinsky, because --

A. Well, it says "draft 23 June" --

Q. It does.

A. -- and the opinion of Secretan Troyanov was June 23.

Q. Yes, and if you look over the page in Mr Fiechter's opinion to page 76 H(A)77/76, do you see he's referring to a second batch of documents?

A. Okay, yes.

Q. If you look down at the last bullet point, we see:

"Rusal Holdings Share Sale -- Compliance  
Information -- Transaction Structure ...  
(draft June 23...)."

So Mr Fiechter has seen --

A. Okay, so he included it.

Q. It has been included.

A. Yes, okay.

Q. What I'm suggesting to you, Mr Streshinsky, is that you filled in the blanks to Mr Escher over the telephone and Mr Escher then provided a brief description of the persons involved to Mr Fiechter, and that is what Mr Fiechter is referring to in the second paragraph on page 75 H(A)77/75. Do you think that is possible?

A. Second paragraph, it's "You provided us with a brief description...", yes. Well, it's possible that I have

filled the blanks for Mr Escher and he has provided that to Mr Fiechter.

Q. I'm grateful for that. In fact we'll come on to some email exchanges in a moment, Mr Streshinsky, which make it in fact perfectly plain that that is what happened, but let's stay with this memorandum for the moment. If we look further down this page, we can see that a list of documents has been provided to First Zurich including Mr Mishakov's diagram of the transaction and Mr Hauser's memorandum. Those are the first two bullet points in the first batch. Do you see that?

A. Yes.

Q. If we turn over the page to page 76 H(A)77/76, we can see that Secretan Troyanov have been also supplied with the second batch of documents including the contract dated 10 February 2000 and your compliance information. Do you see those documents?

A. Yes.

Q. Then in item 2, the heading "Results of our own factual research", we can see that Secretan Troyanov have commissioned their own factual research from a confidential source which they've attached as annex 1 to their opinion. Do you see that heading?

A. Yes.

Q. We have annex 1 to this report at pages 83 to 94 of the

bundle H(A)77/83.

A. Yes.

Q. We can see that First Zurich Bank have commissioned due diligence researches in relation to both Mr Patarkatsishvili, that's pages 84 to 92 H(A)77/84, and also in relation to Mr Berezovsky which we have at pages 93 to 94 H(A)77/93.

A. Yes.

Q. Do you see that?

Then turning back to the body of Mr Fiechter's opinion on page 76 where we were at H(A)77/76, we can see that in section 3 of his advice, Mr Fiechter has set out the general regulatory framework concerning Switzerland's effort to combat money-laundering. Do you see that?

A. Yes.

Q. And the legal analysis then runs through until page 80 of the bundle and we can then pick it up on page 80, page 6 in the internal numbering H(A)77/80.

A. Which page?

Q. Page 80 of the bundle, 77/80.

A. Yes.

Q. And there's a section 5 headed "Analysis". Do you see that, Mr Streshinsky?

A. Yes.

Q. We can see that Mr Fiechter says that:

"The first step of the analysis is to determine if you [by which he means Mr Escher of First Zurich Bank] may enter into business relations with Mr Patarkatsishvili."

Do you see that?

A. Yes.

Q. Then dropping down to the next paragraph, we can see that Mr Fiechter says:

"Based on the Annex 1 it would appear that the accusations directed against Mr Patarkatsishvili originate from Russia, and that they could be politically motivated. Based on this report it would also appear that Mr Patarkatsishvili would typically enter into the definition of the 'oligarch'.

"The initial phases of Mr Patarkatsishvili successful business career may raise uncomfortable questions. This however does not yet mean that Mr Patarkatsishvili was is linked to organised crime as defined by Swiss law. Under the Section entitled 'Alleged links to organised crime' of Annex 1 (points 2.12 and following) it would appear that certain allegations have been made concerning Mr Patarkatsishvili's links to organised criminal activities. It must be however noted that these

allegations either come from Russia (whose bias against Mr Berezovsky and Mr Patarkatsishvili is recognised by the Federal Research Division, Library of Congress) or are not documented.

"Another element that would tend to dismiss the allegation of links to criminal organisations is the fact that based on Annex 1, we are not aware of any freezing orders of Mr Patarkatsishvili's assets.

"It would appear based on our preliminary factual research, that you may wish to complete by interrogating alternative sources, that it is unlikely that Mr Patarkatsishvili is linked to criminal organisation within the meaning of [Article] 260 ... of the Swiss Criminal Code.

"Based on the foregoing, we do not believe that the general ban on certain clients would apply to Mr Patarkatsishvili."

Do you see all that, Mr Streshinsky?

A. Yes.

Q. Then we can see that Mr Fiechter goes on to say that the second step is to determine the degree of risk applicable to the transaction, and Mr Fiechter, as we can see, concludes that the risk should be considered as high. Do you see that, the last paragraph on the page?

A. Yes.

Q. Then over the page H(A)77/81, we can see that

Mr Fiechter says that:

"The third and final step, which is ... as important as the previous steps ... is to conduct the enhanced transaction due diligence..."

Do you see that?

A. Yes.

Q. Mr Fiechter then proceeds to analyse the transaction from what he calls a "helicopter view basis" to see whether the entire picture passes the plausibility test. Do you see that in the second paragraph?

A. Yes.

Q. Mr Fiechter also says that the entire transaction should be x-rayed. He then says:

"It must be pointed out that it seems that Mr Patarkatsishvili has been extremely helpful in providing complete available documentation. These transparency efforts are a factor when conducting a due diligence."

Do you see that passage?

A. Yes.

Q. Mr Fiechter then proceeds to analyse the various contractual documents with which he's been provided and we can see that Mr Fiechter starts by analysing the 2000 agreement and noting that party 1 of the agreement was

said to comprise Mr Abramovich, Mr Shvidler and Mr Patarkatsishvili, and he notes the 550 million sale price. Do you see that?

A. Yes.

Q. Mr Fiechter then turns on to consider the compliance information which you've provided and notes that Mr Patarkatsishvili participated in the purchase of the shares but that the agreement did not clearly define how the shares were to be allocated as between the purchasers.

Mr Fiechter says that:

"As a result none of the ... Shares were fully transferred to Mr Patarkatsishvili but were held by Mr ... Abramovich and his companies, on the understanding that a pro-rata portion is being held for the benefit of Mr Patarkatsishvili."

Do you see that?

A. Yes, I see it.

Q. Then Mr Fiechter notes that:

"In March 2000, Mr Abramovich... agreed with Mr... Deripaska to form Rusal..."

And that the producer shares were reorganised and consolidated into Rusal.

Mr Fiechter notes that they don't have any documentary evidence of that Rusal merger and the

restructuring of the shareholding.

A. Mm-hm.

Q. Then he says:

"It also appears that Mr Abramovich and Mr Patarkatsishvili have now agreed to settle the question of the ownership of the shares by transferring the shares representing 25% of Rusal Holdings.

"Based on the explanations provided to us this would mean that Mr Patarkatsishvili was entitled to half (50%) of Mr Abramovich's share in Rusal Holdings and therefore also half of the value of the 'Producer Shares'.

"This, in turn, would value Mr Patarkatsishvili initial contribution to the acquisition of the Producer Shares at 50% of the acquisition price, or USD 275,000,000 (50% of 550,000,000)."

Then turning over the page to page 8 of the internal numbering, page 82 of the bundle H(A)77/82, we can see Mr Fiechter says this:

"Upon receipt of the shares representing 25% of [Rusal Holding], Mr Patarkatsishvili intends to sell such shares to [Eagle Capital] for a consideration of USD 467,000,000.

"It must finally be noted that half of Mr Patarkatsishvili stake is held on a fiduciary basis in favour of Mr Berezovsky. The fiduciary agreement is

apparently not documented.

"Based on the foregoing Mr Patarkatsishvili's personal initial investment would therefore be USD 137,500,000 ... [and he does the maths] and his capital gain USD 104,000,000 ... [and again he does the maths]."

Do you see that, Mr Streshinsky?

A. I see that.

Q. So what Mr Fiechter is saying on page 8 of his opinion is that First Zurich Bank should only accept about half of the Rusal sale proceeds by way of Mr Patarkatsishvili's personal initial investment because the other half, he understands, belongs to Mr Berezovsky. That's what he's saying here, isn't it, Mr Streshinsky?

A. Apparently so.

Q. Let me ask you this, did you provide Mr Escher with the information that we see on the second paragraph of this page, namely that it must finally be noted that half of Mr Patarkatsishvili's stake is held on a fiduciary basis in favour of Mr Berezovsky?

A. No. All I have provided Mr Escher with is the batch of the documents which is listed here. It was the first batch and the second batch. So first batch included the memorandum of Paul Hauser and the original transaction

documents which included parties B1, B2, and then the second batch as well.

Q. So you never had a conversation, you say, with Mr Escher in which you explained that half of the funds were going to flow through to Mr Berezovsky?

A. I don't remember that.

Q. Well, we'll come on to the documents in a moment, Mr Streshinsky. You see the information that is referred to in Mr Fiechter's advice is not contained in either of the annexes which is attached to his advice. We've been through it very carefully and there's no mention of that information there.

A. Excuse me?

Q. The information that we see in the second paragraph of page 8 relating to Mr Berezovsky and the fiduciary arrangement in his favour is not contained in either of the annexes that were attached to Mr Fiechter's advice, the confidential information that Mr Fiechter had commissioned.

A. Well, you know, I did not know Mr Fiechter, I did not know that Mr Escher would talk to Mr Fiechter, and I didn't know what information Mr Escher gave to Mr Fiechter.

Q. Well, we'll see what you did say to Mr Escher and what he passed on to Mr Fiechter in a moment.

Can you turn on, please, within bundle H(A)77 to page 201 H(A)77/201. We can see here a string of three emails passing between yourself and Mr Escher of First Zurich Bank on 24 and 25 June 2004. I'd like to pick it up with the email which is first in time, which we have at the bottom of page 202 H(A)77/202. If you turn to that, do you see an email towards the bottom of the page which was sent by Mr Escher to you on 24 June 2004?

A. Mm-hm.

Q. We can see Mr Escher writes:

"Dear Ivan, I am very glad to be approached with your transactions and I am ready to also make the appropriate investment i.e.hiring the best lawyer(s) in order to properly structure the transactions within the frame of our rules and regulations. I am also bound to create innovative solutions on this basis.

"It is on the other hand also important that we know the true story from the very beginning in order to be efficient. The lawyers should not get suspicious, we need them on our side. I think there is still a chance to fix the transaction but please be prepared to put everything on the table when we meet on Tuesday at 9 am in our offices."

A. Mm-hm.

Q. Can I ask you this, Mr Streshinsky, why was it that the lawyers were getting suspicious? Do you remember that?

A. I did not know about the involvement of the lawyers until I get the memorandum.

Q. Well, you got the memorandum we've seen on 24 June 2004.

A. Yes.

Q. What Mr Escher is telling you here is that the lawyers are getting suspicious. Do you recall why the lawyers were getting suspicious, Mr Streshinsky?

A. No.

Q. Was it because you were now telling them, contrary to what they had been told previously, that Mr Berezovsky in fact had no interest in this transaction?

A. Well, maybe it was because they received first batch of documents with two beneficiaries, then the second batch of documents with the one beneficiary.

Q. Let's follow this email chain through a little further, Mr Streshinsky. If we turn back to page 201 H(A)77/201, we can see that you wrote back to Mr Escher the same day saying that you had been very open from the beginning and that you had told Mr Escher the whole story and sent him all the documents you had available. Do you see that?

A. Yes.

Q. So you had spoken to Mr Escher and you had told him the

whole story, yes?

A. Yes.

Q. Then if we go over the page to the top of page 202 we can see you say this:

"You on the other hand have confirmed to me that the transaction can be effected by the Bank for the full amount, including the flow-through funds after I have specifically explained you the consequences for me of the unjustified answer."

Now, just pausing there, Mr Streshinsky, the problem that you mention here arises out of the point which we've just seen Mr Fiechter was making on page 8 of his opinion, namely that Mr Fiechter had said, given the fiduciary arrangement with Mr Berezovsky, Mr Patarkatsishvili's initial investment could only be for about half the Rusal sale proceeds. Do you remember that point, Mr Streshinsky?

A. Yes, I remember that point from the -- yes.

Q. We have it back on page 82 of the bundle.

A. Yes.

Q. What you are referring to in your email which we have at page 202 H(A)77/202 is the fact that you had understood that First Zurich Bank could receive the full amount including the flow-through funds, and by flow-through funds you meant the 50 per cent of the

Rusal proceeds that you understood would then flow through Mr Patarkatsishvili's account to Mr Berezovsky.

A. I didn't understand that. I think that I was making reference to the full amount, so which -- and part of this amount Mr Fiechter called as flow-through funds.

Q. Can you please explain to the court what the flow-through funds were, Mr Streshinsky, that you were referring to in this email?

A. Mr Fiechter referred to the flow-through funds probably as the funds which have to be transferred by -- from Mr Patarkatsishvili to somebody else, so -- and I --

Q. I don't think Mr Fiechter --

MRS JUSTICE GLOSTER: Let him finish his answer, please.

MR MASEFIELD: Sorry.

A. So I was insisting that the -- that we need to talk about the ability to hold the full amount on the account of Mr Patarkatsishvili.

Q. If we turn back to page 82 in the bundle, Mr Streshinsky H(A)77/82.

A. Yes, I am on page 82.

Q. Mr Fiechter doesn't in fact refer to the flow-through funds at all. What he talks about is the fact that:

"Mr Patarkatsishvili's personal initial investment would therefore be ..."

And then he does two sums which broadly add up to

about half of the Rusal sale proceeds. The reference to the flow-through funds comes for the first time in your email that we have at page 202.

A. Well, we must have discussed with Mr Escher about this and I told him that the full amount should be on the account of Mr Patarkatsishvili.

Q. And what did you tell Mr Escher about the flow-through funds, Mr Streshinsky?

A. I -- actually I told to Mr Escher that Mr Patarkatsishvili is the beneficiary and he is to receive full amount. So this approach which Mr Fiechter was using was incorrect.

Q. You say at the top of page 202 H(A)77/202 that you had understood from Mr Escher that the transaction could be effected by the bank for the full amount including the flow-through funds. For the last time, what were the flow-through funds that you were referring to, Mr Streshinsky?

A. Look, I -- that happened a long time ago so I assume that Mr Escher and I discussed this approach, that part of the amount should be -- should stay on the account and part of the amount should go to Mr Berezovsky as alleged here in the -- Fiechter's memo. I told Mr Escher that this flow-through fund should not be a flow-through fund, it should be a full amount set on

the account of Mr Patarkatsishvili.

- Q. So you are saying that you believed that you had a conversation with Mr Escher, you discussed the approach, and that part of the money should go to Mr Berezovsky, as alleged here in Mr Fiechter's memo?
- A. Well, I disagreed with that. That's why I was so unhappy with Mr Escher and Mr Fiechter.
- Q. What you are referring to in the email which you've just looked at is the fact that you had understood that First Zurich Bank could receive the full amount, including the flow-through funds, and your understanding was, as you just confirmed, that 50 per cent would flow through from Mr Patarkatsishvili's account to Mr Berezovsky?
- A. No, that was not my understanding, sorry.
- Q. Whose understanding about flow-through do you say that was?
- A. That was the understanding of Mr Fiechter, that 50 per cent of the amount which would go on the account would be for the benefit of Mr Berezovsky.
- Q. You don't correct that. What you say is -- do you say that's a misunderstanding, Mr Streshinsky?
- A. That was a misunderstanding by Mr Fiechter.
- Q. Well, you don't try and correct that, do you, at page 202? You're not saying he's got the wrong end of the picture, there are no flow-through funds. On the

contrary, what you are saying at the top of page 202 is that the transaction can be effected for the full amount including the flow-through funds?

A. Well, that probably must have been the term which we used when we have discussed it with Mr Escher, because he was under the impression that there is a flow-through fund.

Q. Let's look to see what happens next. You go on to say in your email H(A)77/202:

"On this basis I have confirmed to Mr A that the transaction can be done. He has confirmed it to B and started active negotiations with RA and OD. As you can imagine these gentlemen are not the least influential people in Russia."

Do you see that, Mr Streshinsky?

A. Yes.

Q. The reference to Mr A was a reference to Mr Anisimov, wasn't it, Mr Streshinsky?

A. Yes.

Q. And the reference to RA was a reference to Mr Abramovich, wasn't it?

A. Yes.

Q. The reference to OD was a reference to Mr Deripaska?

A. Yes.

Q. And it is Mr Abramovich and Mr Deripaska whom you are

describing as "not the least influential people in Russia", yes?

A. Yes.

Q. You then go on to say:

"So now I am personally in a disastrous situation as a person who has given untrue information. Do you think I can explain to these most powerful people about the capital gains or that signed by them agreements are not a proof of legitimacy of the transaction?"

Now, what consequences were there that you feared might follow, Mr Streshinsky, if you acted in a way which displeased these powerful people, Mr Abramovich and Mr Deripaska? What was the purpose of --

A. Well, that was a way to push Mr Escher to actually approve the transaction. I had no responsibility towards Mr A, Mr Abramovich, or Mr Deripaska. Mr Abramovich or Mr Deripaska.

Q. So the personally disastrous situation that you were contemplating here, you say that was just padding in your email?

A. It was exaggeration.

Q. Looking back at your email, we can see that you go on to say this:

"Cyrill, I do not like allegation that the transaction fails because I have not disclosed to you

all the information -- I have put everything [on] the table and explained everything to the lawyer when I had chance to."

So it appears that you had spoken to Mr Fiechter as well?

A. That's possible, yes.

Q. "I have told you that we have no influence over these people and we do not know what documents they will give."

And you had put everything on the table with Mr Escher and Mr Fiechter, hadn't you, Mr Streshinsky?

A. Well everything that was related to the transaction, yes.

Q. And as part of putting everything on the table with Mr Escher, you had told him about the fact that Mr Berezovsky also had a 50 per cent interest in the Rusal proceeds?

A. No.

Q. Well, let's come back to that in a moment.

A. I might have told him initially when I sent the first batch that Mr Berezovsky was involved, because the first batch of documents included Mr Berezovsky as B1 or B2.

Q. So you think you might have told Mr Fiechter then that Mr Berezovsky was involved?

A. Then, yes, I might have told him, yes.

- Q. And on 24 June when you sent this email, you appear still to be saying that the funds would flow through from Mr Patarkatsishvili's account to someone else, you're not correcting that impression, are you?
- A. Well, I thought it was enough to send a full description of the deal and, you know, all the documents which we had at the time.
- Q. Let's come on to the next email in a moment, but just finishing this email off, you say:
- "So I think it is your turn to be consistent and put everything in front of me: is this transaction approved or not?"
- "I am ready to meet any time, but I just don't see how with this approach of the lawyer and given situation we can satisfy his requests.
- "Please give me the answer in writing."
- A. Yes, I must comment that the approach which lawyer has taken was the initial -- you know, initial investment and split of proceeds I thought was totally irrelevant in that case.
- Q. Well, if we turn back to page 201 H(A)77/201, we can see the response that you get back later the same day from Mr Escher.
- A. Yes.
- Q. He writes to you and he says:

"Dear Ivan, in Fiechter's analysis ([page number] 8) it is clearly stated which part of the amount can be held with us."

Do you see that?

A. Mm-hm.

Q. That is clearly a reference to internal page 8 of Mr Fiechter's analysis which we have back on page 82 H(A)77/82, isn't it, Mr Streshinsky?

A. Yes.

Q. It's the reference to Mr Fiechter advising that Mr Patarkatsishvili's initial investment could only be for 50 per cent of the funds received, yes?

A. Well not only 50 per cent but the capital gain.

Q. Yes. And then looking back at the --

A. It's much less than 50 per cent.

Q. Well, when you add the capital gain and the initial investment together, it comes to about 50 per cent of the Rusal proceeds.

But looking back at the email which we have at page 201 H(A)77/201, Mr Streshinsky, we can see that Mr Escher says immediately afterwards:

"I have given the same explanations to Fiechter as I have received from you. As far as the flow through is concerned Fiechter was not absolutely saying that we should not handle it but that it was rather better to

settle it outside the bank."

A. Where is it?

Q. It's in the email from Mr Escher to yourself, the second sentence.

A. "I suggest we are sitting together ..."

Yes?

Q. No, I'm in the first paragraph still. He refers firstly to Mr Fiechter's analysis, page 8, and then he says:

"I have given the same explanations to Fiechter as I have received from you."

And he goes on to talk about the flow-through funds.

So what Mr Escher is saying here, Mr Streshinsky, in black and white, is that he has given the same explanations to Mr Fiechter as he received from you.

Correct?

A. Mm-hm. Oh, he's saying that, yes.

Q. And the explanations he's referring to are the explanations that we see on page 8 of Mr Fiechter's analysis H(A)77/82, namely the explanation in the second paragraph that half of Mr Patarkatsishvili's stake is held on a fiduciary basis in favour of Mr Berezovsky?

A. Yes.

Q. And you had provided that explanation to Mr Escher, and what he is saying in his email is he has provided that

same explanation to Mr Fiechter.

A. Well, that's Mr Escher saying what he provided to Mr Fiechter, Escher saying what he provided to Mr Fiechter. I don't know what he provided to Mr Fiechter.

Q. You don't? But what he is saying, we can all see it, is that the explanation came from you. Do you dispute that?

A. Yes, he is saying that.

Q. Do you dispute that?

A. I don't dispute that.

Q. You don't. So you did provide the explanation to Mr Fiechter that there was a fiduciary relationship with Mr Berezovsky and that half of the funds would flow through?

A. No, I did not provide this explanation. I might have initially provided this explanation when the full set of documents included B1 and B2, but not at the stage where, you know, where I knew exactly how the deal was structured.

Q. Well, you provided the information to Mr Fiechter and Mr Escher after the conversation you're referring to because the information that you provided was on 23 June 2004, whereas the conversation with Mr Abramovich's representatives was on 17 June 2004.

A. Yes.

Q. You see, Mr Streshinsky, what you were saying to -- what you had said to Mr Escher and what you had said to Mr Fiechter was that there was a fiduciary relationship with Mr Berezovsky and that only half of the funds could flow -- sorry, that the full amount should be paid into Mr Patarkatsishvili's account but then half would be paid on to Mr Berezovsky, and that's what you had told them, yes?

A. Well, that is possible, yes. That is possible.

Q. Well it's not possible; it's what these documents strongly suggest.

MRS JUSTICE GLOSTER: Well, that's a matter for me, isn't it?

MR MASEFIELD: It is, my Lady.

What we certainly don't see in these documents is your ever correcting that information, saying there was no flow-through funds?

A. Well, I think it's important to understand that I was, ever since 3 June when I saw the articles, and when we started to discuss this transaction, I thought that it might be possible that Mr Berezovsky is either a beneficiary or behind Mr Patarkatsishvili, and I --

MRS JUSTICE GLOSTER: Did you discuss that concern with Escher?

A. I might have discussed it. I don't remember it.

I might have discussed it, but that's likely, that I discussed it.

I did not know the complete truth until I spoke to Mr Patarkatsishvili himself.

MR MASEFIELD: I'll come on to your conversation with Mr Patarkatsishvili in a moment, Mr Streshinsky, but as at 25 June when you are communicating with Mr Escher in this email string, it's quite clear that your understanding was that 50 per cent of the funds would flow through to Mr Berezovsky. Do you accept that?

A. That's possible.

Q. And you were now, as you put it, in a personally disastrous situation where you had told Mr Anisimov and others that the First Zurich Bank would accept the entire Rusal sale proceeds, but now, because of the concerns that Mr Fiechter had raised about the funds flowing through to Mr Berezovsky, it looked as if the Zurich Bank would only receive half of the Rusal sale proceeds, correct?

A. No, I said that, you know, I was concerned that Mr -- so we did not have an account for Mr Patarkatsishvili to receive money in, so it was important for me to have an account. So when I referred to a personally disastrous situation, I said that I promised that we will open an

account for Mr Patarkatsishvili in First Zurich Bank, and now it turns out that that's a problem.

Q. And what happened next, Mr Streshinsky, is that you tried to go through the whole story again but this time you air-brushed Mr Berezovsky completely out of the picture in the hope that the First Zurich Bank could be persuaded to accept the entire Rusal proceeds, do you remember that?

A. Well, I think we need to take it in connection with the negotiations we had with Mr -- with Rusal people and Abramovich people about the documents.

Q. You'd had that meeting with the Abramovich people back on 17 June 2004, correct?

A. Yes.

Q. And this correspondence is 25 June 2004?

A. That's right. Well, there were some drafts circling around so we need to look at that.

Q. Let's come on to see the compliance information that you then provided to the First Zurich Bank.

Can you turn on in the bundle to page 178.

A. That was -- okay.

MRS JUSTICE GLOSTER: Can we put this page away now or are you coming back to it?

MR MASEFIELD: We can, my Lady, the string of emails, unless your Lady had further questions.

A. 178?

Q. 178 H(A)77/178. You should see there an email that you sent to Mr Escher later on 25 June, and it says:

"Dear Cyrill.

"Pls find attached statement of facts and our analysis re the transaction.

Pls decide whether you want to send this to the lawyer."

Do you see that?

A. Yes.

Q. And we have the revised version of compliance information at page 204 in the bundle, if you want to turn that up (H(A)77/204.

A. Page 204.

Q. Do you there a document headed "RH Share Transaction -- Summary of Background and Compliance Position 025 June 2004"?

A. Yes, I see that.

Q. In the first paragraph, we can see that you say this:

"In connection with our recent discussions, we would like to attempt to explain the background to the transaction and our position regarding compliance in more detail."

Do you see that?

A. Yes.

Q. And then in section 1, you purport to set out the factual background, and you say this, in the third paragraph down:

"Then, at a meeting between BP and Vasiliy Anisimov, BP suggested that shareholders of Sibneft could also be potential buyers, and that the sellers should also open discussions and seek offers from them."

A. Yes.

Q. "Negotiations were commenced and were conducted with the active support and intermediation of BP. As a result, the shareholders of Sibneft were able to make a better offer than SUAL, and the sellers decided to sell to the shareholders of Sibneft. The shareholders of KrAZ have decided that, together with this sale, it would also make business sense to sell their shares of ... Bratsk...

"As a result, on 10 February 2000, the parties signed an Agreement (original available) by which the shareholders of Sibneft -- RAA, BP and ESh, agreed to purchase shares of the aforementioned companies at a price specified in that agreement."

Do you see that, Mr Streshinsky?

A. Yes.

Q. So whereas in your first compliance information sheet which we have at pages 95 and 96, you had said that the

KrAZ assets were acquired by BP, RA and others, you have now identified only one such other, namely Eugene Shvidler, and you have omitted to mention anybody else.

A. Yes.

Q. Do you have any explanation for that, Mr Streshinsky?

A. Because there were no one else -- there was no one else.

Q. And you say that despite what we see had been said about the flow-through funds and the fiduciary arrangement with Mr Berezovsky?

A. Well, look, I think that the personal relationship between Mr Patarkatsishvili and Mr Berezovsky had nothing to do with the acquisition of Sibneft -- sorry, acquisition of Krasnoyarsk assets. So that would mean that even if Mr Berezovsky had an agreement with Mr Patarkatsishvili that they share the profit from certain ventures, you know, he was -- doesn't mean that he was the purchaser.

Q. You say the personal relationship between Mr Patarkatsishvili and Mr Berezovsky; were you aware of a personal relationship between Mr Patarkatsishvili and Mr Berezovsky relating to the aluminium assets?

A. It was publicly available information that they were friends.

Q. Friends or partners?

A. And partners in some ventures.

Q. And partners, I'm grateful.

You say you were aware of that, were you?

MR MALEK: Let him finish his answer, it's overtalking the whole time.

MR MASEFIELD: Sorry, Mr Malek.

MRS JUSTICE GLOSTER: Do you want to add anything else to your answer?

A. I mean, I was aware from the public sources that Mr Berezovsky and Mr Patarkatsishvili were associated persons, so they dealt with each other, they were friends, as far as I was aware.

MRS JUSTICE GLOSTER: And what, were involved together in certain business ventures? Were you aware of that?

A. Yes, I knew that, for example, Mr Berezovsky and Mr Patarkatsishvili were the shareholders of ORT, and Mr Patarkatsishvili was the -- held executive position in the television. I was also aware of their relationship in Logovaz, I knew that they were partners, or I heard that they were partners.

MR MASEFIELD: We'll come on to some documents related to that in a moment, Mr Streshinsky. But you're also aware, I think it follows from your previous answer, that they were partners in relation to the aluminium assets as well?

A. I was not aware of that. I suspected that, that Mr Berezovsky might have been behind Mr Patarkatsishvili.

Q. You say you suspected it, but we'll come on to some documents that demonstrate that you were in fact aware of it.

Now, the others that you had previously referred to you've now identified as just Mr Shvidler. Let me ask you once again, why was there so much sensitivity in revealing Mr Shvidler's identity?

A. There was no sensitivity.

Q. You see, it makes no sense, Mr Streshinsky, that there had been concerns about naming Mr Shvidler in your earlier memorandum. What would make sense, however, would be a reluctance on your part to name Mr Berezovsky as one of the purchasers, particularly when you had been told by Mr Abramovich's representatives that they did not want to do anything to further document Mr Berezovsky's beneficial interest. That's right, isn't it?

MRS JUSTICE GLOSTER: Well, there are a lot of questions there. Can you just put one question at a time, Mr Masefield.

MR MASEFIELD: My Lady, it's more by way of a proposition actually than a question so why don't I move on to --

MRS JUSTICE GLOSTER: Well, you're here to cross-examine, not to put propositions. Can you put the question in a simple form so that he can answer it, please.

MR MASEFIELD: The reason why you were reluctant, Mr Streshinsky, to name the others in the earlier compliance document was because the others that you had in mind included Mr Berezovsky?

A. I disagree with that. I had -- I've seen the agreement of 10 February, there were only three names in this agreement: Abramovich, Patarkatsishvili and Shvidler.

Q. I don't think we need to work our way through the entirety of this further memorandum that you produced, but we can pick it up on page 205, Mr Streshinsky, in the third paragraph H(A)77/205. We can see you say this:

"Since BP was subject to political persecution, the parties could not document this deal at an earlier date, whereas RA's wish remains to fully and finally settle his relationship with BP and not to continue having a joint business, so as not to create political risks in RA's Russian business dealings. This is also a factor causing the difficulties of obtaining documents from RA's companies, since these documents partly do not exist, and partly are held by RA and his companies who are refusing to provide copies."

- A. Mm-hm.
- Q. Now, where had that information come from, Mr Streshinsky?
- A. Well, I mean, this was very close group, they didn't disclose any documents unless they had to.
- Q. Who was it that had explained to you that the reason why Mr Abramovich was reluctant to document his relationship with Mr Patarkatsishvili was due to Mr Patarkatsishvili's political persecution?
- A. That was my assumption at the time.
- Q. So that hadn't been explained to you, it was just an assumption?
- A. Yes.
- Q. But you felt it appropriate to put that assumption into compliance information, did you?
- A. Yes -- well, because that was based on the factual information around Mr Patarkatsishvili's status --
- Q. Are you sure --
- A. That was the case.
- Q. Are you sure that Ms Panchenko had not explained that to you in her telephone conversation of 17 June 2004?
- A. I told you, I don't remember the conversation.
- Q. Do you know whether Mr Escher did in fact provide this updated compliance information to his lawyers?
- A. I don't know.

Q. You see, what we do know, Mr Streshinsky, whether they received this updated compliance information from you or not, is that Secretan Troyanov were by now deeply suspicious of the transaction and they wanted a deposition from Mr Anisimov setting out the full factual background.

A. Mm-hm.

Q. Do you remember that?

A. I don't remember that.

Q. Perhaps we could just turn that up, Mr Streshinsky. You can put bundle H(A)77 away and please could you now turn up bundle H(A)78. If you turn in that bundle to page 147 H(A)78/147.

A. Which page, please?

Q. Page 147.

A. Yes.

Q. Do you see there an email at the top of the page from yourself to Mr Fiechter?

A. Yes.

Q. Dated 1 July 2004, yes?

A. Mm-hm.

Q. We can see that you're now in direct contact with Mr Fiechter and you write to him saying:

"Dear Mr Fiechter.

"The draft of Mr A's deposition is not urgent as we

discussed it yesterday. I have prepared it and able to send it to you in Russian. However since our translators have been translating all transaction docs yesterday and today I was not able to send you the translation. If it is ok to send it in Russian -- please advise, I'll do it immediately."

Do you see that?

A. Yes.

Q. Can you confirm that the reference to Mr A was a reference to Mr Anisimov?

A. That's very likely, yes.

Q. And please can you confirm that what Mr Fiechter was looking for from Mr Anisimov was a deposition confirming the factual background to the transaction?

A. That is possible.

Q. We know that around this time you had Mr Fiechter's 8-page opinion, together with its annexes on Mr Patarkatsishvili and Mr Berezovsky, translated into Russian. Do you remember that?

A. That's possible, yes.

Q. I don't think we need to turn those up but for the record those documents are to be found at H(A)77, pages 181 to page 200 H(A)77/181.

A. Mm-hm.

Q. The reason I suggest, Mr Streshinsky, but tell me if I'm

wrong, that you had Mr Fiechter's advice translated into Russian was so that you could provide it to Mr Anisimov and explain to him why it was necessary for him to make a deposition?

A. That's possible, yes. That's possible.

Q. Do you recall providing Mr Fiechter's advice to Mr Anisimov around this time, Mr Streshinsky?

A. No, I don't.

Q. Do you recall speaking to him about the concerns that had been raised by First Zurich Bank?

A. I might have spoken to him --

MRS JUSTICE GLOSTER: Do you think you could possibly turn around and face me? I know it's difficult for you. It's just that I get a better reaction to your answers if I can see you face to face.

MR MASEFIELD: You must have raised these matters with Mr Anisimov, mustn't you, Mr Streshinsky, not least so that you could work with him on his draft deposition?

A. Yes, I possibly raised this. I just don't remember.

Q. I'm grateful.

Then if we turn on in the bundle to page 169

H(A)78/169.

A. 169, yes.

Q. We can see there are two further emails which passed between you and Mr Fiechter, do you see those,

Mr Streshinsky?

A. Yes.

Q. And looking at the bottom of the page, we can see that late on 1 July 2004 Mr Fiechter sent you a further email chasing for the documents as soon as possible in English to allow him to make a final evaluation, do you see that?

Bottom of page 169.

A. 169.

Q. "... would help if we had all documents as soon as possible in English to make the final evaluation. Will we get something from the auditors? If [so] what?"

A. What page, please?

Q. 169. You should have an email at the bottom from yourself.

A. Yes.

Q. To yourself, sorry, from Mr Fiechter?

A. Yes.

Q. Saying:

"... would help if we had all documents as soon as possible in English to make the final evaluation."

Do you see that?

A. Yes.

Q. Then if we look back up the page, Mr Streshinsky, we can see you've written back saying:

"Dear Mr Fiechter. Unfortunately, we have no news regarding the documents from auditors.

"The deposition of Mr A is being translated."

A. Yes.

Q. But we don't know what Mr Anisimov's deposition was or was not going to say because no drafts of it, or even a Russian version, have been disclosed. What we do know, Mr Streshinsky, is that about this time you took the decision to switch the transaction from the First Zurich Bank to the Parex Bank in Latvia. Indeed we can see that from the next document in the bundle, page 170, which is an email from yourself to Alexander Kay at Parex Bank forwarding him a draft fiduciary agreement.

Who was Alexander Kay, Mr Streshinsky, at Parex Bank?

A. I don't remember.

Q. Please can you explain to the court exactly why the switch was made to the Parex Bank at around this time, Mr Streshinsky?

A. Well, I was responsible for the completion of the transaction so I had to open the account. I've seen that the approach which Mr Fiechter and Mr Escher took was very conservative and it required a lot of documents. For instance, it required documents from Mr Deripaska about the source of funds, the audited

documents about the companies, the Rusal and the holding companies. It required the documents which would explain the initial amounts which were invested by Mr Abramovich to buy KrAZ. And I just thought that it was simply impossible to get all these documents.

I tried but I could not get them. So -- and I decided that, you know, with this approach we will not be able to complete the transaction and open the account, so I had to switch to another bank.

Q. Did you ever finalise Mr Anisimov's written deposition?

A. Unfortunately I don't remember that.

Q. I'm grateful.

Now, you tell us, Mr Streshinsky, that in early July 2004, yourself and Mr Faekov travelled to Georgia to meet with Mr Patarkatsishvili and to discuss the transaction with him and to take him through the draft transaction documents, correct?

A. That's correct.

Q. And you also tell us, Mr Streshinsky, that it was around this time that the draft transaction documents were being amended. Do you remember that?

A. Yes.

Q. They were being amended so as to include a warranty from Mr Patarkatsishvili that he was the only ultimate beneficial owner of the 25 per cent stake in Rusal?

A. Yes.

Q. Together with a warranty that he was not holding for the benefit of anyone else?

A. That's correct.

Q. And you tell us that it was clear to you that you needed to obtain direct confirmation from Mr Patarkatsishvili that what he was being asked to warrant was correct?

A. Exactly. I thought that it was important to talk to Mr Patarkatsishvili about that because if that was untrue, then his liability could exceed the amount of consideration.

Q. I'm grateful.

And you say that both yourself and Mr Faekov saw Mr Patarkatsishvili in Georgia on Friday 9 July 2004?

A. That's correct.

Q. You say that you and Mr Faekov flew from Moscow to Tbilisi, then from Tbilisi to Batumi, and then you travelled by Mr Patarkatsishvili's helicopter to Ureki, to Mr Patarkatsishvili's private dacha. That's paragraph 129 of your statement F1/02/89.

A. That's correct.

Q. You say that once there you had a meeting with Mr Patarkatsishvili "underneath a covered area on the seashore", on which you sat down with him and went through the draft documents?

A. That's correct.

Q. You say that you were alone when you had this meeting with Mr Patarkatsishvili?

A. Yes.

Q. So Mr Faekov was not present at this particular meeting on the seashore?

A. He was sitting separately.

Q. Could he hear what you were saying?

A. I don't think so.

Q. And you say that during the course of this meeting with Mr Patarkatsishvili, he confirmed to you that he was the sole beneficial owner of the shares and had been since March 2000?

A. That's correct.

Q. And you say you also remember explaining to Mr Patarkatsishvili that "he could have potential liability if Mr Berezovsky brought a claim"?

A. Exactly, yes.

Q. And then you say that following this meeting and the dinner with Mr Patarkatsishvili, both you and Mr Faekov flew back to Moscow overnight and you then believe you updated Mr Anisimov on the position?

A. Yes.

Q. You see, the oddity about what you're telling us, Mr Streshinsky, is this: according to you, this was

a vitally important meeting, you needed direct confirmation from Mr Patarkatsishvili that he was indeed the sole beneficial owner of the Rusal shares, yes?

A. That's correct.

Q. And you had travelled all the way out to Georgia with Mr Faekov to get this confirmation from Mr Patarkatsishvili, yes?

A. Not only.

Q. Sorry?

A. Not only.

You see that this was the only time I saw Mr Patarkatsishvili prior to the transaction so I had to have a chance to explain to him how the transaction is structured and what risks he had.

Q. I understand. And Mr Faekov had travelled with you from Moscow to Tbilisi to Batumi, and from Batumi via helicopter to Mr Patarkatsishvili's private dacha?

A. Yes, we worked -- I believe we worked on 8 July in some office which was given to us by Mr Patarkatsishvili's assistant.

Q. And despite travelling all this way with you, and despite the obvious importance of this meeting, you tell us that Mr Faekov was not present, within earshot, when you had this critical discussion with Mr Patarkatsishvili?

A. Yes.

Q. And indeed you say this important discussion with Mr Patarkatsishvili took place with you alone?

A. Yes.

Q. My question for you is this, Mr Streshinsky: why, having travelled all this way with you for this vitally important meeting, why was it that Mr Faekov was not present during the meeting?

A. Well, Mr Faekov worked with me on 7 and 8 July in Georgia, he worked on the drafts, and he travelled with me to Patarkatsishvili in case some legal explanations would be required.

Q. Why, if this meeting was so important, Mr Streshinsky, did you not seek to document it then and there or report it to Mr Faekov and get him to draw up an attendance note?

A. Well, we don't usually draw up attendance notes.

Q. Why was it when you reported back on the matter to Mr Anisimov the following day you did so verbally, Mr Streshinsky, not by way of an email or an attendance note or a letter to Mr Anisimov?

A. I never sent emails to Mr Anisimov.

Q. Surely, given the importance of this meeting, Mr Streshinsky, you would have wanted Mr Faekov to be present as a witness, and you would have wanted to

document it by way of an attendance note or in subsequent correspondence?

A. Well, I have documented it by way of sending to Mr Patarkatsishvili the simplified structure of the deal and the risk memo which he has signed.

Q. We're coming on to that, but you didn't document what actually was said on this occasion in the course of your meeting with Mr Patarkatsishvili, did you?

A. I did not.

Q. You see, the further oddity, Mr Streshinsky, is this: just over a year later, in July 2005, in interviews held with Mr Berezovsky's lawyers, Mr Patarkatsishvili made it plain that in relation to the 25 per cent stake in Rusal he was not acting alone, and that Mr Berezovsky was also a beneficial shareholder?

MRS JUSTICE GLOSTER: Well, was Mr Streshinsky present at those meetings?

MR MASEFIELD: He wasn't, my Lady. But what I'm seeking to -- well, let me put this to the witness.

You say that on the occasion when you met him alone in the beach in Georgia, Mr Patarkatsishvili happily confirmed to you that he was the sole beneficial owner of the 25 per cent stake in Rusal?

A. Yes.

Q. That's really your evidence?

- A. That is.
- Q. You see, I have to say you're not telling the truth on this, Mr Streshinsky. And what Mr Patarkatsishvili in fact confirmed to you on this occasion in private was that he was prepared to warrant that he was acting alone if that meant that the Rusal sale transaction would go through, even though it did not reflect the true position.
- A. That is not correct. I disagree with you.
- Q. That was why, Mr Streshinsky, following this meeting with Mr Patarkatsishvili, you asked Mr Faekov of Akin Gump to draw up a risk analysis document explaining to Mr Patarkatsishvili the consequences for him if his warranty, that he was acting alone in relation to Rusal, turned out to be false.
- A. Well, I think the draft of this document was prepared during our stay in Georgia, prior to our visit to Mr Patarkatsishvili.
- Q. But it wasn't produced and it wasn't signed by Mr Patarkatsishvili then and there, it was worked upon and it was only sent to Mr Patarkatsishvili for his signature following this meeting in Georgia, correct?
- A. Yes, correct.
- Q. If you could please be given bundle H(A)81 and turn within it to page 195T H(A)81/195T.

A. Which page, please?

Q. 195T. You see here, Mr Streshinsky, an email from yourself to Mr Patarkatsishvili's administrative assistant, Paata, yes?

A. Yes.

Q. We can see that you're attaching various documents from Mr Patarkatsishvili to read and approve, yes?

A. Yes.

Q. In particular, you say in your covering email that it is most important to get Mr Patarkatsishvili to sign the document, transaction approval, 12 July 2004. Do you see that?

A. Yes.

Q. This was the document, wasn't it, Mr Streshinsky, in which Mr Faekov and yourself explained to Mr Patarkatsishvili what his exposure might be, amongst other things, in the event that his warranty that he was acting alone was false?

A. Yes.

Q. Let's turn that document up, if we go back in the bundle to page 181 for the English version. There's a Russian version which Mr Patarkatsishvili signed at 185, but if you're happy to work from the English, let's work from that H(A)81/181.

A. Yes.

- Q. This is the document that you were attaching to your email and you were asking for Mr Patarkatsishvili to sign and approve?
- A. Yes.
- Q. The first two pages describe the deal structure and outline the effect of the main contractual documents, correct?
- A. Correct.
- Q. Then over the page H(A)81/182 and just above the space for Mr Patarkatsishvili's signature, we can see this:
- "The basic risks associated with the given transaction are adduced as Appendix 1."
- Do you see that?
- A. Yes.
- Q. You wanted Mr Patarkatsishvili to sign off on this because Mr Patarkatsishvili had indicated to you that the warranty that he was being asked to sign in relation to Mr Berezovsky was false and you therefore wanted to ensure that Mr Patarkatsishvili understood the risk he was running?
- A. No.
- Q. Well, let's have a look at the document.
- A. Maybe I should explain why I asked him to sign that.
- Q. Please do.
- A. I wanted basically to be sure that Mr Patarkatsishvili

understands the deal structure because he was not reading the full set of documents, and that he also understands the risks involved with these transactions. I was basically covering my position so that, later on, nobody comes to me and says to me that I did not explain that, and that's why there is a problem.

Q. You were covering your position, and that is exactly what this document was designed to do.

Let's look at the document on page 183 H(A)81/183. The first risk that you and Mr Faekov identify is the risk of Madison not paying and the lack of any guarantee of payment of dividends. I don't think we need to worry about that.

The second risk that you and Mr Faekov identify is the risk arising from the fact that Mr Abramovich was not providing any guarantee about historical ownership rights to the shares.

A. Yes.

Q. Again I don't think we need to worry about that.

But then over the page at item 3 H(A)81/184, you identify as a risk for Mr Patarkatsishvili "Risk of demands by BB", do you see that?

A. Yes.

Q. The reference there to BB was clearly meant to be a reference to Mr Berezovsky, wasn't it, Mr Streshinsky?

A. That is correct.

Q. And if we look under "Nature of the risk" we can see that Mr Faekov -- this was drafted by Mr Faekov, wasn't it?

A. Largely, yes.

Q. We can see that Mr Faekov has written:

"BB may declare that sale of the shares infringed certain of his rights.

"For instance, BB might attempt to demand the [Rusal Holding] shares (see above), or seek the annulment of the sale of these shares, or make demand for damages allegedly suffered to them (say, as a result of the consolidation of 2002-2003, or the poor conduct of the business of [Rusal Holding] in 2000-2003, or the nonpayment to him of dividends, or the sale to [Eagle Capital Group] without his knowledge), or a share of the share sale proceeds.

"If this demand is presented to [Mr Patarkatsishvili] or to [Eagle Capital], or is based upon the actions of [Mr Patarkatsishvili], then [Mr Patarkatsishvili] will primarily bear the risk.

"If the demand is only based on the actions of [Mr Abramovich], then the above mentioned statement by [Mr Abramovich] may provide some protection, but it does not cover all situations and is also weaker than a guarantee

agreement -- it is always harder to win a case with a statement of facts than with a guarantee. In addition, it would be necessary to prove that [Mr Abramovich] actually knew of defects and recognised the existence of [Mr Berezovsky's] legal rights or dealt directly with [Mr Berezovsky].

"That aside, in the event that the court found in [Mr Berezovsky's] favour, [Mr Patarkatsishvili's] financial liability would be unlimited and could exceed the sum received for the shares.

"We are unaware of facts upon which [Mr Berezovsky] could rely."

We will come back in a moment to the facts which you, as opposed to Mr Faekov, were aware of, Mr Streshinsky.

But looking to the right-hand column, do you see that it's headed "Methods of elimination and assessment of the risk", yes?

A. Mm-hmm.

Q. We can see Mr Faekov has written this:

"The given risk could only be removed by way of receipt from [Mr Berezovsky] of a statement of release from obligations. As far as we understand it will not be possible to receive such a release."

Do you see that?

A. Yes.

Q. Now, that suggests there had been some discussion about obtaining a formal statement of release from Mr Berezovsky and that you had been told that it would not be possible to obtain such a release, do you recall that discussion with Mr Patarkatsishvili?

A. No, I don't. We assumed that this was not possible because Mr Berezovsky was openly and through mass media saying that he has a claim, so he would not be signing anything.

Q. But you say:

"As far as we understand it will not be possible to receive such a release."

You say that was just based on press reports?

A. Yes.

Q. You had had no discussion with Mr Patarkatsishvili about that?

A. No.

Q. And in any event we know that ultimately Mr Berezovsky was not asked to sign, and did not sign, a formal release as regards any claims that he might have in relation to the 25 per cent stake in Rusal; that's right, isn't it, Mr Streshinsky?

A. I think so.

Q. Then looking a little further down the right-hand

column, we see this, "Assessment of the risk":

"The risk may be real if [Mr Berezovsky] issues proceedings and wins a case against one of the parties. If [Mr Berezovsky] doesn't have any documents and witnesses confirming his participation in the deal, then court recognition of his rights is unlikely. All the same, the court process could be long, expensive and be discussed in the press."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Was that one of the reasons why Mr Abramovich's representatives had told you they did not want to further document Mr Berezovsky's beneficial interest?

A. Well, they never said that they -- that Mr Berezovsky had any beneficial interest.

Q. Well, I disagree about that, because we've seen the correspondence you've had with them earlier about representations to the banks, and we've discussed that, but I don't think we're going to go back over the ground.

A. No, no, excuse me. With regards to representations to the banks, they only said that the compliance information that they were giving to the bank was that Mr Abramovich was the beneficial owner and was the owner of the shares.

Q. They were saying that was the information they had already given to the banks?

A. Yes.

Q. And that therefore, going forward, you had to make sure the document was structured in a way that was not inconsistent with what had previously been said to the banks?

A. Yes, but that involved Mr Patarkatsishvili, not Mr Berezovsky.

Q. Correct.

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR MASEFIELD: It might be, my Lady.

MRS JUSTICE GLOSTER: Can I just raise with you, Mr Rabinowitz and Mr Sumption, Wednesday when there's going to be a strike. Can we still have Mr Rozenberg on Wednesday?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: There's no problem about --

MR RABINOWITZ: There shouldn't be. I will be here. If Mr Rozenberg is here and your Ladyship is here we can no doubt carry on.

MR SUMPTION: The four of us can sort it out.

MRS JUSTICE GLOSTER: It's just translators and --

MR RABINOWITZ: We need to speak to the transcribers. He speaks English so it will all be done in English, my

lady.

MRS JUSTICE GLOSTER: If there are any problems about Wednesday -- well, perhaps you could ascertain whether there are going to be any and let me know if there is going to be a problem.

Very well. How much longer are you going to be, Mr Masefield?

MR MASEFIELD: My Lady, I think I'm probably going to be another half an hour, maybe three quarters.

MRS JUSTICE GLOSTER: Right. Two o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Masefield.

MR MASEFIELD: We looked this morning, Mr Streshinsky, at the compliance documents that you completed for First Zurich Bank, do you remember that? And we saw that you'd been able to set out a detailed history of the KrAZ assets sale and the purchases involved in the aluminium acquisition, yes?

A. Yes.

Q. I'd now like to go back very briefly with you, Mr Streshinsky, to the events of early 2000 to see what you in fact knew about Mr Berezovsky's interests in the aluminium acquisitions?

A. Yes.

Q. You see, you were not just involved in the KrAZ assets sale in the spring of 2000, were you, Mr Streshinsky?

A. Yes.

Q. Do you remember also being involved on behalf of Mr Anisimov, and providing advice to Mr Patarkatsishvili as to how he should structure his assets offshore?

A. Mr Anisimov, from time to time, asked me to organise for Mr Patarkatsishvili a relationship with either lawyers or fiduciaries or the banks.

Q. I'm grateful.

You can put away bundle H(A)81 which I think you still have. Please could you be given bundle H(A)18 and if we could turn within H(A)18 to page 200.001 H(A)18/200.001. Do you see there a telefax addressed to yourself and dated 27 March 2000 from Mr Hans-Peter Stager of Syndikus Treuhandalstalt?

A. Yes.

Q. Syndikus Treuhandalstalt is a Lichtenstein company which specialises in private client advice and off-shore structures; are you aware of that, Mr Streshinsky?

A. Yes.

Q. We can see the fax commences:

"Dear Mr Streshinsky.

"Reference is made to our meeting of last Thursday

and to our telephone conversation on Saturday. We may inform you that we have already ordered all [the] company, and most of them have just arrived. In the meantime, we have examined all documents given to us."

Do you see that?

A. Yes.

Q. So Syndikus Treuhandalstalt appear to have been ordering or setting up companies at your request around this time, is that correct?

A. Yes, they were intended to do that.

Q. They were intended to do that. The fax goes on, we can see this in the second paragraph:

"As you know, we have our due diligence, and we would like to have the following additional documents or inquiries."

And they set out various items that they would like by way of additional information, and if you look at the first item they've asked for, we see it's this:

"Valuation Report of Bratsk Aluminium Plant (as we have got from KrAZ and KrGES). Who has originally established these reports?"

Do you see that?

A. I see that.

Q. So you appear previously to have provided Syndikus Treuhandalstalt with some background financial

information in relation to KrAZ and KrGES, but not in relation to Bratsk; do you remember doing that, Mr Streshinsky?

A. I don't remember doing that. I've seen this letter -- well, I've seen this letter in the course of preparation. I don't remember this letter but it obviously was addressed to me.

Q. I'm grateful, and we'll come on to the significance of that in a moment. But sticking with the document for the time being and looking at the next bullet point we can see that they say:

"We need the enclosed declaration signed by the client (Mr P), that he executes the business for himself and that no members of the government, parliament, or any politician people are involved."

Do you see that?

A. Yes.

Q. If we look over the page H(A)18/200.002 we have the draft declaration to be signed by Mr AP, and would you agree with me that this was very likely to have been a reference to Mr Patarkatsishvili?

A. Yes.

Q. Do you remember being instructed by Mr Anisimov around this time to assist Mr Patarkatsishvili in setting up various offshore companies?

A. I don't remember that particular episode but that must have been the case.

Q. I'm grateful.

Looking back at page 200.001 H(A)18/200/001, we can see, skipping down to the fourth bullet point, this question:

"How is the relation between Sibneft and the four intermediary companies (subsidiaries or affiliated companies)?"

Do you see that?

A. Mm-hm.

Q. Syndikus Treuhandalstalt had obviously previously been provided by you with something which meant that they understood there was a link between Sibneft and what they refer to as "four intermediary companies".

If you keep bundle H(A)18 open, please could you also be given H(E)1, tab 4, page 7 H(E)1/04/7. Do you see there a diagram showing the February 2000 aluminium acquisition transactions, Mr Streshinsky?

A. Yes.

Q. Do you recall seeing this document before, Mr Streshinsky?

A. I might have seen it -- I've seen it in the course of preparation but I might have seen it before.

Q. At the time.

A. Yes.

Q. You see, we know from another document that Mr Anisimov has disclosed in this action, an index, that you do indeed appear to have had a diagrammatic schema of the aluminium transaction in your possession around this time. Do you think you did see a diagram similar to this one around the time of the KrAZ asset sale?

A. Yes.

Q. Do you recall whether or not you might have sent this diagram or a similar diagram to Syndikus Treuhandalstalt?

A. I might have done, yes.

Q. I am grateful. We see, looking in the diagram, in the middle of the page, there is a faint circle around the four companies with the writing "Sibneft" do you see that? The four pages (sic): Runicom Fort, Galinton, Palmtex, Dilcor, are all included within an ellipse with Sibneft, do you see that?

A. Yes.

Q. And immediately below that there's a further ellipse called "Intermediary" with four companies indicated?

A. Mm-hm.

Q. And the arrows pointing from the Sibneft circle to the intermediary circle, do you see that?

A. Yes.

Q. What I suggest is that you had indeed supplied a copy of this diagram, or something very similar to it, to the Syndikus Treuhandalstalt people and they, having seen it, were querying the nature of the relationship between Sibneft and the four intermediary companies. Do you have any recollection of that?

A. No, I don't have a precise recollection of that.

Q. Let me ask you this, Mr Streshinsky: what other document or information apart from this diagram do you think that you might have supplied to Syndikus Treuhandalstalt which would cause them to ask the question that we see in the fourth bullet point? Is there any other document that you can think of?

A. Well, I think I've given them the KrAZ and Krasnoyarsk GES relation(?) report because I have had that in my possession.

Q. But those don't refer to Sibneft and the four intermediary companies. So is there anything else apart from something similar to this diagram that you think you could have supplied?

A. Yes, I might have given this diagram.

Q. I'm grateful.

Looking back at the Syndikus Treuhandalstalt fax, and skipping down to the last bullet point, we can see it says this H(A)18/200.001:

"Please confirm the Austrian Banks with addresses, which will transfer the money to the new accounts."

Do you see that, Mr Streshinsky?

A. Yes.

Q. Do you recall that around this time Mr Patarkatsishvili had indeed set up a bank account with an Austrian bank called Kathrein & Co?

A. No, I didn't know that.

Q. The name doesn't ring any bells?

A. No.

Q. Mr Patarkatsishvili also incorporated around this time two companies, Bili Holdings and Bili SA. And Bili SA then opened an account with Austrian bank Kathrein & Co. Do you remember any of that, Mr Streshinsky?

A. No, I don't know these names.

Q. During the year from March 2000 to March 2001, substantial sums of over 50 million were then paid into Bili SA's account with Kathrein & Co from companies that were associated with Mr Abramovich, which Mr Patarkatsishvili then used to purchase, fit out and maintain an aeroplane. Do you remember any of that, Mr Streshinsky?

A. I don't know that.

Q. Now, in order to open Bili SA's bank account with Kathrein & Co and purchase his aeroplane,

Mr Patarkatsishvili needed to have his commission agreements relating to the aluminium acquisition transactions formally notarised. That happened on 16 March 2000, 11 days before this fax was sent, and the commission agreements were notarised in Moscow before a public notary and witnessed by Ms Tatyana Zaitseva. And Ms Tatyana Zaitseva was a Coalco employee, wasn't she?

A. She was a secretary of Mr Anisimov.

Q. I'm grateful. Do you recall arranging to help Mr Patarkatsishvili get his commission agreements notarised around this time?

A. No.

Q. You have no recollection of that?

A. No, I haven't.

Q. Let me show you one final document, Mr Streshinsky, to see if we can help jog your memory. If you keep H(A)18 open, but turn back in bundle H(E)1 to tab 3, page 4, for the Russian H(E)1/03/4, and 4T --

A. Which bundle, 18?

Q. It's the one with the diagram in it, if you turn back in that to tab 3.

MRS JUSTICE GLOSTER: H(E)1, tab 4?

MR MASEFIELD: We were in tab 4, my Lady, I'm turning back to tab 3.

The start of tab 3 is a Russian document, and we have the translation on page 4T and following H(E)1/03/4T.

A. I see the Russian document.

Q. Looking at the Russian, do you recognise this document, Mr Streshinsky?

A. I haven't seen this document before. Well, I've seen it during the preparation to the witness statement but I haven't seen it at the time.

Q. Now, we know that this explanatory note was drawn up around the same time as the Syndikus fax, that is to say, March 2000, for reasons that I don't need to go into for the time being. But looking at the explanatory note, Mr Streshinsky, do you see that stage 1 is entitled "Initial. Opening accounts, transfer of funds", do you see that?

A. Mm-hm.

Q. There is then a reference to:

"... intermediary services for the arrangement of redistribution of shares in the aluminium complex ..."

Do you see that, on the right-hand side?

A. Mm-hm.

Q. Then a bit further down it says:

"Amount of the Intermediaries' Compensation: About 100 million USD."

Do you see that?

A. Mm-hm.

Q. That is a reference to the sums due under the commissions agreements which Mr Patarkatsishvili had notarised on 16 March, were witnessed by Ms Zaitseva, okay?

A. Mm-hm.

Q. Then we can see there's a short underlying passage which says this:

"In order to carry out the intermediary transaction and also the first stage of the Programme, it is assumed that it will be necessary to perform the following actions."

Do you see that?

A. Yes.

Q. Then it says:

"1. Providing interested parties (lawyers, the persons conducting the companies' business, the bank) with the set of documents constituting the Transaction, including:

"Diagrams of the transaction;

"Cash flow tables;

"Agreements (protocols) between the purchasers and the client -- the intermediaries' representative;

"Copies of the share sale and purchase agreements of

the factories;

"Background, financial and other information about the subjects of the transaction (KrAZ, GES)."

Do you see that, Mr Streshinsky?

A. Yes.

Q. A lot of that ties in with the Syndikus fax of 27 March that we were just looking at.

A. Yes.

Q. For example, do you recall the Syndikus Anstalt people had received financial information for KrAZ and KrAZ GES from you, but they were asking for similar background information for BrAZ; do you recall that?

A. Yes.

Q. So what you appear to have sent the Syndikus people by way of background financial information is precisely the background financial information that it was envisaged by the author of the explanatory note would be sent to interested parties, lawyers and so on, correct?

A. Correct.

Q. Do you recall the Syndikus Anstalt people appear to have received a diagram of the transaction structure that we've just looked at, and were querying the relationship?

A. I don't remember but I think they've received it.

Q. And that would appear to tie in with the information

that it was envisaged would be sent to interested parties, the first bullet point in this explanatory note, yes?

A. Yes.

Q. Do you recall that the Syndikus Anstalt people had also in their fax used similar language to what we see employed here, the language of "intermediary client", and they had referred to four intermediary companies. We can see four intermediary companies being referred to here, can't we, Mr Streshinsky? If you look about halfway down on the page to the word "Intermediaries", where it's capitalised --

A. It's on the Syndikus letter?

Q. No, on the explanatory note that we have at page 4T H(E)1/03/4T, about halfway down we have in capitalised words:

"Intermediaries: Companies belonging to BAB (2 companies) and BShP (2 companies)."

Do you see that?

A. Yes.

Q. Then if we look down to the bottom of the first page of this explanatory note, Mr Streshinsky, and in particular if we look at bullet points 2, 3 and 4, we can see that what is proposed is the acquisition of the intermediary companies on behalf of clients, opening bank accounts

for the intermediary companies and the official transfer of commission fees into the bank accounts. Do you see that?

A. Yes.

Q. And that also ties in with the Syndikus fax of 27 March, because do you remember Syndikus Anstalt people talked about ordering offshore companies, and they talked about transferring monies into the new Austrian bank accounts?

A. Mm-hm.

Q. You see, what I suggest to you, Mr Streshinsky, is that you were the author of this explanatory note?

A. No.

Q. You deny that, do you?

A. I deny that.

Q. And the fax that we have from the Syndikus Treuhandanstalt people to you on 27 March is evidence of your involvement in what we see described as stage 1 of this note.

A. Well, I did not see this note, I was not author of this note, I was simply asked to provide certain information to Syndikus and communicate with them.

Q. You say it's just a coincidence, do you, Mr Streshinsky, that around the very time when this note appears to have been drawn up you were liaising with Syndikus people and carrying out the tasks that appear to have been

envisaged at stage 1?

A. I'm sure it's not a coincidence, I was just asked by Mr Anisimov to assist and I had to send certain information.

Q. You see, what's significant about the explanatory note, Mr Streshinsky, is this: the explanatory note was not just written for the benefit of Mr Patarkatsishvili because although it contains some references to the client in the singular, it also contains references to the clients in the plural.

We can see that from the opening words of the explanatory note. If you look up at the top of the page, do you see it says:

"In connection with the Clients' proposed visit to Europe..."

Do you see that?

A. Mm-hm.

Q. If we look at that, about halfway down, where it says "Intermediaries" in capitalised terms, it's fairly clear that the clients who are being referred to are BAB and BShP, that is to say Mr Berezovsky and Mr Patarkatsishvili, do you see that?

A. Yes.

Q. And then if we go on over the page H(E)1/03/5T and look at stage 2 of this explanatory note, stage 2 is

entitled "The Main Stage. Structuring of the Assets",  
do you see that, Mr Streshinsky?

A. Mm-hm.

Q. We can see the author of the explanatory note says:

"The second stage of the Programme consists of two  
parts:

"Distribution of the assets between the partners in  
proportion to their interests.

"Creation of a single company, determination of the  
rules for its functioning, transfer of the assets to the  
single company's ownership."

Do you see that?

A. Mm-hm.

Q. Then it says:

"It is proposed first of all to distribute the  
assets belonging to the partners in the main business  
projects, including the following."

There then follows a list of assets, yes?

A. Mm-hm.

Q. Those assets include a reference to Sibneft at item 3?

A. Mm-hm.

Q. And those assets also include a reference to the  
aluminium complex at item 2, do you see that?

A. Yes.

Q. That reference to the aluminium complex was a reference

to the KrAZ, BrAZ and Achinsk assets which you knew, as a result of your involvement in the February 2000 sale, both Mr Berezovsky and Mr Patarkatsishvili had acquired ownership interests in?

- A. Well, I knew that Mr Patarkatsishvili acquired the ownership interest because I've seen the documents. I didn't know anything about Mr Berezovsky.

MRS JUSTICE GLOSTER: Can you speak up a bit, please?

- A. I knew -- excuse me. I knew that Mr Patarkatsishvili was involved because he was one of the purchasers in this agreement of 10 February but I didn't know about any involvement of Mr Berezovsky.

MR MASEFIELD: You say that, Mr Streshinsky. But if you were the author of this document, or you were involved in implementing the stages that are described here, what it demonstrates is that you would have known at March 2000 that Mr Berezovsky and Mr Patarkatsishvili were partners and, secondly, you would have known that Mr Berezovsky and Mr Patarkatsishvili had ownership interests in the aluminium complex that would come to form part of Rusal. But you deny any such knowledge, do you, Mr Streshinsky?

- A. Yes. This is the way you put it. I put it very simply: I was assisting Mr Patarkatsishvili in opening the account and establishing the relationship with the

banks.

- Q. We say that this was knowledge which was not just personal to you, Mr Streshinsky. You've told us in paragraph 17 of your witness statement F1/02/59 that whenever you did work for Mr Patarkatsishvili it was always at the instruction of Mr Anisimov. Do you remember that?
- A. That's correct.
- Q. And you would therefore have shared with Mr Anisimov the information that you acquired in the course of providing these services to Mr Berezovsky and Mr Patarkatsishvili?
- A. I did not provide any services to Mr Berezovsky.
- Q. You see, both you and Mr Anisimov have to deny that knowledge, don't you, Mr Streshinsky, because otherwise it fatally undermines not only your case on the overlap issues in these proceedings but also Mr Anisimov's defence in Metalloinvest?
- A. Well, that's your opinion. What can I say?
- Q. You see, there's one final thing, Mr Streshinsky, that's striking about this explanatory note and it's this. Do you see towards the bottom of the page, just before the last five numbered paragraphs, there's a short paragraph which says this:

"This stage concludes in the creation of a single company and the transfer of all the assets of the

partners into its ownership. This company's founding documents must provide the legal rules of the game, including ..."

And then various matters are set out, including mechanisms for protecting minority shareholders, how to resolve deadlocks and the procedure on termination by one partner. Do you see that?

A. Yes, I see.

Q. Then turning over the page H(E)1/03/6T, under the heading "Stage 3. The Final Stage. The Procedure and the Results of Joint Work", do you see that heading?

A. Yes.

Q. It says:

"All the legal activities of the joint company and the businesses controlled by it must be carried out by Western lawyers."

Then in the next paragraph:

"Once a year the joint company's activities and its financial results will be confirmed by one of the major international audit companies."

Do you see that, Mr Streshinsky?

A. Yes.

Q. And that advice ties in directly, Mr Streshinsky, with Mr Berezovsky's evidence given in these proceedings, and long before --

A. Was what?

Q. It ties in with Mr Berezovsky's evidence given in these proceedings, long before this explanatory note was disclosed, that he remembers Mr Anisimov advising both himself and Mr Patarkatsishvili around the time of the Dorchester Hotel meeting in March 2000 that they should structure their assets offshore in a very precise legal way, and subject to western as opposed to Russian law.

That was the advice I suggest to you that both you and Mr Anisimov were giving to Mr Berezovsky and Mr Patarkatsishvili around this time?

A. Well, I did not speak to Mr Berezovsky, I did not speak to Mr Patarkatsishvili. I only spoke to Mr Anisimov, and if Mr Anisimov advised something to Mr Patarkatsishvili, I don't know what he advised.

MR MASEFIELD: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: No re-examination.

MR ADKIN: No questions.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming along.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Particularly given your visa difficulties.

THE WITNESS: Thank you.

(The witness withdrew)

MR MALEK: My Lady, that concludes the evidence on behalf of the Anisimov defendants, and I think that concludes all the factual evidence in this case.

MRS JUSTICE GLOSTER: Right.

Mr Rabinowitz.

MR RABINOWITZ: We're on to Russian law experts and, my Lady, we call Dr Rachkov.

MRS JUSTICE GLOSTER: I've read Dr Rachkov's expert statement.

DR ILIA RACHKOV (sworn)

MRS JUSTICE GLOSTER: Do sit down, Dr Rachkov, if you'd like to.

THE WITNESS: Thank you.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Dr Rachkov.

A. Good afternoon.

Q. Can Dr Rachkov be given bundle G(A)1/1 and also G(A)6/1, please.

While those are being brought, Dr Rachkov, can you just confirm that you don't have any mobile phone or other electronic device with you in the witness box?

A. My Lady, I don't have any electronic devices with me.

Q. Dr Rachkov, if you take bundle G(A)1 and you go to tab 1, you should see a document headed "Fourth Expert

Report of Ilia Vitalievich Rachkov", do you see that  
G(A)1/1.01/1?

A. Yes, my Lady, I do see that.

Q. If you go to the end of that tab, it's at page 108  
G(A)1/1.01/108. It's right at the end of the tab.

Can you confirm that that is your signature?

A. Yes, my Lady, I confirm this is my signature.

Q. And that this is your fourth report in these  
proceedings?

A. I confirm.

Q. Thank you. And can you just go over to the next tab  
G(A)1/1.02/109, you should see a document headed  
"Fifth Expert Report of Ilia Vitalievich Rachkov", do  
you have that?

A. Yes, my Lady, I do.

MRS JUSTICE GLOSTER: You don't have to call me "my Lady"  
every answer.

MR RABINOWITZ: And if you go to the end of that tab,  
page 177 G(A)1/1.02/177, again you should see  
a signature. Can you confirm that that is your  
signature?

A. Yes, I do.

Q. And that this is your fifth report in these proceedings?

A. Yes, this is my fifth report in these proceedings.

Q. Thank you. And then if you go over the tab, to tab 3

G(A)1/1.03/178, you should see a document headed  
"Sixth Expert Report of Ilia Vitalievich Rachkov"?

A. Yes, I confirm this, I see this.

Q. Thank you. And then if you go right to the end of that  
bundle, it's page 217 G(A)1/1.03/217, again can you  
confirm that that is your signature?

A. Yes, this is my signature.

Q. Thank you, and that this is your sixth report?

A. Yes, this is my sixth report.

Q. Thank you. Can you confirm that the contents of these  
reports are all true to the best of your knowledge and  
belief?

A. Yes, I confirm this.

Q. Thank you very much.

Now, can you take up, please, bundle G(A)6/1, which  
is the joint expert memorandum, do you have that  
G(A)6/1.01/1?

A. I do.

Q. Now, it's, as you know, a document which contains  
statements both of yourself and Mr Rozenberg and  
Professor Maggs. Can you first just go to page 41,  
again it's the end of the tab, on the left-hand side,  
can you confirm that that is your signature  
G(A)6/1.01/41?

A. Yes, this is my signature.

Q. Can you confirm that insofar as the joint memorandum contains or reflects statements attributable to you, that those statements are true to the best of your knowledge and belief?

A. Yes, I confirm.

MR RABINOWITZ: Thank you. Can you wait there, please, Mr Sumption is going to have some questions for you.

Cross-examination by MR SUMPTION

MR SUMPTION: Good afternoon, Dr Rachkov.

A. Good afternoon.

Q. Can you assume that it was agreed at the Dorchester Hotel in March 2000 that Mr Abramovich would legally own Rusal while Mr Berezovsky and Mr Patarkatsishvili would beneficially own part of the holding? Do you follow the assumption that I'm asking you to make?

A. I do follow.

Q. Now, you accept, as I understand it, that that would not be a valid agreement as a matter of Russian law, is that right?

A. That is right.

Q. Now, am I right in thinking that that is because, in Russian law, the ownership of property is unitary; that's to say you can't split ownership into different kinds of right?

A. What I said in my report is that the ownership cannot be split into legal and beneficial ownership --

Q. Yes.

A. -- between different persons.

Q. Very well. Even by express agreement? The concept doesn't exist, in other words?

A. Such concept does not exist in Russian law.

Q. Now, I think your evidence is that the draftsman of the Civil Code considered borrowing the concept of trusts from English law but it was deliberately decided not to do that, is that right?

A. This is correct.

Q. Now, can we just look at some special situations. First of all, is it right that an article of property can be in the common ownership of more than one person?

A. Yes, some things can be in common ownership of more than one person.

Q. If we can just establish this, and I don't think there's any dispute about it, by reference to the relevant provisions of the Code. Could you be given bundle G(A)2/1. I'd like you to turn to flag 6 here which is one of a number of places in these bundles where we find extracts from the Code. They're not the same extracts which is why we're going to have to move about a bit.

If you turn to page 131 in the bundle numbering G(A)2/1.06/131, you should find Article 244 in a parallel Russian and English text. Sub-article 1 says:

"Property that is owned by two or more persons belongs to them by right of common ownership."

And that's the proposition that you confirmed a moment ago. That's right, isn't it?

A. Yes, that's right.

Q. I think the rest of the article explains that common ownership may be of two kinds. There is joint ownership and what is called share ownership in the English.

A. Yes, this is correct.

Q. Now, I'm anxious to labour this point slightly because we use very similar terms in English to describe something different. So in order to avoid confusion, am I right in thinking that joint ownership -- and this I think is the same in English and Russian law -- refers to the ownership of an asset by two or more persons in undivided shares?

A. I'm afraid I can only refer to what Russian Civil Code says.

Q. Yes. If you have two joint owners of an asset, is the position that they jointly own the whole of that asset? It's not divided into so much belonging to one person

and so much belonging to the other; is that right?

A. Yes, that is correct. For instance, the husband and the wife have such type of ownership.

Q. Yes, and each of them owns the whole of the asset jointly?

A. Yes, unless they decided to divide it.

Q. Now, the other sort of common ownership which is referred to in Article 244, sub-article 2, is called share ownership. It may be that a less confusing English term would be ownership of a share, and that refers to the fact that property may be in common ownership with a definition of the share of each of its owners in the right of ownership. I'm reading from the English translation of Article 244.2.

Now, is it right then that if you have share ownership, or ownership of a share, in contradistinction to the case of joint ownership, this is a case where two or more people own an asset with each of them owning a defined proportion of that asset; that is correct?

A. That is in principle correct.

Q. Now, that of course is not splitting ownership into different kinds of right, is it? Because in either case each owner will have the same kind of right, is that correct?

A. Can you please specify your question?

- Q. Well, common ownership in either of its two forms is not an example of splitting ownership into different kinds of ownership right, is it? Because in each case common owners have the same kind of right over the asset, is that correct?
- A. That is correct.
- Q. Now, can we look at a second special situation. Is it right that an owner of property can enter into a contract of entrusted management, which I think is a technical term, at least that's the way it's translated into English, the effect of which is that he entrusts the property in question to the management of another person. Is that correct?
- A. The question -- I need to specify your question, or please give me the example whether you refer to the joint ownership or to the shared ownership?
- Q. Well, I'm not now talking about common ownership. I've moved on to a different topic I want to ask you about which is concerned with a kind of contract which is referred to in English as a contract of entrusted management. Now, is that an expression that you are familiar with?
- A. No, I am not familiar with that expression.
- Q. Right.
- A. I am familiar with the expression which is used in

Russian law for an appropriate contract on entrusted management.

Q. Well, let me see if I can refer you to the relevant provision of the Code. Would you look at Article 101.2 of the Code which I think you'll find in the same flag. If you look at Article 1012, sub-article 1, this is under the heading "The Contract of Entrusted Management of Property", do you see?

A. Yes.

Q. I'm for obvious reasons using the English term and it may not be an expression that you would use --

MRS JUSTICE GLOSTER: Would you give me the page, please, Mr Sumption?

MR SUMPTION: It's at page 165 G(A)2/1.06/165.

When I refer to a contract of entrusted management, what I'm talking about is the sort of contract that is mentioned in the heading of Article 1012. There is, no doubt, a more exact Russian term in the parallel column.

Now, is that a kind of contract by which the owner of property entrusts that property to the management of another person?

A. Yes, this is such a contract.

Q. Now, under such a contract, am I right in thinking that the manager has no ownership interest at all? He is simply an agent for the purpose of managing it?

- A. That is correct.
- Q. Now, if I can turn to a third particular situation, you can also, as I understand it, have a custody or depo agreement for shares in companies with a professional securities depository, is that right?
- A. Yes, this is right.
- Q. Is it a feature of that contract that the depository exercises the rights of the owner but he does so only as the owner's agent and subject to the owner's instructions?
- A. In general it is possible, but it depends on what exactly is said in the contract between the owner and the service provider, who is the holder of the depo account.
- Q. But would you accept that it is a feature of custody or depo agreements that the depository or custodian will not have any ownership interest in the shares, he is simply performing services in relation to them to the true owner?
- A. This is correct.
- Q. So that none of the three special situations which I've identified infringe the basic principle that ownership rights in property can't be split into different kinds of ownership, would you agree?
- A. Maybe you can specify once again what you wanted me to

answer.

- Q. Am I right in thinking that none of the three special situations that I've asked you about, namely common ownership, contract of entrusted management and custody or depo agreements, none of those three arrangements are inconsistent with the basic rule of Russian law that the ownership of property can't be split into a legal and a beneficial interest?
- A. Yes, I think none of these legal structures contradicts Russian law.
- Q. Yes. Well now, as I understand it, although two people cannot contract to split ownership into, for example, a legal and a beneficial interest, you say that an asset owner can contract with another person to give him a contractual benefit which is derived from ownership, for example I promise to pay you half the dividends that I receive from my shares in the XYZ company; that is your position, isn't it?
- A. That is my position, that such result can be achieved through a contract.
- Q. Now, is that on the basis that, if you enter into a contract of that kind, you are not agreeing to give the other party to the contract any ownership interests in the shares, it's a purely personal obligation; is that right?

- A. Yes, this is a contractual obligation. It is not a right in rem.
- Q. Right. Now, can I turn, please, to the question of rights in registered shares in a Russian company. Do you agree that shares in Russian joint stock companies are issued in what is called non-documentary form?
- A. Yes, this is correct. Starting from 2001, all shares in Russian joint stock companies must be issued in non-documentary form.
- Q. Is it right that there were non-documentary shares before 2001?
- A. Before 2001 there were non-documentary or documentary form, depending on what the joint stock company prefers.
- Q. So is it right then that the change that occurred in 2001 was that whereas previously a joint stock company could choose either to have documentary or non-documentary shares, after 2001 they had to be non-documentary? Is that correct?
- A. Yes, this is correct.
- Q. Can I next just ask you to confirm that Sibneft was an open joint stock company, wasn't it?
- A. To the best of my knowledge, it was.
- Q. Now, would you accept that the rights of shareholders in a Russian company are governed primarily by the Securities Law of 1996 and the charter of the company?

- A. Yes, this is correct, plus regulations enacted by the Federal Commission of Securities Market or, as it is called now, the Federal Service for Financial Markets.
- Q. Yes. Now could you please be given bundle G(A)4/6. I'd like you to turn to flag 85 in this bundle, which is the 1996 Securities Law G(A)4/6.85/208. Now, Article 2, which is the first article in the extract, provides:
- "Non-documentary form of securities is a form of securities in which the titled holder is to be established on the basis of the record in the system of the register of holders of securities or in the event of accounting the rights to securities and the depository -- by records in the depo account."
- Now, leaving aside depo accounts, which you've given some evidence about, do you accept that title to non-documentary shares is registered in a register kept either by the company itself or by a professional registrar?
- A. Yes, I agree, with one small explanation, that if the number of shareholders in a company exceeds 50 then the register must be held by an independent external registrar and not by the company itself.
- Q. I understand. But in either case, title to non-documentary shares is registered in the relevant register?

- A. Yes.
- Q. Would you agree that a company is not required to recognise the title of anybody who claims to hold shares but isn't registered?
- A. The company is not entitled to do so if the company is provided with all the documents which evidence that the person is the owner or is entitled to be registered in the register of shareholders.
- Q. Yes. Well, I will come to that. But if a shareholder, let us call him X, is registered in the register of shares the company is entitled to regard X and no one else as the owner. But if Y comes along and says "Here is a transfer executed in my favour by X, you must register me now as the shareholder", the company may be obliged to do that, is that correct?
- A. Yes, this is correct.
- Q. Now, would you agree that a person has title to shares only from the moment that he is registered as the shareholder in the company's share register?
- A. The registration is only a prima facie argument to say that a person is an owner. Therefore it really depends on the case we are speaking about. For sure, if the person is registered in the shareholder register, prima facie, as long as nothing to the contrary is evidenced, such person is the owner.

- Q. Right. But if somebody else is going to assert, as against a company, title to the shares he has got to demonstrate that he has a better right to the shares than the person who is registered, is that correct?
- A. What do you mean by "better right"? Can you explain, please?
- Q. Well, suppose that you have a parcel of 100 shares which are registered in the name of X. Now, Y can, as I understand your evidence, come along and say "I ought to be registered as the owner of these shares because, for example, X has sold them to me and here is the evidence". Is that correct?
- A. Yes, if there is a contract between these two persons, the previous and the current shareholder, and this contract can be enforced, that's what the new shareholder may request.
- Q. Yes. So what he has to produce is something which demonstrates that X, the registered shareholder, has transferred or surrendered his interests in those shares to Y, is that correct?
- A. Yes, there is a very clear indication in Russian law which type of documents must be provided to the holder of the register of shareholders to effectuate such transfer.
- Q. Yes. And can you tell us what those documents are,

please?

A. It depends on the specific circumstances of the case but, in general, leaving aside the circumstances of this particular case, there should be a contract between the seller and the purchaser; there should be a transfer order, in Russian called "peredatochnoye rasporyazhenie"; there should be an evidence that the payment occurred, otherwise the shares are deemed pledged. Based on these documents, the registrar effectuates the operation.

Q. And those are all -- the contract that you refer to is a contract in writing?

A. It is usually a contract in writing but, as I said, everything depends on the case by case situation.

If I take another situation, we have a husband who is registered in the register of shareholders as the owner of the shares, but later on, in the course of the divorce, it appears that his wife was also entitled to be registered, then the wife can request the separation of the property and be registered without any contract.

Q. Yes. Well, there are no doubt special situations like that one where presumably what you produce is the order of the court which directs that the wife is to have that right, is that correct?

A. Yes.

MRS JUSTICE GLOSTER: I mean, she couldn't just turn up at a shareholders meeting and vote without getting herself on the register?

A. Correct. She cannot approach the general meeting of shareholders because nobody knows whether she is the wife and how shall this be evidenced.

MR SUMPTION: So there are various situations in which you can call upon the company to register you as a shareholder, but it is the register that is conclusive of the identity of the person who has the existing interest in the shares, is it not?

A. No, it is not. In Russian law, we distinguish between constitutive registration which is, for instance, so-called state registration, and the registration which is just the completion of the whole procedure. So in Russian law there can well be cases where there is a contract but for some reason the person is not entered in the register of shareholders, for instance because the seller prevents the purchaser from being registered because the seller does not deliver appropriate documents.

Q. Well, in that situation, suppose that the person who claims that there is a contract to transfer the shares to him turns up without previously getting himself registered as the shareholder at the general meeting and

tries to vote. Now, the company will be under no obligation, will it, to recognise his right to vote?

A. Yes. The company can rely on the entries in the register of shareholders.

Q. Indeed. And if you look back at Article 2 G(A)4/6.85/208, that is providing, is it not, that where you have non-documentary securities:

"... the titled holder is to be established on the basis of the record in the system of the register of the holders of the securities ..."

Now, that is a mandatory provision, isn't it? The title of a shareholder must be established on the basis of an entry in the register, is that not right?

A. I cannot deny what the literal wording of the law is but, on the basis of the Russian court practice, I can say that the cases when the person is entitled to be registered, but is not registered for several reasons, are numerous. And, in this event, on a case by case basis, Russian court or another competent court must decide whether such person must be entered into the register.

There were cases which are also numerous in Russia that registrars were so-called pocket registrars. For instance, a major Russian group of companies creates, through a chain of companies, quasi-independent

registrars which run the registers of shareholders of this company, and there were cases when registrars were engaged in corporate wars and conflicts and where they did not comply with the requirements of Russian law.

That's why I think it is to simplify things if we simply say or repeat the wording of Article 2.

- Q. Well the wording of Article 2, as I think you've acknowledged, appears to be mandatory. That's what the language says?
- A. It is mandatory for the registrars to register the holders of securities if they provide the registrars with the documents which are, in terms of their composition, their form and their contents, in line with the requirements of Russian law.
- Q. Well, what is said to be mandatory, I would suggest, in Article 2, is that the title holder is to be established on the basis of the record and the register, that's the mandatory principle, isn't it?
- A. I disagree.
- Q. Well, I quite understand and do not for one moment dispute that there may be many circumstances in which a person is entitled to be registered. But until he is registered the company is entitled to disregard his claim, isn't that right? The company is not entitled to treat him as the owner of the shares until he is

registered even though he may have a right to be registered?

A. That is correct.

Q. And the register is therefore conclusive unless and until a court decides otherwise. That is ultimately the position, isn't it?

A. As I said before, it is not the position. We distinguish between constitutive operation of the law where the registration triggers the right of ownership, and the superficial, if you want, or external situation that the right is registered.

Q. Would you agree that when a person acquires or disposes of shares in a company, what he is acquiring or disposing of is an intangible legal right against that company?

A. I cannot follow what intangible means. I can only say that, indeed, the property which was disposed of are obligatory rights.

Q. Against the company?

A. Against the company.

Q. Now, if the company has no legal obligation to recognise his title, because he isn't yet registered, then there is nothing for that person to acquire or dispose of, is there?

A. Yes, you can say this way.

Q. Now, in English law, which recognises a difference between legal and beneficial ownership, a person who is not registered as a shareholder may nevertheless be entitled to require the registered shareholder to treat him as the real owner, but that's not a solution that Russian law acknowledges, is it? Because Russian law doesn't allow a distinction between legal and beneficial ownership?

A. No, I don't think so. I think the Russian law permits to achieve exactly the same economic result as the English law delivers, as you described it.

Q. But what it will not achieve is a situation in which any form of ownership is vested in the unregistered person. He may have a personal contractual right according to your evidence but not a right in rem; I think you confirmed that earlier?

A. That is correct.

MRS JUSTICE GLOSTER: So if I buy shares off you, and you remain the registered shareholder, and I've paid the price for the shares, can I contractually require you to vote in accordance with my directions?

A. Yes, and there is a direct indication to that effect in the federal law on joint stock companies.

MRS JUSTICE GLOSTER: Right.

A. You can request me to deliver you a power of attorney or

to vote in accordance with your instructions, my Lady.

MR SUMPTION: In the case of a power of attorney, you would be exercising somebody else's right to vote as an agent?

A. Yes.

Q. Do you agree?

A. Yes.

Q. And the same would be true if you were voting on the directions of somebody else. You would be exercising his voting rights but, by contract, you would be doing so according to his wishes, is that right?

A. Yes, and there is nothing surprising in it. Imagine a shareholder is holding shares, he knows that the annual general meeting of shareholders will take place soon, he knows what the recommendations of the supervisory board of the Russian company, in terms of dividends, are. He knows that the recommendation is not to pay the dividends. Still he needs money. He sells his shares to a purchaser, and the purchaser does not have enough time to get registered in the register of shareholders. In Russian law we have a deadline by which the list of persons entitled to vote in the general meeting of shareholders must be compiled.

So that's how it works in practice.

Q. Yes, and in that situation the registered shareholder is still treated, as against the company, as being the

owner, but he has contracted to exercise his vote on the directions of the person who has bought the shares, is that right?

- A. Not necessarily. It depends on whether or not the seller is still registered in the register of shareholders or, although the purchaser is already registered in the register of shareholders, but is not included in the list of those who are entitled to vote in the general meeting of shareholders.
- Q. My question assumed, and I'm sorry I didn't make this clear, my question assumed that the seller was still registered as the owner. On that footing, is my proposition right?
- A. And what exactly is your proposition?
- Q. What I asked you was: in that situation, ie the situation where there hadn't been time to complete the formalities, the registered shareholder is still treated as the owner, but he is contracted to exercise his vote on the directions of the person who has bought the shares.
- Now, I was asking you that on the footing that the seller is still the registered owner.
- A. Yes, the seller is still the registered owner.
- Q. Now, would you accept that it follows from the provisions of the Securities Law about registered title

to non-documentary shares that if two people have common ownership of shares in a company then they must all be registered, they must both be registered as shareholders?

A. In an ideal world, yes. In the real world, no.

Q. If they both want their rights as common owners to be recognised by the company that's what they've got to do, isn't it?

A. Yes, but -- unless they agree it among themselves that they do not want to show that they are owners, and they agree to split the dividends obtained by one of them between themselves without sharing it to the public. And this is exactly what happens between husband and wife as well.

Q. In that event, the company will have no obligation to recognise the person who is not on the register, will it?

A. No, it will not.

MRS JUSTICE GLOSTER: And in those circumstances, does the person who is not on the register have a right in rem or just a personal right?

A. Just a personal, ie a contractual, right. And such situations are very widespread. For instance, many foreign companies are not registered in the registers of shareholders of Russian companies but they entrust

professional trustees to be registered in registers of Russian companies as the owners, but still they have contractual rights against these legal owners who are registered --

MRS JUSTICE GLOSTER: What happens if the professional trustee becomes insolvent? Where is the ownership of the share in that circumstance?

A. That's a big problem from the point of view of Russian law. There were cases where, for instance, Bank of New York was registered as the owner of shares in Gazprom, and Bank of New York issued on these shares depository receipts in the United States, and a claimant in Russia, being an individual, filed a claim against Bank of New York with one of the courts of common jurisdiction in Moscow claiming that Bank of New York owed something to that claimant, and actually the shares in Gazprom owned legally by Bank of New York were seized.

So such situations happen and --

MR SUMPTION: When you say seized, do you mean seized in execution of the claimant's debt?

A. Arrested. Well, not yet. It's just -- all operations with these shares were frozen, and the Bank of New York was prohibited from doing anything with these shares, to dispose of them. So its rights as the owner were

limited to only what was absolutely necessary, so to say, to receive dividends for instance but not to vote for instance.

- Q. That result was the consequence, was it, of the fact that the only person recognised as having ownership rights was the registered shareholder and no one else had rights in rem?
- A. Yes. That's correct.
- Q. Now, I wonder if I could ask you to turn in the same bundle to flag 91, which is a decision of the Supreme Arbitrazh Court of the Russian Federation in 2011 about another form of registered title namely title to property, land.

Now, one of the issues considered in this case, as I understand the judgment, was the moment at which a real right came into being, and this case arose out of a partnership agreement. And I think you will get the essence of the issue from paragraph 7 on page 248 G(A)4/6.91/248, and in particular over the page at page 249 G(A)4/6.91/249.

This is dealing with a situation where you have common ownership, in this case arising out of a partnership agreement, but the property, the title to the property has not been registered as being in the common ownership of the partners. You can see that from

the first full paragraph on page 249.

Obviously, Dr Rachkov, if I'm overlooking some other relevant part of this judgment you must point that out to me.

A. Maybe you can refer to specific number, is it number 7?

Q. Well, it's part of number 7. If you look at number 7, that's where the analysis begins.

A. Mm-hm.

Q. And if you turn over to page 249 in the English translation, at the first break in the page it says:

"Therefore, if a real property has been created on a land plot that has not been registered as common ownership of the partners... then the ownership right to the newly created... property may on the basis of... the Civil Code only belong to the partner having rights to the said land plot."

As I understand, what's being said there in the context of land is that the land only belongs to the partner whose title has been registered, notwithstanding that there exists a partnership agreement between him and someone else under which this is intended to be common property.

Is that what it is saying?

A. Maybe I can give my own explanation of how I understand this paragraph?

- Q. Yes, by all means.
- A. It looks like there was a simple partnership agreement where one of the partners was the owner of a plot of land. He failed to transfer this plot of land to the common ownership of the partners. The building was erected on this plot of land, and because Russian law requires in principle that the ownership to land and the house are not split, therefore, the owner of this house is that partner.
- Q. If you look at the next paragraph, you will see that:

"If, despite the terms of an agreement [and that's a reference I think to the partnership agreement], a partner that is obligated to contribute leasehold rights to a land plot to the agreement, or to transfer the land plot into the common ownership ... refuses to do so, other parties to such simple partnership agreements may apply to a court demanding enforcement of the said agreement as provided for by... Article 551 of the Civil Code. Courts shall qualify partners' claims worded as claims to recognise ownership rights to a share in the created real property, the creation of which was [the] common goal..."

The next paragraph says:

"In all such cases, [the] courts must proceed from the fact that the ownership right of a partner making

a relevant claim shall arise not earlier than the moment of state registration of such right on the basis of a judicial act satisfying such claim..."

Now, as I understand what is being said here, it is that the law is that if you have a right, for example, under a partnership agreement to be registered as the owner of some land, you are not treated as having any right in rem until the moment when that registration occurs. And I think that's very consistent with your previous analysis.

Have I correctly understood what the judgment is saying?

- A. I think you did, and I said before in this court that real estate and transactions with real estate are subject to so-called state registration, whereas shares are subject to private registration, and the state registration is indeed constitutive. You cannot say you are an owner of real estate unless you are registered in the register of real estate by the state authority, not by a private registrar.
- Q. Yes. Well, I understand that the person who keeps the relevant register is the state in the case of land, and a corporate or professional registrar in the case of companies. But the common factor in both situations, surely, is this, which is that there is a law which

provides that registration is to be conclusive. In the case of securities, it was Article 2 of the Securities Law of 1996, would you accept that?

A. No.

Q. In spite of the terms of Article 2 of the Law of 1996?

A. Yes.

Q. And in spite of your own evidence that, pending registration, there is no right in rem?

A. I would distinguish between the terms "a right in rem" and the question whether the registration is conclusive or, as I say, constitutive or not. The registration of real estate is constitutive. The right of the owner emerges only with the state registration in the register of real estate.

Q. Dr Rachkov, if you were not the registered owner of shares but claimed to have a legal right to become the registered owner of shares, a situation that we have been discussing over the last half hour or so.

You would ultimately have to produce evidence satisfactory to a Russian court to establish your right, wouldn't you?

A. Yes.

Q. And the evidence satisfactory to a Russian court would, provided that it was a transaction exceeding the relevant value threshold, be written evidence of a right

to those shares, wouldn't it? You would have to establish your right by written evidence in a Russian court.

- A. There is no requirement that you must evidence your right to shares only by written evidence. All other types of evidence are taken into account.
- Q. Well, we'll come in due course to Article 161 of the Civil Code, but do you agree that if you were claiming a right to be registered as a shareholder by virtue of a contract, that contract would be governed by Article 161 of the Civil Code provided that it exceeded the minimum value limit specified in that Article; is that correct?
- A. If you refer to the contract, yes, there should be a contract --
- Q. Yes.
- A. -- which can be --
- Q. Ie, a written contract?
- A. The question is whether there must be a written contract or that it is better that there is a written contract. I think that it is better that there is a written contract, but you can -- actually the triggering event to effectuate the registration is not the written contract, it's the transfer order, and a transfer order is a unilateral act which is done by the seller and not

a contract.

Q. But to establish your right to make the seller give you a transfer order, you may have to demonstrate that he has contracted to give you or sell you the shares?

A. No.

Q. Well, let us suppose that your right to be registered as the owner of shares is a contractual right, it derives from a contract that you've made with the person who is currently the registered owner. Can we suppose that for a moment. Now, if on that basis you say you are entitled to be registered, then you ask the seller to give you a transfer, and if he says no, you go with your contract to the Russian court, do you not?

A. Yes.

Q. And the Russian court, provided that the value limits exceed the minimum specified in Article 161, will, among other things, apply Article 161 to that contract, will they not?

A. Yes.

Q. I'll come back to Article 161 when I come to deal with that.

Can I, before getting there, ask you to help us on the application of some of the principles you've been giving evidence about to other agreements in issue in this case.

Now, you've acknowledged that the alleged Dorchester House (sic) agreement, which involves a split between legal and beneficial interests, would not be regarded as a valid agreement in Russian law. Could I please ask you to be given bundle K2 and turn to flag 3 at page 8 K2/03/8.

What you're looking at now is the original particulars of claim by which this action was begun. What I want you to look at is page 8, a heading two-thirds of the way down the page, "The claim in relation to Sibneft".

Now, you'll see that in this paragraph Mr Berezovsky's lawyers say:

"At that time [and that's referring to May 2001], the Defendant [Mr Abramovich], through corporate nominees, was the beneficial owner of 43% of the shares in an oil company... Sibneft. In addition, the Defendant, through corporate nominees, was the legal owner of a further 43% of the shares held in Sibneft. Those further shares were held by the Defendant as nominee for and on trust for the Claimant and Mr Patarkatsishvili, each of whom was individually the beneficial owner of 50% of that 43% shareholding."

Now, this situation, the situation that is described in the two sentences which begin "In addition, the

Defendant", that is, as I understand your evidence, also a situation which is not conceptually possible in Russian law? Do you agree?

A. I agree.

Q. Now, could you please turn to the next flag, flag 4, which is the next edition of the particulars of claim served by Mr Berezovsky's lawyers.

Paragraph 36 on page 26 K2/04/26 alleges:

"Initially, Mr Berezovsky and Mr Patarkatsishvili legally owned or controlled companies which controlled and legally owned their proportions of the Sibneft shares. However, as Mr Berezovsky became more heavily involved in politics and while Mr Patarkatsishvili continued to manage ORT, it was decided and agreed between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich that Mr Berezovsky and Mr Patarkatsishvili would be distanced from the... business. Mr Abramovich proposed that all the shares held by Mr Berezovsky and Mr Patarkatsishvili should be transferred legally to him or to entities under his ownership or control."

Then in the next paragraph K2/04/27, it is said that it was orally agreed between the three of them by 1996 that:

"Such a transfer would take place."

And, 2:

"Mr Berezovsky and Mr Patarkatsishvili would continue beneficially to own the shares so transferred, which would be held on trust for them by Mr Abramovich."

I think it follows from your evidence that that also is a situation which is not conceptually possible in Russian law?

A. I don't know. So maybe some other than Russian companies are referred to?

Q. No, this is Sibneft. This is Sibneft.

A. Yes, I understand, but what is the chain of control between each of these individuals and Sibneft? Were there any offshore, ie non-Russian companies?

Q. What is being said here is that the shares in Sibneft -- just assume what is being said here is that the shares in Sibneft were to be transferred legally -- I'm reading from the top of page 27 of the bundle numbering K2/04/27 -- to Mr Abramovich "or to entities under his ownership or control". These are shares in a Russian company. And that it was agreed that Mr Berezovsky and Mr Patarkatsishvili, see 37(2):

"... would continue beneficially to own the shares so transferred [assume that's shares in Sibneft], which would be held on trust for them by Mr Abramovich."

I think it must follow from your evidence to date that that is also a situation which conceptually Russian

law does not countenance?

A. I mean, I can read only what is actually said here, I don't see any reference to, or any contradiction in what is said here and what Russian law says. It might well be that, as I said, there was a long chain of companies, not necessarily Russian ones, between each of these individuals and Sibneft, which I don't know, whereas -- and this may say to me that each of Mr Berezovsky and Patarkatsishvili assumed the obligation to make sure that the shares in companies which control directly or indirectly their shares in Sibneft are transferred under Mr Abramovich's control. It can be both.

Q. I quite understand your point, that it's perfectly possible in Russian law to have a trust of a non-Russian asset, a share in a BVI company, for example. That's not what I'm asking -- I think that's the sort of situation you have in mind and the answer you've just given, isn't it?

A. No. It can be well that the owner of Sibneft shares remained the same throughout all these years, but the shares in that owner belonged to Mr Berezovsky and Mr Patarkatsishvili before and were transferred under Mr Abramovich's control later on. This is a widespread situation in Russian economy.

Q. Just assume, Dr Rachkov, that under a contract governed by Russian law it is agreed that shares in a Russian company are to be legally transferred to Mr Abramovich but on the basis that they will be held in trust by Mr Abramovich for Mr Berezovsky and Mr Patarkatsishvili. Just assume that that is what these paragraphs mean.

On that assumption, which I'm not asking you to confirm because it's quite unfair to ask you to do that, on that assumption, would you agree that that's a situation for which Russian law does not make provision because it's a trust?

A. Well, Russian law is very flexible. If -- the Russian law does not know the word "trust" as such, therefore we need to figure out what exactly the parties may have meant. And if the literal wording of the contract does not allow us to derive the intention of the parties we shall look more intensively on the specific performance of the contract later on, on the correspondence which may or may not have been exchanged between the parties, on the payment orders, if any, on explanations of the parties.

Q. Well, I'll come to the whole subject of explanations, but I thought that one thing we'd established right at the outset of your evidence this afternoon, Dr Rachkov, is that the one thing you can't do in Russian law, even

by agreement, is to create legal and beneficial interests, separate legal and beneficial interests in the same property; you agree with that, don't you? You did before.

A. Yes, I agree.

MRS JUSTICE GLOSTER: As I understand it, what you're saying is: if I agree with you that I will hold shares in a Russian company for you, that can be done through a holding company offshore, but not through just holding those shares in the Russian company on trust for the other person; is that what you're saying?

A. I think the situation is very widespread where whilst individuals do not hold shares in Russian companies directly, moreover legally speaking there is nothing which connects them with these companies. There are only trust agreements with some offshore companies, which in turn hold shares in some intermediate sub-holding companies, which in turn hold shares in Russian companies.

MRS JUSTICE GLOSTER: Well, the question that Mr Sumption is putting to you is: forget the structure whereby you've got an offshore company on top of the Russian company, just look at the situation in relation to shares in the Russian company. It couldn't be done, a warehousing type operation of this sort; what is being put to you is

that it couldn't be done directly in relation to shares in a Russian company?

- A. I'm afraid I need some further explanation from Mr Sumption on this.

MR SUMPTION: Well, I'm simply applying the logic of the answer that you gave to the very first question that I asked you, Dr Rachkov, which involved drawing your attention to the Dorchester Hotel agreement as alleged by Mr Berezovsky, under which Mr Berezovsky says that there was an agreement under which Mr Abramovich would hold shares in trust for him, for Mr Berezovsky, and Mr Berezovsky would have a beneficial interest in those shares.

You confirmed, it's in your report, that that was conceptually not possible in Russian law. Now, this pleading, which is the original form or an early form of Mr Berezovsky's alleged 1996 agreement, is subject to exactly the same objection, isn't it? It's an allegation that there was an agreement under which Mr Abramovich would legally hold shares but in trust for Mr Berezovsky and Mr Patarkatsishvili as beneficial owners.

Now, if that is the allegation, then surely exactly the same applies to this agreement as applies in your evidence to the Dorchester House (sic) agreement, isn't

that right?

A. As I understood the documents I was provided with, ie the particulars of claim, as they developed over time, there is a difference between Dorchester agreement and 1996 agreement which is actually --

Q. What you are referring to, Dr Rachkov, is the manner in which Mr Berezovsky amended his case about the 1996 agreement in response to your original report at the time of the striking out application when you pointed out the difficulties that Russian law put in the way of the agreement that he had originally alleged.

Now, I am asking you about this allegation, and this allegation, on the footing that it refers to Sibneft and not to an offshore company, is conceptually just as impossible in Russian law as the Dorchester Hotel agreement alleged by Mr Berezovsky, isn't it?

A. As I said before, since we don't have any written contract in front of us it is difficult for me to say what the parties could have meant when using such words as "trust" and the like.

Indeed, if things are as put by Mr Sumption, it looks like such an agreement wouldn't make sense under Russian law. Under Russian law, you can't split the beneficial and the legal ownership.

MR SUMPTION: Thank you.

MRS JUSTICE GLOSTER: Would that be a convenient moment?

MR SUMPTION: My Lady, yes.

MRS JUSTICE GLOSTER: Right.

Don't talk to anybody about your evidence or the case.

Ten minutes.

(3.30 pm)

(A short break)

(3.45 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Dr Rachkov, I want to turn to the so-called 1995 agreement which you have categorised as a joint activity agreement or simple partnership agreement. I think it's common ground that those are two expressions for the same thing, aren't they; joint activity agreement and simple partnership agreement are the same thing?

A. Yes, I prefer to use the term simple partnership contract.

Q. Very well.

Now, when we ask ourselves whether a simple partnership agreement was paid in 1995, can I just confirm with you -- and I don't think there's any dispute about this -- what the legal source material is that is relevant.

Am I right in thinking that part 1 of the Civil Code was in force from 1 January 1995 but part 2 only from 1 January 1996?

A. Yes, this is correct.

Q. Part 1 means Articles 1 to 453?

A. Excuse me, I need to correct myself. You said from 1 January 1996?

Q. Sorry, 1 March. You're the witness, Dr Rachkov. I'm told from my right I should have said 1 March.

A. Excuse me, 1 March 1996.

Q. I'm grateful.

Now, part 1 means Articles 1 to 453, doesn't it?

A. Yes.

Q. And the rest is all part 2?

A. There are more, there are part 3, part 4, but part 1 is 1 through to 453.

Q. Okay. Well now, in relation to an agreement said to have been made in 1995 then, can I just list the legal sources that seem to be relevant. First of all, part 1 of the Civil Code is relevant, is that right?

A. That is correct.

Q. Secondly, the Fundamentals of the Civil Code of 1991 is relevant so far as the matter is not dealt with in part 1 of the Civil Code, is that correct?

A. The Fundamentals of the Civil Legislation of the Union

of Socialist Soviet Republics, yes.

- Q. Yes. That's a 1991 document, isn't it?
- A. This is the document of 31 May 1991.
- Q. Yes, and was that a sort of provisional Civil Code which was in due course intended to be superseded by parts 1, 2 and 3 and so on?
- A. Not really. This was the document which was elaborated by the Soviet Union parliament, and this was a kind of umbrella law for civil codes which were to be elaborated by 15 Soviet republics.
- Q. Right. But as I understand it, if some aspect of a legal right was not dealt with in part 1 of the Civil Code which came into force in 1995, one would refer to the Fundamentals of 1991 to see if you could get an answer from that, is that correct?
- A. That is correct. Plus the old Civil Code of the Russian Soviet Federative Socialist Republic of 1964 applied to the extent it did not contradict the constitution of the Russian Federation and other laws including Fundamentals of 1991 and the Civil Code of 1994.
- Q. I understand. So, so far as some matter was not dealt with either by part 1 of the Civil Code or by the Fundamentals, and was not contradicted by the constitution or another law, you could refer to the old Civil Code of 1964?

- A. Yes. To the extent it did not contradict the laws, yes.
- Q. Yes. Now, am I right therefore in thinking that part 2 of the Civil Code is irrelevant to an agreement said to have been made in 1995?
- A. Yes, this is correct.
- Q. Now, is it right that in 1995 the general definition of a simple partnership agreement was to be found in Article 122 of the Fundamentals?
- A. Yes, this is correct.
- Q. Can we have a look at that? It's in bundle G(A)2/1, tab 5 G(A)2/1.05/96.
- A. Can I ask someone to bring me the folder?
- Q. This is extracts from the Fundamentals first in Russian and then in English starting at page 96 in the English. Article 122 is at page 96, and that's the article which I referred to a moment ago in my question, and you in your answer, is it not, the general definition that was in force in '95?
- A. Yes.
- Q. As I understand it, this provision was later superseded, but after 1995, by Article 1041 of part 2 of the Civil Code, is that correct?
- A. Yes, this is correct.
- Q. Now, is it right that the classic business partnership as described in, for example, Article 122 of the

Fundamentals is an arrangement under which people combine their capital or their business skills to achieve some common business objective?

A. It's not 100 per cent the literal wording. The literal wording is that property and efforts are combined, yes.

Q. The Code, if we look at Article 122 of the Fundamentals, deals with the position of people who act jointly, and I quote, "without the formation of a legal person", ie without the formation of an artificial legal person such as a company, is that right?

A. Yes, this is correct.

Q. Would you agree that the alleged agreement of 1995 in this case was an agreement which did involve the formation and exploitation of a company, Sibneft, which would be owned and controlled according to Mr Berezovsky's allegation by Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili; that's the alleged agreement made in 1995, or part of it?

A. I cannot subscribe to that. I understand the particulars of claim in a different way to that.

Q. Well, I'm not going to argue with you about what the particulars of claim say, Dr Rachkov, because that will be a matter for my Lady in due course.

Would you agree that an arrangement to operate a business through a joint stock company is governed not

by the law relating to simple partnership agreements but by company law?

A. No, I do not agree. The company law governs the activity of the company itself, it governs to some extent the relations between the company and its shareholders, but it does not govern the relations between the shareholders.

Q. In some respects surely it does, because company law, for example, would determine what constituted a majority decision at a shareholders meeting, wouldn't it?

A. Yes, here I agree.

Q. If we look back at Article 122 of the Fundamentals:

"Joint activity without formation of a legal person may be carried out on the basis of a contract between the participants in such [an] activity."

Now, that's a reference to a simple partnership agreement, isn't it?

A. Yes.

Q. That excludes, does it not, from the scope of simple partnership agreements, cases in which parties agree to join together to control and invest in the company?

A. What is your question, Mr Sumption, which I need to answer?

Q. What I'm suggesting to you, Dr Rachkov, is that what Article 122 is saying is that simple partnership

agreements do not include cases where the parties have come together to form and exploit a business through a company. Would you not agree with that?

- A. I do not agree with that. There is abundant Russian court practice which says that agreements on the formation of legal entities and, more specifically, joint stock companies and limited liability companies are simple partnership agreements.
- Q. What, that every company is a simple partnership agreement? Surely not.
- A. No. Under Russian law, until recently, there was a requirement for the participants in a limited liability company to enter into a so-called foundation agreement. The foundation agreement was one of the two foundation documents, in addition to the charter, and the foundation agreement is an example of a joint activity or a simple partnership agreement. The same is true for joint stock companies.
- Q. If you agree to operate an oil refining business, for example, and three people come together and agree to operate it jointly, pooling their capital and their business skills, that would be a good example of a simple partnership agreement, wouldn't it, or it could be?
- A. Yes, could be.

- Q. If instead of that they agree to incorporate a company which will own the refinery, and simply to participate as shareholders in that company, that's not a simple partnership agreement, is it, because of the express words of Article 122, "without formation of a legal person"?
- A. No, it is not true. The Russian law says only that the simple partners should have a goal which should be lawful, it can be also an economic goal. And in your case I can imagine that the goal is to create the company, maybe also to manage it, maybe also to control, to vote in a specific manner. All this is covered by the simple partnership contract.
- Q. What do the words of Article 122, "without formation of a legal person" mean? What effect do they achieve in your view?
- A. There are two situations in Russian law and practice. The individuals can either engage in economic activity by creating a joint company, a joint venture, which is a legal person, or they can refrain from creating a legal entity and perform the economic activity themselves. If they do create a legal entity then the economic activity is carried out by such legal entity.
- Q. Well, just looking at Article 122, "joint activity" under this article means joint activity without

formation of a legal person, doesn't it? If it doesn't mean that, then what limitation is being introduced into Article 122 by the words "without formation of a legal person"?

- A. To answer your question I need to get back to the archives of the Russian Parliament.

MRS JUSTICE GLOSTER: Can I ask you this question: if you and I agree to go into business and we buy a company off the shelf, and we're 50/50 shareholders, and our relations contractually are governed by the constitution of the company, we haven't got a joint activity contract in those circumstances, have we? We've just agreed to put our business through a company, we're regulating our affairs by virtue of the memorandum of association and the articles of association of the company. You wouldn't say, would you, there was a joint activity contract, a simple partnership agreement in those circumstances, would you?

- A. If we create a company, the company does not exist yet. We enter into a contract with a purpose to create the company. We enter into a so-called foundation agreement. This foundation is recognised by Russian court practice and also legal literature as a simple partnership agreement. Once the company is established, it may happen that our joint venture or joint activity

was completed by this so we are now shareholders in that company and --

MRS JUSTICE GLOSTER: And thereafter there's no joint activity agreement?

A. Well it depends on the provisions of the contract, what exactly is said there.

MRS JUSTICE GLOSTER: Okay. Say you and I don't agree to form a company but you already own a company 100 per cent and I buy in, or you sell me 50 per cent of the company, and we enter into a shareholders agreement as to how we shall vote and how we will appoint directors as between us. Is the shareholders agreement, whereby you and I contractually agree how we're going to vote directors, what transactions the company will and won't do, is that a joint activity contract?

A. It's a very good example of a joint activity agreement.

MR SUMPTION: Well, I'm puzzled by that, Dr Rachkov, because I thought this was common ground.

Would you take your fourth report, please, in bundle G(A)1/1, you may still have it in front of you, and turn to paragraph 164. This is G(A)1/1.01/57.

A. Can you repeat the number of the paragraph, please?

Q. It's bundle G(A)1/1, flag 1, page 57 in the bundle numbering.

You see, I would suggest to you that a foundation

agreement governing the creation or operation of a company is not an example of a simple partnership agreement, and I had thought that this is something that you were pointing out at paragraph 164. Would you like to look at paragraph 164 of your fourth report, have you got that?

A. Yes.

Q. What you seem to say here is that:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract."

Now, a simple partnership is not a legal entity, is it?

A. A simple partnership is not a legal entity.

Q. No. So:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract. But where they agree to act without formation of a legal entity, they make a simple partnership contract."

You quote Professors Braginsky and Vitriansky in their leading textbook on contract law where they describe the subject of a partnership contract as

follows:

"Article 276 of the 1922 Civil Code and Article 1041 of the current Civil Code ..."

Now 1041 I think you've confirmed is the current version of what was in 122 of the Fundamentals, and has the same reference to not including a legal entity, doesn't it?

A. Yes.

Q. And the citation you have in your paragraph:

"Article 276 of the 1922 Civil Code and Article 1041 of the current Civil Code confirm the characteristic features of a simple partnership contract: in the 1922 Code, the combining of contributions, and in the current Code, the combining of contributions and the fact that the joint activity is carried out without forming a legal person. The absence of either of these indicators prevents the parties' contract from being deemed to be a simple partnership contract."

Now, what that textbook extract is saying, surely, is that if you don't have a situation where there is no legal person, ie if you do have a legal person, you haven't got a simple partnership contract; isn't that what it's saying?

A. Indeed at the first glance you can come to this conclusion, but as a matter of law and practice it is

not correct.

- Q. Well, the governing principles of law in Russia, as in I think all civil law countries, are to be found in the various codes, are they not? And it's the duty of the courts to apply the codes?

Now, you say "at the first glance" my interpretation of Article 122 and this textbook is correct. Is the position any different at second or third glance?

If you look at what the Code actually says, and what authoritative textbook writers have said about its meaning, you have to conclude that if the activity is carried out through a legal entity it's not a simple partnership agreement, don't you?

- A. No. If the activity is carried out in order to form or to manage or to control a legal entity, for instance a limited liability company of Russian law or joint stock company of Russian law, this is a simple partnership contract.

- Q. When you said that at first glance this textbook is indicating the opposite, how are we to read it at second glance?

- A. Probably taking a look at the context in which these words are said.

- Q. Well, I'm just looking at what appears to be a proposition of law derived from Article 1041 of the

current Civil Code, which is the equivalent of Article 122 of the Fundamentals. What's wrong with the statement of the law that we see in the textbook that you have quoted?

A. The fact that the parties to a simple partnership contract are shareholders of a legal entity which is formed as a result of such joint activity does not mean that there is no simple partnership contract. The creation of a legal entity is the result of the joint activity.

Q. So do you say that the law formulated in this extract from the textbook is wrong?

A. The textbook is not a source of the law. The textbook is only an interpretation of what the law says.

Q. Do you say that the interpretation is wrong?

A. The interpretation is contained in the context and, as I said, from the context of this textbook it follows that the authors of this textbook means exactly what I said.

Q. Are you distinguishing, Dr Rachkov, between an agreement to form a company and an agreement to operate a business owned by a company? Are you making that distinction?

A. No, not really.

Q. I see. So if two parties come together and say: we will acquire half each of an existing company that owns

a refinery and we will cause the company to operate that refinery and to make profits which we will then declare in dividends and distribute 50/50 between each of us, are you saying that's a simple partnership agreement?

- A. It all depends on the details which are contained in the contract. If the parties combined their efforts, their skills, their reputation, if they acted together to achieve this goal, if this goal was lawful, if this goal was finally achieved, that is a simple partnership contract.

MRS JUSTICE GLOSTER: Okay, well, take the example

Mr Sumption has just put to you, because I'm not understanding this, just take the simple example there. As I understand your evidence, you're saying that until the company has been acquired or until the company has been formed there is a joint activity agreement. But what about once the company has been acquired, so the two parties have acted together, they've acquired the company, from there on in the activity is generating the profits of the business through the company. At that stage in time is there still a joint activity agreement?

- A. There can well be a joint activity agreement.

MRS JUSTICE GLOSTER: No, not whether there can well be. Is there, just in the simple example that you've been given, where parties agree together that they will

combine together to acquire a company, they acquire the company, no more agreement because they've acquired it; in those circumstances is there, going forward, a joint activity agreement?

A. Yes.

MRS JUSTICE GLOSTER: Why?

A. Because the parties combined their efforts to achieve a lawful goal, and they did so.

MRS JUSTICE GLOSTER: Even in circumstances where there's no agreement going forward governing their relations together?

A. The goal can be just acquisition of control or a certain stake in the company. It can also be acquisition of a certain stake in the company plus management of some business of the company afterwards.

MR SUMPTION: Well, Dr Rachkov --

A. Russian law is very flexible in terms of what the parties can agree on.

Q. Doctor Rachkov, I'm bound to suggest to you that this view is not consistent with Article 122 of the Fundamentals; it's not consistent with the textbook which you've quoted in your report; and it's not consistent with your own gloss in paragraphs 164 and 165 where the absence of a legal person, in all three places, is treated as a critical indication of whether

there is a joint activity agreement or not.

MRS JUSTICE GLOSTER: You're being asked about the first sentence of paragraph 164.

A. Yes.

MR SUMPTION: And the first sentence of 165.

A. The first sentence reads:

"Where the parties agree to combine their contributions by forming a legal entity (such as joint stock company or a full partnership), they make a different type of contract."

As I said, if the parties intend to achieve a lawful goal, ie a goal which is not contrary to the law, and if they combine their efforts, and if they achieve this goal, this is a simple partnership agreement.

The first paragraph, or first sentence of 165 reads:

"As I have explained, if the parties' agreement does not match these characteristics, they have not concluded a partnership [agreement]."

Q. One of the characteristics you are referring to there is that the activity is carried on without forming a legal person. Isn't that right?

A. No, it is not correct.

Q. We may have to study that for ourselves.

I'd like to turn to the question of certainty. The first head which I'd like to ask you about is the

requirements for a valid agreement as to the partnership share, by which I mean the share that each party has in a simple partnership agreement if they intend to form one. That's the subject I'm going to ask you about now.

Now, I think you agree, don't you, that for a simple partnership agreement to be valid the essential terms have got to be agreed?

A. Yes.

Q. Now, I think you also agree with the other two experts that these essential terms include the predmet or subject matter of the contract, is that correct?

A. Yes.

Q. Now, your evidence is, and this is recorded in the joint memorandum, and you agree with the other experts on this, that the predmet means the obligations flowing from the contract, is that correct?

A. Yes.

Q. As I understand it, correct me if I'm wrong, the principle is that those obligations have got to be agreed with sufficient precision to enable a court to enforce the obligations in question. That's the essential test, isn't it?

A. Yes.

Q. We have seen earlier, when we looked at the question of common ownership, that it can be of two kinds: common

ownership in defined shares, or joint ownership. Do you remember we discussed that a while ago?

A. I remember.

Q. Now, is it right that in Russian law you cannot have joint ownership except in cases where specific provision is made for joint ownership by legislation?

A. Yes.

Q. And does it follow therefore that, except in cases specifically provided for by legislation, the only possible form of common ownership involves defined shares?

A. Yes.

Q. Now, I understand that you accept that there is no relevant legislation providing for joint ownership in this case?

A. I agree.

Q. And can we take it, therefore, that partnerships involve a form of common ownership characterised by defined shares?

A. Yes.

Q. Would you agree that the proportionate shares that each partner is to have in a proposed simple partnership agreement is one of the matters that has got to be agreed if that agreement is to be validly concluded?

A. Not necessarily.

Q. When you say not necessarily, one would have thought that whether you have to agree the size of each party's proportionate share is a question that should be answered either yes or no. But your answer is maybe?

A. My answer is no.

Q. Your answer is no. I see.

Now, if there is no agreement about what the partnership shares are to be, how does the court enforce the distribution of partnership profits?

A. The term which must be defined is what shall be contributed. On the basis of this term, as well as on the basis of the performance, the court is in a position to identify the shares in the joint ownership.

Q. Well, I will come to the question of looking at the contributions.

As I understand it, there are circumstances in which you can infer from the parties' contributions what the agreement as to their respective shares was. Is that correct?

A. This is correct.

Q. And that's what you're talking about, isn't it, when you talk about the contributions?

A. Yes, because, as I said, the simple partnership contract presumes that the partners combine their efforts, for instance.

Q. Well now, let me put a hypothetical case to you.

Suppose that the parties intend to enter into a simple partnership agreement to operate a business but they do not reach agreement about what their respective partnership shares are to be. A year after they have begun this business, before any distributions have been made, there is an argument about what the distributed shares are to be.

Now, you say that the court in that situation would look at what they each contributed, is that right?

A. Yes.

Q. If they each contributed things of indeterminate value, such as business skills, how does the court set about doing that?

A. This is the question which should be assessed by appraisers, not by lawyers.

Q. I see. So you put a monetary value on their respective contributions, do you?

A. If these efforts do have such value, yes.

Q. I see. Does it follow from this that if you have a simple partnership agreement to acquire and exploit shares in a company, and one of the partners pays 100 per cent of the cost of acquiring those shares, he will be treated as having a 100 per cent share?

A. No, I don't think so.

Q. Why doesn't that follow from what you've just told us?

Let us suppose that you have a simple partnership agreement to acquire and exploit shares in a company, something which you, contrary to our position, say is perfectly possible. Now, if one of the partners is the only person who puts up the money and the only person who acquires the shares, then when the court comes to look at the value of their respective contributions, will it not decide that that partner is alone entitled to 100 per cent?

A. No, the court must decide what the other party contributed.

Q. Well, I'm asking you to assume they contributed nothing.

A. Then the other partner who contributed something is entitled to request that the other party contributes something which that party was obliged to contribute.

Q. Well, if they haven't reached an agreement about that, what does he ask him to contribute?

A. As I said, the contributions must be agreed upon, and on the basis of the contributions you distinguish or determine the shares which each of the partners have in their common ownership, in shared ownership.

Q. Would you look in your fourth report, please, at paragraph 167. This is under the heading which we see at page 57 of the bundle numbering, "Essential terms for

a partnership contract" G(A)1/1.01/58. Now, you quote here Professor Sukhanov, the author of a textbook who "confirms that the essential terms for a partnership contract are those that I have described above".

Above in the previous paragraph, I think you're referring to the concept of contributions, joint activity and, 4:

"... if the agreement is to be a partnership contract, it is essential that the parties should combine their contributions."

Sukhanov says:

"The essential terms of a simple partnership contract are those on:

"Joining of contributions;

"Joint activity of the partners;

"A common goal, at whose achievement these actions are directed."

You say it's quite unnecessary for the parties to have agreed in what shares they are to own the resultant common assets, is that right?

A. Yes.

Q. Now, could you please take bundle G(A)4/6.

My Lady, is your Ladyship willing to go on until 4.30?

MRS JUSTICE GLOSTER: I was going to go on until 4.30 or

a suitable break thereafter.

MR SUMPTION: I will be guided by that.

If you could just take bundle G(A)4/6 and turn to flag 63, Dr Rachkov, which is an extract from Professor Sukhanov's textbook, and the bit that you have quoted in your report is the part immediately under the heading "Terms of a simple partnership agreement" G(A)4/6.63/69. That's right, isn't it?

A. Yes.

Q. Now, if you just turn over the page G(A)4/6.63/70:

"The term on unification of the contributions must contain information about [the] type of proprietary or other benefit, comprising the contribution of a participant, as well as [the] amount and monetary evaluation of contribution with determination of share of each participant in common property."

Now, Professor Sukhanov is pointing out, isn't he, that you not only have to agree the contribution that you're going to make in property or effort but you have got to agree the amount and monetary evaluation of that contribution and to determine the share of each participant in the resultant common property. Is that not what he is saying?

A. This is what Professor Sukhanov believes.

Q. Yes. Now, Professor Sukhanov is a well-known authority

on this area, is he not?

A. He is.

Q. Yes, and you have quoted him in your report for that reason. But it's not right, is it, that Professor Sukhanov thinks that the only things that need to be agreed for a valid simple partnership agreement are the three matters which are identified in your report and in the first paragraph on page 69 G(A)4/6.63/69? Hence the paragraph I've just referred you to.

A. Yes.

Q. You agree?

A. Excuse me, with what?

Q. It is not right, is it -- if you look at the first paragraph under the heading "Terms of a simple partnership", the one that you quote in your report, it's not right that Professor Sukhanov thinks that the three things referred to here: merging of contributions, joint actions of the partners and the general purpose, are all that have to be agreed in order to make a valid simple partnership agreement. As you've just confirmed, Professor Sukhanov's view is that you must also agree the amount and monetary evaluation of the contributions and determine the share of the resultant common property?

A. I explained in one of my reports that this is a so-called "nice-to-have" provision. It is not a "must" provision because Professor Sukhanov clearly distinguishes between material terms or substantial essential terms of the simple partnership contract which are listed in an exhaustive way in the beginning of this quotation, and he does not say that the condition on the appraisal of the shares is an essential term. So therefore I disagree with your opinion.

Q. The word "must" is his word. If you look at that final paragraph in the section which has been translated here:

"The term on unification of the contributions must contain information about type of proprietary or other benefit, comprising the contribution of a participant, as well as [the] amount and monetary evaluation of [the] contribution with determination of share of each participant in common property."

All of that is mandatory in Professor Sukhanov's view, isn't it?

A. No, it is not. It sounds like this but it is not and, besides, there is court practice to which I refer in my reports and Professor Sukhanov is not a judge which says that if the condition on the appraisal of the shares is missing, it does not necessarily mean that the simple partnership agreement was not concluded or is invalid or

has another error or mistake in it. And, besides, I would like to draw the attention of my Lady to a citation in Sukhanov and this is right after the beginning of this three essential terms where Sukhanov says G(A)4/6.63/69:

"For certain kinds of simple partnership agreements, the list of material terms may be expanded by law. For instance, under Article 98 of the Civil Code and Article 9 of the Law on Joint-Stock Companies, a joint venture agreement on the formation of a joint-stock company must specify terms regarding..."

And then there is a continuation of what Professor Sukhanov thinks, so that's the example which shows to you that agreements on formation of legal entities are simple partnership contracts. Sorry for getting back to this topic again but I think it was quite important for Mr Sumption.

MRS JUSTICE GLOSTER: Which you say illustrates the point you were making earlier?

A. Yes, correct.

MR SUMPTION: Professor Sukhanov obviously considers that there are also, in addition to mandatory requirements, there are "nice-to-have" requirements but the requirements that he summarises at page 70 of the bundle G(A)4/6.63/70, this is a paragraph in which he is

summarising what the term on unification of the contributions must contain. The term on unification of the contributions is the first of the three essential terms that he refers to right up in the first paragraph, isn't it?

A. Yes.

Q. The merging of contributions is the first absolute requirement and, in the last paragraph of the extract, what he is doing is explaining what the term on the merging of contributions, an essential term, has got to contain, isn't he?

A. Yes, but what is the purpose of this regulation? The purpose is to make sure that the parties know what they must perform. If the parties already performed their obligations, there is no dispute any longer about what they were obliged to contribute. Therefore, this case to which you and Professor Sukhanov refer is different from the case at hand.

Q. But if you make a simple partnership agreement and before you've started to perform it you go to a lawyer and say, "Is this a valid agreement?", the lawyer will say, "Well, unless you have specified the shares of the resultant common property and agreed a monetary evaluation of your contributions, no, it's not a valid agreement". Isn't that right?

A. No, it is not right. It is important to identify the contributions, not the shares -- not the appraisal of the shares, not the appraisal of the contributions because they can be derived on the basis of default rules contained in the Civil Code and regulating simple partnership contracts.

Q. Well, we'll come to the default rules in a moment.

Now, suppose that the agreement which the parties made in 1995 was that the partnership shares should be 50 per cent for Mr Abramovich and 50 per cent for Mr Berezovsky and Mr Patarkatsishvili jointly. Just suppose that that was what was agreed, okay?

A. Okay.

Q. Now, I think you accept, don't you, given your earlier answers, that Mr Patarkatsishvili and Mr Berezovsky could not validly have agreed to hold their partnership share jointly, because this isn't a case which is provided for by legislation?

A. I agree.

Q. Now, would you accept therefore that, if the parties have expressly agreed that the interest of two out of three partners is to be joint, then there is no basis on which it can be treated in Russian law as an agreement for defined shares?

A. It's --

- Q. If they've expressly agreed that the interests of the two of them in a partnership is to be joint, they've simply entered into an ineffective agreement, haven't they?
- A. I do not agree with that.
- Q. Do you say that if they have expressly agreed that their interest is to be joint, nevertheless by law it can be treated as a share agreement in the language of Article 244, a defined share agreement?
- A. As I understood the particulars of claims --
- Q. I'm not asking you to express an opinion on the particulars of claim, I'm putting to you a hypothesis, okay? And the hypothesis I'm putting to you is that these three people have expressly agreed that Mr Abramovich is to have a 50 per cent interest in a partnership agreement and that the other 50 per cent interest is to be held by Mr Berezovsky and Mr Patarkatsishvili jointly.
- Now, if my Lady were to find that that is what had been expressly agreed, do you accept that that is an ineffective agreement?
- A. It depends on the parties' intention. If the parties intended to have common and not shared ownership, then indeed this is an invalid agreement.
- Q. Thank you.

My Lady, I suspect that rather than embarking on the next question, your Ladyship might wish to rise now.

MRS JUSTICE GLOSTER: Very well.

Wednesday, Mr Rabinowitz, arrangements can be made, as far as I understand it, to sit.

MR RABINOWITZ: Indeed, and I understand the transcript writers can be here as well, my Lady. So Mr Sumption is here, your Ladyship is here, Mr Rozenberg and myself are here.

MRS JUSTICE GLOSTER: That's subject to any wider considerations of whether the courts will be open but as I understand at present -- but I'll let you know tomorrow.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: But you should work on the basis that the court will be sitting. Very well.

You understand that you're not to talk about your evidence or the answers you've given or the case overnight.

THE WITNESS: Yes, my Lady, I do.

MRS JUSTICE GLOSTER: You understand that. Very well.

Thank you very much. 10.15 tomorrow.

(4.30 pm)

(The hearing adjourned until  
Tuesday, 29 November 2011 at 10.15 am)

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Tuesday, 29 November 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

DR ILIA RACHKOV (continued)

Cross-examination by MR SUMPTION (continued)

MR SUMPTION: Good morning, Dr Rachkov.

When we broke yesterday, I was asking you about the implications for simple partnership agreements of the rules about common ownership. I think we'd established that if one is going to have a simple partnership agreement, that could only validly be achieved by doing it in defined shares. You can't have joint ownership. That's right, isn't it?

A. We discussed what are the essential terms of the simple partnership contract, and I confirmed that it is important to make a concluded simple partnership contract to agree on the contribution which are aimed at achievement of a lawful goal.

Q. Yes. But I think you also accept, don't you, that joint ownership of assets is possible only in cases where it's provided for by legislation which do not include partnership cases?

A. That is correct.

Q. So that if you have a simple partnership agreement, the partnership assets have got to be held in defined

shares, not jointly; the other form of common ownership?

A. The shares must not be defined from the very beginning but they can be defined by application of Russian law.

Q. Well --

MRS JUSTICE GLOSTER: When you say "must", you mean do not need to be, do you?

A. Do not need to be.

MR SUMPTION: So you're suggesting, are you, that it's possible for the parties to make an agreement that they will have defined shares but without saying what those shares are?

A. No, I'm not saying this.

Q. In that case I don't quite follow what you are saying.

Suppose that three parties come together and decide to have a simple partnership agreement. Now, their shares in the partnership assets can't be joint, I think we've established that; they have got to be what in Article 244 is called share ownership, ie ownership of a share, isn't that right?

A. Yes, the property which the parties contribute or which arises as a result of their joint activity must be their shared ownership.

Q. Now, for that purpose surely the parties have got to agree what their shares are going to be?

A. I disagree with that statement.

- Q. Well now, let's suppose that three parties come together and make an agreement to have a partnership but they do not agree what their shares are going to be, okay? And let's suppose that before they've done anything else, they come to you as their legal advisers and say, "Is this a valid agreement?" What's your advice?
- A. I will ask them whether or not they defined the contributions, not the shares.
- Q. All right.
- A. Is what is the property, or are there efforts which they would like to unify to pursue their joint activity?
- Q. And suppose they tell you that the answer to that question is that they're not contributing anything in money, they are simply contributing their various skills, and they don't yet know what the value of those skills will be, it will all depend on how the business turns out. What advice do you give them?
- A. I will ask what the goal of their joint activity is, and, if they do not contribute any money or other tangible assets, that this is the goal which governs what they must do. If they are professionals, they do well understand what must be done, what is necessary and sufficient, to achieve this goal.
- Q. Well, that's not always the case, is it? Let's take the facts as alleged in this particular dispute, Dr Rachkov.

You have an agreement, according to Mr Berezovsky, that his contribution is going to be in the form of lobbying and raising money, but you have no agreement about how much lobbying is going to be required, how much money is going to be raised, how long it's going to take and so on.

So in that situation, how do the parties establish what the relative value of their contributions is?

- A. The old Roman said "sapienti sat". This means that those who are professionals, they do understand well, they do it not for the first time, I guess, what should be done to achieve the goal.

In this particular case I think the goal was quite clear, this was establishment of Sibneft as a legal entity and privatisation of its shares with a particular result, and the result is that the control over Sibneft is jointly held by those two or three persons who are the partners to the joint activity contract. This means that each of them was under the obligation to do whatever is objectively necessary and sufficient, as I said, to achieve this particular goal.

And this is the case with all contracts which deal with nontangible assets or nontangible property, if you wish, which are not things or money. You cannot predict from the very beginning what each of the parties shall

do each single day. There are virtually no self-executing agreements, neither in Russian law nor in English law. That's why a reference must be made to performance on the one hand and to default rules of Russian law on the other hand.

Q. I will come to the question of default rules in a moment, but if you cannot predict how much work and how much skill and effort will be required of each of the partners, you cannot, I suggest, know what their shares will be if you are allowed to have a valid partnership agreement in which the shares depend entirely on what's going to be put into the enterprise. Do you follow my question?

A. I do follow your question, Mr Sumption. I insist that there is a big difference between the terms "contributions" and "shares", and the cases on which I base my opinion, which we can have a look at if you wish, they say that in many cases the parties unified their efforts without saying for sure what exactly must be done.

Whatever is necessary and sufficient to achieve a proper, lawful, economic goal must be done by each of the partners. That's my opinion.

Q. If the position is that the parties do not agree their respective shares in the common property and cannot

predict in advance how much work will be required of each of them, I suggest that there is no way in which you could advise them, the day after they had made their agreement, whether it was valid or not. What do you say?

- A. If your question is about how I would advise the simple partners or the future simple partners, of course I, as a practising lawyer, would prepare a written agreement which spells out as many details as possible, which is very clear and very detailed and spelled out so that everybody knows what exactly must be performed.

However, if the performance shows what exactly they did, and nobody objected against, what is the problem?

MRS JUSTICE GLOSTER: Can I just be clear. Is this a summary of your propositions: there's no necessity to quantify the contributions from the start because the parties or the partners have got to do whatever is necessary to achieve the economic goal. And there's no necessity to fix the shares in the partnership assets from the start?

- A. Correct, my Lady, with one small caveat. If the partners agreed to unify money or maybe other tangible property, maybe this is important to say, at least either what is the total amount of the money which is necessary to run the joint activity, for instance, they

agree that the total fund available to the joint activity must be 100 rubles, and there are only two partners, then default rules of Russian law allow to determine that each of them must contribute 50 rubles.

The other possibility is that they agree that the funds available must be 100 rubles but they do not agree -- sorry, the amount, they did not agree on the total amount, but there are two partners and the share of one partner or the contribution of one partner is clearly defined, 50 rubles. This means that the other party must also contribute 50 rubles. That's how Russian law operates.

MRS JUSTICE GLOSTER: No, my question to you was, am I to record your first proposition as being that there is no necessity to quantify the contributions from the start?

A. In this particular case, it is not necessary.

MR SUMPTION: Dr Rachkov, what I suggest to you is that, if you do not sufficiently define in advance either your shares in the common property or the amount that each party is going to put in, you do not have a valid partnership agreement. I think you reject that proposition, do you?

A. Having regard to what I said before, I only agree that the contributions must be not defined, but the parties must agree to contribute something. In this particular

case they contributed their efforts, their business skills, business reputation rather than money. This means that each party was under the obligation to do whatever is necessary and required objectively to achieve this lawful economic goal.

- Q. Now, you mentioned default provisions and there is a default provision of the Civil Code, is there not, providing that in the absence of agreement shares are treated as equal?
- A. Yes, not only shares but also contributions are treated equal. "Contributions" is translated into Russian as "vznosy". Before you have a share, you have to have the contributions.
- Q. Contributions; which article of the Civil Code are you thinking of, 1041?
- A. I refer more to the Russian legal literature to which I referred in my reports, which indicates that, in accordance with the Civil Code of 1964 and in accordance with the fundamentals, unless the parties otherwise agreed, their contributions were to be equal.
- Q. I'll go back to that issue because I certainly can't find that in those parts of the Civil Code but we'll come back to it.

Can I ask you to look at Article 245, which is at G(A)4/4.02/45. Now, is sub-article 1 the relevant

default provision regarding the parties' respective shares in the common property?

A. Correct.

Q. That provides that:

"Shares shall be considered equal if the shares of the participants in share ownership cannot be determined on the basis of a statute and have not been established by agreement ..."

Now, do you agree that the default provision, that default provision, cannot apply where the parties have expressly agreed that their shares in the common property are not to be equal?

A. Yes.

Q. Now, if there is an agreement between all the partners that the partnership shares are not to be equal, but no agreement between all the partners about what their unequal shares are to be, would you agree that the default provision cannot help?

A. I would not agree. I would like to refer to the information letter of the Presidium of the highest arbitrazh court, or Supreme Arbitrazh Court, as you may call it, of the Russian Federation, which I used in my report. It says -- actually it deals with the following case --

MRS JUSTICE GLOSTER: Hang on, can I just have the paragraph

in your report?

A. I need then my reports, please.

MRS JUSTICE GLOSTER: Just because I would like to --

MR SUMPTION: Yes, I think it would be helpful if you kept the volume with your reports open in front of you so you can refer to it whenever you need to.

A. Thank you for your recommendation.

MRS JUSTICE GLOSTER: Are we in your fourth report?

A. I am now looking at my reports just to make sure that I find the proper information letter.

(Pause)

This is my fourth report, paragraph 178

G(A)1/1.01/61.

MRS JUSTICE GLOSTER: Thank you.

A. And there, in paragraph 2 of the information letter, the Presidium of the Supreme Arbitrazh Court of the Russian Federation had to do with the case where two parties allegedly agreed on their shares in the shared property. Later on they contributed maybe the property, which deviated from this initial agreement, and the court had difficulties with defining the shares. And the court of the first instance said, based on especially Article 245 of the Civil Code, the shares are equal.

The court of the upper instance, however, indicated that the court of the lower instance must determine what

exactly was contributed, what is the valuation of this, and only if it is impossible to define it then the shares are deemed equal. That's shortly what the court says.

MR SUMPTION: Well, Dr Rachkov, I was trying to establish with your assistance how helpful Article 245.1 is in a situation where the parties have expressly agreed that the shares are not to be equal.

Now, do you agree that if the parties have expressly agreed that the shares are not to be equal then you cannot apply a default rule which says that they are to be equal?

A. No, I do not agree. In the case to which I refer, the parties also argued before the court that their shares were unequal.

Q. Well, would you please look at the provisions of the Code which you quote in the previous paragraph of your report, paragraph 177 G(A)1/1.01/61. Do you see the reference to Article 1042 which in fact came into force in the following year?

"The contributions of partners shall be assumed equal in value unless otherwise follows from the contract of simple partnership or the circumstances of the case."

Now, do you agree that under Article 1042, if the

terms of the parties' agreement or the circumstances of the case show that the contributions here are not to be equal, then the result is that the default rule does not apply?

A. I think the wording of Article 1042 is self-explanatory and says just what it says.

Q. Well, that's not terribly helpful of you, Dr Rachkov, I want to understand whether you say, in the case of contributions and a contract governed by Article 1042, if the parties or the circumstances show -- sorry, if the agreement or the circumstances show that the parties intended that the contributions should not be equal, then the default rule doesn't apply.

On the face of it, that's what Article 1042 says, do you disagree?

A. No, I cannot deny what Article 1042.2 says. You are right, if the parties agreed from the very beginning that their shares must be unequal, their shares must be unequal, and they must contribute the property which is in accordance with this agreement.

Q. And would you accept that that is a feature of all of these default terms relating to partnership terms: default terms are terms that apply in the absence of agreement on something else, isn't that right?

A. In principle that's correct, yes.

- Q. So if the parties have agreed that their shares in the common property are not to be equal, you can't apply a default term which says that they are; that must follow surely?
- A. If the parties said that their shares are not equal but did not agree what exactly their shares are, then the default rules apply.
- Q. Well, let's have a look at the information letter which you referred to a moment ago and which you refer to in your report. You'll find it in bundle G(A)2/1 at flag 19 G(A)2/1.19/239.
- Now, is this the case that you were referring to, or the information letter you were referring to?
- A. Yes, this is the information letter I'm referring to.
- Q. Do you accept that this information letter was not dealing with a case where the parties had agreed or the circumstances showed that the shares in the common property were not to be equal? That's not the situation that was being considered?
- A. It can be both. The description of the case does not say it correctly. The description says, however, that both parties insisted in the first instance that the shares are not equal. This may be an index to the fact that they agreed that the shares should be not equal.
- Q. That's a reference to the submission that they were

making to the court, isn't it? It's not a reference to the terms that they had originally agreed?

A. Since I didn't see the contract, I cannot insist that they agreed for sure that their shares must be equal or not equal.

Q. Now, if you look at the reasoning, and I'm looking at the English text on page 241 G(A)2/1.19/241, you will see that they refer to 1042 of the Civil Code, which was the relevant provision at that time, and to 245.1 as well, that is about a third of the way down on page 241; do you see that?

A. Yes, I do.

Q. They then say in the paragraph that immediately follows that reference:

"The cassation court overruled this decision and sent the case back for reconsideration by the lower court to determine the amounts of [the] contributions ... The court stated that in accordance with Article 1043 of the Civil Code, the property contributed by [the] participants of the contract, and [the] products resulting from the joint activity, are treated as shared property unless otherwise stipulated by the law or the joint activity contract or unless otherwise follows from the nature of the obligation."

So are they saying that if the agreement or the

circumstances show that the shares were not to be equal then 1043 would not apply? That's what they're saying, isn't it?

A. No, I think that one paragraph below you will see that -- this is just -- well, I need to refer to English translation, sorry:

"The court lawfully decided that the transformation station is an object of common shared property of the parties, and the shares of the parties shall be determined with reference to Article 245 of the Civil Code."

Q. Yes, well, that was what they decided in that case, but the general principle is set out in the previous paragraph, which is that you apply 1043 unless the parties have agreed otherwise or the circumstances show that it was not intended that they should be equal. That's the principle that's being applied, isn't it? And in this case, they were equal because the parties in the circumstances didn't suggest otherwise?

A. Pardon me, can you please repeat the question?

Q. If you look at the paragraph immediately under the reference to Articles 245.1 and 1042 --

A. Yes.

Q. -- that is setting out the principle, isn't it, namely that 1043, which is one of the default provisions,

applies:

"... unless otherwise stipulated by the law or the joint activity contract or unless otherwise follows from the nature of the obligation."

So the principle that is being applied here, surely, is you apply the default provision unless the terms of the agreement or the circumstances show it was not intended that they should be equal. That's what's being said, do you agree?

A. I think I agree, yes.

Q. Right. If you look at the final paragraph on this page:

"Where monetary assessment of contributions of the parties is impossible, and the parties did not reach ... agreement on this issue, it is to be assumed ... in accordance with Article 1042 and Article 245... the contributions of the participants and the shares in ownership of common shared property are deemed equal."

That again is qualified by saying "where the parties did not reach an agreement on this issue", isn't it?

A. Yes. And in this particular case, if you have a look at the paragraph which is at -- third paragraph from the bottom, there is an indication that in this particular case the parties did not agree on how to determine their shares. That's why --

Q. Yes.

- A. -- the court must apply in this case 245 and 1042.
- Q. Now, if you take a case different from the one referred to in this information letter, where the parties have agreed that the partnership shares are not to be equal but haven't agreed on what their unequal shares are to be, one thing seems clear, and that's that you can't apply the default provision, isn't that right?
- A. It depends on the specific situation we are speaking about. I cannot answer your question with "yes" or "no".
- Q. Well now, suppose that Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili had agreed in 1995 that Mr Abramovich was to have 50 per cent and that Mr Berezovsky and Mr Patarkatsishvili were to have 50 per cent between them held in common, but with no agreement about how Mr Berezovsky's and Mr Patarkatsishvili's 50 per cent was to be divided up between the two of them.
- Do you follow what I'm asking you to assume?
- A. I do follow.
- Q. Right. Now, do you agree that in that situation there would be no agreement about the partnership shares of anybody other than Mr Abramovich?
- A. Yes, Mr Abramovich's shares would be defined.
- Q. And do you agree that the default provision could not be

applied in that situation because the parties would have expressly agreed upon an unequal share since each of Mr Patarkatsishvili and Mr Berezovsky would necessarily have less than Mr Abramovich; do you agree?

A. No, I don't agree, I think here the default rule applies. Unless you can prove that Mr Berezovsky and Mr Patarkatsishvili agreed on other distribution of their shares than 25/25 per cent, the rule is that their shares are equal, based on Article 1042 and 245 of the Civil Code.

Q. That would mean, would it not, that each of the three of them was to have 33 and a third per cent of the common property, that would be the effect of the default rule, wouldn't it?

A. If the parties did not agree on their shares then indeed each participant or each partner would have one third in that shared property.

MRS JUSTICE GLOSTER: I think you're at cross-purposes.

MR SUMPTION: I think I may be.

Let us go back to my hypothesis. The hypothesis I'm asking you to assume is that Mr Abramovich was going to have by agreement 50 per cent, and Mr Berezovsky and Mr Patarkatsishvili were going to have 50 per cent between them but with no agreement about how much each of Mr Berezovsky and Mr Patarkatsishvili were going to

have individually. Do you understand?

A. Yes, I do.

Q. Now, in that situation, do you say that the default rule would apply so that they each get a third or not?

A. No.

Q. No. So what do you say the default rule means in that situation?

A. The default rule is that, if we have three simple partners out of which the share of only one partner is defined, and this share is 50 per cent, then the remaining 50 per cent are allocated to each of the two remaining partners in equal shares.

Q. Well, that is not what Article 245, the relevant default rule, appears to say, does it?

A. I think it does.

Q. What it says is that:

"Shares shall be considered equal if the shares of the participants in share ownership cannot be determined on the basis of a statute and have not been established by agreement of all its participants."

If you have a single agreement between three people, and that agreement provides that two of them are to get less than the third, but it doesn't say how much, you can't apply the default rule just to the two whose shares are not defined, can you?

- A. I think I can.
- Q. Well, do you accept, I think you do, that a partnership, a simple partnership, is not a legal entity?
- A. A simple partnership is not a legal entity.
- Q. Does it follow from that that a partnership as such cannot be a partner in another partnership?
- A. Say it again, please.
- Q. A partnership as such cannot be a partner in another partnership?
- A. I'm not sure, I did not check this question. I don't see any reason why it should not.
- Q. Well, if Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili entered into a simple partnership agreement, wouldn't it have to be on the basis that the partnership comprised the three of them individually, because any partnership that might exist between Mr Berezovsky and Mr Patarkatsishvili would not itself be a legal entity?
- A. The question consists of two parts. Maybe you can split it and then I can answer each of them.
- Q. Well, if Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili entered into a simple partnership agreement, would it not have to be on the basis that the partnership comprised the three of them individually?
- A. That's the most logical answer, yes.

- Q. Well, is there any other answer?
- A. There can be also other answers.
- Q. What other answers that are at least arguably relevant to this case?
- A. It can -- I can imagine, but this is also a more hypothetical idea of me, that a simple partnership which is not disclosed to a third partner enters into such an agreement.
- Q. You see, Dr Rachkov, if you have a single partnership agreement between three individuals, Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili, and the individual shares of only one of them is defined, then I would suggest that there is no agreement about the shares of all three partners, and no default rule that is capable of being applied unless you treat as the other partner to Mr Abramovich a separate partnership comprising Mr Patarkatsishvili and Mr Berezovsky.
- A. Is this a question?
- Q. Yes, that's what I am suggesting to you. What is your comment on that?
- A. My comment is that if three individuals entered into simple partnership contract and, in this simple partnership contract, the share of only one of them is defined, this is sufficient to have a valid and concluded simple partnership contract because the

undefined shares of two other partners can be defined by reference to Articles 1042 and 245 of the Russian Civil Code.

Q. Well, in 1995 it would have to be 245, wouldn't it?

A. Indeed.

Q. Now, what I suggest to you is that you could only apply the default rule to equalise the shares of Mr Berezovsky and Mr Patarkatsishvili if you treated them as being parties to a separate partnership agreement, and if you said that the partners themselves -- the partnership itself then contracted with a separate partnership agreement with Mr Abramovich.

Sorry, that's rather involved. Would you like me to say it again?

A. No.

I think you are wrong in saying this because the law does not say this. The law does not require that a simple partnership between Mr Berezovsky and Mr Patarkatsishvili shall be a party to another simple partnership agreement with Mr Abramovich. It can be, but there is absolutely no must in that.

Q. Can we return to the question of contributions. I think you've agreed in your evidence, and indeed in the joint memorandum, that the contributions of partners to a common goal may consist of either property or

services. That's common ground between the experts, isn't it?

A. Yes.

Q. Now, am I right in thinking that in accordance with the general principle that we discussed yesterday afternoon, whether it consists of property or services, the agreement has got to sufficiently define the contribution to make it possible for the court to enforce it?

A. Primarily the parties should make a contract which allows them to perform the contract properly. And, as a secondary task, indeed to allow the court to enforce the contract.

Q. So that if one of the parties complains to a court that one of the other parties has not contributed what he ought to have contributed, the court has got to be presented with terms sufficiently clear to see what the other party should have done. Is that right?

A. Yes.

Q. Now, you do not accept, as you have told us this morning, that agreement on the amount or value as opposed to the nature of each partner's contribution is an essential term of the agreement. You don't accept that, do you?

A. The amount is not necessary.

Q. Or the value?

A. The value neither.

Q. Now, you cite various decisions in support of this view at paragraph 219 of your fourth report, if I'm not mistaken G(A)1/1.01/74.

Would you agree that of the three cases which you cite in this paragraph, the first and third are cases in which it was held unnecessary for the parties to agree the amount of their contributions because, in the absence of agreement, of contrary agreements, the default rule applied; was that what was decided in those two cases?

A. Yes, we can say that way.

Q. Right. In the second case I don't think it is clear whether that was so or not, the case seems to have been decided on the facts, and it doesn't seem to answer the point one way or the other, would you agree?

A. No, I think all these cases dealt with an argument either from the claimant's side or from the defendant's side that a simple partnership agreement shall be declared by the court non-concluded because the parties failed to agree on certain essential terms. So the court's task was to identify what the essential terms of a simple partnership contract are. And in all these three cases, the court came to the conclusion that the

amount, and as well the valuation, the contribution, is not important to be an essential term and to make a concluded contract.

Q. In the first and third cases that was explicitly on the basis that the default rule applied, was it not?

A. I think it was on the basis of the default rules.

Q. Now, if you turn on in your sixth report to paragraph 90 G(A)1/1.03/201, you cite a number of other cases between paragraphs 90 and 93, and later in that report between paragraphs 107 and 109, where you deal with textbook authority.

Can you confirm that in paragraphs 90 to 93 and 107 to 109 you are dealing with cases in which the default rule applies, specifically Article 1042?

A. In 90 to 93, yes, I refer to the cases which dealt with the default rule of 1042 --

Q. And is the same true of the reference that you offer at 107 to 109 to scholarly opinion G(A)1/1.03/206?

That's also dealing, isn't it, with the application of the default rule?

A. I think that's correct.

Q. Specifically Article 1042?

A. Article 1042, correct.

Q. Yes. Now, Article 1042, if we can just remind ourselves of its terms, if you go back to G(A)4/4 at flag 2, which

I think you probably still have on your table, you will find Article 1042 at page 73 of the bundle numbering G(A)4/4.02/73. Now, that's the article that came into force in March 1996, isn't it?

A. Yes.

Q. That deals specifically with the default rule relating to contributions?

A. Yes.

Q. And that was enacted, wasn't it, in order to ensure that contracts where the parties failed to agree contributions would not be treated as non-concluded?

A. Correct, because in the '90s you can imagine that many people had many needs and unified their property to achieve certain goals, to construct something or to engage in entrepreneurial activity. So the simple partnership contracts were very widespread but, of course, sometimes people are negligent to spell out many provisions in their contracts.

Q. Does that suggest that in the absence of the default rule, when parties failed to agree the value of their contributions, their agreement would have been treated as non-concluded?

A. Not necessarily. If the parties performed the agreement, the performance improves the defaults or the errors which were committed before when the parties

failed to agree on certain essential terms.

Q. So subject to your argument about performance, which I'm going to come to in due course, you agree with the proposition but you reserve the point about performance?

A. If there were no default rules and if the parties failed to agree it on the essential terms, provided these terms were actually essential, yes, the contract is not concluded, and if -- the contract was not performed, of course.

Q. Before part 2 of the Civil Code came into force in March 1996, was there a default rule equivalent to Article 1042 relating to contributions?

A. There was at least a scholarly opinion that the Civil Code of 1964 of the Russian Federation and the Fundamentals of 1991 proceed from the assumption that if parties did not define their contributions, the contributions are equal.

Q. There is in fact no provision, is there, in the Fundamentals or the Civil Code of 1964 to that effect?

A. Well, I need to get back to the Code of 1964 and the Fundamentals of 1991.

Q. Yes, of course, by all means do that. You'll find the relevant provision of the Code of 1964 -- well, let's go to the Fundamentals first. If you take G(A)7/3 you'll find I think the whole of the Fundamentals behind flag 4

G(A)7/3.4/227.

I think you will need to go to Article 122 and thereabouts; I'm actually saying that for the benefit of my Lady since I'm sure you know already.

MRS JUSTICE GLOSTER: I've got it.

MR SUMPTION: Now, can you point us in the Fundamentals to a default provision equivalent to 1042, ie relating to contributions?

A. No, I cannot point at such a provision in chapter 18 of the Fundamentals of 1991.

Q. That's the relevant chapter, isn't it?

A. It should be the relevant chapter, yes.

Q. Would you like to turn back in the same bundle to flag 2 where you'll find the 1964 Civil Code. I think if you go to Article 38 you will find a provision relating to joint activity agreements, although of course I don't want to -- sorry, chapter 38, Article 434, which is at page 157 G(A)7/3.02/157.

Chapter 38 comprises Articles 434 to 438. Is this the relevant part of the 1964 Civil Code dealing with simple partnership agreements?

A. Yes, this is the relevant chapter.

Q. Can you point us to a default provision equivalent to 1042, ie dealing with contributions, in chapter 38?

A. Excuse me, did you say I did point you at the relevant

default rule?

- Q. No, can I ask you, please, to tell us whether we find, in chapter 38 of the 1964 Code, a provision equivalent to 1042 of the current Civil Code, namely a default rule relating to contributions?
- A. I don't see such a provision.
- Q. No. In fact, before March 1996, when part 2 of the Civil Code came into force, there wasn't a default rule relating to contributions, was there?
- A. It looks like there was not.
- Q. And if the default rule didn't exist at the relevant time for the purposes of the contract, then the law does require the parties to have agreed the value of their respective contributions, doesn't it, in the absence of a default rule?
- A. No, I don't think so.
- Q. Why not?
- A. Because you cannot point at any article which requires so.
- Q. Well, we've seen the analysis that you have offered us in your report of the reasons why, in your view, one does not need to have an agreement on the value or amount of the contributions. Your analysis is critically dependent on the existence of a default rule, and the authorities you refer to refer to Article 1042.

That's correct, isn't it?

- A. It is not fully correct. My analysis is dependent not only on the absence or presence of default rules. My analysis is also primarily dependent on the performance.

Besides, as well as I cannot show you neither in the Fundamentals of 1991 or the Civil Code of the Russian Soviet Socialist Federative Republic any default rule which I can find in the Civil Code of 1994 (sic) et cetera, you cannot point at any provision which requires the valuation of the property. However, I can point at the commentaries of authoritative authors of the 1960s which are contained in the supplemental bundle which say that the contributions of the parties are presumed equal.

- Q. That isn't however a provision, as you've accepted, that one finds in the relevant parts of the Code?

A. No.

- Q. Now, the contributions of the parties to the acquisition of control over Sibneft, according to Mr Berezovsky's evidence, are set out at paragraph 97 of his witness statement, his principal witness statement, and I wonder if you could be given bundle D2, flag 17, paragraph 97, where Mr Berezovsky sets out what he says were the agreed roles of each of the parties, okay D2/17/217?

A. Yes.

Q. Now, point (a) in that paragraph says that Mr Berezovsky was going to be responsible for:

"... lobbying for the assets to be included as part of the 'loans for shares' programme."

Do you see that?

A. I do.

Q. Now, can you help us on how a Russian court would set about enforcing that?

A. Indeed, and I recognise that in my reports the Russian courts may have problems with specific performance of this provision and may not be in a position to render an order "You, Mr Berezovsky, must lobby," if there are no other evidence which indicate what exactly -- or what, as milestones at least, he must done.

MRS JUSTICE GLOSTER: Could you tell me which paragraph of your report, please, Dr Rachkov?

A. I need to find it, my Lady.

MR SUMPTION: I think it's in your fourth report.

Which paragraph did you have in mind, Dr Rachkov?

A. I'm looking.

MRS JUSTICE GLOSTER: Can you help, Mr Rabinowitz?

MR RABINOWITZ: My Lady, we're also looking.

MR SUMPTION: I'm being told it may be --

A. I don't think it's in the fourth report.

MR RABINOWITZ: The sixth report.

MR SUMPTION: I see, in that case I apologise for...

If you want to have a look at your sixth report, which is the other place where you deal with this general area, I mean, I wondered whether you had in mind paragraph 217 of your fourth report, Dr Rachkov, but you'll have to tell us G(A)1/1.01/73.

A. Yes, this is the correct paragraph, and I repeated this idea also in my sixth report, that what Mr Abramovich would be entitled to if he fails to request a specific performance from Mr Berezovsky to claim for losses on the basis of Article 15 of the Civil Code.

Q. Well, what you say here is that if Mr Berezovsky:

"... did nothing at all, he would be in breach of contract, and would be liable to compensate Mr Abramovich ..."

But your evidence a moment ago was that the Russian courts might have problems with specific performance of Mr Berezovsky's obligation to lobby and might not be in a position to render an order, "You, Mr Berezovsky, must lobby"; that is your evidence, isn't it?

A. Yes.

Q. Now, if you have a partnership agreement in which the whole contribution of one party is to engage in lobbying and there is nothing that the other parties can do to get an order requiring him to lobby, then how does the

partnership work? Do you say that the other partners go ahead and do the lobbying themselves and then claim damages for the cost of doing it; is that your evidence?

- A. No, my evidence is that each partner must act in good faith and reasonably and in the interest of the partnership. As I said before, each partner must do whatever he is capable to do in accordance with the distribution of the roles to achieve the goal which is set before this simple partnership. This means that if he does not fully understand what he shall done, he must consult with the other partners and they may meet another additional agreement. However, I think here the parties well understood who shall do what.

And because Mr Berezovsky was apparently not for the first day in the business, he did understand what he must do in terms of lobbying.

MRS JUSTICE GLOSTER: Let's leave aside the facts, what I'm interested in is the law.

Can you explain to me, if the contract is simply that B would lobby at the highest political level and seek finance for the project, that's the terms of these obligations. How -- and I'm looking at paragraph 217 of your fourth report G(A)1/1.01/73 -- how does the court identify, if that is simply the obligation on B, whether or not he is in breach of contract if he does a bit of

political lobbying but A says you've not done enough of it?

- A. Then this is clearly a violation of his contractual obligations and Mr Abramovich is entitled to sue Mr Berezovsky.

MRS JUSTICE GLOSTER: No, I'm not talking about the facts of this case. I'm just talking about a simple case where there is an agreement on the part of B to lobby at the highest political level but no agreement in the terms of the contract, let's assume it's a written agreement, but no definition in the written agreement as to what the lobbying is going to involve, how much lobbying, of which people. How does the court identify in circumstances where B has done a bit of political lobbying, but A contends that B has not done enough, how in those circumstances does the court identify whether B is in breach of his obligations?

- A. It's a difficult question, and also for a Russian --

MRS JUSTICE GLOSTER: What's the answer to it?

- A. The answer is that indeed the court must look at all the evidence and say what, in a comparable situation, is done. For instance, if I'm going to a restaurant I order for some food, I have no clue what exactly must be done to prepare this food. However, I would like to have this, to be served with this particular food. So

this situation can be compared with this hypothetical case of lobbying.

So we have a particular goal which must be achieved, this means that Mr Berezovsky, or this hypothetical Mr B, must do whatever is objectively required to achieve this particular goal, for instance, meet with those people and not with some other people; highest political level means of course the president, prime minister, and not for instance --

MRS JUSTICE GLOSTER: So am I right, is your proposition that the court itself would look at all the facts and determine the obligations of B under the political lobbying contract?

A. I would say so.

MRS JUSTICE GLOSTER: And wouldn't say "This contract is uncertain"; the court would actually identify for itself the obligations of the party simply by reference to the goal, is that right?

A. Yes, I think so. The court is not -- I mean, if we are speaking about the Russian court, the court is in a temptation, if you want, to decline the cases just because they are uncertain. But this does not mean that -- this is not what the Russian law says. The Russian law says contracts must be upheld and contracts must be -- there is a principle of stability of

contracts. Therefore, to me, the first thing the court in Russia, applying Russian law, must do is try to identify whether all the essential terms were agreed upon. If they were, then there is no question about non-concluded contract.

MRS JUSTICE GLOSTER: You've said that, but what I'm interested in, is the simple hypothetical example of an unspecified political lobbying obligation, your evidence seems to be, or your view seems to be, that the court itself will define the obligation by reference to the goal.

A. Yes, that's what I'm saying.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR SUMPTION: Another possibility, Dr Rachkov, is that there are some obligations which are so uncertain in their scope that it is impossible for the court to know how far the relevant partner had to go in order to attain the goal; that's another possibility, isn't it? Russian law accepts that that may be the case, doesn't it?

A. Can you explain your proposition, please?

Q. Let me put it again. Russian law does acknowledge the possibility, doesn't it, that some obligations may be assumed in such vague and uncertain terms that they are incapable of being enforced; there are such obligations in Russian law, are there not?

A. I think so, yes.

Q. Right. Now, what I suggest to you is that an obligation to lobby for the assets to be included as part of the loans-for-shares programme is exactly that sort of obligation. It is so vague that it is impossible for a court to decide how diligent Mr Berezovsky needed to be and whether what he did was actually sufficient.

What do you say?

A. I can only repeat what I've said before. So if the goal is clear enough, and the goal is clear enough here in this particular case, besides there is a certain deadline by which the parties want to have this company established and to get control over it, there is a certain way in which this control might be obtained, ie through loans-for-shares programme. There were precedents before so many Russian oligarchs were lobbying with exactly the same results. So there was a certain market, if you wish, for these lobbying services. Why should this contract be not clear enough?

Q. You see, you agree, Dr Rachkov, don't you, that the simple partnership agreement must define the obligation with sufficient certainty such that it is objectively ascertainable and a court can adjudicate whether the obligation has been complied with; you agree with that, don't you?

A. I agree with that.

MRS JUSTICE GLOSTER: Where do we find that?

MR SUMPTION: We find that in paragraph 21, subparagraph 4 of the joint memorandum at 61 D2/17/217.

Can we turn to point (b):

"Badri and I would raise funds for the project."

There's a similar problem about this, isn't there?

There's no agreement about what sort of funds, whether bank loans, whether equity, how much, none of that is agreed. How does a court enforce (b)?

A. Here again, apparently it doesn't mean that these particular persons will obtain money from banks as loans, so I can suppose that neither of them was a party to a loan contract, or even gave some personal guarantees. I can only imagine that the actions of each of Mr Berezovsky and Mr Patarkatsishvili will be driven by this ultimate goal to make sure that the state gets the money which it wants to get in exchange for the pledge over the shares.

Q. Well, let's have a look at (c):

"Badri would lead commercial negotiations with key business counterparties."

Does the court have to decide who the relevant counterparties are and which of them are key?

A. I think the court must ask of course both parties what

they think about who key business counterparties is. However, if these are just business counterparties, that's quite clear. So each of the companies which were merged into Sibneft had a certain number of suppliers and a certain number of customers. Besides, there were groups which might have been interested in getting control over Sibneft too. I can imagine that these all are the groups which are described with a very brief sentence:

"Badri would lead commercial negotiations with key business counterparties."

Q. You see, Dr Rachkov, no agreement is alleged in this case that any of the partners would make any personal financial contribution. What I suggest to you is if the parties are not promising to contribute money or assets, and their sole contribution is services, they must, to make a valid agreement, define their obligations more precisely than anything one sees in paragraph 97. What do you say?

A. In an ideal world I would agree with you, it is very good to have a determined obligation. But, in reality, their life is richer than our imagination. Therefore I think the parties, it is sufficient to agree that efforts will be combined and, as I said before and can repeat again and again, the efforts are driven by the

goal. The professionals do understand what they must have done to achieve a particular goal.

- Q. Well, they may understand, may they not? Or they may not?
- A. I think if they are professionals they do understand. If the client comes to me and asks for some legal services, I do understand what I shall do. Then I can offer to the client a kind of menu, if you wish, and the client says, "Okay, I want the soup and the starter but not, for instance, the dessert." That's how it works in the life.
- Q. Mr Rozenberg gives an example of a contract which is too vague to be enforced. He says take the example of a contract to build a two-storey building, just that. "I will build for you a two-storey building," with no further definition of the building.
- Do you agree that if the parties agreed no more than that the contract would not be sufficiently defined?
- A. That contract would not be sufficiently defined unless the parties performed it and I can derive from the performance what kind of storey was -- sorry, what kind of two-storey building was constructed.
- Q. And that would be so, notwithstanding that it might be a contract between professional builders?
- A. It might be so because -- even in that case, yes.

Q. Now, I want to turn from the terms relating to contributions towards the acquisition of control over Sibneft, which is what Mr Berezovsky is dealing with in paragraph 97, to a slightly different subject, namely the contributions required of these parties to the acquisition of ownership of Sibneft shares thereafter. Do you follow the difference?

A. Yes, I do.

Q. Now, I'm therefore addressing any possible acquisition of Sibneft shares when the 49 per cent of Sibneft was privatised or when the 51 per cent retained by the state was sold after the loan default.

MRS JUSTICE GLOSTER: Would that be a convenient moment if you're going on to another topic?

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.30 am)

(A short break)

(11.45 am)

MR SUMPTION: Dr Rachkov, I'm now dealing with the question of contributions to the acquisition of shares, rather than the acquisition of control through the loan-for-shares auction.

I think you agree, don't you, that the parties to a simple partnership agreement must have agreed upon the

common goal?

A. Yes.

Q. And also that the common goal must be sufficiently defined in the agreement to enable the court to know what the subject matter of that agreement is; you agree with that too, don't you?

A. I do.

Q. Therefore the simple partnership agreement would not extend beyond the common goal that had been agreed? Would you agree with that?

A. I would agree with that, maybe with a small reservation that the performance may of course extend this goal beyond what was agreed initially.

Q. I see. In other words, it might be implicit, if the parties all got together and did something else, that they were doing it on the same terms as the originally agreed goal, is that right?

A. Depending on the specific circumstances of the case, it may be that.

Q. But what we're dealing with is effectively an amendment of the scope of the partnership agreement by conduct?

A. You can say this way. I think especially when legal entities are created it is natural that the persons who entered into a simple partnership contract to create such legal entity do not stop their joint activity once

the legal entity is created but continue to pursue this goal in its extended version.

Q. Well now, suppose that there was no agreement at all between these individuals about whether or not to acquire ownership of shares in Sibneft, okay? That's what I'm asking you to assume. Would you agree that in that case the acquisition of shares in Sibneft could not be regarded as part of the common goal?

A. It may be so, but you said what was not agreed, you didn't say what was agreed.

Q. Well let us suppose that there was an agreement that the parties would do the things described in paragraph 97 of Mr Berezovsky's witness statement that you saw earlier this morning, okay, that they would do those things for the purpose of acquiring control over the state's 51 per cent retained share in Sibneft in the loans-for-shares auction. Let us suppose that the parties agreed that, okay?

A. Okay.

Q. Now suppose, as well, that they agreed absolutely nothing about whether or not to acquire ownership of shares in Sibneft if and when the state actually sold its shares; do you follow me?

A. I do.

Q. Now, on that hypothesis, would you agree that the

acquisition of shares in Sibneft could not be regarded as part of the common goal?

- A. I think the broader definition is acquisition of control. If the parties acquired shares directly, this is the most classical way of acquiring control.
- Q. Well, in 1995, at any rate in the later part of 1995, it was appreciated that there was going to be a loans-for-shares auction which would not itself involve the sale of any shares to anybody, okay?
- A. Yes.
- Q. You know that, don't you?
- A. Yes.
- Q. Right. Now, let us suppose that the parties agreed that they would exercise their skills in order to ensure that there was a loans-for-shares auction, right, and that they would exercise their skills in order to win the loans-for-shares auction to acquire control of the state's shares as pledgees and security for a loan, right? Let's suppose that was the deal, all right?
- A. All right.
- Q. And let's suppose that there was absolutely no agreement about what was to be done if and when the state subsequently sold its shares, okay?
- A. Okay.
- Q. Now, what I would suggest to you, for you to comment on,

is that in that situation the acquisition of shares in Sibneft could not be regarded as part of the common goal because there would have been no agreement about it at all.

- A. I don't know. In accordance with Article 431 of the Russian Civil Code, the court must look not only on the literal wording of the contract but also at what the parties actually intended; and it may well be that the parties, because they are accustomed to use some words without understanding the meaning of these words -- as we learned in the past, the parties used the word "trust" without fully understanding what it actually means and without having the same word in the Russian legal language, so the court must identify what the real intention was.

Because a reasonable human being would never participate in any auctions for the right to be the pledgee of shares without having some further and forward-looking goals.

- Q. Well, that's a question of fact, isn't it? It depends on the facts of each case.
- A. Absolutely.
- Q. I'm not asking you about the facts, that's why I'm putting these hypotheses to you, to find out your opinions on the relevant law.

Now, 431, which you referred to, is the general article of the Civil Code which deals with the interpretation of contracts, doesn't it?

A. Correct.

Q. You'll find that in bundle G(A)4/4, flag 2, page 63 in the bundle numbering G(A)4/4.02/63.

A. Can you please repeat the flag?

Q. Flag 2.

A. Thank you.

Q. Page 63 in the bundle numbering on the bottom right. 431, that's the article you were referring to a moment ago I think?

A. Yes.

Q. Now, am I right in thinking that the basic rule, the primary rule of interpretation is that the:

"... court [is to] take into account the literal meaning of the words and expressions contained in it, the literal meaning of a term of a contract, in case the term is not clear, shall be established by comparison with the other terms and the sense of [a] contract as a whole.

So that first paragraph of 431 is the basic rule, isn't it?

A. It is the basic rule.

Q. The second paragraph deals with what happens if the

application of the first paragraph does not enable the court to decide the contents of the contract, okay?

A. Yes.

Q. The reference you gave us a moment ago to the real common will of the parties, that is something that only arises for consideration so far as the literal meaning of the words, read in their context of the agreement as a whole, doesn't give you the answer?

A. Yes, the purpose of this second paragraph of Article 431 is to replenish the gaps in regulation which necessarily occur because you cannot predict 100 per cent, well, what shall happen in the next few months, for instance. The cases where it is possible to make such a contract are very, very rare.

Q. If the parties have agreed that their goal is to have a loans-for-shares auction, and to succeed in that auction, there is no basis, is there, on which the court could say that their goal was actually wider than that and extended to buying shares subsequently unless the parties had subsequently agreed to broaden the goal. Would you not agree with that?

A. I can agree with you to some extent, but I also can stress that the court will ask why the parties intended to participate in such a loans-for-shares auction. The pledgee is just a provisional position, and it was

commonplace in Russia that to acquire shares in exchange of loans granted to the state was a way to circumvent, if you want, the regular privatisation rules.

- Q. Well, there was a privatisation in this case of 49 per cent anyway.
- A. I agree, yes.
- Q. So there was no need for circumventing anything.
- A. Yes, but the position of the pledgee secured that you were managing the company over time, and to get a kind of informal priority to acquire the shares, because you were then in charge of running the auction to sell the shares.
- Q. The court might enquire whether it was rational for the parties to limit their objective to acquiring control in the loans-for-shares auction, but if the court received a rational explanation of why that served the parties' purposes, then it would not look for some wider goal that the parties hadn't agreed, would it?
- A. It's just our speculation whether the court will or will not. I insist that the court will of course ask the court and the parties what is the real intention of participating in this procedure.
- Q. Only if the meaning of their words doesn't give you the answer to that question. I think you've agreed that.
- A. Yes. If the -- correct. If the wording, the literal

wording and the systematic interpretation or construction of the contract does not allow to find out the real will of the parties.

Q. And when you refer to the systematic interpretation of the contract, do you mean by that the interpretation of the words in the context of the contract as a whole?

A. Yes.

Q. In accordance with what the first paragraph says?

A. I do.

Q. Thank you. Now, suppose, to put another hypothesis to you, that the only agreement that the parties made about acquiring ownership in Sibneft shares was that it would be left to Mr Abramovich to decide whether or not to acquire them, at what price and on what terms, okay? That's what I'm asking you to assume the parties agreed, right?

A. Right.

Q. Would that constitute -- would that be enough to make the acquisition of Sibneft shares part of the common goal of the partnership?

A. It may be enough. I don't know what else the parties agreed. Maybe they --

Q. Well, I'm asking you to assume they agreed nothing else about the acquisition of shares other than that Mr Abramovich would decide whether to acquire the shares

and on what terms and at what price.

- A. This means that the parties believed in Mr Abramovich's professionalism, that anyway he must act in good faith and in the interest of the simple partnership. So if after -- or when making the decision on whether or not to acquire the Sibneft shares, and by which particular way, Mr Abramovich acted not in the interests of the simple partnership, or not in good faith or both, then it will be a clear violation of the simple partnership contract.
- Q. If Mr Abramovich had no obligation to acquire ownership of any shares in Sibneft under the terms of the agreement, but decided to do it anyway, how would the court decide whether he had bought them for himself, or bought them for himself and his partners together?
- A. I think the court will be driven by what was the common interest of the partners. If the partners -- and clearly the interest of the parties was to -- the partners was to acquire control of whatever kind over Sibneft, and Mr Abramovich acquired the shares in his own name, that would be a violation of the simple partnership contract.
- Q. Dr Rachkov, I think you agreed yesterday that you have to have sufficient certainty about the predmet, or subject matter, of the contract, and that the predmet of

the contract was the sum total of the obligations under it, okay?

A. What kind of obligations, excuse me?

Q. Well, you I think agreed yesterday, and I'm virtually quoting from the joint memorandum, that the predmet or I think subject matter of a contract must be agreed with sufficient definition and certainty, that's true, isn't it?

A. The predmet or the subject matter or the subject or object of the contract must be determined or determinable.

Q. Yes. I think your definition of the predmet, as I think you confirmed yesterday, is that it is the obligations that flow from the contract?

A. Yes.

Q. Now --

A. It's the actions of the parties to the contract, described in a way which allows them to start performing.

Q. The actions which they are obliged to perform.

A. The actions which they are obliged to perform. As I said, the predmet and other essential terms of the contract are there to allow the parties to understand what they must do, when, vis-a-vis which persons.

Q. Right. Now, I'm going to ask you to assume that

Mr Abramovich had no obligation under this agreement to acquire ownership in any shares in Sibneft, okay?

A. Okay.

Q. And I'm going to ask you to assume that there was no agreement about what contribution, either in services or in money, would be made by anyone else, okay?

A. Yes.

Q. Now, are you suggesting that if that is the situation then the acquisition of shares in the company can be regarded as part of the goal of the partnership?

A. You said about what was agreed -- what was not agreed, but again you didn't say what was agreed. Therefore I --

Q. Let me help you. I am assuming that there was an agreement of the kind described in paragraph 97 D2/17/217 of Mr Berezovsky's witness statement relating to the loans-for-shares auction, okay? So let's assume there was an agreement about that.

The point of these questions is I want to discover what your views are about the application of Russian law principles to a subsequent acquisition of shares in Sibneft, so the assumption I'm going to ask you to make is this: assume there is an agreement to procure the loans-for-shares auction to happen and to do one's best to succeed in the loans-for-shares auction, but assume

that under the terms of that agreement Mr Abramovich has no obligation to acquire ownership of shares in Sibneft, and Mr Berezovsky and Mr Patarkatsishvili have not agreed anything about contributing to the cost, okay? That's what I'm asking you to assume.

Now, you wouldn't suggest, would you, that in that situation the acquisition of shares in Sibneft was part of the common goal of the partnership?

- A. I need again to refer to Article 431, what was the real intention and the real common will of the parties? Because, to me, being a reasonable man, it would be just nonsense why the parties should enter into such a contract.
- Q. That depends on the facts, doesn't it?
- A. What is the economic benefit for them to enter into such a contract, especially for business purposes?
- Q. Mr Rachkov, I could answer that question but I'm not going to ask you questions about the facts, nor are you giving evidence about the facts, or what would be reasonable business. I simply want to understand your evidence about Russian law.
- A. But Russian law is not unreasonable either. Russian law is very logical and very reasonable.
- Q. We all understand that, and my Lady in due course will apply the rules of Russian law as established by expert

evidence to the facts that she determines. That's why I'm not asking you to deal with it, okay?

A. Sure. I don't.

Q. Now, just assume that the result of applying the proper processes of interpretation is that the court concludes that there was an agreement to participate in the loans-for-shares auction, but Mr Abramovich had no obligation to acquire any subsequent shares, and there was no agreement about the other two making any contribution to the cost of acquiring subsequent shares, okay? That's what I'm asking you to assume.

Now, if you make that assumption, then do you agree that the acquisition of shares in Sibneft cannot be regarded as part of the goal of the partnership?

A. I cannot agree with that because I know too small information about what else happened. I can only say that what the parties contributed to the joint activity, and what they -- each of them acquired as a result of joint activity, is their joint property.

Q. Dr Rachkov, what you appear to be doing is trying to argue out of the hypothesis which I'm asking you to assume.

It should be a very simple matter. If Mr Abramovich had no obligation to buy these shares, and Mr Berezovsky and Mr Patarkatsishvili agreed nothing whatever about

contributing to the cost, it must stand to reason that the acquisition of shares cannot be treated as part of their common goal because there were no obligations of anybody in relation to the acquisition of shares. You must agree that, surely?

A. Yes, and I agree with that.

Q. Now, suppose that the agreement was that none of the partners, except for Mr Abramovich, was going to participate in the management of Sibneft, okay? This is another hypothesis I'm putting to you about a different aspect of the agreement. Now, do you say that that would constitute a partnership for the joint exploitation of Sibneft's business if it was all being done by Mr Abramovich?

A. If that is how the roles were divided, if the partners believed that only one of them, and especially Mr Abramovich, is the most suited person to run the business, to manage the company, that's fine. So that's his contribution to this simple partnership.

Q. But if only one person was going to run Sibneft, then the exploitation of Sibneft surely cannot be regarded as a partnership obligation?

A. Can you explain, please, what you mean by exploitation of Sibneft.

Q. Well, the exploitation of Sibneft's business for the

purpose of generating profits. If that was all going to be done by Mr Abramovich, is there any contribution, any relevant contribution, involved from the other two?

A. Can you please formulate your question?

Q. I thought I'd done so but I'll try again.

Let us suppose that in relation to the exploitation of Sibneft's business, after control of it has been acquired, the agreement is simply that Mr Abramovich is going to get on with it, and neither Mr Patarkatsishvili nor Mr Berezovsky is going to do anything about the subsequent exploitation of Sibneft's business. If those are the facts, is it your position that the exploitation of Sibneft's business after the loans-for-shares agreement could be part of the scope of the partnership agreement?

A. Excuse me, I do not fully understand the term "exploitation". Maybe I need to ask Russian interpreter to say it to me in Russian.

MRS JUSTICE GLOSTER: Just before you go there.

Mr Sumption, does this hypothesis include the factors in paragraph 97?

MR SUMPTION: Yes, it does.

Did you follow the question and answer that I gave to my Lady? Take that into account.

A. The problem is that I do not understand the term

"exploitation".

Q. Yes, what I mean by exploitation --

A. In Russian, exploitation has a very bad meaning, exploitation of a human being by a human being, that's what the Communists said, excuse me for this.

Q. I understand. It sometimes has that meaning in English as well.

What I mean by exploitation is the running of the business so as to generate profits.

A. As I said, if the roles are distributed in a way that one party undertakes efforts to achieve a specific goal which is assuming -- or acquisition of control over Sibneft, and the other party's role is more active after the acquisition has been done, because that party is a professional in the oil sector, knows how to extract oil, how to refine it, how to sell it, how to structure the transactions, I don't see any problem why such a simple partnership agreement would fail.

Q. Would you agree at any rate with this much, that if there was a dispute between the parties as to whether the partnership agreement, whether the goals of the partnership agreement included running the business for profit after the loans-for-shares agreement, it would be some indication that it did not include it that the whole of the job was being done by one party, wouldn't

it?

- A. I'm afraid I cannot answer this question. It's really up to the parties to agree what the distribution of the roles is, how big or how small the efforts of either of them is.

The simple partnership contract is a contract which is called "fidutsiarnyj doveritelnyj", fiduciary in Russian. This means that of course you can never have fully equal shares because one partner undertakes maybe more efforts today, the other undertakes more efforts tomorrow. That's just human, to have a contract where the roles are distributed in a way that the person who is more suitable to do the strategic decisions is responsible for those, and the person who is more, how to say, able to run the daily business is engaged in daily business. It's how law firms as well run.

I can be a partner in charge of business development because I'm not in a position to sit down for more than one hour and to write some papers, but I can be not able and incapable to do any business development. It's better to advise clients instead.

- Q. My question was directed to ascertaining the relevance of different functions when you have an issue as to how wide the goal was, but I've asked my question and we've got your answer.

Now, you may recall that earlier this morning I asked you about whether an obligation to engage in political lobbying was sufficiently certain. I want now to ask you about a different aspect of that obligation, namely whether it is consistent with Russian legal public policy. Do you understand the subject that I'm moving on to?

A. I think I do understand.

Q. Now, do you regard political lobbying as a valid and lawful contribution to a simple partnership agreement?

A. If the political lobbying constitutes efforts, business skills, business reputation and other types of contribution which are described in Article 1042 of the Russian Civil Code, yes.

Q. I mean, it's not actually business skills one is talking about, is it? It's political skills?

A. Connections.

Q. Right. Well now, can I ask you to look at a case which both you and Mr Rozenberg comment on, the Makayev case at G(A)4/7, flag 93 G(A)4/7.093/1.

MRS JUSTICE GLOSTER: Mr Sumption, it would help me if you could identify the paragraph in the report where Dr Rachkov deals with this case.

MR SUMPTION: Deals with?

MRS JUSTICE GLOSTER: This particular case you're going to

now.

MR SUMPTION: Yes, I will -- Mr Henshaw will produce that in a moment.

MR RABINOWITZ: It's paragraph 129 in his sixth report, it's behind tab 3 G(A)1/1.03/211.

MR SUMPTION: Have you got bundle G(A)4/7, Dr Rachkov?

A. Yes.

Q. You should turn to flag 93 if you haven't already done so. Now, this is a decision of the constitutional court of the Russian Federation, and that is a court of the highest possible authority in Russia, isn't it?

A. It's -- well, Russian court system is three-fold. It consists of the Constitutional Court, the whole system of arbitrazh courts and courts of common jurisdiction. So I wouldn't say the Constitutional Court is somewhere on top of the Russian court system, it is only in charge of comparing laws with the constitution and saying whether or not these laws are constitutional.

Q. Yes. There are, in other words, a number of separate hierarchies, each with their own highest court, and the Constitutional Court is the whole system, is that the point you're making? It's the only court -- it doesn't have subordinate courts, or does it?

A. It does not have subordinate courts, and there were cases when the arbitrazh court, the highest arbitrazh

court, or the Supreme Arbitrazh Court, rendered judgments which were not fully in line with the opinions expressed in the resolution of the Constitutional Court.

- Q. But the decisions of the Constitutional Court are regarded as carrying very considerable authority, are they not?
- A. Yes, but this is a very general statement. The Constitutional Court deals, as other courts do, with specific cases. So in the specific case we are speaking about, the question is whether or not specific articles of the Civil Code of the Russian Federation are in line with the Russian constitution.
- Q. Yes. Well now, would you agree -- first of all, this case is about lawyer's contingency fees, isn't it?
- A. Yes.
- Q. And it was held, was it not, that a regulation which forbade contingency fees for lawyers representing clients in court was consistent with the constitution? That was the decision, wasn't it?
- A. No, it was not that decision. The decision was that Articles 779 and 781 of the Civil Code are consistent with the constitution.
- Q. What did those articles say?
- A. Perhaps we shall have a look at these articles. I don't know whether they are reproduced in the bundle.

Q. Well, the point is very simple, isn't it? There was a provision of the Civil Code which said you couldn't charge contingency fees for representing clients in court. And the lawyer, Mr Makayev, was saying that's unconstitutional. That was what the argument was about, wasn't it?

A. Not really. No article of the Civil Code says you cannot as a lawyer charge a contingency fee to your clients.

Q. Well, let's have a look at the text. The opening paragraph at the bottom of page 1 of the bundle numbering G(A)4/7.093/1, a commercial services agreement:

"Under a commercial services agreement the contractor as instructed by the customer undertakes to render services to take certain action while the customer undertakes to pay for services."

If you look at the top of page 3 of the report G(A)4/7.093/3, the effect of the relevant provisions of the Civil Code is summarised in the first full paragraph on the page. If you look at the first paragraph beginning:

"Therefore, in this case the issue under review by the Constitutional Court... is the provisions of... 779... and 781..."

If you look at the last words of that paragraph:

"... the point hereby contested is that in light of their interpretation in current judicial practices these provisions do not allow for awarding the contractor's claim for payment should this payment be made conditional [on] a future decision by a court."

Okay?

A. Yes.

Q. So what was being said in this case was that there was a rule in the Civil Code which had been interpreted as meaning that a lawyer couldn't charge a fee conditionally on the outcome of the case. That was the way the Civil Code had been interpreted, wasn't it?

A. One can say this way, yes. I interpret it in a bit different way.

Q. That's certainly the point that's being made in this judgment of the constitutional court. And the issue in this case was whether a rule that prevented a lawyer from charging conditionally on the outcome of the case was consistent with the constitution. That was the question the court posed itself, wasn't it?

A. Excuse me, the court does not evaluate the provisions of private contracts. The court only says this is the rule of the Civil Code. I was asked to compare this provision with the Russian constitution, that's all.

The court did not --

Q. That's exactly what I thought I was putting to you.

Dr Rachkov, would you agree that the question at issue in this case was whether a rule of civil law preventing lawyers from charging fees conditional on the outcome of the case was consistent with the constitution. That was the issue, wasn't it?

A. You can make that way, yes.

Q. Thank you. Now, can we look at the reasoning of the court in holding that it was consistent with the constitution.

If you look at paragraph -- there are a number of reasons given, but if you look at paragraph 2.1 at the bottom of page 3, you will see:

"Public relations arises in the process of providing legal services are interconnected with the discharge by appropriate government bodies or officials of their constitutional obligation to ensure that every individual may have access to legal services and be able to retain competent legal counsel for the purpose of taking legal action..."

Now, with that introduction, if you turn over the page to paragraph 2.2 on page 4 G(A)4/7.093/4, do you have a highlighted version?

A. Yes.

Q. Right. The first bit of highlighted text at the beginning of 2.2 sets out, does it not, the general rule:

"At the same time, due to the permissive nature of civil regulations, persons who wish to obtain legal counsel may use their own discretion when deciding whether entering into a commercial service agreement may be desirable or necessary, to use the most suitable way of receiving such help and since the Constitution of the Russian Federation and the law do not stipulate the contrary, agree on mutually acceptable ... terms."

So the general rule, is this right, is you can reach agreement on the terms on which a service is obtained as you like, that's the starting point?

A. Yes.

Q. They then consider what limitations may be justifiable on that right. If you look at the next chunk of highlighted text starting "At the same time" you have the proviso, don't you?

"At the same time the Constitutional Court of the Russian Federation emphasised that the freedom of contract that is protected under the Constitution must not negate or diminish other recognised human or civil rights or freedoms; it is not absolute and may be restricted; however, imposition of such restriction and

the nature thereof must be based upon the Constitution of the Russian Federation that stipulates that federal law may restrict human law, civil rights or freedoms only to the extent that such restrictions may be necessary in order to protect pillars of constitutional order, morality, health, rights and lawful interests of other parties, as well as ensure proper defence and security of the country ..."

Now, you then have what I would suggest is the critical part of the reasoning on this:

"The freedom of contract also has objective limits that are determined by the fundamentals of constitutional order and public policy. In particular, it concerns the inadmissibility of expansion of contractual relations and the principles underlying them on those areas of social activity that are related to the realisation of governmental power. Since the governmental authorities and their officials ensure realisation by the people of its power, their activity (both of itself and [in] its results) may not be subject to private civil law regulation, as well as the realisation of civil law rights and obligations may not predetermine specific decisions and actions of the governmental authorities and their officials."

Now, would you agree that the particular public

policy which is being referred to in that paragraph, and which contingency fees would have contravened, was the public policy against allowing private persons to make contracts whose subject matter is the activity of a court or of some other organ of the state; would you agree with that proposition?

A. I think it's a very generic statement.

Q. Yes.

A. The purpose of this resolution of the Constitutional Court was this: you may know that the mass media report a lot about corruption in Russian courts, and you may know that corruption is also contained in such contracts which provide for contingency fees. This means that a Russian judge may agree with an advocate of the claimant or of the defendant to get paid in a sum of X, and, of course, the services of the Russian lawyers must also be remunerated. To fight against the corruption, the Constitutional Court rendered this decision. That's the background.

Q. Yes.

A. I think -- I do not fully understand how it is related to our case but I'm happy to discuss this case to you.

Q. Well, I'm going to ask you some further questions about this case. It is for my Lady to decide how the principles are to be applied to our particular facts,

but I would just like to understand the legal principle.

Now, the legal principle is, and I quite see your point that this is designed to ensure that contracts are not entered into which are liable to be used for corrupt purposes; that's your point, isn't it?

A. Yes. But, excuse me, in this particular case where I speak about corruption in the courts, the Constitutional Court learned how corruption actually lives in Russian courts and built an obstacle to that.

Q. Except it's not limited to the courts, is it? Because if you look in the paragraph that I've just referred you to, what it is saying is that their activity -- well, let's look at the whole of the last sentence:

"Since the governmental authorities and their officials ensure realisation by the people of its power, their activity [that is to say the activity of governmental authorities and their officials] may not be [the] subject [of] private civil law regulation, as well as the realisation of civil law rights and obligations may not predetermine specific decisions and actions of the governmental authorities and their officials."

MR RABINOWITZ: It says:

"... may not be subject to private law," not "of".

MR SUMPTION: All right, fine:

"... may not be subject to private civil law

regulation, as well as the realisation of civil law rights and obligations may not predetermine specific decisions and actions of the governmental authorities and their officials."

The point I'm putting to you, Dr Rachkov, is that this principle is explicitly not confined to contracts which have as their subject matter, or which depend upon, decisions of the courts; it also extends to contracts which have as their subject matter, or are subject to, decisions of other governmental authorities. That's right, isn't it?

A. No, it is not right, and I can explain why.

There are law firms in Russia which render services in connection with the public sector. For instance, a company wants to get a licence, there are clear rules on what type of documents must be provided, what is the contents of these documents, what is the form? Must it be -- you don't listen to me, do you?

MRS JUSTICE GLOSTER: I'm listening, that's what matters.

MR SUMPTION: I am too, forgive me.

A. The legal services are aimed at getting a licence, the documents are prepared without any corruption and, of course, the agreement is if the state authority delivers the licence to carry out certain business activity, which is subject to licence of course, then the law firm

gets paid. Or, as another alternative, if the state authority delivers the licence with a delay, the firm gets paid in a lesser amount, ie the law firm is penalised for the behaviour of a third party.

There is nothing about corruption. And I disagree with Mr Sumption's proposition that this extends to all types of contracts which involves any public service. If there is nothing wrong, nothing illegal about -- to have contracts which deal with the public services but still provide either for a contingency fee or a cap fee or a premium if the work resulted -- of a law firm, for instance, resulted in getting a licence on time, because it is important for the business and crucial to get the licence as soon as possible, without any corruption though.

- Q. Dr Rachkov, would you agree that this case applies to any payment obligation to a service provider which is expressed to turn on the outcome of a specific decision by a judge or a state official?
- A. By a judge, yes; by state official, no.
- Q. What I've just said to you is read out from your sixth report. Would you like to have a look at paragraph 132 G(A)1/1.03/212?
- A. Yes.
- Q. What you wrote here was:

"More generally, Makayev only applies where a payment obligation to a service provider is expressed to turn on the outcome of a specific decision by a judge or state official."

A. Okay, Mr Sumption, I agree, you caught me.

What I meant I just explained. It presumes that the contingency fees do not or may not be used to pay bribes to officials, whether it is the judge or other state officer.

Q. Now, what you summarise here in that paragraph is in fact exactly what is being said, isn't it, in the last paragraph which is highlighted on page 4 of the bundle G(A)4/7.093/4, namely that this rule applies to the decisions and actions of governmental authorities and their officials?

A. I'm afraid I have nothing to add to my explanations before. As I said, the questions or the situations where legal services are rendered in connection with the behaviour of the state officials are very widespread.

What -- the aim and the background of this resolution of the Constitutional Court is to try to exclude the situations where bribes are paid to judges. The court said, basically, that if you have such a contract it is unconstitutional. What does it mean? A law firm may well enter into such a contract but this

contract will not have any protection in court. It's like gambling.

MRS JUSTICE GLOSTER: Just a second, can I understand this.

Did this case on your evidence deal exclusively with the issue where the contingency fee agreement with the lawyer envisaged a payment being made to a judge, or was it simply dealing with the issue in isolation, namely contingency fees for lawyers are illegal?

A. Yes, my Lady, the resolution of the Constitutional Court deals with a very specific situation where a law firm says to the client, "Look, I will work for free for you. If the judgment is rendered in your favour then I will get X." That's what the Constitutional Court wants to prohibit because -- but the real background is, as I said, to fight against corruption. In many --

MRS JUSTICE GLOSTER: Is judicial corruption something that's referred to in this judgment?

A. I need to look again at it. Maybe it is not, because maybe in this particular case there was no corruption because the names of the firms which are involved and the lawyers who were acting do not give an idea of whether or not there was any situation of corruption. But I can refer to the Russian press which commented on this decision --

MRS JUSTICE GLOSTER: No, I'm just asking in the actual

judgment itself whether there's any reference to what you -- I mean it's obvious, one would have thought, that any contractual provision that includes payment to a judge is a corrupt unenforceable agreement. But just looking at the principle, it seems to be stated more widely, that is to say any contingency fee.

- A. Of course, any resolution of the Constitutional Court on the merits deals with more reasons than just one, or at least these cases are very rare when only one situation is addressed.

The other situations are, for instance, the Constitutional Court does not want lawyers to invite clients to litigate just as gambling, you know. You do litigate, if you win, that's my legal fee, and this is what you get out of this case.

Because you may know that Russian courts are overloaded, if we have a look at the arbitrazh court of the city of Moscow --

MRS JUSTICE GLOSTER: There are two views, aren't there, on whether contingency views are a good idea, one is access to justice, the other is the gambling or other downsides of contingency fees.

But I'm not, as it were, focusing on that. I just want to know whether in this particular case there's any reference to judicial corruption or not?

MR SUMPTION: My Lady, I can tell your Ladyship that on the text there is not.

MRS JUSTICE GLOSTER: On the text there isn't.

MR SUMPTION: But we accept that part of the mischief of it was judicial corruption.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: So that on that particular point there is nothing between Dr Rachkov and myself.

Dr Rachkov, to clear this up --

A. Can I ask you a question, Mr Sumption, because it looks just ridiculous(?).

You said there is no mention of corruption. Do we need a mention of corruption? Is it not enough that it said independence of justice? The independence of justice means, among other things, that no corruption must be there in Russian courts.

MRS JUSTICE GLOSTER: Right, well you're agreed on that so we can move on.

MR SUMPTION: Dr Rachkov, as I understand your evidence, and I think this may resolve my Lady's question as well, at least I hope so, the point about contingency fee agreements, they weren't considering an agreement between the parties which expressly said "I will pay you if you win and you will pay part of that to the judge"; their point was that you cannot have agreements which

have the potential to operate in that way even if the actual term doesn't say so, is that right?

A. Yes, that's right.

Q. Now, would you agree that this public policy against agreements which have the potential to operate in a corrupt way is just as significant when talking about other state officials as when talking about judges?

A. If it involves corruption, yes.

Q. That is why the principle, as expressed in the last highlighted block on page 4, is expressed to apply, just as your paragraph 132 is, not just to judges but also to state officials.

A. Yes, I can't deny that the Constitutional Court itself refers to governmental authorities and their officials.

Q. Now, you refer in your report, Dr Rachkov, to the dissenting judgments which accompanied this majority judgment of the Constitutional Court. The reference is paragraph 130 of your report, your sixth report G(A)1/1.03/212.

A. Yes.

Q. Now, I'm going to ask you to look at a couple of those judgments. First of all, these are what are called side opinions, is that right?

A. A dissenting opinion, yes.

Q. Yes. A side opinion is given by a judge who differs

from the majority either as to the result or as to the reasoning, is that correct?

A. Yes.

Q. But the dissents do not affect the authority of the majority decision, do they? They are still the decision of the court?

A. Of course, the decisions are taken by majority.

However, this dissenting opinion is quite important because it derives -- if you speak about judges, Kononov's opinion, he rendered many dissenting opinions in the past, and besides in this particular case he was the so-called reporting judge, that means that he was more in a position than other judges to evaluate all aspects of this case. And he actually came to the conclusion that it really depends on the specific situation whether or not the contingency fee can be admitted or must be prohibited.

Q. I understand that he differed from the majority. There are in fact three side opinions or dissenting -- well, there are three side opinions, and I think I'm right in saying, but correct me if I'm wrong, that two of them disagree with the result and one of them agrees with the result for additional reasons, is that correct?

A. Do you mean all three opinions or only one of them?

Q. No, sorry. Two of them concur with the result but give

additional reasons and one of them, Kononov, disagrees with the result, is that correct?

A. Yes, but --

Q. Let's just deal with one thing at a time.

Judge NS Bondar whose side opinion starts at page 8 G(A)4/7.093/8, he agreed with the result and added observations of his own, is that correct?

A. Yes, and we must look at what exactly or what observation exactly he was meaning here.

Q. Judge Gadzhiyev, who starts on page 13 G(A)4/7.093/13, also agreed with the result but added observations of his own?

A. Yes.

Q. Judge Kononov, who starts at page 15 G(A)4/7.093/15, disagreed with the result and the reasoning?

A. Yes.

Q. Now, if we can just look, for example, at the side opinion of Judge Gadzhiyev who agreed with the result but added further observations. On page 14 G(A)4/7.093/14, just below halfway down the page, you will see a paragraph which begins:

"This conclusion is also corroborated in para[graph] 2.2 of the Resolution where it is stipulated that the freedom of contract may have its natural limits set by the basic premises of constitutional order and public

peace."

And he is referring to 2.2 of the majority judgment, isn't he?

A. Yes, maybe he does. Let me have a look at the Russian wording of the separate opinion of Judge Gadzhiyev.

Q. Of course. (Pause)

A. Yes.

Q. Now, in the paragraph that I just referred to, which in English starts just below halfway down page 14, Judge Gadzhiyev seems to be pointing out that the rationale of the rule set out in paragraph 2.2 of the majority judgment must apply not just to for-profit agreements for legal services but to all civil agreements, because that's what he says, isn't it?

"In this case, using this public law argument, the Constitutional Court of the Russian Federation means all civil agreements in their entirety rather than just for-profit agreements for legal services."

That's the point he's making, isn't it?

A. Yes, and this confirms what I've said before. Sometimes agreements between law firms or other alone-standing lawyers and their clients are abused to pay bribes to officials and that's why Judge Gadzhiyev, who comes from Caucasus -- you may know that Caucasus is especially vulnerable to corruption out of other Russian regions --

he knows this from his personal life maybe, how it worked, because his relatives are also in Caucasus. He heard these stories. That's why he want to expand this reasoning for other situations, and quite right from my opinion.

Q. Now, if we look at the side opinion of Judge Kononov --

A. Are we through with Judge Gadzhiyev's separate opinion?

Q. Sorry?

A. Are we through with Judge Gadzhiyev?

Q. Yes, we are, but I don't want to stop you referring to some other passage in it if you think it relevant.

A. I think there is an interesting statement in item 2 which is on page 14 G(A)4/7.093/14, English text:

"To conclude, I believe it would be prudent to note that the issue at hand has no perfect solution, since any of the potential ways to resolve the problem would still be rife with serious social disadvantages.

"Prohibiting the use of contingency fees in agreements for legal services would have the following draw-backs."

He lists the draw-backs:

"One criterion less for assessing the quality of legal services rendered."

This means that sometimes the case is so difficult but on the other hand it is so interesting for the

lawyers but yet the claimant has no funds to pay the lawyers, then the lawyer says, "Okay, I agree to work with you for free provided that, depending on the result, I get certain percentage", and there is nothing wrong about this.

Second:

"No additional remuneration for the service provider, which would promote equal pay for unequal effort."

I think that's a statement which supports that really you need to differentiate between various agreements for legal services.

Third:

"The parties would have an incentive to keep the transaction 'under the table'."

So I think it's just a simplification to say that either all agreements on provision of legal services in courts or, more broadly, as you do, all agreements on rendering legal services or even more broadly, which you still do, all agreements which involve public services are illegal because they contain some type of contingency or success fee.

Q. Dr Rachkov, what Judge Gadzhiyev is saying in that second paragraph of his side opinion is simply that this is a difficult question on which there are policy

arguments for both possible answers, but he considers that the balance of policy advantages lie in preventing success fees. That's what he is saying, isn't it?

A. I don't know whether he actually says this. He says that if there is a contingency fee in a legal service contract for provision of services in court, then such contract may be unenforceable, like gambling.

Q. Well, if you look, what he says is -- he begins paragraph 2 by saying that there is no perfect answer. He then lists, as you've pointed out, three disadvantages -- or three advantages of contingency fees. He then says:

"On the other hand should the use of 'success fees' in agreements be allowed, this may give the service provider an incentive to try to obtain a favourable decision for the service recipient by any means whatsoever."

That, no doubt, is a veiled reference to corruption?

A. It's an allusion to corruption.

Q. Yes. So what he is saying is that, in spite of the fact that from some points of view contingency fees may be okay, nevertheless the balance of advantage and disadvantage suggests that they should not be allowed. That's what he is saying, isn't it?

A. Yes, but he says at the end of his opinion that the same

economic result may be achieved by other means which are not contrary to the Russian constitution or the Civil Code. And actually, by doing so, he gave a kind of recommendation to the Russian legal community and also its clients explaining how they can, if you want, circumvent this prohibition of success fees in legal services contracts for representation in courts.

I don't know whether the Constitutional Court played a very positive role by doing so because if a sophisticated law firm has a look at Judge Gadzhiyev's opinion, I think this statement seriously undermines the stability and the credibility of what the court as a whole said.

Q. Dr Rachkov, what Judge Gadzhiyev is pointing out is that it would be possible to regulate fees in such a way that they would not have the vice of giving opportunities for corruption. That's what he is saying, isn't it?

A. You can construe that way. I construe it in a way that Judge Gadzhiyev gave a recommendation on how you can be compliant with the law on the one hand but still achieve the same economic result on the other hand. I don't speak about corruption though.

Q. Now, Dr Rachkov, you suggest, I think, in your sixth report at paragraph 135 G(A)1/1.03/212, that the Makayev decision should be read in the light of the

informational letter of the Supreme Arbitrazh Court. Would you like to turn to paragraph 135 of your sixth report, you refer to information letter 121 of the Supreme Arbitrazh Court.

Now, I would just like to understand what you are saying about this letter. As I understand it, and you must correct me if I'm wrong, what this informational letter says is simply that if a lawyer has entered into a contingency fee arrangement which is unenforceable because of the Makayev principle, that lawyer can still recover a reasonable fee for his time and trouble even if he can't recover the contingency fee; is that what it's saying?

- A. It is difficult to say that way, because you see that information letter does not refer at all to the resolution of the Constitutional Court.

I think if you have a contract on provision of legal services in court containing a contingency fee, and if this particular provision is unenforceable, then indeed the default rule applies, which is the market value of the services is the indication for the remuneration.

- Q. Well, we can see what it says, can't we, in the first paragraph which you quote in paragraph 135

G(A)1/1.03/212.

"Where the amount of remuneration to be paid to a

representative, and the obligation to pay that remuneration was dependent on the results of the court proceeding, the claim on compensation of trial costs shall be granted subject to a valuation of its reasonable limits."

Then there's a reference in the subsequent parts to hourly rates, user charges and so on. All that this information letter is saying is that if you do enter into a contingency fee agreement, that won't stop you from recovering your fees on an acceptable non-contingency basis. That's right, isn't it?

A. No, not really.

The case was about the following: the law firm got paid by its client. The client is entitled, if the decision is rendered in favour of the client, to get these costs reimbursed upon the court's judgment from the losing party, in accordance with the Arbitrazh Procedural Code of the Russian Federation --

MRS JUSTICE GLOSTER: Why is this issue relevant to anything I've got to decide in relation to Russian law, this particular addition?

MR SUMPTION: I believe not, but since Dr Rachkov --

MRS JUSTICE GLOSTER: What's the relevance of what you're saying in paragraph 135 to the issues of Russian law that I've got to decide?

A. It really depends on what Mr Sumption wants to say on the Constitutional Court resolution.

MRS JUSTICE GLOSTER: No, you tell me why you think it's relevant for me to look at this case so that I can understand what the point is, because I don't at the moment.

A. I only wanted to say that if a condition, an essential term or an allegedly essential term is missing from the contract, ie the contingency fee cannot be agreed, this means that it deems nonwritten in that contract, then the services are paid by reference to the market value of these services, ie by reference to the effort --

MRS JUSTICE GLOSTER: I see, you're saying it doesn't affect certainty or enforceability of the contract, because you just have a quantum meruit substitute.

A. That's what I wanted to say, yes.

MRS JUSTICE GLOSTER: I understand.

MR SUMPTION: Now, let us assume that you have a contract with a politician, okay? The contract says -- the politician is a personal friend of the president and of some of the president's closest advisers, let's just assume that, shall we? And assume that a contract is made with that politician under which he agrees to persuade the president and his advisers to issue decrees which will give him and his business associates an

opportunity to make large sums of money out of state assets. Now, would you agree that that is a contract with a potential for corruption?

A. I would agree with that.

Q. Would you agree therefore that such a contract is likely to be directly contrary to the principle of public policy identified in Makayev, by the majority?

A. If the -- yes. I mean, if the characteristic features of the crime, corruption, are combined, yes, this is a crime.

Q. Now, I want to turn, if I may, to the subject of the rules of Russian law about the circumstances in which an agreement must be recorded in writing. Now, I think you acknowledge in your report, don't you, that the parties may intend an agreement or arrangement, which they make, not to be legally binding? That is a possible situation in Russian law, is it not?

A. It is a possible situation.

Q. They don't have to expressly agree, do they, that their arrangement will not be legally binding; it's enough if the circumstances objectively show that they didn't intend it to be legally binding, would you agree?

A. Yes, besides such contract must have no pecuniary character, ie if no property is transferred between them or to a third party, if this is for instance an

invitation to have a joint walk, then this is definitely not a civil law contract which is enforceable.

Q. An invitation to have a joint, and I missed the next word?

A. Walk. To walk outside.

Q. I see, right.

Well, the parties can surely agree to have an arrangement under which a contract, or an arrangement under which significant financial consequences follow but which they don't intend to be legally binding, can they not?

A. Yes, at the end of the day everything depends on what the parties intended and what they actually did afterwards.

Q. Of course. Now, would you agree that one circumstance which would tend to suggest, and I'm not saying it would be conclusive, but one circumstance which would tend to suggest that the parties didn't intend an arrangement to be legally binding is that they did not record it in writing?

A. No, I disagree with that.

Q. Now, I'm not suggesting to you that all contracts which are not made in writing are not intended to be legally binding, all I'm suggesting to you is that when the court comes to look at what the objective circumstances

are, the fact that the parties did not reduce their agreement to writing may be one of them.

A. May be, excuse me?

Q. The fact that the parties did not reduce their agreement to writing may be one of the circumstances which the court would consider in deciding whether they intended it to be legally binding?

A. Yes, the court may consider this as one of the other circumstances.

Q. Now, I want, against that background, to turn to the effect of Articles 161 and 162 of the Civil Code, which you'll find at G(A)4/4, flag 2, pages 29 and 30 G(A)4/4.02/29.

Before I ask you about the details of these provisions, I'm right, am I not, in thinking that the Civil Code is a code of substantive law? It's not a code of procedure?

A. In principle the Civil Code is a code of substantive law, but Russian doctrine and also court judgments do recognise that some provisions are of procedural character and nature.

Q. Well, what they recognise is that some provisions of the Civil Code may have procedural consequences, that's right, isn't it?

A. No, they say explicitly these are procedural rules.

Q. Can you look at 161, please.

A. Yes.

Q. "The following must be made in simple written form, with the exception of transactions requiring notarial certification ..."

That's a reference to transactions which are dealt with separately in Article 165, isn't it?

A. Yes.

Q. So leaving aside contracts requiring notarial certification, there are categories of contracts listed here which require written form. The second of them is:

"Transactions of citizens with one another for a sum over ten times the minimum monthly wage established by a statute and, in cases provided by a statute, regardless of the sum of the transaction."

Okay?

A. Okay.

Q. Now, would you agree that the transaction alleged by Mr Berezovsky to have been made in this case is a transaction of citizens with one another for a sum over ten times the minimum monthly wage established by statute?

A. Yes.

Q. Now, this is a provision that deals with the circumstances in which an agreement must mandatorily be

in writing, is it not?

A. Although the word "must" is used in Article 161, it does not mean that this is a real must, because it is not sanctioned by negative -- or by heavy negative legal consequences if the form is not complied with.

Q. Well, that's dealt with by 162, isn't it, "Consequences of Nonobservance of the Simple Written Form of a Transaction"?

A. Exactly.

Q. "Nonobservance of the simple written form of a transaction shall deprive the parties of the right, in case of a dispute, to rely for confirmation of the transaction and its terms upon the testimony of witnesses, but shall not deprive them of the right to adduce written and other evidence."

Okay? That's the consequence of noncompliance, isn't it?

A. Yes.

Q. Am I right in thinking that the object of this provision is to protect people against being held bound by high value transactions without some indisputable acknowledgement that they are bound, such for example as their signature on a written agreement? It's a protective provision, isn't it?

A. It is a protective provision. Russia is, at least in

accordance with its constitution if not in the reality yet, a state of law insofar -- a state of rule of law, insofar as the main goal of the law is to give certainty and stability to the civil relations. Therefore clearly to have a stability you need to -- better to have a written contract than oral one.

Q. Yes, but this is a provision which has a social purpose, it's not just a rule for the efficient conduct of court proceedings?

A. What do you mean by this?

Q. What I'm suggesting to you, and what I think you've acknowledged, is that this is a provision -- let me break it up. This is a provision which has a social purpose?

A. Yes.

Q. In other words, it isn't a rule which is designed simply for the efficient conduct of disputes in court?

A. Yes, it has a broader role.

Q. Now, the consequence of noncompliance with 161 is that you can't prove the agreement by the evidence of witnesses. We've agreed to that?

A. Yes, we agreed -- you mean -- well, two things cannot be proven by witness statements. It's the mere fact that the transaction was entered into and its conditions. But, for instance, you can prove by witness statements

the subsequent performance of the transaction.

Q. Well, what I think you say in your fourth report, and I've got in mind paragraph 151, is, as I understand it, your evidence is that although a party cannot produce witness evidence, he can produce "explanations", and I'll ask you in a moment to expand on what "explanations" are. That's right, that's what you're saying at 151, isn't it G(A)1/1.01/54?

A. Yes.

Q. Is it right that explanations are essentially submissions made by or on behalf of a party to a court? They're not evidence of witnesses, they are arguments and submissions made to a court, is that correct?

A. It is correct in a way that we have an umbrella notion of evidence in Russian procedural law which encompasses written evidence, oral evidence, statements of witnesses who are not parties to the trial nor third parties, so it's a separate role. And we have oral or written explanations of the parties which may be contained in the statement of claims or other documents or oral statements submitted to the court.

Q. Now, are explanations governed by the Arbitrazh Procedural Code, Article 81?

I'm not trying to test your memory, Dr Rachkov. If you turn to G(A)2/1, flag 8, you'll find the arbitrage

Civil Code. Sorry, the Arbitrazh Procedural Code.

A. Thank you, it is not necessary. I frequently -- I am in arbitrazh courts.

Q. Well, I would like to ask you to look at it anyway so as to give my Lady the opportunity to do so.

MRS JUSTICE GLOSTER: You've got it at paragraph -- it's Article 81 we're looking at, is it?

A. Yes.

MRS JUSTICE GLOSTER: You've got it at paragraph 150.

MR SUMPTION: There's also Article 88 which I wanted to compare with it.

If you just look at G(A)2/1, flag 8, we can see both articles together. Article 81 deals with explanations by a party of the circumstances known to him which may have significance, and is that contrasted with what we see on the following page, Article 88, "witness evidence", just as you described G(A)2/1.08/194?

A. Yes.

Q. And these are the two procedural code provisions which identify the two types of material?

A. Yes.

MR SUMPTION: My Lady, there's not going to be a convenient moment.

MRS JUSTICE GLOSTER: No. Very well.

Dr Rachkov, I told you yesterday evening, but you

mustn't discuss your evidence with anybody or the case over the luncheon break, okay.

THE WITNESS: Okay.

MRS JUSTICE GLOSTER: Thanks very much. 2.05.

(1.02 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Dr Rachkov, I was asking you when we broke to look at Articles 81 and 88 of the Arbitrazh Procedural Code, which identify and describe witness evidence and explanations. The witness evidence is dealt with by Article 88, and can you confirm, I think it's in sub-article 3, that witness evidence is, in principle, to be given orally but the court may propose that the witness set out his evidence in writing  
G(A)2/1.08/194.

A. This is correct.

Q. The evidence that he has given orally, in writing, when he has already given his evidence, is that right?

A. This is correct.

Q. In that case, is it right that both the oral evidence and the written version are witness evidence, as the term is understood in Russian law?

A. Yes.

Q. Now, could you please take bundle G(A)4/4 at flag 5. You won't need for the moment bundle G(A)2/1, so if you want to get rid of some of the stuff on your desk, feel free.

If you would like to get rid of G(A)2/1 and turn to G(A)4/4, which I think you may have from an earlier stage of the evidence. In flag 5 of 4/4 if you've got that.

A. No, not yet. Oh, 4/4, excuse me.

Q. It's 4/4, flag 5. This is the Code of Civil Procedure.

I'm referring you to this because it contains provisions about explanations by parties and third parties in section 68, page 98 of the volume G(A)4/4.05/98.

That provides, in subsection 1:

"Explanations by parties and third parties of facts known to them that are significant for proper consideration of the case are subject to verification and evaluation together with other evidence."

Now, is the effect of that that if you make a point by way of explanation, it's got to be verified before the court can treat it as a statement of fact that it can rely on, is that right?

A. If there are other evidences, then indeed the oral explanations must be compared with those, and the judge

comes to the conclusion whether or not it is true what is said in oral explanations.

Q. Yes, but isn't the effect of section 68.1 that if a party gives an explanation, in the technical sense of the word, if he wants that taken into account by the judge in deciding what the facts are, he's got to verify it by producing evidence to support it?

A. It depends on the contents of explanations. If explanations relate to notorious facts which are known to everybody, then of course the judge does not need to double-check it.

The other situation is, for instance, if the defendant being in court does not object, which means that he accepted this explanation.

Q. But if a party wishes to give evidence of facts known particularly to him, and not notorious, then unless the other side don't object the rule is that he has got to verify his explanations by evidence, isn't it?

A. If there are such evidences, yes, of course.

Q. Well, if there aren't, then he can't verify it at all, isn't that right?

A. It really depends on the specific case, what exactly is explained.

Q. Isn't the rule very simple: an explanation is basically a submission, it's not evidence. If you make an

explanation to the court which involves asserting some fact, you've got to prove it by producing some evidence; it's as simple as that, isn't it?

A. No. In accordance with Russian classification of evidences, oral explanations are evidences.

Q. Well --

A. However, of course, the judge in every particular case needs to weigh it and to identify what is the weight of such evidence as explanation.

Q. Well, oral explanations, Dr Rachkov, are not evidence, are they? That's why in the Arbitrazh Procedural Code they are dealt with separately in distinct Articles, 81 and 88, and why in the Civil Procedure Code there's a provision saying that explanations have got to be verified by evidence.

MR RABINOWITZ: Before the witness answers this, my learned friend may not have this to his mind, but, in fact, the experts have agreed in the joint memorandum that they are evidence. This is at paragraph 12.4, page 5 of bundle 6/1 G(A)6/1.01/5.

MR SUMPTION: Well, my learned friend is quite right to say that I don't have that to my mind but let me have a look.

MRS JUSTICE GLOSTER: What paragraph?

MR SUMPTION: It's paragraph 12, sub-4.

MR RABINOWITZ: Page 5.

MR SUMPTION: I'm not sure that my learned friend's point is right, with respect, because what is said here is that:

"Such explanations are a type of evidence, but they are not ... 'witness evidence', and ... are not precluded by Article 162.1."

Then the next sentence says:

"As noted below, however, it is disputed whether the parties' explanations have any independent weight (absent any documentary or physical proof)."

MRS JUSTICE GLOSTER: It's as clear as mud to me.

Perhaps you can help me, Dr Rachkov. Just explain to me what an explanation is.

A. It can be any statement concerning the factual circumstances surrounding either the situation, how the parties came to a contract. It can be an explanation on what the contract says in the -- to the best of the parties' knowledge and belief.

For instance, if the parties use the word "trust" in their contract, it may be that one party understands this word in one way and the other party understands it in another way. But it may also well be that both parties did figure out something common under the word "trust", although this word is not used in the Russian law, in the written law adopted by the parliament.

MRS JUSTICE GLOSTER: But is it a submission -- Mr Sumption, I think is suggesting to you that it could be a submission.

A. Unfortunately I'm not familiar with the rules of procedure in England so I cannot --

MRS JUSTICE GLOSTER: Forget English law. There is a contract which says A trusts B to pay some money into C's bank account. Is an explanation something that A gives as to why he entered into that agreement?

A. For instance, yes.

MRS JUSTICE GLOSTER: Which is his reasons for entering into the agreement.

A. Correct.

MRS JUSTICE GLOSTER: Is a proposition put by A's lawyer as to what, as a matter of law, is meant by that provision, an explanation?

A. It can be anything. It can be any explanation of whatever kind --

MRS JUSTICE GLOSTER: So it can be a legal explanation as well as --

A. It can be a legal explanation. It can be a legal --

MRS JUSTICE GLOSTER: So a legal argument put forward by A's lawyer as to what those words mean, a contract which says A trusts B to pay some money into C's bank account --

A. Correct.

MRS JUSTICE GLOSTER: -- is an explanation?

A. It is an explanation. It can also be an explanation to the effect that the parties did not conclude a contract because such and such essential terms were not agreed upon. It can be an explanation to the effect that one party believes that the contract was concluded but is invalid. It can be an explanation that the contract was concluded, is valid, but was not performed, or was not duly performed.

MRS JUSTICE GLOSTER: So it can mean an explanation of a factual matter as well as the statement of a legal proposition?

A. Yes.

MR SUMPTION: Suppose we have --

A. I can maybe, just to give an idea of what explanations are: an explanation is there to help the court understand the factual background on the one hand, but on the other hand identify the legal provisions which are applicable to construe the legal provisions, to apply them to the facts as described by the parties.

Q. Suppose you have a pure question of fact, there is an issue in the case, let's suppose, about whether an agreement was made between A and B as to whether A would sell B his car, all right? One party says this

agreement was made orally on such and such a day.

I said "Will you sell me your car for \$1,000," and he said "Yes," right? The other party says, "I wasn't there at all and I've never made an agreement like that."

So you have a pure question of fact, right? Now, can a party address the court without witness evidence by way of explanation and say, "I made this agreement on such and such a day", can he do that?

- A. The court will not agree with this position so -- of course, anyone can do anything, but clearly if there is no performance, and the court cannot understand whether or not the contract was concluded or was not concluded, the explanation is meaningless in this particular case.
- Q. Yes. So if you have an issue about whether an agreement was ever made and, if it was made, what the parties agreed, what they said, you can't just give an explanation without evidence, can you? You've got to produce evidence to support it?
- A. Yes, you must evidence as a claimant everything which you say, whether as a matter of fact or as a matter of law, unless the burden of proof is imposed on the other party.
- Q. And if you have an agreement which is not in writing and of which there is no documentary evidence, then the only

way that you can do that, surely, is to produce witness evidence?

A. It may well be if the agreement, as concluded orally, presumed or provided for certain payments. You can also produce the payment order, an excerpt from the bank account, which indicates that the payment was actually credited to the bank account of the recipient party.

Q. Yes, I can see that sometimes you may have an oral agreement of which there is documentary evidence. But if we suppose that there is an oral agreement, and there is no documentary evidence of the agreement, then the only way you're going to be able to prove it is by witness evidence; that's right, isn't it?

A. Not necessarily. I have a very interesting case in front of me, maybe you can have a look at bundle G(A)7/1, and there is a last flag, which is 23. It's G(A)7/1 G(A)7/1.23/248.

Q. Right, where should we be looking? Which flag is this?

A. It's 23. I'm not sure whether I shall give a brief description of this case?

Q. Yes, if you want to rely on it.

A. Well, the claimant was layering flooring in a private flat of a customer without having entered into a written agreement before. The claimant said that the agreement was that he gets paid 200 rubles a square metre, whereas

the defendant said she wants to pay only 50 rubles per square metre. Besides, there was apparently an argument about whether or not an agreement at all was entered into.

The claimant tried to produce an audio record in the court of the first instance. However, the court of the first instance decline to listen to this audio record. That's why the court of the upper instance decided that, on the one -- well, the court of the upper instance decided to return the case for re-examination to the very low level because this was the third instance already.

The case went through the justice of the peace, which is the lowest level of the Russian justice of the common jurisdiction, and then went on to Chkalovsky district court of Nizhny Novgorod region, and landed at the end of the day with the Nizhny Novgorod oblast or region court.

So I think this gives a clear indication that the explanations of the parties may well serve as an evidence which is taken into account together with other evidences, and is not less valuable than another type of evidence, namely a written one.

Q. Well, what this decided was that under two specific provisions of the Civil Code, I'm looking at page 252 of

the bundle numbering G(A)7/1.23/252, an audio recording of the alleged agreement was regarded as evidence?

A. Yes, by the court of the final appeal instance though.

Q. Yes. Well, it was regarded as evidence equivalent to written evidence, wasn't it?

A. I'm not sure it was regarded as equal to the written evidence. Believe it or not, there is no hierarchy of evidences in Russian law. It may well be that a claimant files a claim to the court and the defendant does not appear and then, of course, the claimant -- the court can only rely on the evidences, including written ones, including explanations, provided by the claimant.

Q. Well, what this appears to have decided is that there was a specific provision for the admission of evidence on such an issue contained in two articles of the Civil Code, namely 55, part 2, and 77. That's what it actually decided, isn't it?

A. No. I think the court tried to figure out whether there is anything else than simply an oral contract plus controversial statements from both parties whether or not the oral agreement was made; and, second, what the price of the services was, of the works was. So that's why the court -- it was important for the court to listen to the audio record which was provided by the

claimant actually.

- Q. Now, that is effectively a form of witness evidence, isn't it? What you are doing is proving an audio recording of somebody speaking? That's the basis on which this was admitted?
- A. Unfortunately not. The written evidence is something else than audio or video record.
- Q. Well, this wasn't written evidence --
- A. In accordance with the Russian civil procedure and arbitrage procedure.
- Q. This wasn't written evidence, was it? It was an audio recording?
- A. It was not written evidence.
- Q. No. You, as I understand it, suggest that any document can provide documentary evidence of an agreement and be admissible, notwithstanding 161 and 162.
- For example, you give the example in your sixth report, paragraph 59 G(A)1/192. You say that because a newspaper is a document, a newspaper report may provide documentary evidence of an agreement, is that your evidence?
- A. It can be in evidence if it contains facts which are not a lie, for instance --
- Q. Which are not?
- A. Which are not a lie, so --

Q. Which are not untrue?

A. Yes, which are not untrue, correct.

Q. How do you establish whether they are untrue?

A. The court evaluates the evidence based on its internal perception, on its experience, on whether or not the documents are related to the case. For instance it may well be that -- and happens actually in court -- claimants or defendants try to provide the court with completely unrelated documents, then the court says, "Okay, I think this is not related to this case, it's not important for me to decide".

There can also be documents which are obtained by many undue methods, then this evidence can not be used either. But in general, the purpose of Russian legal provisions regulating the evidence is to make sure that the court has a very clear picture on what happened and what kind of law must be applied and how.

Q. You see, pursuing your newspaper example, suppose that a person wishes to give -- a party to an action wishes to give his own witness evidence to say there was an oral agreement, and the court says, under 161.2, "I'm sorry, you can't give evidence of this agreement because the value exceeds ten times the statutory minimum wage."

Now you're not suggesting, are you, that if the party is told that, he can go away and give an interview

to a newspaper, and then produce the newspaper as a documentary record of the agreement, or are you suggesting that?

A. No, no, I'm not suggesting that.

Q. You say that Article 161 is classified, as a matter of Russian law, as procedural?

A. Yes.

Q. That is part of your evidence, is it not?

A. Correct.

Q. Now, I've put it to you, and you've answered this, that it is part of a code of substantive law, to which your answer is "In principle, yes, but there are some things in the Civil Code that would be counted as procedural," and I've also put it to you, and I think you agreed, that this one has a social and not just a procedural purpose?

A. Definitely. The requirement to enter into a written contract has many purposes. One of them is that the state knows what its citizens agreed upon, that the citizens pay taxes, and how shall the state understand what was agreed, which money was transferred where, if there is no written contract?

Q. Now, you're not, as I understand it, or perhaps you are, suggesting that you can get round the social purpose of 161.2 simply by tendering your account of the facts by

way of submission; you're not suggesting that, are you?

A. I'm afraid I don't fully understand your question.

Q. Perhaps I shouldn't have used the word "submission".

You're not suggesting, as I understand your evidence, that you can get round Article 161, sub-article 2, of the Civil Code simply by giving your account of the facts by way of explanations instead of by way of witness evidence?

A. Maybe not, but I can give you an example, which is not produced as a judgment here but I can easily produce this judgment to the court.

We as a law firm entered in July 2008 into an agreement for provision of legal services with a major Russian development company whose shares were traded at that time at the stock exchange. I was commanded to attend the premises of that, of the management of that company in Moscow, and they pushed me a lot under time pressure to render the legal advice as soon as possible. I did so. We generated appropriate legal fees. However, we did not enter into a written contract because of lack of time.

Later on, when we issued an invoice, the client said there was no oral agreement, no services were rendered, nothing. However, we filed a claim with the Russian court, the defendant did not appear, the defendant did

not produce any evidence. We evidenced what exactly was rendered in terms of services, so I provided email exchange which was, however, mostly unilateral, so a few emails which I got back from the client, mainly sending minutes of meetings of its board of directors to me. One of the points in the objections of the former client was that there was no agreement, the court granted our claim in both instances. This is a development of this year.

- Q. So the position in that case was that first of all you had documentary evidence, and, secondly, there was no objection to your deploying it from the other side because they didn't appear; that's right, isn't it?
- A. No, they provided written objections to the court.
- Q. But you had documentary evidence?
- A. I had some documentary evidence, and this shows that the Russian court relies on the totality of evidence available.
- Q. If a particular oral agreement is being made, for which the only evidence is the recollection of witnesses, you can't prove it in a Russian court, can you?
- A. No, you cannot.
- Q. In your evidence, as we've established, you say that this is a rule of procedure. Is it right that the question whether it is procedural or substantive has

never actually been decided in a Russian court, so far as anyone can discover; is that right?

A. To the best of my knowledge, it was not, yes. I mean, maybe it's so commonplace that there is no need to decide on it.

Q. Well, one reason for that, I imagine, is that in a Russian court it wouldn't matter whether it was procedural or substantive because it would be the law in either case which a Russian court would apply. So it's not something a Russian court would ever have to decide?

A. Yes, I agree with you.

Q. On the other hand, a foreign court might have to decide it, or a Russian court might have to decide it when receiving evidence of a foreign law because of the distinction between substantive and procedural law in private international law. You understand that, don't you?

A. I understand it.

Q. Now, would you agree that the consensus among legal scholars in Russia is that Article 161 is a substantive rule?

A. No, I disagree with that. I think the consensus among Russian scholars is that the rule to the effect that agreements cannot be evidenced by witness statements, if the agreements are oral, is of procedural nature.

I refer to such authorities as Professor Molchanov, Professors Mozolin and Masliaev, and these are paragraphs 152, 153 of my fourth report G(A)1/1.01/54.

- Q. Would you agree that Professor Lunts is a highly respected academic authority on these matters?
- A. In which matters, excuse me?
- Q. On questions of procedure and contract?
- A. No, I wouldn't agree with that. Professor Lunts was a specialist of Soviet time in private international law. He died maybe more than 20 years ago when the old Soviet rule applied.
- Q. Well, the rule about proof of contracts is in fact older than the Civil Code of the 1990s, isn't it?
- A. Maybe so. I don't know the wording by heart. I can imagine that it is, yes.
- Q. Can we look at Professor Lunts's book, G(A)7/2, flag 1. Now, the reason I'm referring you to Professor Lunts is that he is the one Russian scholar that we have found who appears to deal with this precisely in the context of private international law, looking at the classification for the purposes of private international law G(A)7/2.01/1-4.
- MRS JUSTICE GLOSTER: Just remind me, Mr Sumption, under English PIL rules, is it for this court to characterise the rule, or is it for this court to have regard to how

the foreign law characterises the rule?

MR SUMPTION: My Lady, it is for this court to classify the rule by enquiring what is the nature and purpose of the rule and how it functions, but for that purpose it is relevant to consider what the consequences are and how it is classified in the foreign system. It is not conclusive how the foreign system classifies it, because the foreign system may be applying criteria which would not be recognised as valid by an English court.

MRS JUSTICE GLOSTER: I see. At the end of the day I have to make my mind up, but it's informed by how it's classified as a matter of the domestic foreign law.

MR SUMPTION: Among other matters, yes. In our submission, your Ladyship will need to look at the purpose, nature and consequences of this and take a view, as a matter of English private international law, that the foreign law's approach to it is relevant in that exercise.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Dr Rachkov, if you've got there the extract from this textbook open, in the first paragraph of paragraph 6 G(A)7/2.01/3, the first block of highlighted text, is the professor making the point that a provision of the Code preventing the parties from relying on witness evidence may simply be the procedural consequence of a substantive rule of law?

Just read through it and tell me whether you agree with that summary. (Pause)

A. And the summary is? Can you repeat, please, because I was reading the --

Q. Of course. Have you read that first block of text?

A. Yes, I did.

Q. As I understand it, and correct me if I'm wrong, the point that the Professor is making here is that the provision of the Code, which prevents parties relying on witness evidence, and he is referring to the older Soviet codes here, may simply be a procedural consequence of a substantive rule of law.

Do you agree that that's what he's saying?

A. Yes, the procedural consequence of the substantive rule of law.

Q. Now, in the second paragraph, the part immediately under the highlighted block of text, is Professor Lunts making the point that the exclusion of witness evidence under a foreign legal system would be respected in a Russian court if it had a substantive purpose. He cites as an example Article 1341 of the French Civil Code.

A. I don't think he mentions a Russian court, he gives an abstract case.

Q. Yes, but this is a textbook, isn't it, on Russian rules of private international law?

- A. It is a textbook on Russian civil procedure, international civil procedure, or not Russian, international civil procedure.
- Q. Well, it's specifically directed to the position in Russia, isn't it?
- A. Well, it was written in, whatever, 1976, to deal with the Civil Code of the then Russia which was part of the Soviet Union.
- Q. I understood it to have been written in 2002. It may be an up-to-date edition.
- A. It is just a reprint of a book which was written in 1976.
- Q. Well, it refers to the Fundamentals of Civil Legislation, Article 125, which was promulgated in 1991?
- A. Yes, but Professor Lunts has a co-author whose name is Marysheva, and of course, because the book was printed in 2002, there was some update with references to them.
- Q. In England we use a book called Dicey, Morris & Collins, notwithstanding that Dicey has been dead for about 100 years.

The point that is being made in the block of text between the two highlighted blocks is that:

"... in accordance with Article 125 of the Fundamentals of the Civil Legislation [when] the form of a document is governed by foreign law, it is impossible

to admit the witness testimony if according to this foreign law the witness testimony may not be accepted instead of or in disproof of the written document, as for example it is provided for by Article 1341 of the French Civil Code."

Now, what that is saying is that if you had an equivalent provision to Article 161 in a foreign legal system which it was sought to rely on, and a contract for example governed by that foreign legal system was being deliberated on in a Russian court, the Russian court would apply the foreign code equivalent of 161 as if it was a substantive rule. That's the point he's making, isn't it?

A. That's apparently the point he's making.

Q. You see, 1341, I don't know whether you're familiar with other systems of civil law apart from the Russian one, Dr Rachkov?

A. Yes, with German law.

Q. Yes. Well, I think the same applies in the German Civil Code. It's a very common principle, isn't it, in the civil law systems, French, German, Swiss, for example, that there are provisions that above a minimum value threshold, oral evidence is not admissible to establish an agreement; that's quite a common principle, isn't it?

A. I'm more familiar with the substantive law than

procedural law of Germany, and in accordance with the material -- with the substantive law of Germany, if an entrepreneur sends an offer to the other entrepreneur, and the other entrepreneur remains silent, the offer is accepted.

Q. Let's look at the example which Professor Lunts, or perhaps it's Marysheva, actually cites, which is Article 1341 of the French Civil Code. You'll find that in flag 3 of the same bundle. And it is substantially the same as Article 161, isn't it?

There's an English translation if you would prefer to read it in English.

MRS JUSTICE GLOSTER: When you say the same bundle?

MR SUMPTION: Flag 3 of 7/2. Does your Ladyship have that?

MRS JUSTICE GLOSTER: Flag 3 of 7/2.01?

MR SUMPTION: In my bundle it's flag 3, and the page reference is G(A)7/2.03/11.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: That's the English translation of Article 1341 of the French Civil Code which provides that:

"An instrument before [notaries] or under private signature must be executed in all matters exceeding a sum or value fixed by decree [currently 5,000 francs or 800 euros], even for voluntary deposits, and no proof by witness is allowed against or beyond the contents of

instruments, or as to what is alleged to have been said before, at the time of, or after the instruments, although it is a question of a lesser sum or value."

Now, 1341 therefore is like Article 161, although there are some differences between them, a provision excluding witness evidence in relation to transactions above a minimum value.

That's the kind of thing which Professor Lunts and Dr Marysheva are suggesting would be classified as substantive by a Russian court?

- A. It may well be that they classify that way, but I do not fully understand what the relation of the French Code Napoleon, for our case, is. That's the first remark.

And the second remark is, as I understood the French wording, because I'm fluent in French as well, the contents of this rule is broader than the Russian one. The Russian law only says the mere fact of the transaction and its terms may not be evidenced by oral statements. Other facts can well be evidence, for instance performance.

- Q. You're quite right that the French rule is in that respect broader than the Russian one, but what they have in common is that they exclude witness evidence to establish the existence or terms of an agreement above a certain value threshold, and that in a Russian court,

I suggest to you, would be regarded as a substantive rule, and gives one some guidance as to how the Russian courts would classify 161, sub-article 2, if they ever had to decide that question. Do you agree?

- A. No, I don't agree. I think it's a far-reaching conclusion.

I refer in my sixth report to a number of not least authoritative sources, like Zhuikov and Treushnikov, "Commentary to the Civil Procedural Code", this is paragraph 61 G(A)1/1.03/193; to a commentary of Professors Abova and Kabalkin, which also say that this rule is procedural; to the commentary of Grishaev and Erdelevsky. So I think there are at least three very alternative sources which confirm the correctness of what I've said.

- Q. But the only context, surely, in which this would ever have to be decided is an issue of private international law?
- A. Is it a question?
- Q. Yes. I'm asking you whether you disagree with that?
- A. I do not understand which role the private international law can play here. We have an agreement which was entered into between two Russian citizens. The agreement was to be performed in Russia. So there is no space to me to apply private international law.

The private international law answers basically the question which law shall be applied? Shall it be Russian law? Shall it be a foreign law? I do not see how and why any foreign laws in(?) Russian shall be applied to the 1995 or 1996 agreement.

- Q. I'm not going to debate with you the question whether the matters I'm asking you about are relevant. That's a matter in due course for my Lady. But it arises, if I may just inform you, from the fact that although these matters are governed by Russian law, they are being determined by an English court.

Now, can you think of any other context in which it would matter whether a rule of Russian law was procedural or substantive, except private international law context?

- A. Whenever a dispute arises between parties to a contract this rule applies, and whenever these parties are Russian citizens who entered into a contract which is governed by Russian law.

- Q. Can you look at the final paragraph in the extract from Professor Lunts's book G(A)7/2.01/3:

"In regard to such cases of close connection between the procedural provision and substantive law, DI Polumordvinov in the mentioned book reasonably notes that non-admission of the witness testimony for proving

existence and content of some civil law transactions provided in the legislation of several states (USSR, English-American and Romanic countries) represents a direct consequence of those legal forms which determine the form of transaction. If the court, he denotes, admits proving [of a contract] by means of witness testimony, it would violate the substantive legal norms of that foreign state which it is obliged to apply resolving the dispute on merits."

Now is the point being made here this: that if the rule in question, and we're talking about Article 161, sub-article 2, reflects a rule of legal policy, then one would expect it to be applied in any court which was applying the foreign law in question, in this case Russian law; isn't that the point that's being made?

- A. It may well be. I think it's always difficult to comment on some excerpts which are taken from a book, which in turn refers to an excerpt from a second other book.

I don't know who Polumordvinov is and what exactly he says in the context of his work.

- Q. Well, neither do I know who he is, but I am suggesting to you that that is the opinion expressed by this book, because it endorses Mr Polumordvinov's view and explains its implications, doesn't it?

A. It may well be, yes.

Q. Now, if we turn to Professor Zhuikov, who is one of the authors that you say we should be referring to in this context. Could we look at paragraph 92 of your fourth report, G(A)3/1, flag 2, page 93 G(A)3/1.02/93.

A. Can you repeat the --

Q. This is not your fourth report, forgive me, this is Mr Rozenberg's fourth report, but it contains a quotation from Professor Zhuikov.

You haven't got it yet, I'm sorry, I should have waited.

At G(A)3/1, flag 2, page 93, paragraph 92, Mr Rozenberg quotes from Professor Zhuikov. Just to identify him, he is currently, is this right, the deputy chairman of the Russian Supreme Court, is that correct?

A. I think so, I'm not very up-to-date, but he was for a while at least, yes.

Q. Now, his work is being quoted here:

"Admissibility of evidence [he says], as a rule of proof in the civil law procedure, is connected first of all with the existence of the norms of substantive (civil) law regarding determination of the scope of possible evidentiary materials in a specific case. Certain types of evidence may be excluded by norms of substantive law from the list of [admissible] sources of

information about legally meaningful facts."

Now, is Professor Zhuikov making the same point here as Professor Lunts is making in the book that I've just referred you to, namely that some procedural rules reflect substantive rules of law?

A. It may well be. Can I please ask to provide me with the annex to this statement by Mr Rozenberg?

Q. You mean the text he's referring to?

A. Yes, Professor --

Q. You'll find it in tab 26 of MAR4, which I think is in -- you'll need G(A)4/2 I think.

Sorry, let me just find the reference for you. It's 4/5 I'm told. You want tab 26 in this bundle, which is G(A)4/5.26/68.

A. Can I also please ask to provide me with my own report and annexes to the sixth report, please?

Q. By all means. Which one do you want?

A. The same. So I mean Mr Rozenberg indicates a commentary but translated it only up to clause 6, and I would like to refer to clause 8.

Q. Yes, by all means. But can I just, while that is being fetched, invite your attention to paragraph 5 which is the passage quoted by Mr Rozenberg?

A. Yes, I understand this paragraph.

Q. Yes. Now, is the point that is being made by

Professor Zhuikov in this passage that a rule of procedural law may reflect a norm of substantive law?

A. I understand what Professor Zhuikov says: a rule of procedural law can reflect a rule of substantive law, which means that -- excuse me, which means that apparently he wants to say this is a commentary to the Civil Procedure Code, not to the Civil Code. He wants to say by this that the Civil Procedural Code may contain some substantive law rules, not vice versa.

Q. Right.

A. Can I now refer to mine?

Q. Yes, by always means. Are you looking for flag 31?

A. Correct.

MRS JUSTICE GLOSTER: Can somebody give me the reference, please?

MR SUMPTION: It's G(A)2/5.31/139.

A. What he says there is:

"Civil procedural rules are contained in many substantive acts: Civil Code of the Russian Federation, Housing Code [and so on]. So, for example, according to Article 162 of the Civil Code of Russian Federation disregard of the simple written form of a transaction divests the parties, in the event of a dispute, of the right to refer the witness evidence in support of the transaction and its conditions, but does not divest them

of the right to produce written and other evidence. By its legal nature, this rule is a civil procedural rule regulating the admissibility of evidence in the civil process."

- Q. If you look at 7/2.02/7, you will see another extract from Professor Zhuikov's commentary.
- A. I'm afraid there is nothing inside.
- Q. Do you have 7/2, flag 2? Do you not have a flag 2 in that?
- A. Yes, flag 2, I do have.
- Q. Is that another extract from the Civil Procedure Code of Professor Zhuikov, his commentary on it rather?

MRS JUSTICE GLOSTER: Are we still in GA?

MR SUMPTION: Yes, it's G(A)7/2. Do you have that?

- A. Yes.
- Q. Does Professor Zhuikov cite Article 162 as an example of a norm of substantive law or a consequence of it? If you look at the highlighted text on page 7:

"In addition, norms of substantive law establish other rules having significance for the civil legal proceedings: on admissibility of evidence; on presumptive (prima facie) evidence and burden of proof; on who is the proper claimant in a case; on the right of a court, if the interests of justice so require, to go beyond the subject and grounds of a claim ...

"The following norms may be given as an example.

"According to Section 1 of Article 162 ... failure to conclude a transaction in the simple written form shall in the case of a dispute deprive the parties of their right to refer to witness testimony in order to confirm the transaction and its terms, though shall not deprive them of the right to adduce written and other evidence."

Then various other examples are given.

What Professor Zhuikov appears to be saying is that Article 162 in fact reflects a substantive rule(?) of law. Do you agree that is what he is saying?

A. That this is what I'm saying, what he is saying?

Q. You both say that, do you?

A. No, I don't say this, and he doesn't say it either.

Q. What do you understand him to be saying when he says:

"In addition, norms of substantive law establish other rules having significance for the civil ... proceedings..."

A. This means exactly what I said before. This means that the Civil Code, which basically contains substantive law, can also contain procedural rules, and Article 162, paragraph 1, is one of these examples, that this is a procedural rule of law.

Q. The point is actually very simple, isn't it, Dr Rachkov?

Article 161 is a substantive rule of law, Article 162 is a procedural consequence of that substantive rule of law. Article 161 therefore falls to be applied by any court applying Russian law?

A. Yes.

Q. Do you disagree?

A. No, I agree with that.

Q. Thank you.

A. I would not call Article 162, paragraph 1, a procedural consequence of the substantive rule, I would say it is a procedural rule of law, but it's just, I don't think there is a big difference between you and I.

Q. Well, we are at any rate agreed that Article 161 is a substantive rule of law?

A. 161 is a substantive rule of law.

Q. I understand. Now, can we deal briefly, Dr. Rachkov, with your point about subsequent performance which you have mentioned on a number of occasions this morning, and which I said I would come back to you.

Is the basis of -- first of all, it's common ground I think between you and the other experts that the way in which the parties have performed, or appear to have performed an agreement may be evidence of what its terms were; is that a point that you agree with the other experts upon?

A. Yes, it can first indicate whether or not the contract was concluded based on Article 438, paragraph 3, of the Civil Code. It can also indicate what the parties agreed and how they performed this agreement.

Q. Well, if we look at joint memorandum, paragraph 24 --

A. Can I please ask someone to provide me with the joint memorandum.

MRS JUSTICE GLOSTER: You have rather a lot of bundles there. Would you like to get rid of some?

MR SUMPTION: Yes, I apologise for that. If you could keep bundle G(A)4/4 in front of you and for the moment I suggest we dispose of the others.

Now, paragraph 24 of the joint memorandum G(A)6/1.01/9, I understand it to be:

"... agreed that where both parties have performed a contract without dispute, and there is evidence of such performance, such evidence shall be taken into account by a Russian court when assessing whether or not a contract was concluded.

Now, that's the proposition on which the experts are agreed, isn't it?

A. Correct.

Q. Is the basis of that Article 431 of the Civil Code, which we referred to for another purpose this morning, which refers in the second paragraph to subsequent

performance as evidence of the terms of an alleged agreement?

A. It's not only 431, it is also 438, paragraph 3, in connection with 434 paragraph 3. So 431, 434 --

Q. I'm just looking for 438 which is not in the extract that I ...

Now, if we look at one of the other propositions that's agreed, if you look back at the joint memorandum, you will see that at 25.3 it's agreed:

"At a minimum... the performance of the contract may shed light on the content of their original agreement in accordance with Article 431."

That of course does not summarise the whole of your view, but that's a proposition on which you agree with the other experts?

A. Yes, since I subscribed to this joint memorandum, that's what I think.

Q. Now, does it follow from that proposition that subsequent performance may enable the terms of the original agreement to be defined with greater precision than would otherwise have been possible without it?

A. Yes, the performance clarifies what was agreed upon, yes.

Q. Now, does that mean that subsequent performance may give certainty to a contract which would otherwise have

lacked it?

A. Yes.

Q. Now, suppose that a contract was non-concluded because an essential term wasn't agreed or wasn't sufficiently defined, okay? Suppose that. Would you agree that subsequent performance cannot save that contract unless it shows that the essential terms were in fact agreed or sufficiently defined?

A. No, I don't agree with what you are saying, Mr Sumption. The idea is that -- imagine there is an essential term which was not initially agreed. However, despite this fact, the parties started performing their contract as they understood that contract, and the specific performance replenished the gap in regulation of the contract. There are many cases to which I refer in my report which indicate that it happens quite often in Russia, maybe due to some negligence of the parties to the contract, that they do not agree on something.

For instance, there was a case where the parties entered into a construction contract. In accordance with the rules of Russian law they must agree on, for instance, the technical documentation which must be provided by the customer or the contractor. However, they did not. Still the contractor constructed the building using the technical documentation which he

developed without any consent of the customer, and the customer accepted this, the result of these construction works.

So the court came to the conclusion that although indeed the contract was not initially concluded due to the lack of this essential term, later on, due to the performance, the contract was cured, if you want, by the subsequent performance.

- Q. Presumably the juridical basis of that was that the parties subsequently, by conduct, entered into a more specific agreement than they originally had, is that right?
- A. Well, it was a bit more complicated. As I said, the customer did not approve the technical documentation for the construction of the building in advance. He just accepted the result of the works.
- Q. Yes. Well, what that means is that the parties subsequently conducted themselves in a way that added to the obligations that they originally undertook. Is that correct?
- A. It was an amendment to the initial agreement in a way that they replenished the provision which was lacking in their initial contract.
- Q. So by their conduct, they amended the original agreement, and the amended agreement had the certainty

that the original one lacked?

A. Yes.

Q. Now, if I can refer you back to the joint memorandum which I think you've still got open in front of you, paragraph 25(2) at G(A)6/1.01/9. This is the part where the experts all agree that:

"The principle [of relying on subsequent performance] can only apply, if the performance makes it possible to define the essential term which was otherwise undefined."

That's a proposition that you agree about, isn't it?

A. Yes.

Q. Now, does that mean that if the parties behave in a way that is consistent with a number of possible different terms, then the subsequent performance isn't going to help much. Do you follow my point?

A. Not really.

Q. Okay, let me try to put it again. Let's suppose that you have an agreement which is non-concluded because some specific and essential term has been left undefined, all right? Let's suppose that the parties subsequently behave in a way that is equally consistent with their having agreed two or three different things. In other words, you can't identify the term which is implicit in their behaviour because it is consistent

with quite a number of terms, do you follow my example?

- A. I can hardly imagine what do you mean, so how does it work in practice?
- Q. Would you agree that the subsequent conduct has got to be unambiguous? It's got to be conduct which points to a particular term having been agreed and nothing else?
- A. Yes, the subsequent conduct must identify the essential term which was not agreed upon initially.
- Q. Yes. So if, for example, the parties were to make a payment to each other, and those payments were equally consistent with there being profit shares, or krysha, just to take a random example, you wouldn't be able to determine from the subsequent performance which was the right answer, would you?
- A. I'm really in troubles. I do not understand, what do you mean by krysha exactly?

MRS JUSTICE GLOSTER: Give a more simple example, not related to the facts of this case.

MR SUMPTION: Okay. If you have a contract and the parties have not agreed, let us say, the price of a car, let us suppose for example that I am alleged by my local church to have bought off them a car for £1,000, and the only evidence is that I paid them £1,000.

Now, I say that that was my annual contribution, my annual gift to the church's funds. They say, "No, it's

the price of the car." Now, that's an example, isn't it, of a situation in which the performance alleged is ambiguous? It might be performance, it might not, depending on a whole host of other facts; do you agree?

A. In principle I agree. I would however have a look at your payment order, what you've indicated as the purpose of your payment order.

Q. I'm sure you would, but that is an illustration, perhaps a slightly artificial one, of the point which is being made by all three experts at 25.2, isn't it, which is that the principle of relying on subsequent conduct can only apply if the subsequent conduct enables you to demonstrate -- if the subsequent conduct was referable to a particular term and there's no other explanation of it?

A. Yes, but in your example, imagine there was an announcement at the church that they are selling their car at £1,000, who pays first gets the car. You were the first. What is wrong about it? Unless you've indicated in your payment order that this is your charity contribution.

Q. I quite see that, as with any example, if you add enough further facts you may make it less ambiguous, but whatever you do, the facts have got to point unambiguously to the parties having agreed a particular

term. That's right, isn't it?

A. Yes, that's right.

Q. Thank you. Now, can we just turn briefly to sui generis agreements. This is dealt with at paragraph 62 of the joint memorandum which indicates that there is quite a large measure of common ground G(A)6/1.01/19.

Now, can I just ask you this: a sui generis agreement, does that simply mean an agreement which does not belong to some specific category provided for by the Civil Code?

A. Yes.

Q. And a contract which doesn't satisfy the requirements of the Civil Code relating to a simple partnership agreement may sometimes be valid as a sui generis or unclassified contract, is that right?

A. That's right.

Q. Now, suppose that an alleged partnership agreement is non-concluded because some term which is essential for a partnership agreement is either missing or insufficiently defined, okay? Suppose that. Would you agree that the alleged agreement can only be valid as a sui generis agreement if the relevant term, although essential to a partnership agreement, is not essential to a sui generis agreement?

A. The question is too complicated, can you please shorten

it a bit?

Q. Let's suppose that you have an agreement which is said to be a partnership agreement, okay? And let's suppose that it is non-concluded because there is some term, essential to a partnership agreement, that is either missing or insufficiently defined, all right?

A. All right.

Q. Now, that could only be valid as a sui generis agreement if the essential terms required for the validity of a sui generis agreement were different, do you agree?

A. Different or less.

Q. Yes.

A. For instance, I can give you a good example. The partners entered into a joint activity agreement or, as I call it, a simple partnership contract but there was nothing but this as indication. So on the top there was just a title, "Joint Activity Contract" or "Simple Partnership Contract".

From the content however you derive only one obligation, to keep the information exchanged confidential and, second, if one party discloses this information without the prior written consent of the other party, this may be sanctioned with a contractual penalty of X. Then a joint simple -- sorry, a joint activity agreement, ie simple partnership contract,

failed if the contributions were not agreed upon, but the confidentiality agreement survived.

Q. Yes, well --

A. And this is an example of sui generis agreement, because confidentiality agreements are not regulated explicitly by Russian Civil Code.

Q. Well, I'll can see that, but that's an illustration where you have an agreement covering the larger number of matters, and it's not valid as a partnership agreement, but some obligations may be independently binding. That's the analysis of the example you've just given, isn't it?

A. Well, it is a sui generis agreement which creates rights and obligations on both parties, and also the liability if one of the parties does not perform this agreement.

Q. Well now, in the present case, the question which arises is if you take all the terms said to have been agreed as a partnership agreement, and assume that they're not valid as a partnership agreement because they don't include essential terms, and the question is: can you take all those terms and then say they are valid as a sui generis agreement?

Now, what I'm suggesting to you, and I think you agree with this, is that they can only be valid as a sui generis agreement if the requirements of certainty

for a sui generis agreement are less exacting than those for a partnership agreement; the terms that are essential are fewer, for example?

- A. The sui generis agreement can be more detailed and it can be less detailed. It just has another subject matter, another object, than simple partnership contract.
- Q. All right. Suppose the parties intend that their agreement should be a partnership agreement and nothing else, but they do not reach agreement on the essential terms for a partnership agreement, okay? Just suppose that. Now, do you accept that that agreement can't be valid as a sui generis agreement because the parties intend that it shall be a partnership agreement?
- A. Here I must agree with you, yes. If they do understand what a simple partnership agreement is, which they are obliged to understand even if they are not lawyers, but they use these words, and there is no doubt that they use it in the proper meaning, then there is no simple partnership contract.
- Q. Indeed there's no contract of any sort on that agreement, is there? There's no sui generis contract either, is there, because if the parties have agreed "We intend to make a partnership agreement," and they understand what that means, then you can't reclassify it

as a sui generis agreement, can you?

A. No, I think you are right, unless, as I said before, the performance shown that still they performed something, so then you need to classify what the performance was. Was it unjust enrichment if there was no contract, or if there was a contract but not a simple partnership contract?

Q. Well, subsequent performance may show that the parties implicitly changed their legal relationship later.

A. And their intention as well maybe.

Q. Okay. Now, would you also accept that an agreement must have sufficient certainty to enable the court to enforce it, whether you call that agreement a partnership agreement or a sui generis agreement?

A. Yes, I agree with that.

MR SUMPTION: My Lady, I'm going to turn to a completely different subject. Would your Ladyship like to break at this stage?

MRS JUSTICE GLOSTER: I'll take the ten minute break now, thank you.

(3.23 pm)

(A short break)

(3.40 pm)

MR SUMPTION: Dr Rachkov, just to recap on one small point, you mentioned on a couple of occasions earlier this

afternoon Article 438, sub-article 3, do you recall that?

A. Yes.

Q. That's not actually in the materials in any of these bundles, it must be just about the only proposition of Russian law that isn't. Am I right in thinking that 438.3 is about offer and acceptance?

A. Yes, it's about offer and acceptance.

Q. And what it says is that an offer can be accepted by conduct subject to certain conditions?

A. Yes.

Q. Thank you. Can we turn to Article 434 of --

MRS JUSTICE GLOSTER: Perhaps you would let me have a copy of it?

MR SUMPTION: We will. I am going to have a copy of the article translated and then I will endeavour to agree the translation with the other side and add it to the existing extracts.

MRS JUSTICE GLOSTER: I think it's in the -- isn't it all translated anyway in the Code?

MR SUMPTION: It's not unfortunately because we only have extracts of the Code and this isn't an article --

MRS JUSTICE GLOSTER: I thought the book that Dr Rachkov has has got it in the English as well?

A. I have only the Russian version, but I'm sure the --

MR SUMPTION: My Lady, I've no doubt --

A. -- counsel team has a very good translation by Professor Osakva(?) on which the court can rely.

Q. There are plenty of translations on the internet and in print and we will have no difficulty in supplying an agreed one.

MRS JUSTICE GLOSTER: In agreeing one, fine.

MR SUMPTION: But Dr Rachkov, there is an issue between you and Dr Rozenberg about whether Article 434 of the 1964 Civil Code applies. But you accept, do you not, that if Article 434 of the Civil Code, the '64 Civil Code, applies, it excludes simple partnership agreements made for entrepreneurial purposes and confines them to partnerships for personal needs, is that a proposition you accept, if it applies?

A. If it applies, yes.

Q. We can basically for the record, and so that my Lady can see the text, see Article 434 at G(A)4/4, flag 3.

I think that's one of the bundles you've got with you G(A)4/4.03/83.

MR RABINOWITZ: It's at 4/4.02 as well.

MR SUMPTION: It's at page 83 of the page numbering in the bundle.

Now, if you've got Article 434 in front of you at page 83, have you Dr Rachkov?

A. Yes.

Q. There's more than one restriction in this article, isn't there? What it says is that:

"Under a joint activity contract the parties undertake to act jointly in order to achieve a common economic goal..."

And various examples are given.

Then there are two restrictions, are there not? The first is:

"Citizens may conclude a joint activity contract only to meet their own personal domestic needs."

That's the restriction that you've just given an answer about, yes?

A. Yes.

Q. Then there's another restriction:

"Joint activity contracts between citizens and socialist organisations are not permitted."

Now, am I right in thinking that "socialist organisations" refers to a category of legal entity which, in the original 1964 Civil Code, was included in Article 24, is that right?

A. I'm afraid I'm not that fluent in the old Civil Code.

Q. No. Well, I'm not surprised, but if you would like to take bundle 7/3.

MRS JUSTICE GLOSTER: State collective farms go back a bit,

don't they?

MR SUMPTION: They do indeed, and I think it's going to be common ground that that particular restriction is no longer germane.

If you look at Article 24 in 7/3, flag 2, page 99 G(A)7/3.02/99, am I right in thinking that "socialist organisations", as referred to in Article 434 of the '64 Civil Code, is a reference to the organisations listed here in Article 24?

A. Yes, it looks like this.

Q. Yes. Is it right that those are the old-style Soviet categories of legal entity which ceased to be relevant once the Fundamentals of Civil Law were promulgated in 1991?

A. Not really. By that time, there were already some other enterprises, including joint stock companies and limited liability partnerships as they were called at that time, and limited liability companies as they are called now.

Q. Yes.

A. So besides -- the legal entities under the Soviet rule had a special legal capacity, which means that they were only entitled to engage into the activity which was indicated in their charters, unlike the current theory which presumes that any commercial legal entity, ie joint stock company or limited liability company, is

entitled to engage into any business activity unless there are any restrictions in the charter of such company.

Q. Did there come a stage when "socialist organisations" ceased to be a recognisable legal category?

A. Yes.

Q. And if so when did that happen?

A. Frankly, I'm not -- at that time I was 16 years old, when the Soviet Union break away, so I can't say for sure when exactly it happened, but this was for sure before 1992 I guess.

Q. Yes, I see. So by 1992 at the latest, "socialist organisations" was a legally redundant category?

A. Yes, it became obsolete.

Q. So that the second prohibition in 434 would have no relevance after 1992?

A. Yes.

Q. Now, Article 434 never did affect partnership agreements between citizens and legal entities other than socialist organisations, did it?

A. No, I don't think so.

Q. It regulates joint activity contracts between citizens, that means natural persons, doesn't it?

A. Correct.

Q. It doesn't matter whether they are Russian citizens or

not?

A. In Russia, the domestic regime applies to foreigners as well, and also to stateless persons.

Q. So for "citizens" we can read, for practical purposes, "natural persons"?

A. Correct.

Q. So 434 never did regulate joint activity agreements a citizen on the one hand and a legal entity on the other. It once regulated joint activity agreements between citizens and socialist organisations but ceased to do so from 1992. Is that correct?

A. I think so, yes.

Q. So what we are concerned with is simply whether any continuing effect was to be given in 1995 to the provision that says that:

"Citizens may conclude a joint activity contract only to meet their own personal domestic needs."

That's the question we're concerned with, isn't it?

A. I think you are concerned with this question.

Q. Yes. Well now, I think it's common ground that once part 2 of the Civil Code came into force in March 1996, Article 434 was of no relevance at all. I know that there's an issue as to what happened before, but the parties are agreed, aren't they, or the experts are agreed that after 1996 there is no doubt that even the

restriction on citizens concluding joint activity agreements disappeared?

A. After 1 March 1996, yes.

Q. So what we're concerned with is the status of that provision in 1995. Now, do you agree that there was no legislative act which formally abrogated Article 434 before 1996?

A. Yes, I agree, and there is a very good explanation why. Because the residual old-fashioned Soviet law was so great in its -- was so voluminous that it was just impossible for the parliament to work 24 hours a day to abolish abolish abolish old Soviet rules. That's why there was a general conclusion, to which the then Russian Parliament came, that the Soviet laws, whatever level it has, applies only to the extent it does not contradict the Russian constitution of 1993, the laws adopted by the Russian Federation on the basis of the constitution, the Fundamentals of 1991 and the first part of the Russian Civil Code.

Q. Yes. So essentially the question we're concerned with is whether there is anything inconsistent with the prohibition of joint activity agreements between citizens other than to meet their personal domestic needs in, one, the constitution, two, the Fundamentals, and three, part 1 of the Civil Code?

A. Plus of course the international treaties to which Russia was a party at that time, including the international covenants on civil rights and so on, so there are two authoritative sources for that.

Q. I don't think you suggest in your report that international treaties had any bearing on the application of 434 to this partnership agreement?

A. I didn't mention them explicitly because they're not that self-executing, but at least it indicates that Russia from a certain period of time adhered to a standard which is in all civilised nations, as the charter of the UN says.

MRS JUSTICE GLOSTER: Dr Rachkov, can you tell me where in your fourth or your sixth report you deal with this?

A. I deal with Article 434 in my sixth report and actually it starts on page 3 G(A)1/1.03/180. This is bundle G(A) --

MRS JUSTICE GLOSTER: I've got it, thank you.

A. And this is paragraph 6, and the forthcoming.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: As I understand your evidence, Dr Rachkov, the two laws which you think are inconsistent with this prohibition in Article 434 are articles of the constitution, in particular Articles 8 and 34, and the Fundamentals, in particular Article 9.2. Is that

correct?

A. And the Civil Code as well. For instance, it's Article 9.

Q. When you refer to part 1 of the Civil Code which particular provisions of part 1 do you have in mind?

A. This is Article 9.

Q. Article 9 of the Civil Code?

A. Of the first part of the Civil Code.

Q. I see. Can we just deal with the constitution first. Would you turn to bundle G(A)2/1, flag 2, please. Now, if you've got the constitution in flag 2 open, could you turn to Article 8 first of all, please. I'm going to consult it in the English version which is on pages 45 and 46 of the bundle numbering G(A)2/1.02/45.

Now, that provides that:

"In the Russian Federation the integrity of economic space, free flow of goods, services and financial resources, support of competition, and ... freedom of economic activity [are] guaranteed."

And:

"... municipal and other forms of property shall be recognised ..."

The other provision is, I think, Article 34, which is at page 51 of the English version G(A)2/1.02/51:

"Everyone shall have the right to use freely his

[or] (her) abilities and property for entrepreneurial and other activity not prohibited by law.

"Economic activity aimed at monopolisation and unfair competition shall not be permitted."

Before I ask you about this, can I refer you to the Fundamentals, Article 9.2 --

A. Excuse me for interrupting you, Mr Sumption. We can also refer to Article 35 of the constitution which deals with the right of private ownership, and actually says that everyone is entitled to use his or her property as well as solely and with other parties or persons.

Q. Yes, I understand that. So those are the provisions that I think you identify as relevant under the constitution, is that right?

A. Yes.

Q. Now, if we can just turn to the Fundamentals, which are in G(A)1/1, flag 3. Sorry, forget that reference, I will refer it to you in the original text.

In bundle 7/3, there's an English translation of the whole of the Fundamentals which will save us having to jump about. And on page 231, we find Article 9 of the Fundamentals of Civil Law G(A)7/3.04/231. Article 9.2 provides that:

"A citizen may hold belongings in ownership; inherit property; engage in entrepreneurial and any other

activities not prohibited ...; set up legal persons independently or together with other citizens; conclude transactions not prohibited by law; choose the place of residence ..."

And so on.

Broadly summarising the position, these articles that we've looked at, and the constitution and the fundamentals of civil law, would you agree that they are all essentially saying that, in the post Soviet system, citizens have the freedom to engage in commercial activity and to own and dispose of property? That's broadly what they are -- those are the rights they are creating?

A. Yes, this is the right which they are creating in accordance with standards as they are for instance set by -- also by international treaties like European Convention on Human Rights and the like.

Q. I understand.

A. Protocol number 1, for instance, to it, Article 1.

Q. You mentioned a moment ago Article 9 of the Civil Code, part 1. The reference to that is G(A)4/4, flag 2, page 7 G(A)4/4.02/7. That is the provision that says that citizens and legal persons can exercise their civil law rights at their discretion but are not obliged to exercise them.

A. No, they are not obliged. On top of this you can please refer to Article 18, Mr Sumption, which describes --

Q. To Article?

A. 18.

Q. Of the Civil Code?

A. Yes, which describes in more detail what legal capacity of citizens is.

Q. Yes.

"Citizens may have property by right of ownership; inherit and will property; conduct entrepreneurial and other activity not forbidden by a statute ... make any other transactions not contrary to a statute and participate in obligations ..."

That essentially repeats what we have already seen in the Fundamentals of the Civil Law at 9.2, doesn't it?

A. Yes, correct.

Q. Would you agree that the fact that you are allowed to engage in commercial activity and own property does not mean that you can necessarily do it through a simple partnership?

A. You can do it by making any contract, including simple partnership contracts.

Q. Well, Dr Rachkov, are you not confusing two separate things? You can have a law, as we in England have laws, which confer a general right to carry on business

activities, but it doesn't follow that you can necessarily do it through a company or a partnership or some other form of legal organisation; that's right, isn't it, as a matter of logic?

A. I do not confuse these two things.

Q. Well, would you not accept that laws conferring a general right to carry on business activities and own property can exist side by side with laws regulating the use of companies or partnerships for that purpose?

A. In theory, in an abstract country, yes.

Q. In a what sort of country?

A. In an abstract country other than Russia, yes.

Q. Well, in principle, there's nothing inconsistent, is there, between a general right to carry on business and own property, and a regulation which says that certain kinds of business and certain kinds of property cannot be operated or owned by a company or a partnership. There's no inherent inconsistency in that, is there?

A. There is no inherent inconsistency.

Q. No. Well now, Article 434, the relevant prohibition, is a specific provision limiting the purpose for which partnerships can be created or used. It's a specific provision which says you can only use it for domestic needs, that's what it says?

A. No, it is not what it says. It was maybe the case as

long as the Soviet rule existed but I think it ceased to exist and to apply in that way starting from 1986.

Recently Russia celebrated the 25th anniversary of the introducing of the law on individual labour activity, which was the starting law adopted in 1986 to allow private initiative. So starting from that moment --

Q. Dr Rachkov, you've misunderstood my question.

MRS JUSTICE GLOSTER: Let him finish his answer.

A. Starting from that moment, this particular prohibition was not in activity any longer, in operation.

Later on the state broadened and broadened even more and more the private initiative giving the right to engage into banking activity, so for instance the individuals were allowed to create banks, to create legal entities and so on. So that's the answer to your question, Mr Sumption.

MR SUMPTION: Well, it isn't actually the answer to my question because I understand that your view is that 434 doesn't apply anymore, but what I wanted you to confirm was what 434 actually means, okay? Now, what I suggest to you is that Article 434 is a specific provision which says that joint activity contracts can only be made for the purpose of meeting the parties' personal domestic needs. That's what it says, isn't it?

A. Taken by word, it's what it says.

Q. And if it applies, that's what it means? I know you say it doesn't apply, but if it applies that's what it means?

A. It's very straightforward and, if it applies, it is that it means, yes.

Q. Yes. Well now, there is no inherent inconsistency, is there, between a law which says that citizens can carry on any business activity and own property and another law which says that they can't do so through a joint activity agreement except in order to meet their own personal needs?

A. Indeed. Russian law can be construed that way. However, in Russian law, there are two very important rules as in many other systems. The first is *lex posterior derogat legi priori*, which means that a law which was adapted afterwards and regulated the same subject matter applies to the relationships which arose later.

The second is *lex specialis derogat legi generali*, so I think starting from the moment when all this loss allowing private initiative were adapted, Article 434, second paragraph and the like could not be applied any longer.

Q. Well, would you agree, Dr Rachkov, that even after the coming into force of part 2 of the Civil Code in 1996,

some restrictions on the permissible use of partnership still existed even though there was a right to own property and engage in business activities? Would you agree with that?

A. Which particular limitations do you mean?

Q. Well, let's have a look at Article 1041 of part 2 of the Civil Code which you will find in G(A)4/4, flag 2, page 73 G(A)4/4.02/73. At least that's where -- yes, you'll find the bilingual version of it there. Under Article 1041, sub-article 2, it is provided, isn't it, that:

"Only individual entrepreneurs and/or commercial organisations may be parties to a contract of simple partnership concluded for the conduct of entrepreneurial activity."

Now, would you agree that, notwithstanding that there is a general right to engage in economic activity and own property in Russian law, there are nevertheless, even now, restrictions on the uses that they be made of simple partnerships. Would you agree with that?

A. I agree.

Q. Now, this particular provision is concerned with contracts of partnership concluded for an entrepreneurial activity, and says that the parties can only be individual entrepreneurs or commercial

organisations, that's its effect, isn't it?

A. Yes.

Q. As I understand it, correct me if I'm wrong, being an individual entrepreneur is a formal status, isn't it? You have to register as one?

A. Yes, sole entrepreneurs are registered in the same manner as legal entities in Russia.

Q. That is the effect, I think you'll agree, of Article 23, which I believe has been added to the provision but you can probably tell us that from memory?

A. Yes, this is Article 23.

Q. It's in the same tab. Now, would you accept that this question, whether Article 434 still has some application, was the issue which came before the Federal Arbitrazh Court for the East Siberian circuit in the Salata case in 2004? Would you agree that that was the question which they were asked to decide?

A. Yes, there was one case which is referred in Mr Rozenberg's report which is Salata, yes.

Q. Well, I'd like to ask you to look at that. It's at G(A)4/6, flag 77. Now, I think we've agreed that this was the issue in this case, and the way that it was resolved I think can be seen on page 139 of the bundle numbering G(A)4/6.77/139 where there's a highlighted block of text.

A. Yes.

Q. I think the most efficient way of dealing with this is to invite my Lady to read the highlighted block of text, and the witness to remind himself of it.

MRS JUSTICE GLOSTER: Very well. (Pause)

MR SUMPTION: Has your Ladyship --

MRS JUSTICE GLOSTER: Yes, I've read that.

MR SUMPTION: Can I first of all ask you to note this was about a contract which was made in April 1995, so therefore at about the time that the so-called 1995 agreement in this case is said to have been made and, in any event, before part 2 of the Civil Code came into force the following year. That's right, isn't it?

A. It looks like that's right.

Q. Yes, and would you agree that what the court did in this case was to treat the contract as invalid because, under section 434 of the 1964 Civil Code, citizens could only conclude a joint activity agreement for the purpose of satisfying their personal needs, and this was a partnership agreement relating to an unfinished storage building.

A. Yes.

Q. In the last paragraph of the highlighted text:

"The provisions of Section 434... do not contradict Section 122 of the Principles of Civil Law..."

That's the Fundamentals, isn't it?

A. Yes.

Q. "... which were in effect at the time when the disputed relations arose, and are consistent with Section 1041(2) of the Civil Code of the Russian Federation, under which parties to the simple partnership contract concluded for the purpose of doing business may be only individual entrepreneurs ... (or) commercial entities."

Would you agree that this case, if correct, does appear to suggest that Article 434 did have continuing application to agreements made in 1995?

A. No, I do not agree.

Q. Why is that?

A. In my sixth report, I refer to approximately seven or eight different cases where judgments were rendered on contracts of simple partnership entered into before the second part of the Civil Code entered into force.

Q. I'm going to come to those in a moment but at the moment I'm just asking you about the effect of this case.

Do you agree that the effect of this case -- and we'll look at the other materials in a moment, but the effect of this case is that Article 434 did have a continuing application to simple partnership agreements in 1995?

A. I think this is a too broad statement. I think only in

this particular case one of the Russian courts decided that Article 434 of the Civil Code of 1964 did not contradict Article 122 of the Fundamentals. However, if you look at the very substance of this contract, what happened? This company, which was the claimant, was inactive since 1998. Besides, it was in bankruptcy proceedings. That means that the choice which the court had in front of it was the following.

Either the property is returned into a bankrupt estate of this company and is distributed among maybe a lot of creditors, or this property is away from this company, at least to the extent a share in it belongs to the defendant who actually filed a counterclaim, and stays with that.

I think the court, after having got the evidence, who spent actually how much money, who did what to perform this contract, and take into account also the public interest, decided that, on the basis of all these circumstances, the contract shall be declared invalid.

Frankly, this indication is not needed in this. So I think the court could have rendered its judgment without any indication whether or not Article 434 is or is not in compliance with Article 122 of the Fundamentals.

Q. Well, let's just look at what the court actually

decided --

MRS JUSTICE GLOSTER: Just before you go there. Tell me, this circuit court, the East Siberian Circuit Federal Arbitrazh Court, what level is that in the hierarchy?

A. This is the final appeal instance. Actually this court judgment has no precedential value, it's not the judgment of the Presidium of the highest arbitrazh court, it is just a case by case decision.

MRS JUSTICE GLOSTER: So it has no precedent value?

A. No.

MR SUMPTION: My Lady, that is true, as I understand it, in Russia as in most civil law systems of all courts below the level of the court of cassation, and I entirely accept that this decision, like many of the decisions though not all of them, is below that level.

At the same time, Dr Rachkov, this is some relevant evidence, isn't it, about what Russian law is, although I quite accept it's not conclusive?

A. It is not conclusive. It is only one case without any precedential value.

Q. Well now, if we just look for a moment at what it decided. You're quite right to say that the issue in this case was whether property was going to be employed to satisfy a company's debts to its general creditors or whether part of it was going to go into the hands of the

claimant.

A. That's obvious.

Q. Yes. And the claimant's claim to have part of this property treated as his own depended on whether he had entered into a valid partnership agreement. That's right, isn't it? He was relying on a partnership agreement?

A. Yes, among other things.

Q. Yes.

A. And besides, I must say, the claimant's interest, maybe the court decided in that way because the court said, "Look, the claimant is not deprived of the right to raise a claim based on the unjust enrichment." So even if the contract falls away, it's still the claimant who, if he has actually spent some money, is entitled to recover this money. However he will not be entitled to get a share in the real estate, he will only be one of potentially many creditors and will not get 100 per cent of what he spent but only an appropriate share.

Q. I understand that, Dr Rachkov. But the way in which they arrived at that conclusion was to say that the claimant could not rely on the joint activity agreement that he was founding his claim on because, under section 434 of the 1964 Civil Code, it wasn't a contract for personal domestic needs and was therefore not a

valid partnership agreement; that's what they said, wasn't it?

- A. Yes, but why do you speak about the citizen? The citizen has nothing to do with that. This was a dispute between a mixed partnership on the one hand who claimed that it spent some money to construct the store, and an open joint stock company which was in the situation of bankruptcy.

The claimant said, "I spent so much money, I now need my property," but he wasn't able to evidence what exactly he spent, how much, how was it documented. He simply said in the court that, well, he bought something but without proving it with any written evidence.

In Russia, there is a requirement that legal entities in principle must transfer money wireless, so without any cash payments, and here, there is no evidence in here. Besides, if we need to -- if we really want to understand what happened in this particular case we need to analyse also the lower courts' judgments. Maybe they say something about it. I don't know.

- Q. Dr Rachkov, do you agree that one of the things that this case decided was that the alleged joint activity agreement was not valid?

- A. One of the conclusions to which the court came was

indeed that the simple partnership contract is not concluded.

Q. Yes.

Do you agree that the ground on which they reached that decision, as recorded in the middle of the highlighted block of text on page 139, was that in accordance with section 434 of the 1964 Civil Code:

"... citizens may conclude a joint venture contract only for the purpose of satisfying their personal... needs."

And that means:

"... the latter's participation in the construction of residential buildings, apartments, and garages. Participation in a contract for joint construction of a store building does not constitute satisfaction of personal domestic needs... it is an indication of the intentions of the citizen... to be involved in business aimed at earning [a] profit..."

Do you agree that the reason why this particular joint activity agreement was not valid was that it was not a contract for the purpose of satisfying personal domestic needs; that's what they say, isn't it?

A. I think it's common sense that if a building of a store is erected, it is not to satisfy someone's personal needs.

Q. And that's why this particular joint activity agreement was not valid, isn't it?

A. This is one of the arguments on which the court relied, yes, because it didn't find any better grounds.

However, I must draw your attention, Mr Sumption, to the paragraph which says -- well, actually I have the Russian wording in front of me because this is my mother tongue, it is for me better to understand it, but my free translation is as such:

"The defendant got the construction permit to construct the store, the defendant got the right to use the land beneath it, besides it spent money to construct. Whereas the defendant did not -- was not granted the land, was not granted the construction permit, and he didn't prove the fact that he spent anything to construct the store."

Q. Could you please turn to your sixth report in bundle G(A)1/1, starting at page 178, and to the part of your sixth report where you refer to a number of decisions which you say go the other way. I think you're referring to what we see between paragraphs 28 and 38 of your sixth report. Do you see that?

G(A)1/1.03/178

A. Correct.

Q. Now, do you agree that these decisions are all earlier

than the Salata decision?

A. They are all earlier, but they are -- or some of them at least are of equal legal force and some of them even of -- well, I don't see whether there was a claim which was -- yes, one claim was dealt by the Supreme Court and one of them was dealt by the Presidium of the Supreme Arbitrazh Court which are -- well, upper courts as compared to a simple Federal Arbitrazh Court of the Eastern Siberian circuit.

Q. I understand that.

Do you agree that none of the cases to which you refer in these paragraphs referred to or considered Article 434 of the 1964 Civil Code?

A. No, I do not agree with that.

Q. Can you identify which ones you say did refer to or consider Article 434?

A. Can I please ask to provide me with the bundle which contains annexes to my sixth report?

Q. You will I think find that in 2/5.

A. Yes, 2/5.

MRS JUSTICE GLOSTER: Tab?

MR SUMPTION: Well, the witness is going to take us to the ones that he says he wishes to refer to.

A. For instance, the case which is in this bundle, it's in flag number 9, the case is as follows, an individual

entrepreneur --

MRS JUSTICE GLOSTER: Can you just identify the name of the case?

A. It's K v State Tax Service of Petrozavodsk.

MRS JUSTICE GLOSTER: Yes, thank you.

A. So what happened there, the claimant acquired the car, he believed that this was based on a simple partnership contract which was entered into between him and another firm before the second part of the Civil Code came into force. So he relied on this fact. And the question of whether or not Article 434 applies was implicitly raised by him apparently. It is not mentioned in this judgment, that is true, but this indicates that by that moment this particular provision of Article 434 was not applicable any longer.

MR SUMPTION: Well, you agree that 434 is not mentioned in this decision?

A. Yes, 434 is not mentioned in this decision.

Q. Right. Now, when you say that it is implicit in it, is there any particular passage which you say is an implicit reference to 434?

A. Let me see. (Pause)

I think I based my conclusion on the absence of Article 434 in this judgment, it was not relied upon by the defendant or by the claimant, therefore I came to

the conclusion that Article 434, paragraph 2, does not apply.

Q. Well, can I suggest to you another reason why Article 434 was not mentioned.

A. Sure.

Q. This case concerned an alleged partnership agreement between a natural person and a legal entity, didn't it?

A. Correct.

Q. And I think we agreed at the outset of our discussion of Article 434 that Article 434 had never applied to partnership agreements between a natural person and a legal entity. That's right, isn't it?

A. That's right.

Q. So Article 434 was inapplicable on its own terms to the partnership agreement considered here, that's right, isn't it?

A. Yes, that's right.

Q. And the same is true, isn't it, of all the other cases that you referred to between paragraphs 28 and 38, they're all about alleged partnership agreements between citizens and legal entities? You can see that actually from the summaries that you give in your report?

A. Yes, but as I said before, any attempt to say that these contracts were not concluded failed, and I'm sure the courts analysed, among other things, the arguments that

Article 434 may apply. Whether it was that part of the article which deals with the prohibition to meet personal needs, or with the prohibition to contract with what was called before socialist organisations, this is of secondary importance to my mind.

- Q. Well, it's actually pretty critical, isn't it, Dr Rachkov? Because the reason why Article 434 was not considered in any of these cases is that Article 434 had never applied to contracts between natural persons and legal entities; it had at one stage applied to contracts between natural persons and socialist organisations but that, as you've explained, was gone by this time. That's why 434 was not relied on here, isn't it?

- A. I see what you mean. However, as I explained yesterday, any contract on formation of a commercial legal entity in Russia is also deemed a joint activity or a simple partnership agreement. This means that if two individuals enter into such a contract to form, for instance, a limited liability company in Russia, or a joint stock company, then this is a simple partnership contract. We all understand that this is not a contract to satisfy one's personal needs. On the other hand, it is not a contract to engage in entrepreneurial or business activity. These contracts were upheld.

I refer to flag 10 of exhibits to my sixth report,

this is to me a very authoritative regulation of the plea notes of the Supreme Court and the highest arbitrazh court of the Russian Federation dating back in 2 April 1997 which says, among other things, that such a contract is a simple partnership contract.

So the courts implicitly recognised, without need to indicate, that Article 434, second paragraph applies. Because by that date it was just common sense that you don't need to indicate all the many thousands of rules which do not apply, which became obsolete, just because they were overruled by new law.

Q. Dr Rachkov, you yourself point out at paragraph 30, when referring to this case, that it concerned an agreement between a citizen and a legal entity, and I thought we'd agreed that the prohibition we are concerned with in Article 434 only applies to simple partnership agreements between natural persons.

A. I'm afraid we're speaking about different cases, Mr Sumption. I referred to flag 10 in the bundle, which is called G(A)2/5, claimant Russian law exhibits G(A)2/5.10/26. This deals with a case whether or not contracts on creation of legal entities constitute a simple partnership contract or something else.

Q. Who were the parties to the partnership agreement being considered in the case at flag 10?

- A. It is not indicated.
- Q. Right. But it matters very much, doesn't it, who the parties were if one is to know whether 434 applies?
- A. I disagree. If we follow your logic, Mr Sumption, then all legal entities which were established in Russia before 1 March 1996, between individuals only, without any participation of legal entities, were invalid or otherwise unlawful, because these agreements were entered into not to meet the personal needs of the persons who are parties to the contract.
- Q. Dr Rachkov, that depends on your view, about which I cross-examined you yesterday, that foundation agreements and agreements to set up and operate limited companies are joint activity agreements, and that is a point which I have suggested to you, I know you don't accept this, is, as a matter of Russian law, wrong?
- A. It is not wrong under Russian law. Under Russian law it's recognised since many years, and maybe the first time when it was explicitly said, this is this regulation to which I refer, dated 2 April 1997, that such contracts are simple partnership contracts.
- Q. Dr Rachkov, are you aware of any Russian court decision at any level which upholds a joint activity agreement between natural persons made before 1 March 1996 which was not for satisfying domestic needs?

A. There are many. However, this question was maybe not dealt with as the basic question, so I imagine the parties claimed that the joint activity agreement to form a joint stock company was not or was not duly performed. That's why the court based its opinion on the fact that there was such a contract, it was concluded, it was valid, so that's why there was no need for the court to deal with this question which you asked me.

Q. Well, you say that there are many such cases, but the examples that you include between paragraphs 28 and 38 do not include a single one because none of them are alleged partnership agreements between natural persons.

MRS JUSTICE GLOSTER: Do you accept that or not?

A. I accept only that, of course, the documents which I provided are exhaustively contained in this folder but, as I said, there are many court cases where the law was applied on a dispute arising out of a simple partnership contract, ie a contract on formation of a limited liability company between individuals, and the court upheld these contracts.

MR SUMPTION: I'm not going to go over that ground again. This depends on your view that contracts to create or operate a company are simple partnership agreements, and that's an issue on which you and Dr Rozenberg are in

difference.

A. But how can you deny it, Mr Sumption, if I refer to the regulation --

MRS JUSTICE GLOSTER: Well, that's a matter for me, not a matter for him to answer.

A. Good.

MRS JUSTICE GLOSTER: I think that's enough for today.

MR SUMPTION: My Lady, I was going to suggest that.

MRS JUSTICE GLOSTER: How much longer are you going to be with this witness, Mr Sumption?

MR SUMPTION: I think I will be most of tomorrow morning.

What I've got to cover is the subject matter of the amendment made at the opening of the trial about the aluminium agreement made in 1999 as alleged.

I've then got to cover the two articles relied upon as providing for an extension to the limitation period in relation to the intimidation tort, which is a completely different aspect of Russian law. That will take me, I suspect, until about midday tomorrow.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Possibly a little longer.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: Now, I was going to suggest, if your Ladyship would be agreeable to this, that your Ladyship might be prepared to sit at 10 o'clock tomorrow in the hope of

completing the expert evidence this week. I have discussed this with my learned friend, and I think his position is that he would be perfectly happy to deal with it, and possibly to deal with it on that basis for the rest of the week as well, if necessary.

MRS JUSTICE GLOSTER: I'm always happy to sit early. The problem is I've got a meeting with Lord Saville at 9.30 tomorrow which I've already pushed back for my own personal reasons from 9.00 to 9.30. I'm now fixed to do that at 9.30, and I've got something else before that.

So if I can conclude my meeting with him by 10 o'clock, I'll be here. So shall we say not before 10.00?

MR SUMPTION: My Lady, yes.

MRS JUSTICE GLOSTER: I've also got to hand down a judgment but that's the work of a minute, and I can do that with all you here because it's not subject to counsel's submissions.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: But I'll say I'll certainly sit not before 10.00 but if I'm a bit late, please excuse me.

Right, so 10 o'clock tomorrow and, again, don't talk about the evidence you've given or email or communicate in any way about it.

THE WITNESS: Sure.

MRS JUSTICE GLOSTER: Thank you very much. Not before  
10.00.

(4.33 pm)

(The hearing adjourned until  
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Wednesday, 30 November 2011

(10.00 am)

DR ILIA RACHKOV (continued)

Cross-examination by MR SUMPTION (continued)

MRS JUSTICE GLOSTER: Yes, Mr Sumption. Good morning.

THE WITNESS: Good morning.

MR SUMPTION: Good morning, Dr Rachkov.

It is I think accepted by you that the alleged agreement made in 1995, that the parties would be entitled to participate in each other's business ventures, in future business ventures, is invalid as a matter of Russian law. That's correct, isn't it?

A. That is correct.

Q. And that is, for the record, an agreement which is recorded in the joint memorandum, paragraph 70, subparagraph 2 G(A)6/1.01/22.

Now, the reason for that, as recorded in the joint memorandum, is that that particular part of the alleged 1995 agreement is too vague. That's correct, isn't it, in summary?

A. That is correct.

Q. Now, because it's too vague, it lacks the certainty required for an enforceable agreement to that extent?

A. Taken apart from any subsequent performance, yes, this is correct.

Q. Now, is that because in the case of the agreement, or is it in part because in the case of the agreement as to future businesses it was not clear what the partners would be required to do in order to acquire or run that business? Was that one of the reasons why it was too vague?

A. This is one of the reasons, yes.

Q. And it wasn't clear either, was it, what contribution they would be required to make to either funding or managing the business?

A. This is correct.

Q. Now, can you tell us why exactly the same objection does not apply to Mr Berezovsky's case that the 1995 partnership agreement extended to the acquisition of shares in Sibneft when the state came to sell first the 49 per cent and then the 51 per cent?

A. As I explained in my report, the important feature of the current case is its subsequent performance. That's why I believe on the basis of the facts as presented in the documents I was provided with that the specific performance indicated what the parties intended and what they did afterwards.

Q. So is it right that, but for your view that subsequent performance demonstrates what the parties agreed about the acquisition of the Sibneft shares, you would regard

the application of the 1995 agreement to the acquisition of shares as suffering from the same problem, ie excessive vagueness? If it weren't for the subsequent performance, that would have been your view?

A. Being a reasonable man, I would say of course if we don't have a written agreement it is extremely difficult to identify what the parties agreed upon and what they intended actually.

Q. Yes. But if it weren't for the fact that in your view one can identify the terms with sufficient certainty from the subsequent performance, you would regard the suggestion that the 1995 agreement applied to the subsequent acquisition of Sibneft shares as open to the same objection that you accept is valid in relation to future business. That's right, isn't it?

A. In principle this is right.

Q. Now, I think it's common ground that it follows from your view about the provision relating to future business that Mr Berezovsky would have no right to participate, no legal or contractual right to participate in the aluminium assets acquired in February 2000 unless there was some agreement after 1995 which gave him such a right; a fresh agreement?

A. No, this is not the conclusion to which I came in my reports. The conclusion to which I came in my reports

on the basis of the applicable Russian law on simple partnership contracts is that if the parties contributed some property to the joint activity, and if the parties generated some other property as a result of the joint activity, this is their joint shared ownership.

Q. Which joint activity are you talking about when you give that answer?

A. I'm speaking about the joint activity which was carried out on the basis of the 1995 agreement.

Q. Are you talking about Sibneft rather than the aluminium assets?

A. I'm talking about the property which was contributed by the partners to perform the oral 1995 agreement, plus all fruits and income generated on the basis of that agreement.

Q. Dr Rachkov, I think you may have misunderstood my question.

I am focusing on the acquisition of the aluminium assets in 2000, which was not part of the original alleged partnership agreement.

A. This is how you interpret the statements of fact, Mr Sumption.

Q. Dr Rachkov, in 1995, Mr Berezovsky alleges that there was a partnership agreement to acquire control of Sibneft and, he says, ownership of Sibneft. That's what

he says. Now, you have agreed that that agreement did not, as a matter of Russian law, effectively apply to any future business ventures, have you not?

A. No, I doubt I agreed this. What I said, and I'm continuing to say this, is that the property which was contributed by the partners to the joint activity, plus the property which was acquired by the partners as the result of their joint activity, constitutes their joint shared ownership.

Q. Well, what are the implications of that view for the aluminium assets acquired by Mr Abramovich in February 2000?

A. The implication is that if the shares acquired in 2000 in aluminium assets constitute income or fruits of the joint activity, then the partners are entitled to the appropriate shares in such joint shared property.

Q. Would there not have had to be some agreement to that effect?

A. I cannot deny that under Russian law, rights and obligations and liabilities arise either out of contracts or out of defaults, ie torts.

Q. Can we please look at your fourth report at paragraph 281 G(A)1/1.01/89. I'm referring you to paragraphs 281 to 284. At paragraph 281, you set out part of Mr Berezovsky's pleaded case as it then was. It

has been amended since. At paragraph 282 you set out in full paragraphs 250 to 263 of Mr Berezovsky's witness statement. Then at paragraph 283 you say

G(A)1/1.01/91:

"In my opinion, these passages describe an agreement among Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili by which they would seek to acquire the Aluminium Assets on the same terms and in accordance with the 1995 Agreement. Their common goal was to acquire control of the Aluminium Assets, and the effect of the agreement was to bring the Aluminium Assets within the scope of their partnership contract."

Now, that is a conclusion you say that you draw from the passages of the pleading and the passages that you quote from Mr Berezovsky's witness statement, is that correct?

A. This is correct.

Q. Now, could you please, leaving that part of your report open, take bundle A1, which you won't have in front of you but I'm sure somebody will be good enough to provide it, at flag 2, at paragraph C59B, which is at page 26 A1/02/26.

Now, this is an amendment which was made to Mr Berezovsky's particulars of claim, it's on the bottom of page 26 and the top of page 27 --

A. Yes.

Q. -- after you wrote your report, and, as we understand it, an amendment that was based upon your report.

What I want you to do is to read paragraph C59B to yourself and tell us whether you, in your report, are supporting as a matter of Russian law the case which is made in that paragraph? (Pause)

A. I read this paragraph. I think nothing changes in what I've said before. So it looks like the parties at least, as the situation is described here, agreed to apply their 1995 agreement to further assets, ie aluminium assets, in the case at hand.

Q. You see, what this pleading is alleging is that in 1999 there was a further agreement between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich to the effect that the 1995 agreement would also apply to the aluminium assets. That's what's being alleged. Now, is that the proposition that you are supporting at paragraph 283 of your report?

A. It is the proposition which I support in 283 and 284 of my fourth report.

Q. Right. Thank you.

A. With maybe, well, one small of caveat that there is a direct connection between these two agreements, so the agreement which was reached, if it was reached, in 1999

is a logical continuation of the agreement of 1995. It is not a new one agreement, it is, so to say, a supplement or amendment to some extent because any supplement is an amendment to the previous agreement.

Q. I see. Well now, can you tell us, please, which facts stated in the paragraphs that you quote at paragraph 282 amounted to an agreement, according to you, in 1999 to apply the 1995 agreement to the aluminium assets? Which facts are you identifying in that rather long quotation as amounting to such an agreement G(A)1/1.01/89?

A. It's the totality of this long quotation. But, for instance, here in paragraph 256 of the draft particulars, I mean the particulars of claim as -- no, sorry, witness statement, as they are quoted here.

"Badri and I raised the Bosov proposal with Mr Abramovich, as we considered we were obliged to do in accordance with our 1995 agreement with him."

Q. That's the essence of it, is it?

A. At the end of the day, this is the most characteristic sentence which, to me, indicates that when discussing this issue, first with Mr Abramovich and later on with his associates, Mr Berezovsky and Mr Patarkatsishvili proceeded from the assumption, and maybe said this explicitly, which I don't know, to Mr Abramovich.

Q. Well, I'm not going to ask you to comment any further on

the facts, I'm going to put to you a series of assumptions or hypotheses, Dr Rachkov.

Assume, please, for the moment that nothing was said to Mr Abramovich in 1999 about the 1995 agreement, and nothing was said by Mr Abramovich about the 1995 agreement in that year. On that assumption, do you say that there was an agreement in 1999 to apply the '95 agreement to the aluminium assets, on the assumption that nothing was said by either party or by any of the three of them about the 1995 agreement?

A. If nothing was said, no, there was no gesture, there was no written exchange, there was no understanding, common understanding, between the parties that whatever they did over the last five years or so, or four years, was their joint activity, then I would agree that there was no agreement to apply the 1995 agreement to the subsequent agreements.

Q. And assume that there was no agreement in 1999 about contributions, whether financial or of any other kind, on that assumption you wouldn't say, would you, that there was an agreement to contribute to the cost of acquiring the aluminium assets, if you make that assumption. Is that right?

A. If this assumption also includes that there was no 1995 agreement beforehand then maybe I would agree. However,

as I said before and as is stated in Russian law, joint activity presumes combining not only and not necessarily property, which can be tangible, but also efforts.

Q. But if there was in 1999, one, no reference at all to the 1995 agreement and, two, no agreement on a specific partnership and, three, no agreement about contributions to the aluminium assets, you wouldn't suggest that the partnership was by agreement extended to the aluminium assets, would you?

A. No, I would not. I base my opinion on Article 1041 of the Russian Civil Code which defines the contract of simple partnership and, clearly, the parties must either agree beforehand what their contributions are, which may be either property or efforts, business skills and so on, or they must show in the course of the performance of the agreement that they both agree on something.

Q. I want to turn now to the tort claim, Dr Rachkov, the intimidation claim.

I am not going to cross-examine you on the elements of the tort, on which there is a very large measure of agreement, certainly on all the points which seem to matter. What I do want to ask you about, however, is your opinion on the subject of the limitation period and the grounds on which it may be extended. Okay?

A. That is a very interesting question indeed.

Q. Well, I'm glad you think so, Dr Rachkov.

Can we please ask you to turn to chapter 12 of the Civil Code which I am looking at in bundle G(A)4/1, flag 5, page 30 and following G(A)4/1.05/30. Can we look first at Article 96 which in the -- hang on, sorry, Article 196, forgive me.

Now, just to establish the basic background to this, which I think is common ground but I think it will assist if we just agree about this, the general limitation period in Russian law is three years. Is that right?

A. That's right.

Q. And that's the effect of Article 196.

A. Yes.

Q. But as is pointed out in 197, laws may prescribe specific time limits which are different from three years for particular cases, and they may be longer or shorter than three years; that's correct, isn't it?

A. They are mostly shorter, yes.

Q. Yes. Now, it's agreed, isn't it, that no special time limit applies in this case which is why three years is the relevant time limit?

A. I think it is agreed.

Q. And there are special provisions, are there not, for a number of other types of claim, not relevant in this

dispute, which may be as short as two months?

A. Correct.

Q. It's also right, isn't it, that limitation periods in Russian law run from the time that the claimant knew or ought to have known the facts which violated his right?

A. That's the general rule.

Q. There are two provisions which you refer to as giving rise to a possible extension of the limitation period in this case, Article 205 and Article 10. I'm going to deal with them, if I may, in that order.

Article 205 is at page 32 in the English, and that provides G(A)4/1.05/32:

"In exceptional cases..."

Well, perhaps I might just pause to allow my Lady to read the whole of the provision before I ask about it.

(Pause)

MRS JUSTICE GLOSTER: Yes, I've read it.

MR SUMPTION: Dr Rachkov, the first point I want to ask you about, this is a provision that applies only in exceptional cases, isn't it?

A. I can't deny it.

Q. So there has to be some exceptional impediment to prevent the claimant bringing his action?

A. Yes, to lapse the period of limitation.

Q. Yes. Well now, the second point I want to put to you

is: is it right that the exception circumstance has got to be something amounting to a personal disability of the claimant, hence the words:

"... due to circumstances associated with the person of the claimant (serious illness, helpless condition, illiteracy, etc.)..."

Is that right?

A. Not really, no, it is not right.

Q. Does it not have to be due to circumstances associated with the person of the claimant?

A. Sure. If the period of limitation expired due to reasons which are connected with the personality or person of the claimant, an approximate list of such circumstances is indicated here, however it is not an exhaustive list, then the period of limitation can be restored by the court.

Q. I understand, and I wasn't intending to suggest to you that the list of conditions in brackets is an exhaustive list. Indeed it couldn't be, it says "etc".

What I was intending to suggest, and I don't think you differ from this, was that whatever the circumstances relied upon, they have got to be circumstances associated with the person of the claimant?

A. With the person or personality of the claimant.

Q. Right.

A. It's what -- "lichnyest" (?) may be translated in various ways into English, but in principle there is no disagreement between us, I believe, in what person or personality is.

Q. No, I don't think there is.

Thirdly, as a matter of causation, is it right that the exceptional circumstance associated with the person or personality of the claimant has got to have prevented the claimant from bringing his action within the limitation period? It's got to have causally had that effect, hasn't it?

A. Well, there should be a valid excuse, yes. I think so, yes.

Q. Well now, just to get this out of the way, the final sentence of Article 205:

"The reasons for allowing the time limit of the statute of limitations to expire may be recognised as compelling if they took place during the last six months of the time limit of the statute of limitations, and if this time limit is equal to six months or less than six months -- during the time limit of the statute of limitations."

Now, that says two things, doesn't it? First of all, it says that the exceptional circumstance

associated with the person of the claimant may be recognised as compelling only if it was operative for the last six months of the limitation period. Is that right?

A. Yes, at any moment within the last six months.

Q. Secondly, the final words of that last sentence are I think irrelevant to our situation because they deal with the situation in which the limitation period is six months or less, so we can forget about those final words, can we not, for present purposes?

A. We can for present purposes.

Q. Now I want to take you to some illustrative authorities so that we can see how far we are agreed about what is meant by exceptional circumstances due to the person of the claimant.

You cite the textbook, I think, of Maleina which we find at G(A)4/8, flag 5, page 38 and following G(A)4/8.05/38.

MRS JUSTICE GLOSTER: Mr Sumption, please may I have a reference to the paragraph in I think it's the fifth report of Dr Rachkov where he deals with this?

MR SUMPTION: He deals with it starting at page 56, so that's G(A)1/1, flag 2, page 164 of the bundle numbering G(A)1/1.02/164.

MRS JUSTICE GLOSTER: Thank you.

A. Excuse me, can I have my own reports, please? It's Rachkov 5, exhibit 41.

MR SUMPTION: Yes, of course. Could you be given bundle G(A)1/1 which has all your reports in it. I'm sorry, I didn't realise you didn't have them.

I'd like the witness also to be given G(A)4/8. Do you have G(A)4/8, Dr Rachkov?

A. Yes.

Q. Could you please turn to flag 5 in that bundle.

A. Yes.

Q. This is an article, I think, by Dr Maleina, and that's an author that you yourself I think cite and for whom you have a high regard, is that right?

A. That's right.

Q. She is an authoritative writer? He or she? Is it he or she?

A. She, yes. She's a specialist in personal intangible rights, such as, well, claims arising out of defamation, but I have no doubt that she deals also very well with these issues, since I am referring to her.

Q. Right. Well now, this provides, this work provides an illustrative list or discussion of instances in which the limitation period has been extended under Article 205, and I wonder if I could invite my Lady to read from the bottom of page 39 G(A)4/8.05/39, the

words:

"The period of limitation may be reinstated ..."

Up to -- well, the critical parts that I'm concerned with, but I don't want to be tendentiously selective, are that part up to the fifth line of the next page, and then the main section which I'm concerned with is the one that starts with the words:

"The second condition ..."

Just below halfway down page 41 and continues to the bottom of page 43.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: Dr Rachkov, can I invite you just to remind yourself about what those parts of the work say.

(Pause)

MRS JUSTICE GLOSTER: Right, I've read that.

MR SUMPTION: Dr Rachkov, there's one particular example given here which I would just like you to help us about. Towards the bottom of page 43, you will see that Dr Maleina says:

"It would seem that the circumstances relating to the personality of the claimant should include his professional activities. It is evident that this is not the job performance itself but non-ordinary working situations that may be regarded as legitimate reason. Thus, the fact that the claimant was away on business

for a long period of time prevented him from making an appeal against the resolution of [a] general meeting of a limited... company and therefore, this fact was recognised as a ground for reinstatement of the period of limitation..."

There's a reference to a decision in 2006. Are you familiar with that decision, Dr Rachkov?

- A. I read it for sure but I need to maybe find it again.
- Q. I'm not going to ask you about the details or take you to it unless you would like me to, but it's right, isn't it, that when you are challenging a decision in court of a general meeting of a limited liability company, the relevant limitation period is only two months, isn't it?
- A. I think it's two months only, yes.
- Q. In that particular case, what happened was that the general meeting occurred at a time when the businessman in question was away on business and he didn't come back until it was too late to do anything about it --
- A. No.
- Q. Those are not the facts?
- A. No, I don't think so.
- Q. Well, let's have a look at the report in that case. Can we look at G(A)2/4, flag 9, page 61 G(A)2/4.09/61.
- Have you got that open, Dr Rachkov?
- A. Yes, the Russian version.

Q. Now, we see that the limitation period was two months, from page 63, about three quarters of the way down the page G(A)2/4.09/63. And there's a reference to Article 205. If you look at page 63, you will see that the facts are set out towards the top of the page:

"... each member of the Company [has to be] informed ..."

And Mr Turchinovich received his notice on 15 February about the holding of a meeting on the 24th, seven days before the relevant date.

And if you look back at page 62 --

A. Nine days.

Q. Is it nine days?

A. 24 minus 15, it's nine days.

Q. Okay, I'm not going to argue with you about the difference between 7 and 9.

Page 62, the previous page --

MRS JUSTICE GLOSTER: It says seven days in the text.

MR SUMPTION: It does.

A. In accordance with Russian law, the general meeting of participants of a Russian limited liability company must be convened with a notice of 30 days, unless all participants otherwise agree.

Q. Yes. Well, that no doubt was part of the grounds on which Mr Turchinovich was complaining.

If we just look at the facts on the previous page, page 62, halfway down the page:

"As is evident from the documents and established by the court, on [24 February] there was an extraordinary general ... meeting ... with the following agenda ..."

And it's set out.

On the first page, you will see in the third paragraph under the word "Established":

"RV Turchinovich furthermore requested to reinstate the time [limit] permitted for appealing ... decisions of the general members' meeting which he had missed for good reason in connection with being on a business trip for the period 18 [March] 2005 to 26 [August] 2005."

- A. So in fact he was absent not when the meeting was conducted.
- Q. You're absolutely right about that. He was therefore absent for a little over half of the two-month limitation period. Okay?
- A. Okay.
- Q. Which was a particularly short one. I think two months is the shortest limitation period which exists in Russian law, isn't it?
- A. It's very short indeed.
- Q. Now, if you look at the last paragraph on page 43 of Dr Maleina's work G(A)4/8.05/43:

"The justifiable reasons are those which entail the absolute impossibility of filing a claim or which cause a practical impediment to apply to the court."

Do you see?

Would you accept that as a fair statement of the law, that paragraph?

- A. It is a fair statement, but it is a too general statement. I think what she means is that, if there are such reasons which entail an absolute impossibility to file a claim, then they are of course valid grounds to restore the limitation period. But it doesn't mean that any reason should be that.

The reason connected with the personality of the claimant has a subjective character or a subjective nature, that's why the courts should always look at what is subjectively a valid reason for this or the other claimant.

- Q. Well, it's not the law, is it, that anything which the claimant thinks prevents him from filing a claim is treated as relevant? The court has got to agree that it actually did prevent him, surely?
- A. Yes, it is not what the claimant subjectively thinks, it is what he or she is subjectively prevented to do.
- Q. Well, it's whether the court thinks it was impossible for the claimant to file in time.

A. If the court, on the basis of the evidence provided by the claimant, and maybe by the defendant, by third parties, comes to the conclusion that there are such grounds, yes, the court is entitled to restore the period of limitation.

Q. And the sort of impediment which is envisaged here is something that actually prevents the claimant from taking the administrative steps necessary to begin his action. That's right, isn't it:

"... a practical impediment to apply to the court."

A. I think if the practical impediment is one of the reasons connected with the personality of the claimant, yes.

Q. Right. Now, would you agree, generally, that the examples discussed by Dr Maleina between pages 41 and 43 of the bundle numbering are a fair body of examples of how Article 205 is applied by the Russian courts?

A. I think she lists a lot of interesting issues or cases where the question of period of limitation arose, and I think she described them very well.

I can also refer to a very interesting case where legal illiteracy of a claimant who lived in Ukraine, in relation to the Russian legislation, was recognised by court as a justifiable reason.

Q. I understand.

A. We can look at this case if my Lady wants.

MRS JUSTICE GLOSTER: Mr Sumption, this may be in dispute, but nevertheless perhaps you can assist me. Have I got to decide whether there was an impossibility or a practical impediment to Mr Berezovsky filing a claim in Russia or in England?

MR SUMPTION: In England, because your Ladyship is applying under the act a Russian limitation period and Russian principles of limitation to a failure to commence proceedings in England within the Russian limitation period.

MRS JUSTICE GLOSTER: Is that agreed, Mr Rabinowitz?

MR RABINOWITZ: My Lady, yes.

MR SUMPTION: It's also correct, and I think this is also common ground, that so far as the operation of limitation in the relevant foreign jurisdiction depends on an exercise of discretion by the foreign court, your Ladyship should exercise that discretion for yourself, but on the principles that would guide the foreign court.

MRS JUSTICE GLOSTER: Right, thank you.

MR SUMPTION: My learned friend nods, I'm grateful.

Now, if you just turn to another textbook which is cited by you and for which I think you have a high regard, this is the work by Mozolin at G(A)2/4, flag 30

G(A)2/4.30/229.

A. You don't like to discuss the case I'm referring to,  
Mr Sumption?

Q. Well, you've summarised the circumstances. I'm not sure  
that they are particularly close to those of  
Mr Berezovsky.

A. They are very close, because there the limitation period  
was lapsed which was equal to ten months. It looks like  
here in this case the period is 11 months.

Q. Right. Well, I'm going to come to that particular case  
in due course, but there is a difference upon it and  
I will get to that.

A. Of course there are no 100 per cent coinciding cases.

Q. Could you for the moment please turn to bundle G(A)2/4.

A. Yes, I'm here.

MRS JUSTICE GLOSTER: Tab?

MR SUMPTION: At tab 30, page 229 G(A)2/4.30/229. I think  
I'm right in saying this is a work that you cite, and it  
is a work again for which you have a high regard, is  
that right?

A. Yes.

Q. Now, that tells us that:

"According to Article 205... restoration of a missed  
period of limitation can only be allowed in the  
following circumstances. Firstly, a period of

limitation can only be restored in exceptional circumstances [and you've agreed to that] ... secondly, only by [the] court. Thirdly, the court must accept the reason for missed period of limitation as compelling."

I think you accept that, don't you?

A. "As valid justifiable" is maybe the more appropriate translation, but the word "compelling" is maybe not the wrong one.

Q. "Fourthly, [the] period of limitation can only be restored with respect to individuals... where compelling circumstances are related personally to the claimant."

You agree to that as well, don't you?

A. Related to the personality of the claimant in proper Russian, but I mean -- otherwise I agree, yes.

Q. This translation says:

"... related personally to the claimant", ie to the claimant and not to someone else.

A. The Russian wording says -- it just repeats the wording of the law, which is the reasonable, or the justifiable circumstances connected with the personality or person of the claimant. But I think the distinction is not that great.

Q. Okay. The work then goes on:

"In connection with this the Civil Code for the first time provides an approximate list of reasons which

could be taken into account for the purposes of [restoring the] period of limitation. In particular, those include illness of the claimant, incapacity, illiteracy of the claimant... Such circumstances as [the] claimant being on a business trip have also been taken into account in judicial practice [that's the case we have just been talking about]. Other compelling reasons are also possible. However, circumstances related personally to the defendant [that's the defendant rather than the claimant] are not taken into account..."

Is there anything in that paragraph which you would disagree with?

A. No, I cannot disagree with that, because this is the literal repetition of the wording of the Russian Civil Code which is, for me, the second important book after the Bible, so that's why I can't disagree with that.

Q. Yes, well, I'm not going to cross-examine you on the biblical authority for any of these propositions.

A. Thank you. I will be lost.

Q. I have been asking you questions mainly devoted to the exceptional character of the event relied upon. I want to ask you a little further about the personal character of the disability.

There are a number of cases, are there not, which

show that the sickness of the claimant may be a personal disability, as indeed the article says, but the sickness of his spouse, his or her spouse, will not be a relevant factor unless the claimant is required to give her continuous personal care. That's broadly right, isn't it?

- A. That's broadly right. In one of the cases to which I refer, indeed the claimant says "The period of limitation must be restored because I was taking care all the time for my wife." But in the reality, the court learned that the claimant was not taking care all the time for his wife, he was working all the day, he was away from time to time, so that's why the court came to the conclusion that the claimant was simply lying.
- Q. Yes. What the court found was that his wife's problem had not prevented him, since he wasn't the person who was ill, from filing his claim in time?
- A. Yes, in this particular case. But there are also other cases when the claimant is so tied up with taking care for his wife, or other close relatives, that he is not in a position to take care for the claim.
- Q. Yes. And the requirement that the disability should be personal, or should be due to the person or personality of the claimant, is satisfied in that case by the fact that the claimant was fully occupied in looking after

his wife, is that correct?

- A. I think that's correct. What Russian courts try to achieve is that, of course, the claimant has the right to fair trial but, on the other hand, there is a certain period of limitation which is there to create more stability in the civil turnover. But I think in general the Russian courts of common jurisdiction apply very generously the restoration of limitation periods. It includes not only such reasons as sickness of a close relative, a serious sickness which actually prevents, it's not like just a headache within one day but a continuous heavy sickness. It can be an absence away from the home because the person is, for instance, imprisoned. I did refer to one of such cases. It may be a long business trip, what we already discussed. It may be legal illiteracy as I referred in one of the cases.

Q. What do you mean by legal illiteracy?

- A. By a legal illiteracy I mean that there was a miner from Ukraine, of Russian origin though, so there is a Russian minority, which is not that minor, living in the eastern part of Ukraine, in Donetsk, which is also a mining region. He was working for a long time with Norilsk Nickel. So he got some shares and wasn't able to exercise certain rights as a shareholder. So the court

came to the conclusion that because he was a miner -- a mining worker, not minor but a mining worker -- he was not in a position to understand Russian law and its particularities and restored the period of limitation. Although the person, I must say, was not, so to say, illiterate (sic), he was a Russian native and he was able to read all these laws, spending maybe five years of his life understanding what they all mean.

- Q. But you're not suggesting, are you -- I mean this was about, as I understand it, an impoverished mine worker in the Ukraine. You're not suggesting that a rich and powerful figure with access to all the advice that he might want would ever be able to say "I didn't realise the limitation period was what it is"?
- A. I don't know. There are wealthy individuals who are illiterate, or legally illiterate. Their life is very rich than that what I can imagine.
- Q. If somebody has all the means that he needs to find out what the relevant law is, he's never going to be able to say, is he, "The limitation period should be extended because I didn't realise it was only three years"?
- A. No, I think -- I agree, this case looks very exotic. In Russian, real life, usually the courts say like this, "You don't know the law but it's your problem, so you should have known the law, you should have taken legal

advice." But still, as I explained, the same logic may be deployed in all other cases. For instance, a person being in prison can say, or the court can say to the person being in prison, "Look, you could have given, I don't know, a power of attorney to a lawyer to represent you," and actually one of the cases deals with such a situation.

Q. Could you please turn to bundle G(A)4/8, flag 8 G(A)4/8.08/58.

A. Yes.

Q. Dr Rachkov, when you've opened that, if I can just go back to the mine worker. Looking at the case, it seems to have been decided on a combination of three factors: one, he lived in a foreign state, namely the Ukraine; two, his legal illiteracy; and three, the significant territorial distance between him and the court. Is that correct? I can certainly take you to the case if you would like to be --

A. Maybe we should indeed look at the case. I remember well that these were the three reasons but I think there were even more than this.

For instance, he -- what happened in that case, my Lady, the shares of this -- the mining worker was entitled to get shares in Norilsk Nickel because the company was privatised, so he got some shares due to the

privatisation and moved to Ukraine later on, after he discontinued working at Norilsk Nickel.

His shares were fraudulently taken away by a person acting on the basis of a power of attorney. The signature of this mining worker was forged under the powers of attorney, which was recognised later on by the law enforcement agencies of Russia and Ukraine.

However, among other things, because he went not to the court directly but to the local authorities in Ukraine and in Russia, to the Ministry of Interior, to the police, to complain, things went very slowly, so the period of limitation passed away.

This was one of the grounds why the period of limitation was restored in that particular case. And it is not only what Mr Sumption mentioned but it's much more.

Q. We had better look at the case then. Leave open the bundle you have just opened, please, and turn to bundle G(A)2/4, flag 11, page 76 and following G(A)2/4.11/76.

If you have got the case open -- Dr Rachkov, have you?

A. Yes.

Q. Right. Now, if you look at page 79 in the bundle numbering you will see, after an account of the facts,

halfway down the page G(A)2/4.11/79:

"... in his petition to revive the statute of limitations, the complainant state[s] that he lives in Ukraine, is inexperienced in legal matters, and is not familiar with the special legislation of Russia.

"At the session of the appeal court the representative of U explained that the complainant is a miner, who has extremely limited funds due to the economic situation [of the] Ukraine, and took measures to defend his infringed rights, and that time was lost in connection with the transfer of materials regarding [that's, I think, the company] by the agencies of the Ministry of Internal Affairs of Russia and Ukraine and the lack of a summary decision by the investigating authorities in relation to [the company]."

- A. Yes, the documents relating not to the company but to the person who was allegedly acting on the basis of the power of attorney, but, as we learned from this case, forged the signature of this mining worker under the powers of attorney.
- Q. Yes, but time was lost because of the delays by public authorities in transmitting relevant information, wasn't it?
- A. Well, the literal wording is that.
- Q. Right. The next paragraph says:

"The change in interstate jurisdiction [in] the criminal prosecution did not depend upon the will of the complainant and cannot serve as grounds to dismiss the defence of [his] civil rights."

What was the change in interstate jurisdiction of the criminal prosecution?

A. I don't know.

Q. You don't know, okay.

Now, the part that I was referring to a moment ago when I gave the three reasons which appeared to be relevant is the first full paragraph on page 80

G(A)2/4.11/80:

"Taking into consideration article 6 of the European Convention ... the appeal court deems reasonable the excuse that the complainant overran the statute of limitations due to conditions connected with the individual complainant [one] living in a foreign state, [two] and due to legal experience and [three, I'm adding the numbers obviously] significant territorial distance he was unable to defend his legal rights within the prescribed term and was deprived of his acquired property due to the fault of the respondents."

Those seem to be the reasons, do they not?

A. Yes, plus the court refers to the fact that the circumstances emerged or have taken place within the

last six months of the period of limitation.

- Q. Right. Well now, I was going to ask you to look at the decision of the -- it's the cassation ruling by the St Petersburg city court at bundle G(A)4/8, tab 8 G(A)4/8.08/58. This is one of the cases about somebody claiming to extend the limitation period because his wife was unwell.

There are a number of cases like this, are there not, in which somebody was relying on the sickness of his wife?

- A. Other ways around. The claimant was female.

- Q. Or spouse. You're quite right.

The reason I'm referring you to this is that it contains a statement of principle and I'm going to ask you whether you agree with that statement. If you look at page 62.003, halfway down the page G(A)4/8.08/62.003:

"The court of first instance established that it follows from the Claimant's husband's medical documents that he received in-patient treatment during the periods from 1 February 2010 to 9 April 2010, from 7 June 2010 to 20 July 2010 and [then for a third period in July].

"Thus, the court of first instance came to the correct conclusion that it was not during the last six months of the limitation period that the Claimant's

husband was receiving in-patient treatment, as a consequence of which the Claimant could have submitted a claim from 2 August 2010 to the day of expiry of the limitation period..."

The next paragraph says:

"At the same time, as the District Court correctly concluded, a husband's illness is not grounds for [the] restoration of the limitation period, as it follows from the meaning of Article 205 of the Civil Code that the right to restoration of the limitation period and [the] recognition of the validity of the reason for which it was missed applied to circumstances inextricably connected to the Claimant's person, and not that of other parties. In addition, the Claimant has not produced evidence that, during the legally significant period, the Claimant's husband was in a state requiring constant care from another person."

Is there anything in the passage that I have just read which you would disagree with as a statement of the law?

- A. I would not disagree, I would only stress that the most important sentence is the last sentence which you've cited.

The claimant failed to prove that her husband was in a state which was necessary for her to take care for

him. He was in a hospital, there was appropriate care for him when he was in hospital. At that time, apparently the court came to the conclusion that this lady could have filed a claim, and even indicated the time gap within which it could have happened.

Q. Yes. What I'm trying to get your assistance on, Dr Rachkov, is the principle that my Lady should apply to the rather different facts of this case. The actual legal principle is the one stated immediately before that sentence about the facts of this case where the court said:

"At the same time, as the District Court correctly concluded, a husband's illness [et cetera] ..."

Is not a ground, unless there is a circumstance inextricably linked to the claimant's person and not that of other parties. You accept, don't you, that that is a correct statement of the legal principle that is being applied to the various facts?

A. No, I do not accept that this is a correct legal principle. It is a correct statement in this particular case.

Q. Well --

A. You cannot say that whenever a husband is ill, and whatever the gravity of this illness is, the court must decline the application for restoration of period of

limitation. The cases are very various.

Q. I'm not suggesting that to you for one moment, Dr Rachkov. What I am saying is that the legal principle that applies is that a husband's illness is not grounds for the restoration of the limitation period in itself. You've got to show that the husband -- that the wife was actually taken up personally with caring for him, or some other factor affecting her, right? Do we agree on that?

A. This particular wife and this particular husband, yes.

Q. Yes. And the legal principle is, as is stated here, that:

"... it follows from the meaning of Article 205 ... that the right to restoration of the limitation period and recognition of the validity of the reason for which it was missed applied to circumstances inextricably connected to the Claimant's person, and not that of other parties."

Do you agree that that follows from the meaning of Article 205?

A. No, I do not agree that this follows from the Article 205 because the person does not live in isolation, there are many people around it, it may be friends, it may be close relatives, it may be animals(?) who prevented, or whose state prevented the claimant to

file the claim in due course within the limitation period.

Q. So do you say that this is a mistaken statement of the law by the cassation court of St Petersburg?

A. No, I cannot say this for this particular case, but I would not derive from this very generic conclusions on Russian law.

And by the way, this judgment has no precedential value, as I said.

Q. Well, that is true of all judgments below the top cassation level in Russia, isn't it?

A. Yes.

Q. But we still are entitled, are we not, to look at decisions for illustrative purposes as guidance to what Russian law is; you don't dispute that, do you?

A. That's true, but I wouldn't expand the importance of this particular judgment to the court practice in Russia in general.

Q. You see I suggest to you that the statement of principle here is in fact exactly what Article 205 says, we've looked at it. Do you not agree?

A. I can only say that the circumstances which are connected with the personality of the claimant can include also the conditions in which third parties are; it may be close relatives, it may be third persons, it

can be animals.

Q. Provided, would you agree, that the conditions of the third party have the effect of personally disabling the claimant himself from acting?

A. Can you give me an example?

Q. I'm asking you to agree that that is the principle.

A. No, but I can't agree with that.

Q. Sorry?

A. I cannot agree with that. It's a too general statement.

Q. Right. Well, we will have to agree to disagree on that.

If the various conditions of Article 205 are satisfied, do you agree that it does not follow that the limitation period is extended indefinitely?

A. I'm afraid I cannot understand your question.

Q. If the conditions for an extension are satisfied, the extension is not indefinite, is it?

A. The extension is not indefinite.

Q. The extension of the limitation period.

A. The extension of the limitation period is not indefinite.

Q. No.

What it means is this, isn't it: the claimant is allowed to bring his claim once the exceptional circumstance has ceased to be operative, even if that is after the expiry of the limitation period; that's the

effect, isn't it?

- A. It is the effect, however plus a period of time which is objectively necessary and sufficient for this person to prepare the claim and to file the claim. If the case is so simple that the evidence can be gathered within one day or, another case, this whole time all the evidence was collected and the draft statement of claims was prepared.

So the only missing thing is a signature beneath the statement of claim, its filing with the court, then I would agree. Otherwise unfortunately -- or fortunately for you, Mr Sumption, but the Russian law does not indicate what is the period which the court can grant the claimant to file the claim, even if the period of limitation is lapsed. That's a problem a bit.

- Q. Do you accept that the Russian courts have held that the exceptional circumstance must operate not only in the last six months of the limitation period but continuously thereafter up to the point where the claimant finally brings his claim?

- A. No.

- Q. Can we look at an illustration of that at bundle G(A)4/3. If you've got that bundle, I would like you to turn to flag 108, page 90 and following G(A)4/3.108/90.

Now, this was a case in which the Federal Arbitrazh Court for the Moscow circuit overturned the decision of a lower court to extend the limitation period on the grounds that the allegedly exceptional circumstance did not operate continuously up to the time of filing.

Could you please turn to page 91, the second page of the translation. I wonder if you would like to read to yourself from two-thirds of the way down page 91, the paragraph beginning:

"The Arbitrazh Court, having examined the indicated application..."

Until the end of the court's reasoning on this particular point which is about a third of the way down page 92, at the end of the paragraph which begins:

"Having established these circumstances..."

Perhaps you would just remind yourself of that.

(Pause)

A. I am through.

Q. Right. Now, I think this may have been the case that you had in mind earlier this morning when you referred to a case where the claimant was relying on the illness of his wife but it turned out he'd been carrying on his business in the ordinary way, notwithstanding the illness of his wife, was that right?

A. Yes, that's right.

Q. Now, if we just look at this case, on page 91, second paragraph from the end G(A)4/3.108/91:

"Here, a right to restoration of the statute of limitations arises if the circumstances connected with the person of the plaintiff that provide a basis for the court to declare them valid arose within the last six months of the statute-of-limitations period."

You accept that that is so in principle, do you not?

A. So far I accept.

Q. Then in the next paragraph:

"Thus, the reasons for missing the deadline of the statute of limitation that the plaintiff cites in the justification for restoring the period must be continuous in nature from 1 [January] 2002 ([the] date of its expiration [that's the expiration of the limitation period]) through [to] 24 [May] 2004 (... filing [of the] claim in the court)".

Do you accept that that is a correct statement of the law?

A. This may be a correct statement in this particular case but it is not a correct statement on Russian law, generally speaking.

Q. Well, it was because the claimant in this case could not satisfy that requirement that he failed, isn't it?

A. Yes, but besides there are many other requirements, so

it looks like -- you know, Russian courts do not like when people are lying to them, which happened here.

Second, if you have a look at the substance of the case, the case was as such: the claimant filed an application to withdraw from a limited liability company. This is one of the major draw-backs of the Russian company law which is feared by many, many foreigners when they engage in business in Russia. That's why many of them prefer to establish a joint venture with a Russian partner not as a limited liability company but as a joint stock company.

In a limited liability company until recently any participant could withdraw at any time, which means that the company is under pressure to pay the actual value of the share of that participant to such participant within a very short period of time. This may undermine the solvability of the company.

So -- but the case as such is quite simple. If I would be the judge I will of course decline the application for restoration of the period of limitation in this very case, because here the circumstances when the wife of the person was in need of the care ended at 1 January 2002. But the claim was filed on 24 May 2004, which means that this is a period of time comparable to the three-year limitation period in a very

straightforward and simple case, whether or not the company paid the actual value to a withdrawing participant and what its amount should be.

- Q. Dr Rachkov, I'm not particularly interested in the application of the principle to facts which are very different from ours, I'm interested in getting your assistance in identifying what the principle is.

This court believed that the principle was that the justification must be continuous in nature from the expiration of the limitation period to the date of filing the claim in the court. That is a statement of legal principle. Do you say it's wrong?

- A. I say it's wrong.

- Q. You say it's wrong. Right.

- A. I say it's wrong.

- Q. Are you aware of other cases in which any other principle has been applied once the limitation period has expired? Or are you simply referring to the Urybin case which you mentioned, the 10-month case, a moment ago?

- A. To save time I'm referring only to Urybin case, but I think the same applies in other cases whenever the period of limitation must be restored. So --

- Q. Well we'll look at that --

- A. -- the conclusion is that Russian law, although there is

a requirement that the circumstances preventing from filing a claim should have arisen within the last six months of the limitation period, there is no deadline within which, after the circumstances discontinued, the claim must be filed. It really depends on the nature of the claim. And, as I said, if the evidence is simply lacking nobody will file a claim and -- incurring additional costs and expenses. First all the evidence must be collected.

And if you compare this situation with the situation of a normal claim, in a normal case the claimant has three years to think about whether he is in a position to settle the case with a defendant amicably, whether there are any mediation possibilities, to gather the evidence, to engage in correspondence with the defendant and maybe third parties, and to think thoroughly about whether or not to file the claim, and to prepare it.

What is wrong about a person who is not in a position to file a claim to have the same period of time? So there is absolutely no rule on that in Russian law.

- Q. Are you suggesting that the claimant has three years from the end of his disability to bring his claim, is that your suggestion?
- A. It is not my suggestion because, as I said before, it's

really -- this question must be solved on a case by case basis. However, it is not unreasonable to think that in difficult cases it may well be three years.

Q. Your own evidence is that the claimant must bring his claim promptly once the exceptional circumstance has ceased to operate, isn't it?

A. Yes, but subject to the evidence which he or she must gather in the meanwhile.

Q. Well, let's turn to the exceptional circumstances alleged in this case, and I'm not asking you to discuss the facts but simply to proceed on certain hypotheses.

Mr Berezovsky says that he was aware of the violation of his rights in May 2001 but was afraid that if he sued Mr Abramovich while Mr Glushkov was still in Russia, Mr Abramovich would use his influence to prevent Mr Glushkov's release from prison or would influence his prosecution.

That's Mr Berezovsky's case, you understand that?

A. I understand.

Q. Now, I'm going to ask you to assume that that is true, okay? Would you describe that, I presume not, as a serious illness or a helpless state as far as Mr Berezovsky is concerned?

A. It is not an illness of Mr Berezovsky.

Q. It's not, therefore, one of the specific exceptional

circumstances mentioned on a non-exhaustive basis in Article 205, is it?

- A. So it is not a physical, heavy illness, maybe it's a mental one; it's not a helpless state; it's not illiteracy.
- Q. Now, you would not say, would you, that this particular alleged disability is even analogous to the exceptional circumstances which are mentioned in 205, would you?
- A. What do you mean by analogous?
- Q. It's not even similar.
- A. No, it is not similar.
- Q. Now, you recall the extract which we went through from Dr Maleina's work and the various examples that she gives: illness, need to attend to a sick family member, change of residence, residence abroad, long business trip; it's not analogous to any of those either, is it?
- A. No, but Dr Maleina underlines that the list is not exhaustive. Dr Maleina tries, as any writer, to identify the most typical cases, but, as I said, the life is much richer than yours and mine and Dr Maleina's imagination.
- Q. It's not a problem personal to the claimant, Mr Berezovsky, is it; it's about Mr Glushkov?
- A. It may be a personal problem of Mr Berezovsky. I don't know how good or how confident, how friendly the

relations between Mr Berezovsky and third parties is.

- Q. It's not a matter that made it impossible for Mr Berezovsky to give instructions to his solicitor to issue a claim form, is it? There's nothing in that assumed fact that a Russian court would regard as preventing Mr Berezovsky from giving instructions to an English solicitor to prepare and issue the claim, is there?
- A. It's not quite right. I mean in Russian reality, and here I need to refer to the Russian reality, wealthy individuals were put under pressure to give up some property, and here I'm speaking about such cases as Woshinski(?), as Khodorkovsky, as, you know -- what is it, the name -- Gusinsky, who gave up their property, Galdovski(?), who gave up their property at undervalue because they were threatened and because they were put under pressure. Some of them were put in jail.
- Q. Dr Rachkov, I don't want to debate the facts with you, but this alleged tort was committed in May 2001, and the Russian limitation period expired therefore in about May 2004, and for all but six months of that period Mr Berezovsky was out of Russia.
- A. I can't deny it if these are the facts, which you know. I don't know all the facts, but maybe you are (inaudible).

Q. We shouldn't be debating the facts.

Now, are you aware of any case in which a claimant's fears for the consequences of bringing his action have been accepted as a reason for extending the limitation period?

A. The cases which I was able to identify do not contain such situation.

Q. No. Would it make any difference to the application of Article 205 if the claimant's concerns, although genuinely felt by him, were objectively unfounded?

A. If they were not -- if the feelings of Mr Berezovsky or an abstract claimant were not well-founded and genuine, then indeed there is no reason to restore the limitation period.

Q. So if he had a genuine but completely unfounded fear that, if he were to leave his house to go and file a claim, he would meet with ghosts or monsters on the way, that would be irrelevant?

A. I think it would be irrelevant, yes.

Q. Could we please have a look at a decision of the Federal Arbitrazh Court of Western Siberia at G(A)4/3, flag 95 G(A)4/3.095/1. It's the same bundle that we had open last, I believe.

A. What is the number of the flag? Can you repeat this?

Q. 95. This is the case of Mr Guseletov. Now, the

allegation -- have you got that? The allegation here was that the claimant was prevented from bringing his claim by a fear that, if he did bring his claim, the defendant would murder him.

If we just look at the reasoning, at the bottom of the first page of the extract, second paragraph up from the bottom:

"Having considered the arguments in favour of granting a revival [that's of the limitation period], the court found that there were no exceptional personal circumstances present (as set forth in Article 205...) that would warrant granting the motion to revive the limitation period. Having reviewed the medical documents submitted, the court found that they had failed to corroborate the claimant's inability to take procedural action in court (such as preparing the statement of claim, filing it in court, etc.). The claimant's assertion of discontinuity in the limitation period was denied."

Now, just pausing there, in that part of the judgment the court is saying, isn't it, that they had been presented with no medical evidence that suggested that the claimant's fear of being murdered was something that prevented him from preparing a statement of claim and filing it in court et cetera, ie taking the

practical administrative steps to start an action. That is the point that they're taking into account there, isn't it?

A. Yes, correct. I think Guseletov behaved in courts very strangely. So he said he wants to refrain or to prohibit a public hearing, and he filed several applications, so I have the impression that he was a bit crazy in saying something.

Q. Well I'm sure Mr Guseletov was a most eccentric person, but courts of law in Russia apply legal principles to particular facts, don't they?

A. Yes.

Q. If we can just look at the second page of this report, bottom of the page G(A)4/3.095/2:

"The court found that the claimant became or should have become aware of the violation of his rights... on 18 [October] ... at the latest, when along with Kuznetsov he was making decisions on issues within the authority of the general... meeting. [Mr] Guseletov filed his claim as to ... ownership ... in [January 2010] ... after the three-year limitation period had expired."

Then they set out Article 205.

After that paragraph:

"VV Guseletov asserts that he has failed to file

within the time allowed because on 18 [September]... he learned from law enforcement officials that ... Kuznetsov was conspiring to commit a crime (murder) against him, and he was so much affected by this that he could not file his claim in court prior to the expiration of the limitation period. As a matter of proof, the claimant submitted a ruling to bring criminal charges dated 18 [September]... and certain medical documents.

"Having considered the arguments in support of the motion... the court found that the claimant had failed to prove the special circumstances asserted therein.

"The documents in the case file contain no evidence to corroborate the assertion that the claimant has been in a state that prevented him to file on time for six months prior to the expiration of the limitation period.

"The court did not consider the claimant being under stress and in a state of confusion as a valid enough reason to miss the allowed filing window. The medical diagnosis in the documents... does not corroborate the assertion that the claimant has been gravely ill and incapacitated."

Now, there's a number of points about that that I want to ask you about. First of all, do you agree that the ground on which the court proceeded was that

a fear of being murdered was only a relevant factor if it could be shown that it produced a physical or psychological incapacity on the part of the claimant of the sort that you would expect to be established by medical evidence? Would you agree that that is what they said?

- A. No, I don't derive such conclusions from this case, and I think it would be too creative to expand it to the Russian court practice in general.
- Q. Would you agree that the first ground on which the court decided this case was that the claimant's fears for his safety was not established by medical evidence demonstrating that he was under a personal incapacity; do you agree that that was the first of their grounds?
- A. I agree that the claimant did not provide the court with the documents deriving from a medical institution, and saying that he is in such an illness which prevented him from filing a claim on time.
- Q. Now, would you agree that the second ground was that, in the court's view, the claimant's fears for his safety were not such as to prevent him from performing the various administrative steps necessary to bring his claim such as filing and drafting and so on? Do you agree that was the second ground upon which they decided this?

A. Well, the court does not mention such statement that the claimant has enough time to prepare the claim, and so on.

Q. Well, let's have a look at four paragraphs down, page 3 G(A)4/3.095/3:

"The documents in the case file contain no evidence to corroborate the assertion that the claimant has been in a state that prevented him to file on time for six months prior to the expiration of the limitation period."

A. Yes, but there is nothing said in that that he had enough time to collect evidence and so on. What is said is that, within the last six months of the period of limitation, the claimant was not in a state which prevented him from filing a claim.

What does it mean? Does it mean that he could not evidence that he could not go to the post office and file the claim? Maybe something else. Who knows?

Q. What they say in the last paragraph of the part that I referred you to is:

"Moreover, the court was correct to note that the reasons the claimant asserted had prevented him from filing before the limitation period... did not at the same time [prevent] him from personally managing a number of companies..."

In other words, he was perfectly capable of conducting his affairs.

A. Absolutely.

Q. And if he was capable of conducting his ordinary business, then there was no reason why he shouldn't be capable of filing a claim even if he thought he was going to be murdered by Mr Kuznetsov. That's what it decided, isn't it?

A. It is only decided that -- or it appears from the judgment to me that Guseletov tried to say some lies to the court, to say that he was so badly stressed that he couldn't do anything.

I think if he would be in such a state he would not be able to work, so that's why I think it was very imprudent from his part to lie to the court.

MRS JUSTICE GLOSTER: What's your evidence if, just through fear, he didn't file? So obviously there's some stress but he's not incapacitated, he goes and runs his business, he manages his affairs, but he's just frightened that something will happen to him or his family if he files proceedings against the defendant; is that enough to extend the period of limitation in your view?

A. I think this can be enough. I think clearly it all depends on the specifics of the case --

MRS JUSTICE GLOSTER: Okay. Let me just hypothesise to you that the specifics are he's perfectly well in himself but he is just frightened that if he files, the defendant will murder or kill him or members of his family.

A. If he knows the defendant so well that he understands that this might well happen, I think that's a valid ground to restore the limitation period.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: You see, this court appears to have been of a different view, because if you look at page 3, almost exactly halfway down the page G(A)4/3.095/3:

"The court did not consider the claimant's being under stress and in a state of confusion as a valid enough reason to miss the allowed filing window."

Because the medical evidence did not establish that the stress was such as to incapacitate him.

A. Yes, but stress and confusion is something else than a well-founded, or well-grounded and genuine fear.

Q. You see --

A. I am also in stress now when you are cross-examining me.

Q. I don't believe that for a moment, Dr Rachkov.

Now, what I suggest to you is that this case is a perfectly orthodox application of the relevant general principles of Russian law. Would you accept that?

There's nothing legally questionable about this analysis.

A. I think in this particular case the analysis is correct, but you cannot expand this reasoning to all other cases because the cases are many-fold.

Q. What I would suggest to you is that a state of stress and confusion on the part of the claimant is not enough to justify an extension of the limitation period unless it is such as to incapacitate the claimant from running his affairs.

A. Yes, and I can give you a very good example.

Q. First of all, would you accept that that, as a general statement of law, is a fair summary?

A. It's a fair summary, and I can give you an example.

When Hitler was just 20 kilometres away from Moscow, a famous Soviet composer Maxim Dunayevsky, who was a Jew, he was so in stress that he couldn't able -- he couldn't do anything for three years. He couldn't write any music, nothing.

This shows that people can, although Hitler did not promise to kill him personally, and the Hitler troops did not occupy Moscow at the end of the day, but he was in a position -- he wasn't simply able to do anything.

Q. I understand, and my Lady will in due course decide whether that would be a fair description of

Mr Berezovsky's condition between 2001 and 2007.

A. Well, but thanks to the situation, Mr Abramovich is not Hitler who threatened Mr Dunayevsky.

MRS JUSTICE GLOSTER: Well, let's get back to the principles of law, shall we?

MR SUMPTION: Now, in this case, Mr Glushkov left Russia in July 2006 but the claim form was not issued until June 2007, and it's in that context that you refer to the Urybin decision of the arbitrazh appellate court, that's right, isn't it?

A. Yes.

MRS JUSTICE GLOSTER: If you're going on to another case, I'm going to take a break for the shorthand writers.

MR SUMPTION: Yes, of course.

MRS JUSTICE GLOSTER: Ten minutes.

(11.35 am)

(A short break)

(11.50 am)

MR SUMPTION: Dr Rachkov, Urybin is the case about the legally illiterate miner living in the Ukraine which we referred to in another context earlier this morning.

I'm coming back to it because of your suggestion that this shows that you might have quite a long time to prepare your case and so on, and ten months was the gap in this case. That's the point you're making, isn't it?

A. I don't know whether in that particular case the claimant needed ten months to prepare his statement of claim, I just said that in an abstract case it may take time to prepare the statement of claim plus its annexes.

Q. Dr Rachkov, if you've got Urybin open, and I would like you to turn to page 80, which is the last page of the reasoning in the English text --

A. Can you remind me please of the binder?

Q. Sorry, it's G(A)2/4, flag 11 G(A)2/4.11/80.

You remember we had a discussion about the reasons for it, the disability is identified in the first full paragraph towards the top of page 80. And the dates in question, from where you get your ten months, are to be found in the second last paragraph before the words "Has Rule":

"The findings of the appeal court in relation to the statute of limitations not being overrun cannot be adopted since the complainant did not state the date of 9 [November] 2002 in the statement of claim ... when he learned of disposal of the shares."

So he learned of wrongful disposal of the shares in September 2002.

"... in the statement of claim ... when he learned of the disposal of the shares. The legal action was received by the court on 19 [July] 2006."

Now, where do we get the ten months that you refer to? Is that because you're taking three years from September 2002, and then measuring the time from September 2002 -- no, that doesn't work.

Where do you get the ten months, Dr Rachkov?

A. Yes, I can explain.

Three years from 9 September 2005 -- 2002, sorry, makes 9 September 2005.

Q. And it's the gap between that and July?

A. Yes, the gap between these dates.

Q. I understand. So that is the gap between the expiry of the limitation period and the filing of the claim, isn't it?

A. Yes.

Q. It is not the gap between the time when the exceptional circumstance ceased to operate and the time when the claim was filed, is it?

A. I don't know. This question is not addressed here.

Q. I see. So you cannot say that this case shows that you can have as much as ten months between the exceptional circumstance ceasing to operate and the claim being filed; this case does not say that, does it?

A. No, it does not.

Q. And indeed, if we look at what the disability was in the first full paragraph at page 80, namely the fact that

the individual complainant was legally inexperienced, living in a foreign state and so on, all of those are factors which, on the face of it, appear to operate right up to the moment where he began the claim. That's right, isn't it?

A. It may well be.

Q. Now, are you aware of any case, however complex, in which a Russian court has allowed a claim to be brought after the expiry of the limitation period when the exceptional circumstance had ceased to operate 11 months or more before the claim was filed?

A. I did not find this.

Q. No.

Now, I want to turn if I may to Article 10, and that we will find at G(A)4/4, flag 2. It's on page 7 of flag 2 G(A)4/4.02/7.

Have you got that, Dr Rachkov?

A. Yes.

Q. You're obviously very familiar with this, but if I may just ask you to open it so that we can remind ourselves of its terms.

"Actions of citizens and legal persons taken exclusively with the intention to cause harm to another person are not allowed, nor is abuse of a legal right allowed in other forms."

Then there's a reference to competition which we don't need to trouble about.

Now, this is the provision of the Russian Civil Code equivalent to the provision which we found in almost all other civil law systems about abuse of rights, isn't it?

A. I think so, yes.

Q. And the basis of the argument that you found on this, I just want to make sure I've correctly understood it. What do you say is the right that Mr Abramovich would be abusing if he relied on the limitation period in this case?

A. Nothing.

Q. Nothing? Would he not be abusing his right if he relied on the limitation period in this case, in your opinion?

A. If we take an abstract case, there is nothing. If we take the particulars of claim, as I was made familiar with, I think the abuse may consist in preventing by threatening the claimant to file the actions, to file this claim. That's the abuse of right.

Q. I see. So is the basis on which you say there may be an abuse of right, and obviously you're not expressing a view on the facts but on the legal principles.

A. Of course.

Q. Is the basis on which you say there may be an abuse of rights that Mr Abramovich's conduct, in making threats

to Mr Berezovsky, may have caused him to miss the limitation period; is that the basis of it?

A. That's the basis.

Q. So is this a form, or is the principle here that Mr Abramovich should not be allowed to apply the limitation period because he would be thereby profiting from his own wrong, is that the essential point that you say is an abuse of rights?

A. Well, yes, provided that all this is evidenced --

Q. Of course. But that's the legal principle that you're referring to?

A. That's the legal principle.

Q. Understood. The wrong in question being the threats made in May 2001, on his case?

A. Or continuant one.

Q. Well, would you agree that in order to succeed in this argument Mr Berezovsky would have to show at the very least that the threat said to have been made by Mr Abramovich in May 2001, and I can tell you that no threats are alleged after that, caused him to delay issuing his claim form until June 2007? Would he have to prove that?

A. What exactly?

Q. Sorry?

A. What must he prove, excuse me?

Q. Well, in order to succeed in this argument -- can I ask you to assume that no threats were made after May 2001, okay? Now, in order to succeed in this argument, would Mr Berezovsky not have to show at the very least that the threat made in May 2001 caused him to delay issuing his claim form until June 2007?

A. Maybe so.

Q. Well, is it so or not?

A. In Russian procedural law it looks a bit different. So first the claimant files the claim. The claimant is free to either file simultaneously or afterwards an application for restoration of the limitation period, but the claimant can also act the other way around. The claimant can wait until the defendant raises the objection that the period of limitation lapsed and only then file such application.

Q. Well, I'm not asking you about the procedure in a Russian court for establishing whether or not the limitation period should be extended, I'm asking about the underlying principle of law.

If you assume that the last threat was made in May 2001, would it be necessary for Mr Berezovsky, in order to be able to rely on Article 10, to show that the threat made in or before May 2001 caused him to delay issuing his claim form until June 2007? Would it be

necessary for him to establish that?

A. I think it is important, yes.

Q. Now, you cite by way of analogy Articles 179 to 181 of the Civil Code. I don't think you say that they are directly applicable but you say that one can get guidance from them.

A. Yes.

Q. Can we just look at those. I think the best place to find this is in your fifth report where you actually, I think, set it out verbatim. It's not in the extracts that I've been using. G(A)1/1, flag 2, page 163  
G(A)1/1.02/163.

A. Yes.

Q. And at the bottom of page 162 and the top of page 163 you deal with this and you refer to Article 181.

Now, this is concerned, isn't it, with the running of the limitation period in cases of duress and fraud, is that right?

A. Which cases are you --

Q. 179 to 181 are concerned with that.

A. So we're speaking about the Civil Code of the Russian Federation, aren't we?

Q. Yes, I think we'll need to look at something which has 179 as well.

Forgive me for jumping around, my Lady.

Can you turn to G(A)2/1, flag 6, where we've got the whole of this section of the Code, and in particular page 118 G(A)2/1.06/118.

Now, is Article 179 of the Civil Code concerned with the invalidity of transactions made under the influence of fraud, duress, threats and so on? Is that right?

A. Yes.

Q. And the analogy that you are referring to is with the provisions relating to the running of time there, and Article 181 deals with time periods of limitations of actions under invalid transactions.

This is concerned with time periods of limitation of actions in cases where a transaction has been made under the influence of fraud, duress, threat et cetera, is that right?

A. Yes.

Q. Does Article 181 provide at sub-article 2 that:

"A suit for the declaration of an avoidable transaction as invalid and for [the] application of the consequences of its invalidity may be brought within a year from the day of the termination of the duress or threat under the influence of which the transaction was made... or from the day when the plaintiff knew or should have known of other circumstances that are the basis [of invalidity]."

So is it the position -- there is obviously a special time limit here, unlike the time limit that applies for a damages claim, relating to fraud, duress and so on, that's right, isn't it? There is a special time limit of a year which starts from the time that the threat ceases to operate, is that correct?

A. Yes, which can be well beyond the three-year period.

Q. Yes. The reason this doesn't apply directly is that when we're talking about a claim not for the recognition of a transaction as being invalid but a claim for damages for a tort, there is no special period of time which starts from the time when the threat ceased to be effective, isn't that right?

A. Yes.

Q. Now, the significant point about this, surely, is that this time period, so far as it's analogous, begins to run as soon as the influence of the threat or violence in question comes to an end?

A. In principle, yes. However, we need to understand whether this rule applies vis-a-vis the party to the transaction or third parties.

Q. Now, if we can go back to the article we're looking at, Article 10, I may ask you to address one other aspect of this particular issue G(A)4/4.02/7. Article 10.1 refers to:

"Actions of citizens and legal persons taken exclusively with the intention to cause harm to another person are not allowed nor is abuse of a legal right allowed in other forms."

Now, would you agree that there is a respected school of thought among Russian legal scholars that an allegation of abuse of rights requires proof that the party abusing his rights intended to use his rights for an improper purpose?

A. To which writers do you refer, Mr Sumption?

Q. Well, I'm asking you to agree generally that there are respected writers who take that view.

A. There are respected writers.

Q. Well, for example, Volkov takes it, does he not?

A. Let us have a look at Volkov.

Q. G(A)4/8, flag 16. G(A)4/8.16/84.

First of all, do you regard Volkov as a distinguished and reputable legal scholar?

A. Frankly I don't know him. Volkov is a very widespread Russian name, I simply don't know which Volkov it is.

Q. I see, so you know nothing about him.

A. No.

Q. What he says about this is:

"Subjectively, exercising a certain right 'wrongfully' implies certain blamefulness of the

relevant authorised person. Causing harm accidentally in the course of exercising a subjective civil law is not considered to be an act of 'wrongdoing' and shall be qualified under the laws of tort."

A little lower, after the page break:

"May any other forms of abuse of a right be manifested not intentionally but by negligence, or at least with [an] indirect intention...? An intention is different from a wish and/or motives by the fact that [a] person who expresses an intention has a goal clearly articulated for himself/herself. Abuse of right, unlike other offences, is carried out by ... means of right. This is what makes it so different, and this exactly 'model' is entirely built-in into the program formed beforehand in the offender's mind. The awareness of the means by which he/she would achieve the goal makes it impossible for the offender's mental process to go on other than in the form of direct intent. As one cannot chop wood without knowing the purpose of a wood chopper, one cannot abuse a right without being aware why a person uses such right."

Now, the translation isn't terribly fluent there but if we go down to the next sentence:

"Hence the conclusion: both chicane and any other forms of abuse of right may only be exercised by

a person with direct intent, i.e. deliberately. Actions performed unintentionally or by negligence must be qualified either in accordance with individual rules of the Civil Code ... or in the context of tort law."

MRS JUSTICE GLOSTER: I must say I'm mystified by the last sentence about the wood chopper.

MR SUMPTION: I don't think it's a close analogy, my Lady. It will not be featuring in our submissions.

But I think it's clear what the point being made is. The point being made is this, isn't it, Dr Rachkov: if the law confers upon you a certain right, and contrary to Article 10 you use a legal right that you undoubtedly have but for abusive purposes, you may be disabled from exercising your right.

The point that Mr Volkov is making is that since this is a rule that prevents you from relying on an undoubted legal right, you cannot accidentally commit an abuse of right, you can only do so intentionally.

Do you agree that's the point that he's making?

A. To some extent. In Russian law we differentiate between accidental causation of harm, and causation of harm at fault.

Q. And? I didn't hear that last word.

A. Causation of harm at fault. The fault consists of either intention or negligence, and in turn negligence

and intention may have two sub-forms, if you want.

So I wouldn't say that the first paragraph, which deals with accidental causation of harm, is somehow related to the case at hand.

Q. Well, what I'm suggesting to you, and this is certainly the view expressed by Mr Rozenberg, is that if you are going to be disabled from exercising a right conferred upon you by the Code, namely a right to rely on limitation on the ground of abuse of rights, nothing short of an intentional abuse of your rights will do.

Do you accept that?

A. I think it can be also negligence.

MR SUMPTION: I see. Those are all my questions,

Dr Rachkov. Thank you very much.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Yes, Mr Adkin.

MR ADKIN: My Lady, I have a few questions.

Cross-examination by MR ADKIN

MR ADKIN: Dr Rachkov, I want to ask you some questions on behalf of the family defendants.

Do you agree that under Russian law you cannot amend or add to an existing contract if that existing contract is non-concluded or invalid?

A. Yes. This statement makes sense, I agree.

Q. You would agree, wouldn't you, that in resolving

disputes about whether a contract has been formed, the Russian courts do not apply laws retroactively, that is to say, they apply to the dispute the substantive law in place at the time of the making of the contract?

A. Russian law is more difficult than this. If you have a look at Article 2, paragraph 4 I guess -- no, it's Article 4, paragraph 2 -- which stipulates that if there was a contract made before the first part of the Civil Code entered into force, but certain rights and obligations have arisen out of this contract after that date, then the Civil Code applies to this these rights and obligations and liability.

Q. I understand. But subject to that qualification which arises out of the provision of the Civil Code, what Russian law doesn't do is apply to a contract, which was made, performed, concluded in 1992, the Civil Code which wasn't introduced until 1995?

A. Yes, in principle that's correct. Russian law, as any other -- or many other laws of other countries, has no retroactive effect, unless the law so provides.

For instance, if you have a look at 422 of the Russian Civil Code, it states that if after the contract was concluded some mandatory rules were introduced they apply anyway.

Q. I see. And you would also agree, would you, that in

resolving disputes before the Russian court, the Russian court will apply the procedural rules in place at the time of the hearing of the relevant court proceeding?

A. Yes, I agree with that.

Q. Please could you be given Professor Maggs's first report, and turn to paragraph 58, which is at bundle G(A)5/1.00/19.

A. Can you repeat the number of the flag, please?

Q. I don't think the flag has a number, it's just at the very front of the bundle.

You should there see the first expert report of Professor Maggs, and I would like you, if you would, please, to turn to page 19 of that report. Do you have that?

A. Yes, I do.

Q. Now, prior to the introduction of Article 161 of the '95 Civil Code, which I think we're all agreed came into force on 1 January 1995, the provision of Russian law which dealt with the nonobservance of the written form in contracts was Article 46 of the 1964 Civil Code. That is the article which is set out by Professor Maggs at paragraph 58 of his first report. Do you agree?

A. Yes, I do agree, with a small caveat that I'm not a specialist in historical law which applied at that time.

Q. I understand.

Professor Maggs tells us in this part of his first report that he has searched for cases involving the confirmation by witness testimony of an oral contract where the contract was formed before 1 January 1995, ie before the '95 Civil Code was introduced, but the case was heard after that date; do you understand?

A. I do understand.

Q. And he tells us -- and this is at paragraph 59 of his report -- that he has discovered two such cases, and that in both cases the court applied not Article 161 of the '95 Code, but Article 46 of the '64 Code, ie the predecessor provision. Do you see that?

A. I do see that.

Q. Now, I want, if I may, to look at these cases. They're both in the same bundle. The first is at tab 9. For the transcript that is G(A)5/1.09/89.

Now, this is a decision, as I understand it, of the Supreme Court, that's right, isn't it?

A. Yes, of the Supreme Court of the Russian Federation.

Q. And we see from the first large paragraph that it was heard in September 1998, and if we scroll until four paragraphs from the bottom, we will see that the lower court hearing was December 1996, and the intermediate court May 1997. In other words, all of the relevant

hearings in this case happened after the date of the introduction of the '95 Civil Code; do you follow?

A. Yes, I do.

Q. We also see, don't we, from the third substantive paragraph, the paragraph in the middle of page 89, that the relevant transaction with which this case was concerned occurred in May 1993. Do you see that?

A. Yes.

Q. And that was of course before the '95 Civil Code was introduced.

Now, turning over the page, we get to the conclusion of the Supreme Court. It disagreed with the court below, and it criticised the decision of the lower court because it said it had applied the wrong substantive law. We see that again in the middle of page 90, the paragraph that starts -- well, the first paragraph I should take you to is in the middle of page 90 and it says:

"The decision of the court, which is in violation of Art 197, as well as Arts 192 and 194 of the... Code of Civil Procedure, is based solely on the tentative testimony of the plaintiff, who has an interest in the outcome of the case."

Then two paragraphs below:

"In accepting the arguments of the plaintiff that

the transaction was concluded under the influence of fraud, the court did not referred [perhaps that should be 'was not referred' or 'did not refer'] to any evidence in support of this, the notary was not questioned and the substantive law -- Art 179 Civil Code -- was not properly applied, since on the date of these events -- 1993 -- the Civil Code (Part 1) of 1995 [had] not yet entered into effect."

Then if we go to the final paragraph on page 90, the court remits the case back to the lower courts for a fresh determination, and the Supreme Court says this:

"In the new proceedings it will be necessary to consider the above and issue a decision in accordance with the law, bearing in mind that by virtue of Art 46 [of the 1964 Civil Code] confirmation or denial of contractual clauses by testimony is not allowed, except in the cases specified by law."

So would you agree that what is happening in this case is that the Supreme Court is looking at a contract, looking in 1998 to the contract formed in 1993, and saying, in relation to the writing requirement: you have to apply the provision of the code in force in 1993, namely Article 46 of the 1964 Civil Code. That's right, isn't it?

A. I think it's a too generic statement. If you have

a look at the chronology, the contract was made in May 1993 but the claimant filed the claim in May 1994. In May 1994, of course the old Civil Code applied. That's why the court of the first instance which accepted this claim for trial, and rendered its judgments only in December 1996, applied the old Civil Code.

Besides, I think the credibility of the reasoning here is undermined largely by the mix-up of two various legal regimes. On the one hand, the court refers to Article 179 of the new Civil Code, which is on the second page; on the other hand, it refers suddenly to Article 46 of the old Civil Code.

Last remark. The wording of Article 46 of the Civil Code of 1964 is interchangeable with the wording of the current Article 162.

Q. Well, can I just pick up on what I understand the two points that you've made to be.

Firstly, you said there appears to be some confusion because it's referring to Article 179 of the new Civil Code. Now, if one goes to page 90, and I referred you to this paragraph a moment ago, what the Supreme Court appears to be saying in the paragraph starting:

"In accepting the arguments of the plaintiff ..."

Is that the courts below were wrong to apply

Article 179 of the new Civil Code because, at the date of these events, ie the contract, 1993, the new Civil Code had not yet entered into effect.

That's right, isn't it? That's what the court is saying?

A. I have difficulties in understanding this very awkward wording which the court used.

Q. Could we please look at the second decision, which is at tab 10. Again, this is a decision of the Supreme Court, as I understand it. I'm not sure one can see that from the face of the document, but we are told that by Professor Maggs in his first report G(A)5/1.10/95.

A. I think the number indicates that this is a judgment of the Supreme Court.

Q. Thank you.

And here, if one looks at the first paragraph, these proceedings were instigated in October 1999. Do you see that?

A. Yes.

Q. And if one looks at the fourth paragraph, we see what the proceedings were about, and they're about an agreement which was entered into in November 1990.

So this is a case, again, where we have a pre-'95 agreement and a post-'95 determination on that agreement.

And if we go over the page, please, to page 96 G(A)5/1.10/96 and look at the fourth paragraph up from the bottom of the page, the court says this:

"The rule on observance of the written form of a transaction --"

Sorry, do you have that, Dr Rachkov?

A. Yes, I do, yes.

Q. "The rule on observance of the written form of a transaction by legal entities with citizens in respect of housing and on the removal of rights of the parties in a dispute to refer the case to support the transaction on the evidence is contained in the Civil Code [this is the 1964 Civil Code] [at] Art ... 46, which was in force at the time of sale of the house."

So again, they're applying the pre-existing 1964 Code provision, Article 46 on simple written form, because that was the provision which was in force at the time of the sale of the house.

Do you follow, Dr Rachkov?

A. Yes, I do follow.

Q. What I suggest these cases show is that, because the court was applying the pre-1995 rule, notwithstanding that the cases were heard after the introduction of the '95 Civil Code, it indicates that the rule in question on simple written form is regarded by the Supreme Court

at least in these cases as substantive and not procedural. Do you agree?

- A. No, I do not agree. I can draw your attention to the fact that in this judgment, the mix-up is even more -- is even heavier than in the previous one. In this judgment the court cites for instance here -- the English wording is, "In confirmation", it's page 96, second paragraph from the bottom:

"In confirmation of the contract of sale of the house between V and PC 'Kolorit', the court decision referred to the testimony of witnesses, whereas in accordance with Art 162 of the Civil Code non-compliance of the transaction with simple... form deprives the parties of the right in the event of dispute to refer to the confirmation of the transaction and its conditions as evidence ..."

And here the court refers to Article 46 of the Code of the RSFSR, which are, by the way, fully interchangeable between each other.

I also refer to, well, to the same page in the middle, the upper part of the middle:

"As stipulated in Art 161 of the Civil Code, the transactions of legal entities with each other and with citizens must be made in writing, except for transactions that require notarisation."

Q. Dr Rachkov, I think we can agree that they're interchangeable in this sense, that they contain largely the same provision to the same effect; but what I suggest to you is clear is that when the court considers what was actually in force at the time of the agreement, ie what is to be applied, it says it's Article 46. That is clear, is it not, from the fourth paragraph up from the bottom?

A. I disagree.

Q. Now, I want, if I may, to ask you some questions on a different topic.

As I understand it, it is your evidence that the general trend of legislation in Russia during the course of the '90s, if not beyond, was to liberalise the laws as they related to economic activity so as to permit individuals to engage in such activity with fewer and fewer restrictions.

Is that right? Have I understood your evidence correctly?

A. In general, this is right. However, later on, this freedom was more and more limited by the state. For instance, by introduction of licensing for certain business activities, by saying that individuals cannot do that, cannot do this, but only if they are sole entrepreneurs and registered as sole entrepreneurs they

can do such things.

But in general, starting from 1986, so right after the Perestroika was announced, this began with the law on individual labour activity, indeed the freedom to engage in business activity was enlarged more and more.

Q. Well, you're quite right, Dr Rachkov, I do want to ask you about the entrepreneurial provisions, but let me ask this.

I also understand it to be common ground that from 1 March 1996 onwards, when the second part of the Civil Code was introduced, simple partnership agreements concluded by individuals for the purposes of entrepreneurial activity could only be concluded by registered entrepreneurs, do you agree with that?

A. Yes.

Q. Now, do you say that there are any restrictions on individuals, any restrictions on individuals, entering into simple partnership agreements for the purposes of entrepreneurial activity immediately prior to 1 March 1996?

A. Immediately prior there was, at least to the best of my knowledge, no such limitation, because I disagree that Article 434, second paragraph of the old Civil Code, applied.

Q. I see. So your evidence, as I understand it then, is

this: until March -- from some stage in the 1980s, people were entirely free to conduct simple partnership agreements as individuals, but in 1996 that changed?

- A. Yes, it was to some extent a further development of the idea which was already reflected in Article 434 of the old Civil Code of 1964. You may remember that the old Civil Code prohibited not only citizens from engaging into simple partnerships beyond their personal needs, it also prohibited them from contracting with legal entities, with socialist organisations as they were called before. So this is the logical continuation of this idea in the new reality, if you want.

I'm not sure whether I expressed myself comprehensively enough.

- Q. No, that's helpful, thank you.

I think you said during cross-examination by Mr Sumption that you accept that Article 434 wasn't, as it were, formally annulled until the introduction of the second part of the '95 Civil Code on 1 March 1996, that's right, isn't it?

- A. Yes, that's right. I also would like to draw your attention to a paragraph of my fourth report, it's paragraph 46, where I explain what the rule was G(A)1/1.01/23.

As I said, the Soviet Union was a great state, a big

one, and the corpus juris was so numerous that the parliament was simply not in a position to say, "Okay, these laws are old-fashioned, we abolish them, and these newer do apply."

So that's why the Solomon(?) decision was to say -- and which was actually done, the Supreme Soviet of the Russian Federation, which was, if you want, the permanent body of the Russian Parliament of that time, took a decision dated 14 July 1992 that the laws of the old Soviet Union, or old Russian Soviet Federative Socialist Republic, shall not apply if they are not in line with the newer law, ie Fundamentals.

And the explanation was that if there is something in the old Civil Code which is not 100 per cent reflected in the new -- in the Fundamentals, or new Civil Code, these restrictions do not apply.

Q. I understand. Well, I don't want to go over that ground again because I think it was covered by Mr Sumption.

What I want to do is put to you something which Professor Maggs says about this topic as it relates at least to entrepreneurial activity.

Could you please be given Professor Maggs' second report at G(A)5/2/6. Professor Maggs's analysis of this Article 434 issue is set out here, and I just want to take you through it.

Could you look, please, at paragraph 18, I think the easiest way of doing it is to take you to that, and 19.

MRS JUSTICE GLOSTER: What page?

MR ADKIN: That's page 6, my Lady, and page 7, where Professor Maggs sets out Article 23 of the first part of the Civil Code G(A)5/2/6.

Now, that sets up the situation in which a citizen is entitled to conduct entrepreneurial activity without the formation of a company but only from the time of registration as an individual entrepreneur. That's the effect of Article 23.1.

The effect of Article 23.3 is to apply the rules of the Code that regulate the activity of legal persons that are commercial organisations to entrepreneurial activity of citizens. That's right, isn't it?

A. Yes, that's the wording of the law.

Q. Yes. Now Professor Maggs explains, and do you agree, that the rules regulating commercial organisations, to which Article 23, sub-3 nods, were not contained in the first part of the Civil Code; they were introduced, weren't they, in the second part?

A. Excuse me, can you specify your question, please?

Q. The rules that regulated the activity of commercial organisations, at least in relation to joint activity agreements, were in the second part of the Civil Code,

weren't they?

A. Yes. The contract on simple partnerships you mean, yes.

Q. So in order to make sense of Article 23.1 and 23.3, as it stood in 1995, before the introduction of the second part of the Civil Code, one would either have to ignore the article in its entirety or apply analogous provisions from another source, pursuant to Article 6, which I understand is the article which allows the provision of law by analogy. Do you agree with that?

A. With what exactly?

Q. In order to make sense, Article 23 sets up a situation where a set of rules are to be applied to an entrepreneurial activity before those rules have actually been brought into force, yes?

A. Yes.

Q. So in order to make sense of Article 23, either one has to ignore it in its entirety, at least in 1995 before those other rules have been brought into force, or one has to look to some other set of rules which were already in existence or which one could apply by analogy?

A. To the best of -- not necessarily. To the best of my knowledge, the legal status of a sole entrepreneur or registered entrepreneur pre-existed 1995.

Q. I understand, but we're talking here about --

A. So that's why I don't understand why we shall apply analogy of law or analogy of reasoning here.

Q. Well, Article 23 does not allow -- let me start again.

Article 23 was in the 1995 first part, wasn't it?

A. Yes.

Q. And we've established that it referred to a set of rules which were not in the 1995 first part?

A. Yes.

Q. Now which set of rules do you say it was referring to?

A. Before 1 January 1995, there was a federal law that regulated the activity of legal entities and individual entrepreneurs, and there was a requirement that if the individuals -- the individual engaged in business activity, then he must be registered as a sole entrepreneur, or a sole trader, if you wish.

The purpose of that was that the state knows who is doing what to collect taxes, for instance, and so on. However, the definition of the entrepreneurial activity is contained in Article 2 of the Civil Code which stipulates -- this is just my translation.

The entrepreneurial activity -- it's Article 2 of the Russian Civil Code of 1994 -- the entrepreneurial activity is an independent activity run at one's own risk, aimed at the systematic gaining of profit from using property, sale of goods, performance of works or

provision of services by the persons who are registered in that capacity in accordance with the procedure established by the law.

As a matter of fact, only small traders who are well sitting(?) in the market were registered as sole entrepreneurs. None of Russian tycoons was registered as a sole entrepreneur.

- Q. But the rules concerning contracts, as I understand it -- and I think you agree with this -- regulating a contract between legal persons that were commercial organisations were not in place in 1995, were they?
- A. Yes, but there were other rules.
- Q. There were other rules?
- A. Yes.
- Q. Now, what Professor Maggs says is that the appropriate way of dealing with Article 23 is as follows. Because there were no rules dealing with the regulation of contracts between legal persons that were commercial organisations at that time and, specifically, no rules dealing with the regulation of contracts for joint activity, he says that one applies by analogy, so far as concerns joint activity agreements, the rules of the 1964 Civil Code. Do you agree with that?
- A. As long as --
- Q. That question was a bit dense so if you want to take

some time to read it on the transcript, please feel free.

A. I'm afraid I still do not understand the substance of the question. What shall be applied by analogy to what?

Q. Well, he says that in order to make sense of Article 23 you need to apply by analogy the rules on joint activity contracts between legal persons that were previously in place, namely the rules contained in the 1964 Civil Code and in particular Article 434. Do you understand?

A. To the extent the Civil Code of 1964 did not contradict, as I said, the laws adapted since 1986, first in the Soviet Union and then in the Russian Federation, and these laws were numerous.

Q. What Professor Maggs says the upshot of that analysis is is that registered entrepreneurs could, in 1995, enter into joint activity agreements to pursue entrepreneurial activity without falling foul of the satisfaction of everyday needs(?) restriction in Article 434 of the 1964 Civil Code, but only if they registered as entrepreneurs according to Article 23.1 of the '95 Civil Code.

A. No.

Q. You disagree with that, do you?

A. I disagree with that. I can refer to the cases to which I tried to refer yesterday by -- unfortunately, I was pushed a lot but now I can refer to them.

MRS JUSTICE GLOSTER: No, you can't. You will be referred to them in re-examination.

A. Excuse me.

MRS JUSTICE GLOSTER: If Mr Rabinowitz thinks it's appropriate to do so, he can take you then. Unless Mr Adkin wishes to take you there?

MR ADKIN: My Lady, I don't. I've put the point I wanted to put.

Now, Dr Rachkov, I understand it is common ground, and you've affirmed this again this morning, that the purported term of the '95 agreement, the alleged '95 agreement that any future business between interests acquired by Mr Abramovich, Mr Berezovsky or Mr Patarkatsishvili would be shared between them was too vague to be legally binding. You agree with that, don't you?

A. In terms of contributions or in which terms?

Q. Let me remind you of what you say about this in the joint memorandum. If you could be handed please bundle G(A)6 and turn to tab 1, or the only tab, at page 29 G(A)6.01/29. I have in mind paragraph 82 which says:

"... it is agreed that the purported term of the 1995 Agreement described in C34.3, namely that any future business interests [the three] acquired would be

shared between them with 50% to be owned by the Defendant and 50% to be owned by Mr Berezovsky and Mr Patarkatsishvili, was too vague to be legally binding."

I understand that you say that it did give rise or there was a term which gave rise to an obligation for each party to inform the other, but this is correct, is it not?

A. Yes, this is correct. Plus you should look at the performance, if any.

Q. I understand.

Now, the consequences of the invalidity of part of a transaction are set out in the first part of the Civil Code at Article 180, aren't they?

A. Yes.

Q. I'd like, if I may, to turn to this. If you could be given, please, bundle G(A)2/1 at tab 6 at page 118.

That's G(A)2/1.06/118:

"The invalidity of part of a transaction shall not entail the invalidity of the other parts of it if it is possible to suppose that the transaction would have been made without the inclusion of its invalid part."

Dr Rachkov, do you agree that what this means in practical terms is that, if the court concludes that a part of an agreement is invalid, it must decide

whether the parties to that agreement would nonetheless have reached that agreement if that part had not been included?

A. Yes, I agree.

MR ADKIN: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Right. Thank you very much, Mr Adkin.

Anybody else wishes to cross-examine?

MR MALEK: I have no questions.

MRS JUSTICE GLOSTER: Thank you.

Mr Rabinowitz, would you like to start now or at 1.50?

MR RABINOWITZ: Indeed. I may actually be able to finish.

MRS JUSTICE GLOSTER: Very well.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Dr Rachkov, on Monday, two days ago, you told my Lady that where parties enter into a contract with the purpose of creating a company, this was a so-called foundation contract. Do you recall that?

A. Yes, I do.

Q. You also said that this foundation contract was recognised by Russian court practice and legal literature as a simple partnership contract. Do you recall that?

A. Yes, I do.

Q. Now, can I ask you, please, to go to bundle G(A)1/1,

tab 3, which is where you'll find your sixth report. If you go to paragraph 34, I think it begins at page 186 G(A)1/1.03/186. Do you have that?

A. I do.

Q. You refer there, you say:

"Another form of partnership contract is a foundation contract, by which parties agree to create a company. The Plenums of the Supreme Court and the Supreme Arbitrazh Court have confirmed that this is a joint activity contract (partnership contract)..."

And then you cite something from that. Can I just invite you, please, to go to G(A)2/5, tab 10. You may have been taken to this by Mr Sumption. This is a joint resolution of the Plenums of the Supreme Court and the Supreme Arbitrazh Court and can you just -- the English is at page 27 G(A)2/5.10/27. Can you just read this to yourself. (Pause)

MRS JUSTICE GLOSTER: I don't think we have been to this.

MR RABINOWITZ: I beg your pardon?

MRS JUSTICE GLOSTER: I don't think we have been to this document. We may have been, I just haven't taken a note of it.

MR RABINOWITZ: I'm not sure that we focused on -- maybe we haven't. The bit I think in particular, Dr Rachkov:

"A contract on the creation of a company being

concluded by the founders of a joint stock company is a contract of joint activity on the foundation of the company [and then it says] and bears no relation to the foundation documents..."

Do you see that?

A. I do.

Q. Can you say whether or not this is the joint resolution of the Plenums that you had in mind?

A. This is the resolution that I had in mind.

Q. Thank you. You can put that away now, thank you.

Can I ask you next, please, if you could take up bundle G(A)4/6 and go to tab 63. I think this may have been what Mr Sumption took you to. This is Sukhanov's writing on the law of obligations. Can I ask you, please, to look at page 69 G(A)4/6.63/69 and in particular the penultimate paragraph of that page. You see it says:

"The goal for which a simple partnership is created should be common (joint) for all participants of a simple partnership agreement. At the same time it may be of commercial or non-commercial nature..."

Then you see the examples he gives:

"... (making profit, construction of apartment building, [and then this] formation of legal entity...)."

Do you see that?

A. I do.

Q. Can you say whether this is part of what you understand to be the writings and practice in Russia which reflects what you said about parties entering into a contract for the purpose of creating a company making a simple partnership contract?

A. Yes, this is the writing to which I refer when saying this.

Q. You can put 4/6 away. Can I ask you, please, to go to bundle 7/1. On Tuesday, yesterday, you said in answering Mr Sumption's questions that there was at least scholarly opinion that the Civil Code of 1964 and the Fundamentals of 1991 proceed from the assumption that if the parties did not define their contributions, the contributions would be equal. Do you recall that?

A. I do recall.

Q. Now, can I invite you, please, to go to tab 1 of 7/1, the English starts for relevant purposes on page 7. Well, it doesn't start, the relevant passage is on page 7 G(A)7/1.01/7.

This is, as you see from page 5 G(A)7/1.01/5, a work produced by Professor Ryasentsev?

A. Ryasentsev.

Q. Ryasentsev. I apologise to you and to him.

If you then go to page 7, do you see -- perhaps I should just get the date of this as well, I'm sorry. Can you help us as to when this book was published, page 4 G(A)7/1.01/4?

A. Yes.

Q. 1964?

A. 1965.

Q. 1965. Then going back to page 7 G(A)7/1.01/7, do you see the second paragraph --

A. Yes.

Q. -- on page 7:

"The amount of each participant's contribution is determined by the contract. If it is not determined in the contract, the sizes of contributions are assumed to be equal."

Can you say whether or not this was part of the scholarly opinion that you were referring to?

A. Yes, exactly.

Q. Can you then go to tab 2 in the same bundle, please, the English starts at page 11 G(A)7/1.02/11. Can you tell us whose work is this?

A. It's the work by Professors Ioffe and Tolstoi and Cherepakhin.

Q. And when was this published?

A. It was published in 1971.

Q. If you go to page 13 G(A)7/1.02/13, can you look in particular at the sentence at the beginning of the last paragraph of that page:

"The amount of each participant's contribution is determined by the contract. In the absence of direct indications in the contract, all the participants provide contributions of equal size."

Can you say whether this also is an example of the scholarly opinion to which you referred?

A. Yes, this was one of the examples to which I referred.

Q. Can you finally just go to tab 3. There is English at page 18 G(A)7/1.03/18, a work edited by Professor Krasavchikov, 1973. Can I ask you, please, to go to page 21 G(A)7/1.03/21 and can you look in particular at the section in the middle of the page beginning with the bold letters:

"The duty of the participants in the contract..."

A. Yes.

Q. Just read that, if you would, to yourself, in particular the second paragraph. You see it also says there:

"The amount of the contribution of each of the participants in joint activities in property or in work is determined by agreement between the parties. If not otherwise established by agreement, the amount is assumed to be equal for all participants."

Can you say whether this is another example of the scholarly opinion to which you referred?

- A. Yes, this is another example to which I referred when saying that the Civil Code of 1976 proceeded from the assumption that the contributions are equal unless otherwise regulated in the contract.
- Q. Now, today Mr Adkin was asking you about whether in 1995 only a registered entrepreneur could conclude a partnership contract. You disputed that and said that you wished to refer to a case or cases in your report. If you can do that quickly, can I invite you please to go to 1/1, tab 3, I don't want to tell you where you wanted to -- do you have it in front of you, Dr Rachkov?
- A. Yes, sorry.
- Q. Can you just identify what case or cases you were referring to, that you wanted to go to in answer to Mr Adkin's question?
- A. Yes. Well, the most significant case to which I referred was that mentioned in paragraph 37 of my sixth report --
- MRS JUSTICE GLOSTER: Sixth report?
- A. Yes.
- MR RABINOWITZ: Page 187, 1/1, tab 3 G(A)1/1.03/187, is that right?
- A. Yes.

MRS JUSTICE GLOSTER: Just a second. So it's B v S in paragraph 37, is it?

A. Correct.

MRS JUSTICE GLOSTER: And CJSC in 38?

A. Correct, and why is it so significant to my opinion?

Because it is the judgment which was rendered by the Supreme Court of the Russian Federation. It was based on a foundation contract dated 23 December 1993 and the court explicitly said that this is an agreement on simple partnership.

MR RABINOWITZ: I have no further questions, Dr Rachkov.

Thank you very much.

MRS JUSTICE GLOSTER: Those are the cases you were referring to earlier, are they, when Mr Adkin was examining you?

A. Yes.

MRS JUSTICE GLOSTER: Very well.

Thank you very much indeed, Dr Rachkov, for coming and giving your evidence.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Very well, you may be released.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: Right, 2 o'clock.

(The witness withdrew)

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: My Lady, I call Mr Rozenberg.

MR MIKHAIL ROZENBERG (sworn)

MRS JUSTICE GLOSTER: Please sit down if you would like to.

Examination-in-chief by MR SUMPTION

MR SUMPTION: Mr Rozenberg, would you give the judge your full name, please?

A. My name is Mikhail Rozenberg.

Q. Have you got bundle G(A)3/1 in front of you, I think you're about to be given it.

Now, you have prepared three expert reports for this trial, your third, fourth and fifth reports. Can you confirm that those three reports are the documents that we find behind the three flags of this bundle?

A. I confirm it.

Q. And do those reports represent your opinion?

A. Yes, they do.

Q. And are they the evidence that you wish to give on the matters on which you've been instructed in this hearing?

A. Yes.

MR SUMPTION: Thank you.

A. Thank you.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good afternoon, Mr Rozenberg.

A. Good afternoon.

Q. In your reports you identify a number of reasons why you say the 1995 agreement, and indeed the 1996 agreement, are invalid and ineffective, and I'm going to ask you, to begin with, questions relating to the reasons that you have identified.

I would like to start, if I may, with your contention that because the agreement between Mr Abramovich and Mr Berezovsky was in oral and not in written form, that of itself makes it impossible for Mr Berezovsky to establish either the 1995 agreement or indeed the 1996 agreement, okay?

A. Yes.

Q. Can I begin this topic by seeing what you and indeed the other experts say about this in the joint memorandum, and if you can be given bundle 6/1, G(A)6/1, and keep it handy because we will be going back to it regularly.

G(A)6/1, there's only one tab, if you can go to page 5 of that, it's to see paragraph 12 which is where you deal with this topic G(A)6/1.01/5.

Just going through this, you see, looking at paragraph 12(1) that you and Dr Rachkov agree as follows:

"If the 1995 [agreement] and 1996 Agreements were made in oral form as alleged, Article 161.1 would apply

to them, with the consequence provided by Article 162.1."

So it's common ground, is it not, that the consequences provided by Article 162.1 apply to the 1995 and 1996 agreements?

A. Yes.

Q. We have Article 161 and 162. If you go to G(A)4/4 behind tab 2, page 191 of this exhibit -- sorry, I've given a bad reference. It's page 29 of that exhibit, 4/4, tab 2, page 29 G(A)4/4.02/29. Okay?

Just have that open because we will need to refer to it.

Just going back -- do you see it, Mr Rozenberg?

A. "Transactions Made in Simple Written Form"?

Q. That's right. So just looking again at the joint memo, and then just looking at subparagraph 2 to see what else is agreed, you also agree that the consequences of 162.1 are, and you say:

"Article 162.1 prevents the parties from referring to *sviedetelskie pokazania* or 'witness evidence' to prove the existence of the agreement [or] its terms."

Do you see that?

A. Yes, yes, I do.

Q. At the moment -- I mean, do look at the article if you want. At the moment I'm just looking at what you and

Dr Rachkov have agreed about this. It's right then that what Article 162.1 does is to prevent the parties from referring to witness evidence to prove the existence of the agreement and its terms, right?

A. That's absolutely correct.

Q. Then subparagraphs 3 and 4, where you set out what you agree the consequences of 162.1 are not.

In subparagraph 12(3), you agree that:

"Article 162.1 does not prevent the parties from referring to ..."

Evidence other than witness evidence.

You say in the first sentence:

"Article 162.1 does not prevent the parties from referring to other evidence to prove the existence of the agreement and its terms."

Correct?

A. Correct.

Q. Then you give some examples of the kind of evidence to which the parties may refer. You say:

"The parties are entitled to refer to documentary evidence or some other kind of physical evidence (such as records, photographs or videotapes etc) to prove these matters."

So, tell me if this is right: the claimants can rely, for example, on a tape recording of a conversation

between the parties at the time of the relevant events before the litigation arose?

A. No, other evidence, such evidence, is possible.

Q. And that would include a tape recording of a conversation between the parties?

A. It's not prohibited by law. It's possible.

Q. Indeed Professor Maggs in his report has actually referred to a case in which the court allowed admission of a tape recording of the parties agreeing to the contract terms. Are you aware of that?

A. Yes, that's what Professor Maggs wrote.

Q. And you would accept that that accords with Russian law?

A. I see nothing contradicting it so I can agree.

Q. Thank you.

Then just going to subparagraph 4, you agree this, just looking at the first three sentences of subparagraph 4 of paragraph 12 of the joint memo:

"Article 162.1 does not itself prevent the parties from referring to their own... explanations to prove the existence of the agreement and its terms. Such explanations are a type of evidence, but they are not... 'witness evidence', and they are not precluded by Article 162.1. As noted below, however, it is disputed whether the parties' explanations have any independent weight (absent any documentary or physical proof)."

A. Yes.

Q. So just pausing here, you appear to agree with the following. First, you agree that Article 162.1 does not itself prevent Mr Berezovsky from relying on his own explanations to prove the existence of the agreement and their terms, that's right, isn't it?

A. Yes.

Q. Secondly, you agree that Mr Berezovsky's explanations are a type of evidence; that's right, isn't it?

A. That's right.

Q. Yes. And third, you agree that Mr Berezovsky's explanations are not witness evidence within the meaning of Article 162.1 and so are not precluded by Article 162.1, correct?

A. Obyasneniya, it's written in Russian, but explanations, party explanations, are not prohibited of course. Actually they're required.

MRS JUSTICE GLOSTER: Can you just explain to me what an explanation is?

A. I would say that it's the type of evidence closest to witness statements but given by the parties. And from the point of view of procedural form, both in courts and in arbitrazh procedural courts, they look almost like witness statements, with the difference that witnesses are warned that they will have to bear criminal

liability in case of lying to the court, and parties are not informed about it.

And the second difference is that, of course, usually explanations of the parties are broader because parties reflect their position regarding the whole case, and witness evidence usually relates to particular episodes or particular parts which are important.

But from the point of view, form, and how it goes in courts, are just individuals explaining to the court, explain -- answering questions of lawyers whether they are parties, whether they are witnesses from the point of view of a person sitting in the courtroom.

It may look similar, but their legal weight, the importance of this evidence, is absolutely different because, first of all, both the Civil Procedure Code and the Arbitrazh Procedural Code require that evidence should be checked and evaluated in connection with other evidence.

And this brings the court to the situation when there is only one party's evidence and nothing else. It's important to verify this evidence and to evaluate in accordance with other evidence. But when there is at least one witness, it's already possible to evaluate the witness's evidence in connection with explanations of the parties.

MRS JUSTICE GLOSTER: So if, for example, one had an oral contract for the sale of a car between A and B, B says the contract was never made for the sale of the car, A said it was made, C is a bystander who heard the conversation. Is what A says and what B says explanation and what C says evidence?

A. Unfortunately the word "evidence" is used also regarding explanations, it's also a type of evidence. But you are absolutely right that C's statement -- because C is a witness, it will be witness evidence which, as I write, and I'm sure I confirm again, has much bigger legal weight because it's always possible to compare C's witness evidence at least with parties' explanations, with parties' evidence.

But in the absence of C, it's practically impossible for the court to compare the parties' explanations with any other evidence.

MRS JUSTICE GLOSTER: So all Article 162.1 would prevent, if it applied, would be to prevent C giving evidence of the conversation?

A. Correct. If this is a dispute regarding oral form of the transaction then C's -- if this agreement, sale of the car, was not in writing, if it was an oral agreement, then in order to confirm the existence of this transaction and of its terms it will be impossible

to refer -- actually it will be impossible to call C as a witness for confirmation of the circumstances.

MRS JUSTICE GLOSTER: But A and B can give their evidence as to whether the conversation took place or did not take place?

A. Yes.

MRS JUSTICE GLOSTER: But it's got limited weight.

A. Yes. But in the absence of C, and in the absence of any other evidence, it will be really a sad situation for the claimant, I would say.

MRS JUSTICE GLOSTER: Yes, I see. Thank you very much.

Sorry, Mr Rabinowitz.

MR RABINOWITZ: So it's a rather narrow exclusion because it excludes -- it doesn't exclude evidence from the parties at all, you say, other than the fact that it's given a different name; it's in effect the evidence of the parties, it simply excludes the evidence of third parties?

A. It excludes the evidence of witnesses. Third parties sometimes participate in trials, it's a different story.

Q. All right. I think it's becoming a lot clearer, thank you, Mr Rozenberg.

A. My pleasure.

Q. I think it becomes even clearer if we go to your second report at J2/5, tab 37 and you go to page 113

J2/5.37/113. You have paragraph 27, do you see that?

A. Yes.

Q. And you say here:

"However, according to statutory rules of proof, each piece of evidence shall be evaluated by the court in conjunction with the other evidence in the case and no single piece of evidence has any predetermined value ..."

A. Yes, this is what the law says.

Q. So the law makes it clear that no piece of evidence has any predetermined value.

Then you say that this applies to evidence of subsequent conduct as much as anything else.

Then in paragraph 28, you continue as follows:

"Also, as follows from the Procedure Codes, a court may only accept evidence which relates to the case under consideration. The scope of evidence accepted is at the court's discretion and depends on the object to be determined by the court, to be established for the proper settlement of the dispute. Evidence that proves or disproves the circumstances related to the object to be proved will be related evidence. Accordingly, evidence unrelated to the object to be proved shall not be accepted by the court. Although of course this does not restrict the parties to the court proceeding from

submitting whatever evidence to the court that they believe to be relevant, the weight to be attached to, or the admissibility of, such evidence will be a matter for the court."

A. Yes.

Q. So again you're saying that there is no single piece of evidence that has any predetermined weight, and that the weight to be attached to the evidence, and indeed its admissibility, is a matter for the court, correct?

A. That's correct.

Q. Then if we turn to page 155 of this report, paragraph 142 J2/5.37/155, at the bottom of the page, you see you say here:

"I agree with Mr Rachkov at paragraph 79(5) of his report that the pleadings of the parties would be an admissible proof of evidence with respect to oral agreements; however, this evidence will not have any independent evidential [significance] ..."

Then you carry on at paragraph 143:

"Russian procedural law recognises the following types of evidence: written evidence and material objects, explanations (pleadings) of the parties, expert opinion, witness statements, audio and video recordings, and other documents and materials ..."

Then you cite various statutes.

"Therefore, witness statements and pleadings of the parties are different types of evidence, and since Article 162 of the Civil Code (which is a substantive rule of law, and not of procedure) restricts only witness statements from proof of an oral contract... it may be concluded that the pleadings of the parties are not restricted to be used as such."

I think you've explained to my Lady that where you're referring to explanations of the parties, it's not just their formal pleadings, it's what they actually say, the evidence that the parties give; correct?

A. That's correct.

Q. Thank you.

Again, I think you've confirmed this, but the parties' explanation, while you say that the parties' explanation have no independent evidential significance, you accept that they are a type of evidence which is different to witness evidence and which is not restricted by Article 162.1?

A. That's correct.

Q. Thank you.

We can see this distinction again if you go to Article 64.2 of the Arbitrazh Procedural Code. You'll find that at G(A)2/1, tab 8, page 192 G(A)2/1.08/192. The Russian starts earlier, the English starts at

page 192.

Again, this is making the point that this is all evidence, you see the heading "Evidence":

"Evidence may take the form of written and material evidence, explanations of the persons participating in the case... witness evidence, audio and video recordings..."

So again that emphasises the fact that this is all evidence, does it not?

A. Yes, yes, I agree. I confirm.

Q. In fact the only dispute between you and Dr Rachkov, this is right, isn't it, is over the weight that is to be attached to the explanations of the persons participating, the explanations of the parties. That's right, isn't it?

A. It is a very serious disagreement, that's correct.

Q. No, but that is the only disagreement though, isn't it?

A. Well, regarding all the issues, or regarding what?

Q. Regarding this particular issue relating to 162.1.

A. Well, I remember about substantive and procedural laws, there were some other disagreements, but it's a serious disagreement.

Q. This is the core of the disagreement in terms of the admissibility of the evidence. You say this is all evidence, it all goes in, but there is a dispute as to

the weight that is to be attached to the explanation of the parties?

A. I'm sorry, I disagree with the word "admissibility" because at least there is no dispute between Mr Rachkov and me that evidence of the parties, explanations of the parties, are clearly admissible. It's only regarding the witness statements.

Q. All right. Let's just see if we can clear up any confusion about this.

If you go back to your joint memorandum, and you go back to page 6, so bundle 6/1, if you look at paragraph 15 on page 6 G(A)6/1.01/6, we see how this dispute about the weight is described. Paragraph 15 says:

"It is disputed whether a party's explanation has any independent weight to prove an oral agreement or its terms in and of itself.

A. Yes.

Q. If we then look at subparagraph 1, we see that you and Professor Maggs state your collective position:

"Mr Rozenberg considers (and Professor Maggs agrees) that the parties' explanations or pleadings, independent of any other documentary or physical proof, have de minimis weight in a Russian court, and in a situation where an oral agreement is supported only by a party's

explanations such agreement cannot be established."

So that's your position, is it?

A. Yes, that's correct.

Q. Can you go to bundle G(A)7/1, tab 21 at page 186, please G(A)7/1.21/186?

A. Yes.

Q. Now at this tab, Mr Rozenberg, you should see Professor Maggs's book entitled "Law and Legal System of the Russian Federation", do you have that?

A. Yes, I can see it.

Q. Okay, thank you. I just want to show you what Professor Maggs says here about this and related topics and get you to comment.

On page 189 G(A)7/1.21/189 you can see that --

A. I'm sorry, it looks like it starts from 400.

Q. You need to be looking at the pages on the bottom right-hand side.

A. Yes.

Q. You can perhaps pick it up at page 187. Do you see, if you go to page 187, you should have just the page with the copyright date G(A)7/1.21/187.

A. 187 is actually the cover.

Q. Well, it's the inside cover perhaps.

Do you see that this book was dated 2009?

A. Yes.

Q. Then if I can ask you, please, to go to page 193, again using those same numbers. They're not that easy to read.

A. Okay, now I understand how it works.

Q. Very good.

A. 193.

Q. Please G(A)7/1.21/193.

You see Professor Maggs is dealing, just looking at the right-hand side, with aspects of the civil trial in Russia. If you then go over to page 194 --

A. Yes.

Q. -- just picking it up on the bottom paragraph on the left-hand side of the page, we see that Professor Maggs is talking here about the Civil Procedure Code and he says this:

"Current Art 12(2), by contrast, requires that the judge 'create the conditions for a complete examination of the evidence from all sides, the establishment of the factual circumstances and properly application of the law in the trial and decision of the civil case.' The evidence 'is to be presented by the parties.' If the evidence submitted by the parties is inadequate, the court may propose that the parties submit additional evidence and [that] the court, at the request of the parties, is to assist the parties in assembling that

evidence. An admission by a party is to be taken as true and is not subject to further evidentiary hearing unless the court finds that 'it was made for the purpose of concealing the circumstances of the case and [I think he must mean 'or'] was made by the party under the influence of fraud, force, a threat or a good-faith mistake'."

Do you agree with this so far, Mr Rozenberg?

A. Yes, even just absence of 'or', and here, because simply it's a direct translation from Russian. Yes, it's the law.

Q. Thank you. At the right-hand side of the page, we see in the paragraph at the top of the page that Professor Maggs also says this:

"At the same time the incidence of judicial control and activism during the trial are considerably greater than would be the case in a common-law adversarial trial. Thus, while the parties must prove their claims and defences, trial judges determine what issues are important, what evidence will be examined at trial and in what order witnesses are to be heard. Judges have the right to interrogate the witnesses and parties at any time and, in practice, often do so..."

Wouldn't that be nice, my Lady?

"... if they believe the parties are off the track."

That is right as well, is it not, Mr Rozenberg? The judge may interrogate the parties and witnesses and ask them questions?

A. They always do.

Q. They always do, thank you.

Then lower down --

MRS JUSTICE GLOSTER: There are obviously some lessons to be learned here.

MR RABINOWITZ: Lower on the right-hand side of the page, Professor Maggs has a section entitled "Elements of Proof at Trial" and one sees that he says this:

"The Civil Procedure Code lists the permissible means of proof: explanations of the parties and third [parties]; testimony of witnesses; documentary evidence; physical evidence; audio and video recordings and; conclusions of experts."

Then separately he says:

"Parties' Explanations. The oral explanations of the parties are not given under penalty of perjury, but are considered to be a form of proof the court must take into account along with the other evidence. Normally, the court will require other evidence, such as police accident reports, in addition to party explanations.

"Witness Testimony. Witnesses who are summoned by the court to appear at the trial must testify and

testify truthfully under penalty of the criminal law, unless they claim an exemption from the obligation to give evidence. Before taking testimony, the judge must warn the witness of these sanctions and their obligation to [tell the truth]... The witness's testimony begins when the judge asks the witness to state everything the witness knows about the matter in dispute. After this narrative account is given, questions by the parties are permitted, with the party at whose request the witness was called to testify asking questions first, followed by the other parties."

Can we just break down what Professor Maggs appears to be saying here, Mr Rozenberg. First he describes the explanation of the parties as a different form of witness testimony, do you see that?

A. Yes, that's what I said, it looks similar.

Q. Indeed. You agree with that, yes?

A. Yes.

Q. And second he says, and this is the first sentence of the paragraph entitled "Parties' Explanations":

"The oral explanations of the parties are not given under penalty of perjury, but are considered to be a form of proof the court must take into account along with the other evidence."

So what Professor Maggs appears to be saying here is

that the oral explanation of the parties are a form of proof which the court must take into account along with the other evidence, is that correct?

- A. I wouldn't say so categorically because what does it mean, "the court must take into account"? Very often I can read in the judgments that the court does not take into account explanations of a party because these explanations contradict witness statements, other evidence and so on. Therefore, it depends what sense just we understand in these words.

But the key point here is that, of course, the law both now in Russia and in the Soviet times always released a party from criminal liability for lying and, therefore, the attitude of courts to parties' explanations is absolutely different in comparison with witness statements.

Moreover, the reason for releasing parties from criminal liability for lying to the court, and actually is reflected in some scholars' writings, is that it's clear for the court that parties have very strong personal interest in presenting their explanations and, therefore, it's practicably impossible to concede -- to evaluate them with the same attitude like witness statements and other evidence. This is the key point.

But, of course, to deprive parties from right to

give explanations, and to ignore them, would mean violation of law, and courts need to evaluate this type of evidence in connection with all the other evidence. But it's really a very special type of evidence.

- Q. I think in the last sentence of that rather long answer you rather agreed with what Professor Maggs says. You may choose slightly different words.

Professor Maggs is not saying you have to take them into account in the sense that you have to accept everything that they're saying. What he's saying is that you have to have regard to them, not that you have to believe them, do you follow?

- A. Yes, I do, simply very often it's like a cliché, just we can read in judgments that the court cannot take into account parties' explanation because it's not supported by other evidence, contradicts the following or the following evidence.

But from the point of view of just putting words in the right order, if you mean that to pay attention, taking into account, then of course the court must pay attention, but eventually may reject them.

- Q. Of course they may reject it, Mr Rozenberg, but they have to have regard to it. They may plainly reject it because they may think "This is not supported by anything and I don't believe it," but they have to have

regard to it, as Professor Maggs says. Do you agree with that?

A. Yes. I keep repeating that the court must not only regard them but evaluate them.

Q. Absolutely.

A. The court must evaluate parties' explanations, the court cannot ignore them.

Q. Then just looking on to what Professor Maggs also says, and this is in the last sentence of the paragraph entitled "Parties' Explanations", he says:

"Normally, the court will require other evidence, such as police accident reports, in addition to party explanations."

So what Professor Maggs in this book seems to be saying -- or let me put that slightly differently, what Professor Maggs in this book does not say is that the parties' explanation must always be supported by independent evidence. He says the court will normally require other evidence to support parties' explanation. Do you agree with that, Mr Rozenberg?

A. Well, when we speak about civil cases, I think I would generally agree because, strictly speaking, this is the parties' obligations to prove circumstances on which they base their claims and objections. Therefore, the court normally and usually requires, but if nothing is

submitted it's the parties' fault.

Q. Okay. Then if we turn over, back to Professor Maggs's work, if you go over to page 195 G(A)7/1.21/195, and you look at the top right-hand side of the page, you see the paragraph beginning:

"Consistent with the civil law tradition..."

He says this:

"Consistent with the civil law tradition, Russia has few strict exclusionary rules of evidence. Since exclusionary rules of evidence are necessary to protect inexperienced jurors from being swayed by unreliable evidence, the use of professional judges obviates the need for them. In general, then, all relevant evidence will be considered for whatever probative value it might have. A related principle shared by both common-law and civil law systems is the principle of 'free evaluation' of all the evidence. Thus, no particular kinds of evidence have any predetermined weight or hierarchy of value."

So he says that there is no kinds of evidence with "any predetermined weight or hierarchy of value". Then he continues:

"This principle has some legal and practical limits, however ... For example, failure to put an agreement in writing will in some cases deprive the parties of the

right to rely on witness testimony as to its content."

If you look at footnote 269 on the bottom right, you can see there's a reference there by Professor Maggs to Article 162.1, so it's clear he has that provision very much in mind.

A. Yes, I can see.

Q. What Professor Maggs then says, I'm looking at the next paragraph --

MRS JUSTICE GLOSTER: Sorry, what page are you on?

MR RABINOWITZ: If my Lady has page 195, we're in bundle G(A)7/1, tab 21.

MRS JUSTICE GLOSTER: I'm still in Professor Maggs' work, am I?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Yes, I am there. I was looking at the books and page numbers, I apologise.

MR RABINOWITZ: On the book page it's 411, my Lady.

MRS JUSTICE GLOSTER: No, I'm there, thank you. I've got it now.

MR RABINOWITZ: Right, we'll carry on then.

A. So far, mostly these are citations from the Civil Procedure Code and from the Civil Code.

Q. All right, let's just see what Professor Maggs then says, shall we?

So he's identified the fact that no kinds of

evidence have any predetermined weight or hierarchy of value, and the fact that there are some cases in which failure to put an agreement in writing will deprive the parties of being able to rely on witness testimony.

Then he carries on to say this:

"There are also intuitive tendencies towards an informal hierarchy of probative value that are perhaps universal. For example, documentary evidence tends to be favoured over testimony. Also, opinions of court-appointed experts may carry greater weight than witness testimony. In addition, party explanations are looked at with some skepticism. Similarly, while there is no prohibition against hearsay evidence, in general it is given little weight unless it is supported by other evidence."

So what he appears to be saying here, Mr Rozenberg, is this: first he is referring to what he calls intuitive tendencies which are perhaps universal -- I would say calls accurately -- intuitive tendencies which are perhaps universal. He is not referring to the rules of law but to the natural way in which judges assess evidence, correct?

- A. That's correct, and I would support Professor Maggs's view because the law requires an impartial attitude of the court to all evidence and states that no evidence

has predetermined value. In practice, of course, some evidence, especially expert reports, and especially in some areas like, for example, medical knowledge, of course has much greater value than other evidence.

Q. Indeed, I don't disagree with any of that.

The second thing Professor Maggs does is he gives us an example: the natural tendency to favour documentary evidence over testimony. Do you see that?

A. Yes, especially in commercial disputes.

Q. Indeed. And again, you would describe that as a universal tendency and I don't think anyone would disagree with that.

Then he says, the third thing that one can find Professor Maggs saying here is that: party explanations are looked at with some scepticism.

Do you see that?

A. Of course.

Q. So he doesn't say that they will automatically carry no weight unless corroborated by independent evidence, he says they are considered critically, does he not?

A. He cannot say that they have zero weight because it would contradict the law. The law recognises explanations of the parties as evidence and requires to evaluate them, but scepticism and minimal weight, what is reflected in our joint memorandum, is the reality.

Q. So you agree, in fact, with the way Professor Maggs puts it here, don't you?

A. Generally I agree.

Q. Is it nonetheless your view that the parties' explanation carries no weight unless corroborated, which is the way you've put it in your report?

A. Unless supported by other evidence.

Q. So you say it carries no weight unless corroborated, no weight at all?

A. If it's not supported by other evidence it's practically zero weight.

Q. Well, practically zero weight, so close to no weight, yes?

A. Well, theoretically, if a party gives explanations and withdraws the claim though it has weight, but these are extreme situations.

But generally, from the point of view of evaluation of evidence, if there is only a party explanation and no other evidence, if the party explanation is not supported by other evidence, then from the point of view of evaluation of evidence, yes, it's practically zero weight.

Q. Right. But you wouldn't suggest, would you, that it would be okay for the judge to disregard the parties' explanations? That would be inconsistent, would it not,

with the judge's duty to consider all evidence?

A. Absolutely correct. The judge cannot simply ignore. The judge would write that, after having considered evidence, the court comes to the conclusion that parties' explanation is not supported by any other evidence and therefore it cannot be in the usual way(?) taken into account or taken into consideration.

Q. All right. I think the dispute between us is a lot narrower than I had understood it to be.

Perhaps we can just see really whether there is anything left in this particular dispute, Mr Rozenberg. Can I put to you a hypothetical example and just get your reaction to this.

Let us suppose that I go to work for my uncle who lives alone on his farm. I'm going to give you the story and then ask you to comment. I don't really have an uncle with a farm but let us suppose that I did and I worked on that farm.

After a number of months the farm burns down and all records are lost, okay? I say that my uncle owes me money for the last three months when I have worked on his farm, I say we had a written agreement but it burnt in the fire. My uncle denies having ever met me -- not uncommon in my case. I say that it isn't true, and under the judge's interrogation my uncle admits that it

isn't true, and he accepts that I have spent the last three months working on his farm. But he still denies that he owes me any money, he says I was working for him for free.

Now, the judge is convinced that my uncle is still not telling me the truth but no other evidence can be found because the fire burnt anything (sic), and there are no other witnesses.

Do you say that this is a case in which the Russian court is incapable of doing justice?

- A. I wouldn't say. Of course it's a very interesting case, and thank you for giving such example, because the first question in Russia would be whether there was an employment agreement or a civil law agreement, whether you were working as employee in the company or if you were providing services on the basis of civil law contract, and different legal rules apply.

However, I understand that basically it was a civil law agreement, there were no other employees there, and he was not like a boss in the office, simply you were a contractor, something like that. If it was a civil law agreement, then after confession of your uncle who, as I understand, should be the defendant in this case, you brought a lawsuit against him, you didn't specify it but I understand that.

- Q. He is the defendant in this case.
- A. So then the party's explanation, I mean your claimant's explanation, is not the only evidence. Suddenly enough your explanation is supported by the confession of the defendant who agreed that you were working, and working for a long time, right?
- Q. Well, that's as far as it got: he denied that he owed me any money, Mr Rozenberg.
- A. No, but first he agreed that you were working for him?
- Q. He confessed, as you put it, to that, yes.
- A. Yes, it's very important, because then he should answer questions on what basis you were working a long time for free, and the question would be what kind of work you were performing.

And, of course, just judges in Russia and in the Soviet Union very often use -- were using, and are using, the wording like the explanation of the party, which contradicts explanation of the other party. It would be already regarding the evidence of your uncle. It doesn't look credible and appears to be something the defendant simply -- well, usually in Russia the word "invented" is used, but it means that the court does not trust him.

Therefore, in your story, it's not so simple and easy that in the absence of a written agreement it's

hopeless, then it will be necessary for your uncle to explain why a normal person agreed to work several months performing rather hard labour for free.

Q. And at the end of that rather long explanation, Mr Rozenberg, would you accept that the Russian court, with the judge who simply doesn't believe any explanation that the defendant, my uncle, gives, is able to do justice by coming to a conclusion, if this is the conclusion he is convinced is the case, that my uncle does owe me money, because there was a contract under which he had not paid me?

A. It's very difficult and practically impossible to imagine the situation you described, that it would be just absolutely no other evidence because probably, if it was a farm, there should be some records for the tax authorities, some --

Q. Yes, but they burnt down, Mr Rozenberg, that was the example I gave you. There was no evidence.

A. There is just a citation, I'm sorry, from a very popular Russian book that handwritings cannot be burnt, something always remains, there should be some other documents in the tax inspectorate, there should be some signs whether the production --

MRS JUSTICE GLOSTER: But stick to the hypothesis. What's your answer if you stick to Mr Rabinowitz's hypothesis?

A. If nothing remains, there are only explanations of the parties, and still the uncle could not explain why and on what basis a normal person, not mentally sick, preferred to work many months performing hard labour for free, then in my view chances are high that the judge probably would check what is the normal salary in this region for this type of work, and would probably award you some monetary remuneration, because otherwise simply the party's explanation, I mean the defendant's story, looks absolutely incredible.

MR RABINOWITZ: All right. Thank you very much for that.

I think in the end we got to the result where you say the judge would do justice and would give the claimant his award.

Now, I want to change the facts --

A. I am sorry, of course I cannot guarantee, but that's what appears to me. The probability is high.

Q. I'm not asking you to guarantee anything, Mr Rozenberg, it was only a hypothetical example so it will never get tested.

MRS JUSTICE GLOSTER: Maybe the hypothesis should include the fact that the uncle had promised, or said he'd promised, the house to the nephew if he worked for free.

A. Ah, it would be different story.

MR RABINOWITZ: Then one would have an ambiguity.

But let's just go a little more slowly than that, shall we?

Let's consider the facts, that the facts are as follows, because I want to ask you about the degree of corroboration from supporting documents that you say is required, and I think, in light of what you said in answer to the previous question, I know what you will say.

So consider the facts as follows: once again I go to work for my uncle on his farm and we make a written agreement. Once again there is a fire and his business burns down and nearly all records are burnt. Okay? So this is getting closer to what you wanted to change my hypothetical example to be.

This time, however, I have bank accounts showing that my uncle has been paying me money for the past year, and that therefore undermines his story about me working for free. Presumably on those facts you would accept that the judge would be entitled to accept my explanation and grant my claim if he, the judge, was satisfied that I and not my uncle was telling the truth, given that the bank accounts corroborate my story and discredit his story?

- A. As far as I understand, in this case, simply additional evidence appeared.

Q. Yes. Do you --

A. Of course I would say that chances are high in this situation for you to win the case if just everything remains the same and noted parties are involved, then nothing else affects my previous conclusion.

Q. All right. Then can we change the facts a little bit further, just to bring it a little bit closer to the facts of this case. It's still very, very far away, but a bit closer.

Let us suppose that my uncle admits that he hired me and admits that he owes me money, what he disputes is how much money he owes me. In particular, I say that when he hired me he agreed to pay me 10 per cent of the profits of the farm, he disputes that and says I was only entitled to a fixed salary.

Let us suppose that my bank statements show irregular payments, in other words payments not consistent with a fixed salary being paid. So assume that the bank accounts corroborate my story, first, that I was not an unpaid worker and, secondly, that I was employed but not at a fixed salary.

On these facts, would you accept that the judge was entitled to accept my explanations and grant my claim if the judge was satisfied that I and not my uncle was telling the truth?

- A. Getting the truth, I have to check whether it was clear from the bank account that all the money was transferred directly by your uncle to your account.
- Q. Then let's assume that to be the case. We're talking about payments coming from my uncle and they were of irregular amounts.
- A. The uncle would be questioned by the judge and asked whether all the money he was transferring was only the salary or something else, and if something else, on what basis.

And if your uncle gives a credible story, in the absence of any other evidence, probably regarding amounts, the explanations of your uncle shall be taken into account because there is no other evidence.

However, if there is no explanation what else constituted these payments besides the salary, then probably chances are high that the court will share your view, your line.

- Q. Okay. Now I want to add just a further piece of supporting evidence. Let us suppose the documents are recovered from the fire showing the profits made by the farm, and let us suppose that the payments which my bank account show my uncle has made to me happen to correspond to 10 per cent of those profits, the very percentage I am claiming. Presumably you would accept

that that would be sufficient to allow the judge to decide the claim based on her inner conviction of the truth, having heard only from the parties and this being the only evidence?

- A. Again, the situation with the parties' explanation, as I said, is never simple. If there is only parties' explanation and nothing else, such explanation would fail, they have practically no legal value. If parties' explanation are supported at least by the other parties' explanation, like in the case with your uncle, and there is no other credible explanation of the facts, then chances are high that the court will take this as proven fact.

But in addition, if there are some documents, as I understand, which also confirm, and written evidence, as we read, has big importance in Russian courts, if in addition to your explanation, in other words, the court's judgment may look like statement that claimant's explanations are supported by -- partially by the defendant's explanations and also by the documents attached to the fire.

- Q. All right. I'm going to change one more fact here and then I'm going to leave this.

Let us suppose that I find a voicemail message on my mobile from my uncle, in other words a recording, and it

says, this is what the voicemail says:

"Well done for the hard work, it's been a good year, I'm sure you will enjoy your share of the profit."

Presumably that also would be sufficient to allow the judge to decide the claim based just on that, and having heard from the witnesses, one of whom, me, he believes, and he doesn't believe my uncle, yes?

A. I'm sorry, you deserve some share of the profit, but the numbers would be indicated.

Q. Well, we're adding that to the evidence I've just referred to earlier where the bank account details show that my uncle has been paying me an amount which corresponds to 10 per cent of the profits.

A. It looks like you have a winning case.

Q. A slam-dunker.

A. Just one last question: I understand from the very beginning that the respondent, ie your uncle, never denied that the agreement in writing just was destroyed in fire, right?

Q. He did not dispute that.

A. He did not dispute it. Well, then just a situation where apparently there was no violation of law, all requirements of law were observed, the work was performed, and just from the record it looks like the uncle was satisfied, and there is no contradiction, no

contradicting evidence, then your chances are very high, I would say.

- Q. Just to sum up this topic I'm going to suggest some conclusions and you can tell me whether you agree or disagree.

First, the supporting evidence that you say is necessary to corroborate a party's explanation need not expressly confirm every disputed fact?

- A. Need not; I said I think that party's explanation always shall be supported by something, at least, as in your example, by the other party's explanation, but without such support just it will fail.

- Q. Yes, but it doesn't need to confirm every disputed fact? None of the further pieces of evidence which I referred to in the examples expressly confirmed that I was hired on terms entitling me to 10 per cent of the profit of the farm, and yet each, I think you accept, was sufficient to allow the judge lawfully to decide the claim in my favour?

- A. Yes, but we spoke about the decision either in your favour or a possibility to dismiss the claim.

But you mentioned every fact; usually courts are not obliged to analyse every fact if the case may be resolved without giving evaluation to every fact. The most important facts must be evaluated.

- Q. Secondly, the oral form of the agreements does not prevent a party from seeking to establish those agreements by a combination of his own explanation, the other party's evidence and admissions, and documentary or physical evidence including tape recordings? Do you agree?
- A. That's what in general the law states.
- Q. Third, the judge is required to evaluate all of this evidence separately and together as a whole, and using his or her own inner conviction, based on a comprehensive, full, objective and first-hand study of the evidence available in the case, and if the judge is satisfied that an oral agreement was made, then the judge is entitled to find that as a fact, correct?
- A. Yes, I think usually the key words, "in accordance with the law", are used, but it's correct.
- Q. Fourth, Article 162.1 does not exclude the oral explanations of the parties or documentary or physical evidence, it only excludes witness testimony, and that only means the sworn evidence of non-parties; I think you've agreed with that already?
- A. Yes, yes, we agreed.
- Q. And fifth, Article 162.1 does not render an oral contract invalid, it simply excludes one form of proof, it restricts the range of evidence that may be admitted

in a Russian court, correct?

- A. Just oral contract may be invalid in some instances clearly indicated in the law, like for an economic transaction, for example. But in general it's correct.
- Q. Thank you. And sixth, Article 161 is a substantive rule which has only a limited procedural effect, correct?
- A. I would agree it's not quite clear for me why only limited to some procedural effect, that's correct.
- Q. All right, the procedural effect that we've been discussing.
- A. Yes.
- Q. Thank you very much.

All right, I think we can leave that topic and go on to another of the grounds that you identify for saying that the 1995 agreement was invalid or ineffective or incomplete, and that's intention to create legal relations.

Can we see what you say about this if we go to bundle G(A)3/1 at tab 2 where we have your fourth report, if you go to page 148 of that G(A)3/1.02/148.

Now, before we look at what you say here, Mr Rozenberg, I just want to be clear about this. My focus at this stage is on what you say about the question whether the parties intended their agreement to be legally binding. Of course, there is some overlap

with other topics, such as the topic we've just looked at, namely proof of oral agreements, and the topic we'll come to next, namely the certainty of the contract, but at this stage I am just on the question of whether the agreement was intended to be a legally binding agreement. Do you follow?

A. Yes, that's very important.

Q. Presumably you also understand that the position of Mr Berezovsky on this issue is that this is an issue in which your opinions and indeed Russian law are wholly irrelevant because the question whether the parties intended their agreement to be legally binding is a question of fact to be decided by my Lady in accordance with the ordinary English rules of evidence and proof. Do you understand that that's Mr Berezovsky's position?

A. Yes, that's clear.

Q. The lawyers for Mr Abramovich have a different position, as I understand it, and that is why I need to ask you some questions about it, okay?

A. I understand.

Q. Now, just looking, if you would, Mr Rozenberg, at paragraph 275, in paragraph 275, and I'm picking it up in the middle of this paragraph, page 148 of bundle 3/1 behind tab 2 G(A)3/1.02/148, you say:

"The limited consensus of the parties alleged in relation to certain projects, on the Claimant's case, fell far short of establishing a sufficiently precise, binding agreement. The alleged agreement is hopelessly vague and imprecise. I am strongly of the view that a Russian court would not enforce it and would not regard it as having been intended by the parties to create legally binding obligations."

Then in paragraph 276, you say this in the first sentence:

"First, the vague nature of the parties' purported obligations suggests a complete absence of objective intention to enter into a legally binding contract."

Then just looking at the last sentence of paragraph 276, you say:

"Reasonable commercial parties would not intend to be legally bound by a vague obligation to 'coordinate contacts' or 'raise funds' (as the Claimant alleges) because it is too difficult to give objective meaning to these activities."

Then just paragraph 7 (sic) if I may, you say here:

"Clearly, the purported obligations of Mr Berezovsky and Mr Patarkatsishvili could not have been enforced through the Russian judicial system; the court could not bind Mr Berezovsky to use his 'connections' to ensure

privatisation of Sibneft for his own benefit through the issuance of the August Decree or oblige Mr Patarkatsishvili to invoke his business contacts to achieve the agreed goal. It is impossible to determine an objective standard by which the performance of such obligations could be measured or damages for any non-performance assessed."

Now, in these paragraphs, Mr Rozenberg, you seem to be drawing two conclusions. Your first conclusion is that the 1995 agreement was too vague and incomplete to be a binding agreement, correct?

A. Yes.

Q. And your second conclusion is that because the 1995 agreement was, you say, vague and incomplete, it follows, you say, that the parties did not intend the agreement to be legally binding, correct?

A. Yes.

Q. Can I ask you this, does your reasoning apply in reverse? If the agreement was sufficiently precise and complete to be a binding contract and if it was in writing, would it follow that the parties did intend their agreement to be legally binding?

A. If it's in writing specifically precise and comprehensive, then of course I leave aside the questions of validity of certain provisions. But it

would appear that there is a sufficient basis for a conclusion that the party really had intention to be legally bound by this agreement.

- Q. So you do say that your reasoning applies in reverse?
- A. If the agreement is in writing and indicates in details parties' rights and obligations, yes, there is no basis for a conclusion that the participants of such agreement had any other goal rather than to enter into legally binding agreement.
- Q. So it follows then, doesn't it, that your second conclusion about whether or not the parties intended their agreement to be legally binding actually adds nothing to your first conclusion? If the agreement is too vague and incomplete to be a binding agreement, then why does it matter whether the parties intended their agreement to be binding? Either way the agreement will fail, do you agree?
- A. It's not quite clear for me because, usually, if parties prefer to conclude not an agreement but something what we call protocol of intent or letter of intent, they're satisfied by very vague and general wording of the planned actions and of the planned obligations. If they want to have the agreement legally binding, they prepare just something what can be legally enforced through the Russian judicial system as a rule.

Therefore, just the fact that there was no such agreement which could be enforced in Russian legal system brought me to conclusion that parties never wanted to be legally bound.

Q. And in that sense, Mr Rozenberg, your second point adds nothing because your second point is entirely predicated on your first point. In other words, you are saying, "I think that the agreement was vague and incomplete"; and because of that you're saying, "That tells me that there was no intention to create legal relations", correct?

A. Not precise, incomplete in the oral form. These facts, in my view, if considered by a court, would bring the court to a conclusion that there was no intention to create a legally binding agreement.

MRS JUSTICE GLOSTER: Can I just get away, for a moment, from your views as to the application of the principle to the facts and just concentrate on the principles. Is there a separate requirement under Russian law of an intention to create legal relations in order for there to be a binding contract?

A. Just the law is rather short. The law requires that the parties should agree on all essential terms in the form prescribed by law and this should be the basis for the conclusion that parties intended or that the will of the

parties was directed at conclusion of legally binding agreement.

MRS JUSTICE GLOSTER: But if -- again, going back to the agreement for the car. I agree to sell you a car and we agree the price and all the relevant terms, we shake hands on it but I say to you, "This won't be a binding contract, it's just binding in honour only", and you say, "Yes, I agree". There is no intention as a matter of English law to create legal relations there. Would Russian law take the same view?

A. If as you said "in honour only" and they agreed that it will be called even in Russia so-called gentleman's agreement. Gentleman's agreement, it's not a legally binding agreement. In honour only, usually translated --

MRS JUSTICE GLOSTER: So as a matter of law your evidence is that there is an additional requirement that there should be an intention to create legal relations?

A. The will of the parties should be directed, yes.

MRS JUSTICE GLOSTER: Likewise, if there is an agreement for the sale of a car, but on the shake of hands it's said, "Well, this is subject to a written contract", again that would be a situation in which there was no contract because there was no intention to create binding legal relations at that stage?

A. At that stage, absolutely correct, but with the plan to do it in the written form later.

MRS JUSTICE GLOSTER: Yes, but there wouldn't be a binding contract at that stage?

A. Not yet. Not yet.

MR RABINOWITZ: Can we just have a look at what you say at paragraph 278 of your report and I'm looking at the first sentence here G(A)3/1.02/149. You say:

"Secondly, had commercial businessmen intended that an agreement of this scale and significance be legally binding, they would have put it in writing."

Then you give your reasons for this conclusion. You say in the second sentence:

"Whether or not this was a mandatory requirement of Russian law (as I discuss below at paragraphs 340-343), the fact that they did not [put it in writing] indicates that they intended to rely on informal arrangements rather than on legal enforcement."

Then you say:

"Mr Rachkov himself states that '[r]elationships in Russia are often based on trust, and it is often thought that putting agreements in writing would undermine that trust, or suggest that such trust does not exist'. The difference between an informal understanding and a legally binding agreement is well known to Russian

commercial businessmen."

Then you say in the last sentence:

"Thus, the fact that the 1995 Agreement, which was purportedly concluded to establish multi-million dollar wealth between three individuals was concluded without regard to the basic requirement of Russian law to have significant agreements between individuals in writing, serves as clear evidence that the parties did not intend this agreement to be legally binding."

There is, I suggest, something of a contrast between your second sentence and your final sentence here, Mr Rozenberg. You see, in the second sentence, you seem to be saying that your opinion applies regardless of whether writing was a mandatory requirement of Russian law, correct? Do you see that? You say:

"Whether or not this was a mandatory requirement of Russian law...?"

A. Yes, yes, I can see it.

Q. If you look at the last sentence of this paragraph, you do appear to rely on what you say is the legal requirement to use written form. You rely on what you say is the basic legal requirement to have the agreement in writing in support of your opinion that the use of oral form is clear evidence, as you put it, that the parties did not intend the agreement to be legally

binding. Do you follow?

A. Yes.

Q. Can I just make sure I understand what you are saying.

Do you mean to suggest, as the second sentence implies, that even if there was not a mandatory requirement of Russian law that the agreement be in writing, so even if Mr Berezovsky could establish his agreement in a Russian court and even if that agreement was sufficiently precise and complete to be a binding contract, even then nonetheless it remains your opinion that the use of oral form indicates that the agreement was not intended to be binding?

A. Frankly, as far as I remember, when I was writing it, I was concerned that it was not absolutely clear whether it could be considered a foreign economic transaction because of Mr Patarkatsishvili's Georgian citizenship and in this case it's clearly violating mandatory rules of Russian law. But even if it's not so, still my view was that the decision to ignore the mandatory rule of Russian law, the consequences of violating of which were not as serious as with foreign economic transaction, still were bringing me to a conclusion that there was no serious intention. That's why I wrote "whether or not it violates mandatory requirements", because at that moment still I thought that there is a chance that it

violates mandatory requirements which will bring to more painful consequences, it will destroy the agreement in any event.

However, the meaning I think is clear that whether this violation of mandatory requirement is the deal-killer or it's still possible somehow to survive the fact that such extremely important contract was, if not planned to be in writing, demonstrates that there was no intention to be legally bound by this agreement to conclude a legally enforceable contract.

MRS JUSTICE GLOSTER: Mr Rabinowitz, it may help you to cut this down, what I'm interested in at the end of the day, without disrespect to either expert, are the relevant principles of law.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: At the end of the day, although -- their conclusions as to the applications of those principles to the facts of their case and their views as to whether on the evidence here there was or was not an agreement, with respect to both experts, is irrelevant.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: What I'm interested in is what are the relevant principles of law which I have to apply or may have to apply.

MR RABINOWITZ: In which case, as your Ladyship knows, that

is our approach. I shall skip the questions relating to --

MRS JUSTICE GLOSTER: So don't feel you have to challenge --

MR RABINOWITZ: No, I'm not going to.

MRS JUSTICE GLOSTER: -- his conclusions of applying the law to the facts.

MR RABINOWITZ: I am grateful for that, my Lady.

MRS JUSTICE GLOSTER: I'll take the break now. Ten minutes.

You mustn't discuss your evidence with anybody during the break.

(3.14 am)

(A short break)

(3.25 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: I would like to turn to the next reason why you say the 1995 agreement was not valid or binding, and that concerns the topic of whether the 1995 agreement was sufficiently precise on all essential terms to be a concluded partnership contract.

And again, I want to start by making sure that we are clear on the concept of essential terms and default terms and the like. We'll come later to how these general concepts apply to partnership contracts in particular.

Can I ask you, again, to go in bundle G(A)6/1, the

joint memorandum, to page 3, paragraph 7.

G(A)6/1.01/3.

At page 3, paragraph 7, we have what you and Dr Rachkov have agreed about, and in subparagraph 1 you agree that:

"Part 1 of the Civil Code (Articles 1-453) came into force on 1 January 1995..."

That's correct, isn't it?

A. Yes, of course.

Q. Then you say in subparagraph 2 that:

"Part 2 of the Civil Code (Articles 454-1109) came into force on 1 March 1996..."

So a helpful thing to remember when we are considering the 1995 agreement is that articles numbered 453 or less of the Civil Code applied in 1995, while articles numbered 454 or more did not apply in 1995 but only came into force later, correct?

A. Yes, that's correct.

Q. If you then go in the joint memorandum to page 6, paragraph 17 of the joint memorandum G(A)6/1.01/6.

A. Yes.

Q. We have here the heading "Terms of a contract" and in subparagraph 1 you agree that:

"The terms of [the] contract are determined by agreement of the parties ..."

In subparagraph 2 you agree that:

"Any contract is subject to mandatory rules of law which apply irrespective of the agreement of the parties ..."

And in subparagraph 3 you agree that:

"The contract may also be governed by 'default rules' which are rules specified by law and which apply unless the parties exclude their application by agreement ..."

Then over the page on top of page 7, you identify:

"Two examples of default rules which you say are Article 314.2 (time for performance) and Article 424.3 (price)."

You refer in this paragraph to a number of articles of the Civil Code. Can we just turn those articles up so that we're quite clear what a default rule looks like.

If you go to bundle G(A)4/4, tab 2, page 65 is where you get the beginning of Professor Maggs's translation, it has both languages.

If you go to page 54 G(A)4/4.02/54, you have Article 314, do you have that?

A. Yes, I do.

Q. Headed "Time period for Performance of an Obligation".

Subparagraph 1 says:

"If an obligation provides for or makes possible the determination of the day of its performance or the period of time in the course of which it must be performed, the obligation is subject to performance at this day, or accordingly, at any time within the limits of such period of time."

So where the agreement provides for or makes it possible to determine the day of performance of the obligation in question, that is when the obligation must be performed by? That's right, isn't it?

A. Yes, that's correct.

Q. And then subparagraph 2 provides as follows:

"In cases when an obligation does not provide a time period for its performance and does not contain terms making possible the determination of this time period, it must be performed in a reasonable time period after the origin of the obligation."

So subparagraph 2 applies where the agreement doesn't provide, or make it possible to determine the time for the period of performance. And what it says is then the obligation must be performed within a reasonable period of time; do you agree?

A. Yes, absolutely.

Q. Then if we go to page 59, we can see Article 424, which is the other default provision that you and Dr Rachkov

referred to G(A)4/4.02/59. This one is headed "Price", at the top of the right-hand side, do you see that?

A. Yes, "Price".

Q. And then subparagraph 1 provides:

"Performance of a contract is paid for at a price established by [the] agreement of the parties."

Then subparagraph 3, if we can look at that:

"In cases when in a compensated contract a price is not provided and may not be determined proceeding from the terms of the contract, performance of the contract must be paid for at the price that, under comparable conditions, usually is taken for analogous goods, work, or services."

So what that means is that where the agreement does not provide the price, or make it possible to determine the price, performance is to be paid for at the price usually payable under comparable conditions for analogous goods, works or services, correct?

A. Yes.

Q. And those are two examples of default rules, are they not?

A. Yes.

Q. I think they're sometimes called dispositive rules?

A. Correct, dispositive, correct.

Q. Don't put Professor Maggs's translation away, but if you can just go back to the joint memo, page 7, under "Terms of a contract", I just want to look with you at subparagraph 4.

What you agree there is this: you agree that if a term of a contract is not established by the parties or by a default rule, the relevant term may be determined by a rule of commercial custom applicable to the relations of the parties. Correct?

A. Yes.

Q. So we've looked at paragraph 17 of the joint memorandum and that has told us in general terms, just looking at the subparagraphs in turn, first that the parties may agree the terms of the contract, that's subparagraph 1, yes?

A. Sorry, what paragraph?

Q. Paragraph 17 of the joint memo.

A. Yes, and subparagraph?

Q. 17.1 tells us that the parties may agree the terms of the contract?

A. "The terms of a contract are determined by agreement of the parties (Article 421.4)."

Q. So that's telling you that the parties may agree the terms of the contract, correct?

A. Of course.

Q. Then subparagraph 2 tells us that the contract may also be subject to mandatory rules, correct?

A. Yes.

Q. Subparagraph 3 tells us that the terms of the contract may also be defined by default rules, yes?

A. Yes.

Q. And also, this is subparagraph 4, that in some cases terms may be determined by rules of commercial custom, correct?

A. Yes.

Q. And then if we look, just so we can see what is common ground, at paragraph 18 of the joint memo, this is headed "Essential terms" as you see. What you agree in subparagraph 1 is this:

"Under Article 432, if the parties do not reach agreement on all the essential terms for their contract, that contract is... 'non-concluded'. It has not been formed. An essential term is therefore a necessary term, in that the parties must reach an agreement in order to give rise to a contract."

So what this is saying, you'll tell me if this is right, is that if a term is truly an essential term then it must be agreed before there can be a contract, correct?

A. Yes.

Q. Then in subparagraph 2 you agree that:

"Where a term, which is not essential, has not been agreed, that does not prevent an agreement from being concluded."

A. Correct.

Q. That means what it says.

A. Correct, correct.

Q. If it's not essential it doesn't matter if it hasn't been concluded, correct?

A. Generally, at least it doesn't prevent an agreement from being concluded. Whether it doesn't matter at all, that's maybe too strongly said.

Q. No, that's a very fair comment.

So it is important in any analysis to identify very clearly what terms are essential terms and what terms are not essential terms if what you want to determine is whether a contract has been concluded, correct?

A. Yes.

Q. And then in subparagraph 3, you also agree with Dr Rachkov that:

"In accordance with the last sentence of Article 432, there are three types of essential terms which must be agreed before there can be a contract."

First predmet, which is a subject or subject matter, I think it's sometimes called the object of the contract

as well in some translations, correct?

A. Yes, sometimes.

Q. Then:

"Terms identified by law as essential for contracts of the given type, or which are necessary having regard to the nature of the contract."

And then:

"Any terms which either party declares must be agreed in a contract."

Then in subparagraph 4 you agree:

"In order to be an essential term, a term must qualify under one of these three types. However, the terms that may be essential ([that is] the precise composition of essential terms) may be different for different types of contract."

And that makes sense, yes?

So in order to be an essential term, it has to be one of those three types. And I think what you're saying is that for different types of contract, different terms may qualify. Correct?

A. Yes.

Q. Okay. Now, can we just look at Article 432 of the Civil Code to be clear how it describes the three types of essential terms, and if you have G(A)4/4, tab 2, can you go to page 63 of that, please. G(A)4/4.02/63.

And on the right-hand side of the page, you have chapter 28, "Conclusion of a Contract", and then you have Article 432. Do you have that?

A. Yes, I do.

Q. Thank you. Then looking at subparagraph 1 and the second paragraph of this, this tells us what the essential terms are. It says, do you see that, subparagraph 1, but we go to the second paragraph there:

"The essential terms are those on the subject of the contract, terms that are named in a statute or other legal acts as essential or necessary for contracts of the given type, and also all those terms with respect to which by declaration of one of the parties an agreement must be reached."

And that reflects, I think, what we saw in the joint memo, yes?

A. Yes.

Q. Now, can we just look at what you say about these three types of essential terms in your reports. Perhaps we can look at paragraph 112 of your fourth report which you can find at bundle G(A)3/1 at tab 2, page 101 G(A)3/1.02/101.

So if you're there, paragraph 112, page 101:

"The first type of essential term is the 'subject matter' of the contract (in my view [this is you saying

this] this is the most appropriate translation of predmet). This refers to the nature of the obligation that each party is agreeing to perform, and the object at which such obligations are directed. So, in a simple sale of goods contract, the subject-matter of the contract will be the delivery of goods by one party, and the acceptance of and payment for those goods by the other party with the aim being to transfer money for goods."

So is this right: the subject matter of the contract is really a description of the nature of the obligation?

A. Yes.

Q. If you want to agree a contract for the sale of goods, then one party must agree to sell goods and the other party must agree to purchase and pay for those goods, correct?

A. Correct.

Q. Then if you go over the page to paragraph 114, you deal here with the second type of essential term, and you say, paragraph 114:

"The second type of essential term includes those terms that have been identified in the... Civil Code or other legal act as being necessary for a particular type of contract. I agree with Mr Rachkov that it is implicit in Article 432 that this second type of

essential terms may be identified not only from legislation but also from the nature of the contract."

And so what effectively you're saying about the second type of essential term is that this applies where there is legislation saying that a certain term is essential for a particular type of contract, or where it is obvious from the nature of the contract that this is the case, correct?

A. Yes.

Q. Then in paragraph 115 you say as follows, I'm just picking up in the second sentence:

"I note that Mr Rachkov relies on a statement made in the textbook, edited by Professor Sukhanov in support of the proposition that most contracts only have one essential term -- the subject-matter of the contract... This, of course, is true; but it is because the vast majority of civil contracts are very simple, and impose only one clearly definable obligation on each party."

Just pausing there, I think, just looking at this, therefore you accept that for the vast majority of civil contracts there are no essential terms other than the subject, that's what you say here, is it not?

A. Yes.

Q. Then just seeing what you carry on saying in the same paragraph:

"That is not to say, as I think Mr Rachkov seeks to imply, that there are very few other types of essential term applicable to more complex contracts, such as the one alleged in the present case."

We'll come in due course to look at partnership contracts and we'll see if there's anything terribly complex about them. I just want to stay with the general topic of essential terms for the moment, okay?

If you then go back to page 98, paragraph 105 of your report G(A)3/1.02/98.

A. Page 98?

Q. Page 98, paragraph 105. Just back a few pages. At paragraph 105 you say this:

"I agree with Mr Rachkov that an 'essential' term is, (as the name suggests) a necessary term. Default terms are the terms which fill a gap in a contract with respect to certain terms which could be agreed by the parties. Such default terms in legal literature are recognised as essential [terms]..."

You then quote a passage by Professor Vitryanskiy. Professor Vitryanskiy, is this right, is the deputy chairman of the Supreme Arbitrazh Court?

A. Yes.

Q. And the Supreme Arbitrazh Court is the top Russian Commercial Court, is that right?

A. That's correct.

Q. And as well as being a very senior judge, Professor Vitryanskiy is also a leading contract law scholar and a member of the group of senior jurists who wrote and designed the Civil Code, correct?

A. Yes, this is correct.

Q. Perhaps we can look at Professor Vitryanskiy's article. If you go to bundle G(A)2/3 at tab 40.

You're looking for page 21 in the English G(A)2/3.40/21, that's where the English starts.

I'm going to ask you to go to page 27 G(A)2/3.40/27, and if you have page 27, Mr Rozenberg, I think you do?

A. Yes.

Q. Do you see that towards the top of page 27 in the English, Professor Vitryanskiy says this:

"The second group of material terms --"

I think he uses "material terms" in the way that we're using "essential terms", yes?

A. "Material" and "essential" sometimes are two words used for translation of (Russian words). Essential terms, yes, material, of substance, essential.

Q. Thank you for that.

"The second group of material terms includes contract terms specified by a law or other legal acts as

being essential for contracts of the type in question."

We've seen that.

In the next paragraph, do you see he says:

"In numerous cases the Civil Code, in regulating various types of contract, specifies a range of essential terms for such contracts."

Again I think that reflects what we have already discussed.

Just going down to -- do you see the paragraph "Particularly noteworthy"?

A. Yes.

Q. "Particularly noteworthy are cases in which the legislator refers to essential terms of a contract and at the same time prescribes [dispositive] rules in the case of absence of the relevant clauses from the text of the contract."

What Professor Vitryanskiy is saying is that sometimes the legislature indicates an essential term for a contract, but at the same time it provides a default rule or dispositive rule which will apply where the term in question is missing from the text of the contract. Do you agree?

A. Yes, I agree.

Q. Thank you.

Then in the next paragraph, Professor Vitryanskiy

gives an example. He says:

"Thus under 339 ... of the Civil Code a pledge agreement must provide [not only] for the object of the pledge; its valuation; the substance, extent and [period of] performance of the obligation to be secured by the pledge [but] also an indication as to which of the parties is holding the pledged [parties]. However, in the section 3 of chapter 23 of the Civil Code we find [dispositive] rules which specify two of the three essential terms of a pledge: a rule to the effect that, unless a contract has prescribed otherwise, pledged property is to remain with the pledgor ... and a rule to the effect that, unless the contract has prescribed otherwise, a pledge secures a claim to the extent of its scope at the time it is granted and in particular interest, penalty, compensation for losses caused by delayed performance, and also compensation for necessary expenses of the pledge for maintenance of a pledged item and expenses concerning execution."

So what Professor Vitryanskiy is saying, is this right, is that although Article 339 provides that a pledge agreement must contain various essential terms, the Civil Code itself provides default rules covering some of those terms, correct?

A. Yes, I agree.

- Q. So just because the Civil Code describes a particular term in a way that makes it sound essential, it does not follow, does it, that the term is truly essential in the sense that its absence will mean the invalidity of the agreement, and that is because there may be a default rule which applies even if the parties do not reach agreement on that term. Correct?
- A. This you are citing?
- Q. No, I'm putting something to you.
- A. Because it looks like just you are going too far, saying that if there are terms which are default rules and still not agreed by the parties, am I correct?
- Q. No, you're going much too far. We haven't got anywhere near there yet, Mr Rozenberg.
- A. Maybe it was a very long question. I didn't find it in the text.
- Q. Let me put the question to you. I think you were trying to see whether -- you thought I was quoting Professor Vitryanskiy.
- A. Right.
- Q. What I was suggesting to you arises from what Professor Vitryanskiy is saying is this: just because the Civil Code describes a particular term in a way that makes it sound essential, it does not follow that the term really is truly essential in the sense that its

absence will mean the invalidity of the agreement, and that is because there may be a default rule which applies even if the parties do not reach agreement on that term?

- A. My general view is that if there is a term which either has to be agreed by the parties, or in the absence of agreement shall be understood according to the default rule, then in the absence of the agreement of the parties, and in the absence of their concern to apply the default rule, the absence of this term will bring the agreement to the situation when it will be non-concluded.

In other words, this term which, as you said, can be actually filled out by the default rule still will be essential. And by the way, Professor Vitryanskiy and Professor Braginskiy, Braginskiy wrote about such situation. I have one of the paragraphs in my report about it.

- Q. All right. Let's just take this a little more slowly if we can, Mr Rozenberg.

We're positing a situation in which there is an essential term, for example the time for performance, and for whatever reason one party writes a letter saying "I want this done" or "I would like this done in three weeks", the other party says "I would like this done in

four weeks", and they never managed to come together and make an agreement about that. In those circumstances, you have a default rule which says:

"In the absence of agreement, a reasonable time."

Correct?

- A. And nobody objects, or it's unclear?
- Q. Let's assume the object is sorted out, we're just talking about that particular term, about the time for performance.
- A. Because the key point here is the following: if there are no objections and this term is filled out as default rule by legislator, no problem. But if still parties did not agree the default rule will resolve the question, then it will be an essential term. That's what Vitryanskiy and Braginskiy wrote.
- Q. Let's just be clear about what you're saying. Are you saying that you have to have an express agreement by the parties that the default rule will apply before it will apply. Is that your evidence?
- A. You came from another end --
- Q. Indeed.
- A. -- because the situation here is the following. If the parties agreed that, in the absence of the agreement, the default rule will work, it's fine, and we can call this term nonessential. However, if the parties

disagreed, and one of them or all of them insist that some deviation from the default rule should take place and still there is no agreement, then this term will be essential.

Q. Let's just break that down, Mr Rozenberg, because you've posited two different situations there. You start off by saying that if the parties agreed that in the absence of agreement the default rule will work, it's fine.

Are you suggesting that what you need before a default rule will apply is an agreement by the parties that it will apply?

A. Actually the agreement is concluded when there is agreement on all essential terms, and if the parties object against the default rule, then this term becoming essential precludes the agreement from being concluded.

From this point of view, we can see that before the agreement is concluded it should be clear that parties do not -- at least do not object against the default rule.

Q. You see, Mr Rozenberg, you're jumping in a sense to the third issue. What you're effectively saying is that where parties insist -- one of the parties insist that you reach an agreement, for example on time, then that will be an essential term and you cannot have the default provision, okay? Because that's what the third

default -- sorry, the third essential term involves, one of the parties saying, expressly I suggest, that we have to make an agreement about time. Therefore, even if that weren't otherwise an essential term, it would become an essential term.

But what I'm positing with you is the situation in which neither party insists on that agreement, they try and reach agreement about a particular provision but they fail to do so in circumstances where there's a default provision. In those circumstances the default rule will apply, correct?

A. If I understood you correctly, that the parties did not reach agreement, the default rule applies and there are no objections from the parties against application of the default rule. Am I right?

Q. Correct.

MRS JUSTICE GLOSTER: Can we have a simple example, Mr Rozenberg, of where you say there wouldn't be an agreement and where you say there would be, because the default rules apply?

A. Yes, that's what I'm saying actually. Vitryanskiy and Braginskiy said the situation when there is no agreement between the parties and the default rule --

MRS JUSTICE GLOSTER: Go back to the example of a car, the sale of a car or the sale of a house or something. Give

me an example, a concrete example.

- A. With the house, for example, just regarding the price, of course it's usually easier not with the house but with some goods --

MRS JUSTICE GLOSTER: Yes, let's do goods, goods is easiest.

- A. -- which are sold in this region at the time, at the price which prevails at this period of time.

If there is by default rule just the price is established, and there are no objections of the parties against such price, or if you speak about the time what is indicated, counsel read the provision of the Civil Code just five minutes ago with time as indicated in the Civil Code, and there are no objections of parties, then this term is not essential and the agreement will be concluded.

MR RABINOWITZ: Perhaps I can put an example to you,

Mr Rozenberg, and you can indicate your view about this.

Let's take the situation of the car. I want to sell you a car and I would like to sell it with delivery to take place next week. In fact, you would rather delivery took place in a month because you don't have the money, okay? So I say, "Here's my car, this is the price, I would like to transfer it to you next week." And you say, "Well, actually, I'm not happy about next week, I want next month."

Now, we know that the essential term -- there is an essential term of time, time for performance, yes? But we haven't been able to agree that essential term of time because I would like a week, you would like a month, correct?

A. Correct.

Q. In those circumstances, do you say the default rule applies or not? Let's just be clear what the default rule says, the default rule says performance within a reasonable time, correct?

A. Correct.

Q. All right. Now, in the situation I've given you, do you say that the default rule applies or that it doesn't apply?

Just say whether it applies or not and then give your explanation if you would.

A. If the default rule is indicated on the Civil Code, and there is (inaudible) time, and there are just following provisions, does not meet objections from the parties, the agreement is concluded, and there is no problem that initially they didn't reach any agreement.

MRS JUSTICE GLOSTER: But here it could be said there would be an objection from one of the parties because the purchaser of the car doesn't want the car delivered within a reasonable time, he wants the car delivered in

a month, which, let's say objectively, is not a reasonable time. Had the parties thereby, by implication, agreed that the default rules would not apply?

- A. My understanding of counsel was that initially the purchaser who didn't have money raised objection, but eventually agreed with application of default rule.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: No. Can I just --

MRS JUSTICE GLOSTER: Put it again, will you?

MR RABINOWITZ: -- with Mr Rozenberg suggest this.

The third default rule, Mr Rozenberg, is a rule which says that you'll have a default rule -- sorry, the essential term is a term -- you see this if you go in paragraph 18 of the joint memo -- is a term which either party declares must be agreed in a contract, correct?

A. Correct.

Q. So the party actually says, "This has to be agreed before we have a contract. I insist that we agree this term, otherwise there is no deal," correct?

A. Yes.

Q. And so in the scenario that we've been discussing, where I say, "Well I would like it to be a month," or a week, I think I had it, and you had it a month, unless we're in a situation where either of us is saying, "No,

I insist that it be in a week or we don't have a contract," we're not dealing with a third default term, are we?

A. If nobody insists, then the default rule may apply.

Q. Thank you.

MRS JUSTICE GLOSTER: But if they do insist --

A. If they do insist, and they do not agree with the application of default rule, the agreement is non-concluded, just because this term which becomes essential was not agreed. It was neither agreed between the parties nor replaced by the default rule.

MRS JUSTICE GLOSTER: But they don't have to specifically refer to the default rule in the example that's been given by Mr Rabinowitz.

A. Absolutely not.

MRS JUSTICE GLOSTER: He wants the car today, you say "I can only deliver it in a month's time," or "I can only pay for it in a month's time, I don't want delivery in a month's time," you don't have to mention the default rule for it to be disapplied?

A. Again, I am sorry, just -- my Lady, initially there are negotiations of an agreement, and during the negotiations, as I understand, they didn't reach an agreement. Then their proposal to have the default rule applied, either the proposal or the understanding that

the default rule will apply, did not meet any objections. Then the agreement will be concluded.

However, if a party which initially was insisting on something still objects against the default rule, or from the very beginning insists, as we used the word, insists on the other term, then the default rule cannot apply and therefore this essential term remains unagreed.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: What one needs in order to have your third essential term is that one party must insist that that term is agreed before there will be a contract, correct?

Let me put it differently. It has the ability to elevate a term which wouldn't be an essential term into an essential term if one party insists that there be an agreement about that term before he will make a contract?

- A. If there is a term on which one of the parties insists and still never agrees to have it in accordance with the will of the other party, there will be no agreement because this essential term will never be --
- Q. It becomes an essential term because he insists on an agreement about it?
- A. Of course. But since we mention the default rule, it means that at some stage there was a possibility to

apply the default rule. The parties actually at least either discussed or were ready to leave this clause silent, but if at the last moment still one of the parties objects against the application of the default rule, it makes the agreement non-concluded.

Q. You're just putting it in a slightly different way.

The fact that you have a negotiation where parties try and agree on a particular term but don't agree on a particular term, in other words, I would like the car to be red, you don't have a red car and would like it to be green, but I don't insist on it, that's probably not an occasion on which there would be an agreed default term.

The fact that I want something and don't get it doesn't make that an essential term. It is only if I say, "The only car I'm going to buy is a green car" that it becomes an essential term, correct?

A. Yes, correct.

Q. And the fact that in a negotiation I have said that is what I want, unless I've insisted upon that it does not make it an essential term, correct?

A. If you do not insist on the colour, it is not indicated in the law, it is not an essential term.

Q. All right.

I hope my Lady is a little the wiser for that.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then if we just go back to the Civil Code,  
you can --

MRS JUSTICE GLOSTER: Can you give me the reference, please?

MR RABINOWITZ: Sorry, I'm just going to try to put my --  
I'm not taking him to a particular reference. It's all  
in 4/4.02, my Lady, where --

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: Sorry, that's at bundle 4/4, tab 2, at  
page 63 G(A)4/4.02/63.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Probably the clearest place to get this is  
in the joint memo, paragraph 18.

I'm going to put to you again, Mr Rozenberg, what  
I've just put to you in the hope that having cleared  
away some of the confusions it will be clearer.

Just because the Civil Code describes a particular  
term in a way that makes it sound essential, it does not  
follow that that term is truly essential in the sense  
that its absence will mean the invalidity of the  
agreement, and that is because there may be a default  
rule which applies even if the parties do not reach  
agreement on that term?

A. In general, yes, default rule just replaces the  
agreement of the parties, strictly speaking.

Q. Very good, thank you for that.

Now, we were looking at Professor Vitryanskiy's article, G(A)2/3, tab 40, page 27 G(A)2/3.40/27, and we then come in this article to the passage that you quote in your report at paragraph 105.

Having given the example of a pledge agreement Professor Vitryanskiy says as follows, this is at page 27, just below halfway:

"This example confirms the notion that the essential terms of a contract must not be considered as terms, the absence of which from the text of [the] contract leads to the contract being deemed not to have been concluded, and also ... the existence of definable essential terms of the contract, [that is] essential terms which are specified by dispositive rules where they are absent from the text of a contract."

Okay?

Can we just look at what Professor Vitryanskiy appears to be saying here. He is saying, is he not, that essential terms must not be considered as terms, the absence of which, from the text of the contract, will lead to the contract being non-concluded, do you agree?

A. Absence will not lead because default exists.

Q. Because of the default terms, that's right.

Now, can we then look at what Professor Vitryanskiy says in the next sentence of the same paragraph on page 27. This is a passage on which you comment in your report and we'll look at what you say in a moment.

He says this:

"True it should be mentioned that in a number of cases the legislature has become excessively distracted in relation to individual types of contracts by formulating a list of essential terms without considering possible negative consequences: increasing the risk of specific contracts drawn up by the parties being deemed non-concluded by reason of the absence of an agreement on various contract terms which have been declared (often invalidly) to be essential."

So what Professor Vitryanskiy appears to be saying is that the legislature sometimes formulated a list of essential terms without considering the possible negative consequences of this, namely the increased risk that contracts will fail due to the absence of agreement on those terms.

That is what he is saying, is he not?

A. Yes.

Q. Then, in the next two paragraphs he gives an example from the world of leasing, and I don't think we need to be concerned with that.

Then in the next paragraph he goes back to dealing with the general position rather than the particular example of leasing. He says, and I'm just looking at the first sentence, it's on page 28:

"In our view, the only element which is indisputable and obvious in relation to rule making of this kind is the conclusion that when these provisions on the essential terms of a lease agreement were formulated, no consideration whatsoever was given to the possible consequences of their application."

He continues then:

"For surely, after all, the question of deeming a contract non-concluded because of the absence from that contract of some essential term is, as a rule, raised by a party to a contract who is acting in bad faith in response to entirely well-founded attempts by a party acting in good faith to compel the other party to fulfil his obligations in the necessary manner, or to apply the prescribed sanctions [to] him."

Would you agree that Professor Vitryanskiy's view, as reflected in this passage, is that the argument that the contract is not concluded is one that, as a rule, is raised by a party to a contract who is seeking in bad faith to resile from his agreement?

That is his view, is it not?

MRS JUSTICE GLOSTER: Why is that relevant to anything I've got to decide, that particular view?

MR RABINOWITZ: Because --

MRS JUSTICE GLOSTER: It may or may not be the case.

MR RABINOWITZ: Well it may or may not be, my Lady, but what there is in the literature, in Russian law literature, is a view that one shouldn't be overzealous to find essential terms, and that is going to be one of the issues that your Ladyship is going to have to decide.

Do you agree that that is Professor Vitryanskiy's view?

A. This is Professor Vitryanskiy's view based on Russian court practice. Very often defence is raised on the basis of an argument that agreement was not concluded.

Q. Just reading on, he then says:

"In this regard, any unjustified extension of the range of essential terms, or inclusion in that range of various secondary or purely technical terms (for example, in respect of a list of additional services, procedure for accounting of property on the balance sheet and so on) adversely affects the position of a party who is fulfilling his duty under the contract in good faith and does not foster stability of contractual relations."

In effect what Professor Vitryanskiy is saying, is

he not, Mr Rozenberg, is that one should be cautious before allowing a contract to fail on the grounds that essential terms were not agreed?

MRS JUSTICE GLOSTER: But that must be fact dependent, Mr Rabinowitz, in any law, in any system of law? Whether or not there's a contract and whether or not somebody is acting in bad faith, in asserting the existence of the contract or denying its existence, must be totally fact dependent.

MR RABINOWITZ: That must be fact dependent, but what I submit is not fact dependent is what I've just put to the witness, that one must be cautious before allowing a contract to fail on the grounds that essential terms were not agreed.

That is the view of Professor Vitryanskiy.

A. I'm not sure that I share your view.

Professor Vitryanskiy wrote that sometimes just a party which is not very cautious may really be at risk later if the contract will be considered by the court non-concluded, just even ideally this party would not like such an outcome, but the only recommendation is, yes, to be cautious and to prepare good and valid contracts.

Q. Is it not your own opinion, expressed in your own reports, that Professor Vitryanskiy's view was indeed,

I think as you put it, an exhortation to the legislature to permit less restrictive drafting techniques?

A. Professor Vitryanskiy expressed a view that, broadly speaking, sometimes Russian law is too formalistic. But it's true, there are many regulations, many specifications, including essential terms regarding some agreements. There are pluses and minuses, there are advantages and disadvantages. It depends, because sometimes it's better to be more specific. But Professor Vitryanskiy warns that it's necessary to pay attention to it. But of course it all depends on facts.

Q. All right. Let's have a look, if we can, at the information letter, recent information letter of the Presidium of the Supreme Arbitrazh Court.

Can you go to G(A)7/1, tab 7, please. The Russian begins at page 44 G(A)7/1.07/61, and the English begins on page 61 G(A)7/1.07/61.

Now, just before we look at this, I think you say in your second report that information letters of this kind play an important role in the understanding and interpretation of Russian law, is that correct?

A. Yes. They summarise the court practice with the implementation of --

Q. And as you see, this information letter is dated 13 September 2001 --

A. 2011.

Q. Sorry, 2011, thank you. Just looking at this, if you can look at paragraph 12 of the information letter, the Presidium describes a case as follows:

"The court granted the claim of [the] bank for recovery of a loan under a loan agreement and dismissed the counterclaim to declare the agreement [as] non-concluded, since the disputed agreement contains [terms] agreed by the parties on the loan amount and ... terms for its disbursement."

In the next paragraph we see what the claim was for:

"The bank filed a claim with the court against [the] joint stock company for the recovery of the loan amount, interest under the loan agreement for use of the loan, and penalties for late performance of the obligation to repay the loan."

So what one is dealing with here is a bank suing to recover the loan, plus contractual interest and penalties, correct?

A. Yes.

Q. Then just looking at the third paragraph we see that the defendant tried to get out of its bargain, and in particular to resist the claim for contractual interest and penalties, and the defendant's argument was that essential terms had not been agreed.

The third paragraph says this:

"The company, disagreeing with the claims for recovery of interest and penalties, filed a counterclaim to declare the agreement non-concluded, stating that the parties did not reach an agreement on essential terms of the loan agreement: the loan amount, the term and procedure for disbursement of the loan, and the [term] for repayment of the loan. Furthermore, the loan agreement [is] in violation of the provisions of Article 30 of the Law on Banks, [and] does not contain terms on the liability of the bank for breach of contract or the procedure for termination."

Then in the next paragraph the terms of the loan are provided, it says:

"Considering the claims, the first instance court found that a credit agreement had been concluded between the parties, which provided for issue of a loan in the form of a credit line up to 1,978,000 rubles. The parties agreed the credit limit under this agreement, providing for the loan to be disbursed in tranches on the application of the borrower, and furthermore that only one application could be submitted in a month for a sum not exceeding 440,000 rubles."

So the contract, is this right, provided for a credit line of nearly 2 million rubles to be disbursed

in tranches on the application of the borrower, with a maximum of one application per month, for up to 440,000 rubles a time, correct?

A. Yes.

Q. Now, we're not concerned with Article 30 of the law of banks so we can ignore the next paragraph.

But if we look at the paragraph that begins right at the bottom of page 61 and goes over the page, we see that the lower court had upheld the borrower's argument that the contract was non-concluded because it omitted material terms:

"However, the court considered [this is the lower court] the parties not to have reached agreement on other terms which the law treats as essential for loan agreements: terms on the time period and procedure for disbursement of the loan. The court came to the conclusion that this agreement cannot be considered concluded and that there were therefore no contractual relations between claimant and the defendant in relation to [the] repayment of the loan, and dismissed the bank's claim."

Okay?

Then just looking at the next paragraph in the English on page 62, we see that:

"The appellate court set aside the judgment of the

first instance court, [and] granted the claims of the [lender]... "

Do you see that?

A. Yes.

Q. The reasons given by the appeal court are set out in the last paragraph on page 62, and do read it for yourself, if you would.

A. Just the last paragraph, "The appellate court acknowledged"?

Q. Exactly. (Pause)

A. Yes, it's clear.

Q. So would you accept this, that the Presidium is saying -- in fact it's reflecting precisely what Professor Vitryanskiy said in his article. It's saying there are some essential terms which do not have to be expressly agreed because they're covered by default rules, correct?

A. In general I agree.

Q. And the fact that the parties have failed to express their will or reach agreement on such essential terms does not provide a ground to treat the contract as non-concluded, correct?

A. In this situation, I understand there were no objections of the parties to act within the credit limit.

Q. What happened here was they didn't reach agreement on an

essential term but there was a default rule which could apply, yes?

A. In the absence of agreement, the default rule applied and there were no objections of the parties against its application.

Q. All right.

Now, I want, if I may -- my Lady, I don't know what time your Ladyship --

MRS JUSTICE GLOSTER: I'm happy to sit until 4.30 if you wish to go on.

MR RABINOWITZ: I'm happy to go on given the amount we have to get through.

I want to focus, if I can, on the third type of essential term, and we've discussed this already somewhat. These are terms with respect to which, by declaration of the parties, or one of them, agreement must be reached, correct?

A. Yes.

Q. And can we go back then to the joint memorandum just to see what the difference is between you and Dr Rachkov in relation to this?

A. I remember this.

Q. Bundle 6/1, tab 1, page 7, paragraph 18 G(A)6/1.01/7.

A. 18.

Q. If you look under paragraph 18(3)(c), we've already

looked at the fact that it was agreed between you that:

"Any terms which either party declares must be agreed in a contract."

Is an essential term.

Then we have this:

"Dr Rachkov maintains, in this regard, that the third and last category of essential terms under Article 432.1 applies where a party has said that one, more or all [the] terms of the contract must be agreed before there can be a contract: such terms are, for this reason, essential terms, and until agreement is reached on them, the parties have not concluded a contract."

Then just looking down to paragraph 20, at the bottom of that page, we see that it's said:

"It is disputed whether a default term will necessarily become an essential term if the parties have tried but failed to depart from it."

Then we have Dr Rachkov explaining his position, subparagraph 1:

"Dr Rachkov maintains that such an attempt will make that term an essential term only if either party has made clear that agreement must be reached on that term before there could be a contract. Dr Rachkov maintains, in this regard, that the declaration must be made prior to the conclusion of the contract, and that, as noted

above, what is required is that either party must declare that the term must be agreed before there can be a contract."

So what Dr Rachkov is saying, is this right, is that in order for a default rule to become a type 3 essential term, one party must make clear that the parties must reach agreement on that term before there can be a contract between the parties, correct?

- A. Correct, but I wrote in my report that mentioning a specific declaration is quite artificial expression.

In practice, and I cite legal scholars, it's sufficient to make clear for the other party that the party which does not agree with the default rule wishes something else. And the words "declaration", they do not work in practice.

- Q. Let's just see the way you put it in the joint memorandum, if we look at subparagraph 2 on page 8 G(A)6/1.01/8, you say there:

"Mr Rozenberg maintains that an attempt to depart from a default rule without reaching agreement on that term makes that term an essential one (if it is not already an essential term), as the attempt evidences that the parties have agreed that the default rule will not apply. In his view, the assertion of a necessity to make any specific declaration/statement (oral or

otherwise as a separate announcement) in this context is quite artificial; what is necessary is an indication of any type that either party wishes to deviate from the default rule."

In order that we get a complete picture of what you're saying, this may have been what you were just referring to, can you go to your fifth report, bundle G(A)3/1, tab 3 at page 269. We're looking for paragraph 246 G(A)3/1.03/269.

This reflects what you've put in the joint memorandum, paragraph 246:

"If during negotiations either party expresses a desire to deviate from a relevant default rule provided in law, or raises an additional issue not reflected in law at all that must be included in a contract, it is clear that such terms become essential for the particular contract. As such, the term in question will have to be agreed between the parties to become a contractual term mutually acceptable to both parties (by virtue of Article 432...). An attempt to depart from a default rule would, in and of itself, evidence that the parties have agreed that the default rule will not apply, and, consequently, that this rule will not be applicable in the event that it is not agreed by the parties."

So --

A. "This situation would lead to a contract being non-concluded".

Q. Indeed.

So you say, do you, that if during negotiations either party simply expresses a desire to depart from a default rule, then the term in question becomes an essential term. And if an agreement isn't reached on it, the contract will be non-concluded and will fail entirely, is that your view?

A. Yes, either default rule applies without objections of the parties. If one of the parties wants, desires, as I wrote, desires to deviate from a relevant default rule, then either it's necessary to agree or the contract is non-concluded. This term becomes essential.

Q. So if, going back to the example of the time for delivery of a car, if I say in negotiations "I would like to deliver it in a week" and that is necessarily departing from the default rule because that would provide for a reasonable time, and you say, "Well, actually I would like it delivered in a month" and that again is necessarily, implicitly, an attempt to depart from the default rule, as you are saying a month rather than a reasonable time.

You are saying that if we don't reach agreement on

that, if we have a negotiation about it and we don't reach an agreement on it, the contract will fail because the default rule can't apply?

A. That's correct.

Q. Well, I suggest to you, Mr Rozenberg, that that is a very extreme position to take. Is it not obvious that the whole purpose of this default rule is to apply in circumstances where the parties do not in fact reach agreement on things like the time for delivery, time for performance?

A. My view is that the agreement cannot be concluded against the will of the parties. If the parties understand the application of the default rule will violate their will, object against it, it cannot be mandatory against their will.

And if you allow me, my Lady, I can refer to a very impressive citation of both Professor Braginskiy and Vitryanskiy in my fourth report.

Q. Before you do that, and I'm not going to stop you doing it, I just want to be again very clear what you're saying.

We're dealing here with a situation in which neither party says "I insist on this particular time for delivery", but they simply raise in the context of negotiation that what they want is a particular time for

performance, okay? So neither party says, "There is no contract unless we agree on what I say should be the time for performance," they simply raise in negotiation the time for performance, and they don't agree about that.

Your evidence is that merely by raising what they would like as the time for performance, that means the default rule can't apply?

- A. The default rule cannot apply against the will of the parties.
- Q. Mr Rozenberg, there's no point in simply repeating that. We accept necessarily, because this is what you've agreed with Dr Rachkov, that if either party -- this is what you say at paragraph 18 -- if either party:

"Any terms which either party declares must be agreed in a contract."

Then that party will become an essential term.

I have put to you an example in which neither party is declaring that it must be agreed, they are simply raising what they want to happen without saying, "I will not enter" -- saying any words to the effect of "I will not enter this contract if we can't agree it".

- A. I wrote in my report and in the joint memorandum that the word "declaration" used by legislator means expression of will, but not some specific statement like

in foreign relations, for example.

And since you said that the parties still never agree regarding the application of default rule, in my view it makes the agreement non-concluded. At least the parties should keep silent regarding the application of the default rule. As soon as one of the parties raises objections against application of the default rule, the contract becomes non-concluded. And as I said in my fourth report, as far as I remember it's paragraph 69.

Q. Mr Rozenberg, are you suggesting that the mere fact that parties try to negotiate about something for which there is a default rule, that is the same as raising an objection to the default rule applying, such that if they can't agree on this matter the contract fails?

A. There is no special procedure for negotiations. In considering whether the agreement was reached or not, courts, according to Russian law, check what was the will of the parties.

Q. But just go back to my example. Are you saying that the mere fact that the parties tried to negotiate about something, for example I write to you and say "I would like delivery to be in a month," are you saying that by doing that, that is the same thing as raising an objection to the default rule in a way that you say elevates my request that this be delivery in

a particular time, to the status of an essential term;  
is that what you're saying?

A. Basically yes, because application of default rule is a very important issue and actually mentioned rather frequently in Russian court practice. And it's clear that if parties did not agree, default rule applies. If there are no objections, it's fine, the agreement is concluded. If parties deviate, using this English word, or object against application of the default rule, and it's their will, then the agreement cannot be considered concluded.

Q. Perhaps we can just have a look at what Professor Vitryanskiy says about this. If you go, please, to G(A)2/3 at tab 40, the bottom of page 29, it's the article we were looking at earlier G(A)2/3.40/29. It's further on in the article.

Do you have page 29 there?

A. Yes.

Q. Do you see towards the bottom of page 29, Professor Vitryanskiy says this:

"And, finally, the fourth group of essential terms of a contract are made up of all those terms on which one of the parties indicates agreement must be reached."

Do you see he says that?

A. Yes.

- Q. Now, he calls this the fourth group of essential terms, and that is because, I don't think you need to go back, but earlier, at pages 27 and 28, he split up the second group into two parts. But what he's referring to here is the same as your third type, is it not?
- A. Yes, basically, yes.
- Q. Then in the next paragraph, at the bottom of page 29, we see that Professor Vitryanskiy says as follows:
- "Judicial and arbitrazh practice categorises as essential terms far from all the terms of a contract which were contained in an offer or acceptance at the time when the contract was being concluded. For these purposes it is required, in relation to a relevant term, that one of the parties should have directly stated the necessity of achieving an agreement, under threat of refusal to conclude the contract."
- Just pausing there, Professor Vitryanskiy is saying that, for this type of essential term, it is required that one of the parties should have directly stated the necessity of achieving agreement on the threat -- on the term under threat to conclude the contract.
- Do you agree that this is what Professor Vitryanskiy is saying; plainly it is what he is saying, is it not?
- A. I think he uses the word "one of the parties should have directly stated". I said that one of the parties

disagreed with the application of default rule, or insisted on the term, but I think it's the same meaning.

Q. He says they:

"... should have directly stated the necessity of achieving an agreement, under threat of refusal to conclude the contract."

A. Right.

Q. Do you agree that Professor Vitryanskiy is right in this formulation?

A. This is my understanding of the situation.

Q. All right. Then maybe there's less between us than appears.

If you then look at what Professor Vitryanskiy goes on to say at the bottom of page 29 and over to page 30:

"In practice [this is the last two lines of page 29] it is not infrequently the case that in concluding a contract the parties have not settled differences, for example in relation to the size of a contractual penalty for failure to fulfil obligations, but have then fulfilled the terms of the contract. And only in the event of a dispute arising in relation to liability does one of the parties state that the contract should be regarded as not having been concluded, as at the time no agreement was reached on a contract term in respect of the amount of the penalty. In this case a contract is

to be deemed as having been concluded (but without a term in respect of the amount of the penalty), bearing in mind that when concluding the contract neither of the parties had made a statement that it was necessary to reach an agreement on the disputed term of the contract."

So this is in a sense a fairly straightforward example. One party wants something in relation to the contractual penalty to be paid, tries to negotiate this but fails, and they nonetheless perform their contract. He says the contract will be deemed concluded without the penalty term, do you agree?

- A. My understanding that it's closely connected with the next sentence, that still it should be clear for both parties, for all the parties, that nothing is included accidentally or something is missing accidentally. And the procedure, how to raise objections, to make declarations, in my view can be considered as irrelevant. This is the key sentence:

"... as has been shown previously, the procedure for conclusion of contracts under Russian law precludes the possibility of 'accidental' entry of any terms into a contract, just as, conversely, it also precludes 'accidental' non-inclusion of any terms in a contract."

The will of the parties should be reflected in the

agreement.

Q. I'm sure that the will of the parties should be reflected in the agreement, Mr Rozenberg. The point is what is the consequence of not agreeing a particular term? And what Professor Vitryanskiy is plainly saying here is that you could have a negotiation in relation to a particular term and not reach agreement about it, and unless one of the parties -- and then the parties perform the contract. Unless it was an essential term, the fact that they haven't reached agreement on it will not matter?

A. If there was no deviation from the default rule, it will not matter.

MR RABINOWITZ: All right.

My Lady --

MRS JUSTICE GLOSTER: Very well.

Mr Rozenberg, you mustn't talk about your evidence overnight, do you understand, with anybody, or communicate with anybody?

THE WITNESS: I understand.

MRS JUSTICE GLOSTER: Very well.

10.15, 10 o'clock tomorrow, what do you want to --

MR RABINOWITZ: Mr Sumption plainly has a strong view. I'm happy to start at 10.00, my Lady.

MR SUMPTION: My Lady, I would suggest, if your Ladyship was

willing to start at 10.00, that would be wise because it would increase the prospect of finishing certainly the legal expert evidence and possibly at least a substantial part of the historical evidence by the end of the week.

MRS JUSTICE GLOSTER: Yes, very well. How much longer do you have?

MR RABINOWITZ: I have probably the whole of tomorrow, my Lady.

MRS JUSTICE GLOSTER: The whole of tomorrow, fine. Okay very well, 10 o'clock tomorrow.

(4.33 pm)

(The hearing adjourned until  
Thursday, 1 December 2011 at 10.00 am)

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Thursday, 1 December 2011

(10.00 am)

MRS JUSTICE GLOSTER: I'm sitting with a marshall today,  
a student.

MR RABINOWITZ: My Lady, I thought it might be sensible to  
give your Ladyship an indication of where we are  
timetable wise. I'm likely to go through the day with  
Mr Rozenberg and indeed tomorrow morning.

I've told my learned friend Mr Adkin that the view  
we're taking in relation to Professor Maggs is that  
I don't propose to go through with Professor Maggs what  
I've gone through with Mr Rozenberg. I think that would  
just tax everyone's patience.

MRS JUSTICE GLOSTER: Not mine, Mr Rabinowitz.

MR RABINOWITZ: Of course not, your Ladyship's patience is  
infinite.

That may mean that we don't have anything for  
Professor Maggs, or very little. On that basis, there  
is at least a prospect that we will finish the evidence  
tomorrow. It rather depends -- I understand that the  
history evidence won't take very long. But if we don't  
finish tomorrow, it looks as if we'll certainly finish  
on Monday.

MRS JUSTICE GLOSTER: Yes, fine.

MR RABINOWITZ: But we will be, I think, all day with

Mr Rozenberg, at least.

MRS JUSTICE GLOSTER: Very well.

MR MIKHAIL ROZENBERG (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Good morning, Mr Rozenberg. We were talking about essential terms, the relationship between essential terms and default rules. What I would like to do, if I may, is to ask you to look at a recent decision of the Presidium of the Supreme Arbitrazh Court. It's the decision in Delex which you will find in bundle G(A)7, tab 6. The English begins at page 41.

MRS JUSTICE GLOSTER: G(A)7/1, is it?

MR RABINOWITZ: It's G(A)7/1, sorry I may have just said G(A)7. G(A)7/1, tab 6. G(A)7/1.06/41

Does your Ladyship have it?

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: It's a decision, very recent, of 5 April 2011, as you see. You will also see, Mr Rozenberg, if you look at who the members of the Presidium were, that they included Professor Vitryanskiy, do you see that?

A. Yes, I can see it.

Q. And then, about a third of the way down the page, just under the section which begins "Having heard", we see what the claim is about. The court says this:

"Delex LLC filed a claim with the Moscow Arbitrazh Court against Cassiopeia LLC seeking to recover 6,000,000 rubles in [principal debt] under the 16 January 2007 Loan Agreement... as well as 2,455,890 rubles and 41 kopecks in interest accrued on the loan for... 17 January 2007 to 8 June 2010 (subject to changes [made] to the claims and the waiver of the default interest and penalties)."

So we see from that, do we not, that Delex is suing Cassiopeia for repayment of a loan plus accrued interests. Do you see that?

A. Yes.

Q. Then right at the bottom of the page there is a break, and then you see a section beginning "Having examined the merits of the arguments", do you see that, just at the bottom of the page?

A. In Russian it's on top of the next page.

Q. Okay. In the next paragraph the court says this, it's at the bottom, certainly in the English, of page 41, going over to page 42:

"As was established by the courts, Partner (the lender) and Cassiopeia (the borrower) entered into Loan Agreement [number] ... 16 January 2007, under which the lender extends to the borrower a loan totalling 6,000,000 million rubles at the interest rate of

12 per cent per annum."

So the loan agreement is one, as you see, made between Partner and Cassiopeia, do you see that?

A. Yes.

Q. Then in the next two paragraphs, in the English the first two paragraphs on page 42, the court says this:

"By its payment instruction... of 17 January 2007, Partner transferred the amount in question to the transactional account of Cassiopeia.

"The defendant does not dispute having received the funds under the Loan Agreement."

Again, pausing there, I think this tells us, does it not, that the lender, Partner, advanced the loan money and the borrower, Cassiopeia, accepted that it had received the money, yes?

A. Yes.

Q. Still at the top of page 42, in the next paragraph we see how Delex comes into the picture. The court explains this:

"Under the receivables assignment agreement dated 31 July 2009, Partner transferred its receivables under the Loan Agreement to Orbita, which in turn assigned these receivables to Delex under the receivables assignment agreement dated 1 October 2009."

So in effect Delex has taken assignment of the loan,

correct?

A. Correct.

Q. The court then continues as follows:

"Believing that the loan became due for repayment off 16 April 2007 and that the borrower defaulted on the obligations, Delex filed this claim with the arbitrazh court."

Nothing that unusual so far.

Let's then see how the dispute arose, so the court says in the next three paragraphs this:

"As part of the case files, the claimant presented a photocopy of Loan Contract Number 03/01-07 of 16 January 2007, which states the loan repayment date as 16 April 2007.

"The defendant furnished the court with a photocopy of the same Loan Agreement stating the loan repayment date as 16 April 2027.

"Neither the claimant nor the defendant has been able to furnish the court with the original copy of the Loan Agreement."

So what appears to have happened, Mr Rozenberg, is this: the claimant, Delex, presents the court with a copy of the loan agreement which says that the date for repayment is 16 April 2007, and that is a date which has elapsed by the time the matter has come to court,

yes?

A. Yes.

Q. And the defendant then comes up with a different copy of the same loan agreement, and that has a repayment date of 2027, 20 years into the future. And, if that were the position, then plainly the loan would not have --

A. Due.

Q. Be due, exactly that. And neither party can produce the original loan agreement.

A. Right.

Q. We can see how the lower courts resolved the situation. If you then just look at the next paragraph beginning "The first instance court", about a third of the way down page 42 in the English:

"The first instance court dismissed the defendant's arguments..."

Can you just read that to yourself. (Pause) Just the bit about the first instance court.

A. I think it's a very good resolution.

Q. Well, I'm not sure which resolution you're talking about, but just looking at the first instance court --

MRS JUSTICE GLOSTER: Just a second, are you talking about the resolution by this court or by the earlier courts?

A. The final resolution of the Presidium, I find it very substantiated, reasonable, and actually that's -- the

first impression is that the decision explains in details why such a resolution should take place.

MR RABINOWITZ: Yes. So just seeing what the earlier court has done, what the first instance court does is it looks at the assignment agreement and it sees that the assignment agreement also referred to the repayment date as 16 April 2007 and, on the basis of that, it concludes that the claimant's version is right, that is to say that the repayment date had arisen already, correct?

A. That's what they state.

Q. And then you see that the appellate court, the court to which they appeal from the first instance court, took a different view and it concluded that the claim failed because the photocopies could not be accepted as evidence, and on that basis said the claimant had failed to prove the defendant's obligation to repay. That's what the second court did, did it not?

A. Right.

Q. And then you get the appellate court's position, and it's dealing, obviously, with a situation where you have two copies showing different repayment dates. And just seeing what the court does, if you go to about two-thirds of the way down, just looking at the approach of the Presidium, you see:

"The position of the appellate and cassation courts

is erroneous."

A. Yes.

Q. "A loan agreement [it says] may not be deemed to be non-concluded when there is proof that the loan amount has been transferred to the borrower, while the parties disagree on the repayment date. The legal relationship arising between the parties out of this agreement is subject to the provisions of Article 810(1) of the Civil Code, under which the loan amount must be repaid by the borrower within thirty days of the lender's demand where the agreement does not establish the repayment date or states that the loan shall be repaid on demand."

Can we just look at the reasoning here. The first thing that you see the Presidium says is that you can't deem a loan contract concluded where the loan funds were actually transferred to the borrower, even though the parties disagreed on the repayment date.

Do you agree that that's what they say?

A. That's what they say.

Q. And do you agree with that as an approach? I think you already indicated that you do.

A. Yes.

Q. So it's upholding the contract as a concluded contract even where the parties disagree on a fairly fundamental matter, do you agree?

A. Well, they disagree on this matter because the original was lost. It's a question of evidence, I understand, because nobody argues that there was disagreement at the moment of conclusion of the agreement.

Q. Well, they're in a position where they don't know what the position is on that. They have one version saying 2007 and another version saying 2027, and what they conclude is that in circumstances where they're unable to resolve the position, they can nonetheless uphold the contract in particular; yes, do you agree with that?

A. Right.

Q. The second thing the Presidium says in relation to the repayment date is that the default rule in Article 810(1) applies:

"... under which the loan must be repaid within 30 days of the lender's demand where the agreement does not establish the repayment date ..."

Do you see that?

A. I see the text.

Q. Well, you see the text and you've already indicated that you agree with its reasoning, correct?

A. Yes.

Q. What that case shows, Mr Rozenberg, is that where the parties try to deviate from a default rule, but either fail to reach agreement, or even where they do reach

agreement but something goes wrong, a default rule can apply, correct?

A. It's not quite clear for me what you mean saying something goes wrong.

Q. Well, plainly there was an agreement at some point in relation to the loan repayments date, at least the parties thought they had agreed it, but there was something defective about that because one party was saying 2007 and the other party was saying 2027. In those circumstances, something has gone wrong with the attempt to agree a repayment date. They may have agreed it but something has gone wrong, in the sense that neither of them can establish that that was agreed. Do you follow?

A. I do.

Q. What the court is doing in those circumstances, where something has gone wrong, even though the parties thought or understood that they'd agreed it, is to apply the default rule; do you agree?

A. I agree that the Supreme Arbitrazh Court indicated that, in the absence of the original agreement, the court found this way of resolution of the case. But I see no sign in this court act that there were disagreements at the moment of the conclusion of the agreement, and it's unclear whether the parties agreed at the moment of

conclusion of the agreement what should be the provision of the contract.

Q. Well, at a minimum, it appears that both parties had a view as to when the repayment date should be because one party produces a version which says 2007 and the other party produces a version which says 2027, correct?

A. That's correct.

Q. And notwithstanding this apparent attempt, even on that basis, to deviate from the default rule, what the court is willing to do in those circumstances is to apply the default rule, do you agree with that?

A. I agree with the remark that there was no deviation connected with conclusion of the agreement. It was not deviation, but I would say different interpretation of the agreement concluded long ago, simply because of the fact of the absence of the agreement.

If you allow me, my Lady, I will remember yesterday's example when the agreement was destroyed in fire and still the parties tried to find the resolution of the dispute through the court. And actually, as I understand in such situation, the key point is not what was the behaviour of the parties and the arguments of the parties at the moment of the conclusion of the agreement, but rather evaluation of all the evidence in their entirety. That's what always Russian courts do.

And the fact that in connection with banking activity, which usually is very strictly regulated in Russia, and courts try to avoid to the maximum possible extent unclear situations when rights and obligations connected with transfer of monetary funds remain unclear.

In this situation, my understanding is that this reference to Article 110, paragraph 1 (sic), of the Civil Code of the Russian Federation shall be understood not in connection with negotiations of the parties at the moment of conclusion of the agreement and deviation from the default rule, but in light of necessity to apply correctly the existing material law to resolve the dispute in light of the available evidence.

Q. Mr Rozenberg, there's no doubt that the court is trying to resolve the dispute in light of the available evidence, that is indisputable.

You said one thing in that answer, which I'm not sure was an answer to my question, and that, I think, reflected something I put to you yesterday which is that the courts seek to uphold contracts which have been performed and not allow them to, in a sense, be invalidated, correct?

A. In the general sense, when everything is crystal clear, the courts have just -- I would say there is a trend in Russian court practice that courts prefer to uphold

contracts which are performed when there are no dispute between the parties that it was really the performance of this agreement.

Q. Right, that's very helpful. But I just want to go back to my question because I'm not sure that you did answer my question. Because is this not a case where it is perfectly clear that the parties did not intend or expect the default rule to apply? One party produces -- neither party, on the version of the contract that it produces, has a provision which ties in with a default rule, which is 30 days from demand; would you agree at least with that?

A. Your question is rather long, but the beginning, as far as I remember, at the beginning of your question you said that there was no intention to deviate from the default rule, am I correct?

Q. Well there was an intention to deviate from the default rule, that's very clear. Neither party is putting in this contract a provision which reflects the default rule, which is that there will be repayment 30 days from a demand.

A. If I am correct, when the contract was concluded, there was not even such an issue, deviation of the default rule. When the contract was concluded both parties, according to the explanations in the court of the first

instance, knew what was the term, simply the evidence is different today because the agreement was destroyed, like in your example yesterday when it was destroyed in fire.

There is no agreement today, but at the moment of the conclusion of the agreement both parties explain they knew what was the term, and there was -- nobody even ever mentioned the default rule when the contract was concluded.

- Q. I entirely accept that, they didn't mention a default term, but they each asserted a term which was inconsistent with the default rule, correct?
- A. They brought their evidence today to the court, which is different, but it doesn't mean that there was discussion, and actually nobody alleges that there were negotiations or discussions at the moment of the conclusion of the agreement.
- Q. Mr Rozenberg, I think I've given you a sufficient opportunity to deal with this. I suggest to you that this is a clear case where the parties had plainly intended that the default rule should not apply, but something has gone wrong so as to mean that the court is not in a position where it can give effect to what either party intended should apply, and that, in those circumstances, the default rule applies.

Do you agree with that or do you disagree with that?

A. My Lady, correct me if I'm wrong, but courts in Russia resolving a dispute go step by step. First step, to identify what was the will of the parties when the agreement was concluded. It's clear that the will of the parties was to have agreement specifying all the terms, and it's clear that, at the moment of conclusion of the agreement, the parties did reach agreement on all the terms, and there was nothing unclear at that moment. And neither the party nor the creditor -- either the creditor or the borrower had in mind that the default rule should apply. At the moment of the conclusion of the agreement everything was clear.

Am I correct?

Q. Well, that's a very interesting point. You are saying that the parties did reach agreement on all the terms and nothing was unclear at that moment. Then what happens, Mr Rozenberg, on your analysis, what happens next?

A. And next some time expired and the original agreement was destroyed.

Q. So it becomes impossible to rely upon or determine what the original agreement on that term was, correct?

A. That's correct.

Q. And then, in those circumstances, the court applies

a default rule?

A. That's correct.

MRS JUSTICE GLOSTER: What would have happened, and this is maybe a bit artificial, this example I'm about to give you, but what would have happened if the claimant had sued on the basis of the default provision, said to the court, "Well, I know there's a disagreement between the defendant who says the loan is not payable until 2027, and I'm saying it's repayable in 2012, there therefore is a dispute between us, I'm relying on the default provision and I'm serving my demand in 2011."

Would the courts have allowed, in those circumstances, the claimant to have recovered on the basis of 30 days from the demand by virtue of the default provision, or would the court have said, "Well, your case is that the loan is repayable in 2011, and on any basis you're going to have to wait until then until you demand your money back."

I'm just not quite clear how this default provision, as it were, comes in to the picture.

A. I understand that there are several possibilities here. The first, regarding declaring the agreement non-concluded because of a default rule, cannot apply if at least one of the parties insists on specifying the term, and therefore the term becomes essential. The

other side disagrees, and maybe there is a silent agreement that default rule should apply, nor one of the parties prevails in this disagreement at the moment of the conclusion.

If such evidence were presented to the court, and it would be clear for the court that, from the very beginning, there was unclear which party prevailed in the negotiations, and it would be at the same time crystal clear that both parties disagreed regarding application of default rule at the moment of the conclusion of the agreement, then the court probably had no choice, would have no choice, and would have to declare the agreement non-concluded in such situation.

But in the situation when both parties agreed that the agreement was perfectly valid at the moment of conclusion, that all the terms were specified and there was no essential term for which the default rule should apply in that moment; next question before the court is how to evaluate this evidence, either to prefer one version about 2011, or the version of 2027, or the third option which the court choose that, according to the -- you say -- counsel says default rule, but according to this dispositive norm, to apply the legislation allowing the payment on demand.

In this situation, when it was clear that there is

no legal basis to declare the agreement non-concluded, number one, because nothing was wrong at the moment of the conclusion of the agreement, second, as I understand, there was no objective basis for the court to prefer one or(?) the second version of the agreement, otherwise I understand it would be necessary to acknowledge that there is a forgery, or just other consequences would take place.

But in this situation, the court simply applied the rule allowing to pay the loan on demand because there was no other legal basis in this -- in light of this evidence, in light of these circumstances. We always say that of course it's necessary to check, to investigate very carefully, all the circumstances of the case, but on the surface it looks here that this is the only possibility to issue a substantiated decision and not to put anybody in a very unfair situation.

Because first there is no basis to make a conclusion that the decision -- that the contract was non-concluded, and as we agreed with counsel, to the extent possible when the circumstances allow or Russian courts prefer not to declare agreements non-concluded, but at the same time to rule that only in 2027 the time for repayment should come, although it contradicts apparently some other available evidence mentioned here

in the decision. The court chose the best way how to resolve the dispute, in my view.

MRS JUSTICE GLOSTER: Okay, I think I've got the picture.

Thank you very much. I think we can move on.

MR RABINOWITZ: I'm going to move on to a slightly different topic, if I may. We've discussed the issues of essential terms, and the next topic I would like to consider with you is what happens when the parties agree a contract but one of the terms which they agree is void or invalid. And the question is: does the rest of the contract survive or does it fail?

You agree, I think, that this is an issue covered by Article 180 of the Civil Code. Can we just turn that up, bundle G(A)4/4, tab 2, page 33 G(A)4/4.02/33.

Just looking at what Article 180 is about "Consequences of Invalidity of Part of a Transaction". It says:

"The invalidity of part of a transaction shall not entail the invalidity of the other parts of it if it is possible to suppose that the transaction would have been made without the inclusion of its invalid part."

Then can we just look, if we may, at what you and Dr Rachkov have said in the joint memorandum, paragraph 28 of that. It's bundle G(A)6/1, tab 1, page 10 G(A)6/1.01/10.

We can see where the agreement is and where the disagreement is about this. So paragraph 28, page 10, and just looking at the first two sentences of paragraph 28:

"It is agreed that, where part of a contract is invalid, other parts of the contract may survive if it is possible to suppose that... a contract would have been made without the inclusion of the invalid part (Article 180). Surviving part of the contract must contain all essential terms for a contract to be concluded."

That seems straightforward enough. There is, is there not, a factual question whether the parties would have made the contract without the invalid term, and a legal question whether the surviving contract contains all essential terms for a contract. If both questions are answered affirmatively, the surviving part of the contract stands, correct?

A. Yes.

Q. In paragraph 29, just staying with the joint memorandum, we see that you and Dr Rachkov disagree as to whether the severability principle in Article 180 can ever apply where an essential term is invalid. You say it cannot while Dr Rachkov says it can. Is that correct?

A. It is correct.

- Q. Then can I just put to you a hypothetical example just to test your position on this point. Let us suppose that I agree to lease your property with an option to buy it at the end of the lease, okay? So it's a lease of the property, but we're also wanting to agree an option that I be able to buy the property at the end of the lease. Let us suppose also that we agree all essential terms for a lease, okay?
- A. Okay.
- Q. We also agree all essential terms for the option, for the sale option, but one of those terms is void.
- A. Yes.
- Q. Now, as a matter of fact, in this hypothetical example, we would both have been happy to enter into the lease contract on the same terms even without the option to buy at the end. Let us just suppose that that is the case, okay?
- A. We can suppose anything, of course.
- Q. All right, thank you for that. My family then move into the property and we live there happily for a period of time, but the option fails because one of its essential terms are void. All right? Do you say that in this example you can evict me and my family from the property on the basis that the failure of the option to buy causes the failure of the lease as well, even though the

lease contains all essential terms for a lease, and we would both have signed the lease on the same terms even without the option to buy?

A. I understood at the beginning that it was not an essential term.

Q. No.

A. That option to purchase.

Q. No, we agree a lease and an option. We agree all the terms, all the essential terms of the lease and we agree all the essential terms of the option, but the option part of it fails because an essential term is void. The factual hypothesis, the hypothetical, involves an assumption that we would have been happy to enter into the lease even without the option. Do you say that the lease fails because an essential term of the option has failed so that the option has to fall away?

A. The crucial point here is the beginning. We agreed all the essential terms, and one of the essential terms was this option. It was also integral part of the whole agreement.

In other words, I would never enter into this agreement without this option because I would like to have a tenant, potentially a buyer. Am I correct?

Q. Mr Rozenberg, you're changing the facts that I gave you. The facts that I gave you were that we agree a lease

with an option to buy at the end. The other fact that I gave you is that we would have been happy to agree the lease without the option. We agree all essential terms of the lease part of it and all essential terms of the option part of it, but there is an essential term of the option part of it which fails so that, in a sense, the option part of it would have to fall away. Do you say that as a consequence of that the lease part of it also becomes invalid?

- A. It's not quite clear for me what and how reflected in the agreement is that we would both be happy if this option would not work. In other words, we would agree about lease even without an option. How to prove it, and is it included in the agreement, because it seems to me that it's really an essential term.
- Q. Well, Mr Rozenberg, you accepted that for the purposes of Article 180 there's a factual question as well as a legal question, and the factual question is whether we would have been happy to agree the lease without the option. And I've put to you a hypothetical example in which that is the case.
- A. Normally all leases, not all of course, the majority of leases are concluded without such option. The vast majority of leases. Therefore if the parties agreed this term in addition to the lease, on the surface it

appears that it's an essential term of the agreement. However, you added that it was not. If it's indicated in the agreement somehow that actually it doesn't matter for the seller -- I'm sorry, for the landlord at least, then the position would be that the failure with this option does not invalidate the whole agreement.

However, what I understand, it really was the essential term, and, as a result, the landlord has a tenant who will never become a buyer though he would prefer to have a tenant, potential buyer. Therefore, my view is legally, if there is no indication that parties clearly confirmed that it doesn't matter for them whether the option remains or not, then the failure of the option is fatal for the whole agreement.

Q. Mr Rozenberg, it may be that you have misunderstood or confused what we are talking about when we talk about essential terms.

Let us just be clear. The option is not an essential term of the lease agreement. An option agreement has its own terms: for example, how much has to be paid if you're going to exercise the option, when you have an entitlement to exercise the option.

The lease agreement has its own essential terms, okay?

What the parties have agreed is, if you like,

a mixed agreement in the sense that it contains both a lease and an option to buy at the end. So the option is not an essential term of the lease, and we know that because, in the example I gave you, I have made clear that both you and I would have been happy with the lease, happy to enter into the lease, even if there wasn't an option.

Now, I will put the example to you one more time. If the option part of that contract fails because an essential term of that option is void for some reason, do you say that the lease as well becomes invalid, even though all essential terms relating to the lease aspect of that agreement are valid and have been agreed?

A. My Lady, since it's for the court to evaluate evidence, I understand that in this example it's crystal clear that it was irrelevant for the parties at the moment of the conclusion of the agreement whether the option would fail or not, and therefore the conclusion is that the failure of the option is irrelevant and the lease agreement remains valid.

MRS JUSTICE GLOSTER: And that's just applying Article 180?

A. Yes.

MR RABINOWITZ: And that is so even if the reason that the lease -- the option part of it fails is because of a failure in respect of an essential term of the option

part of that contract, correct?

A. I understood from the counsel that at the beginning, at the moment of the conclusion of the agreement, it was not the situation, when in the mixed contract the option was an essential term. It was indicated that, for the parties, it was not the necessary element of the mixed agreement.

Q. Mr Rozenberg, again, I think you're mixing up what we mean when we talk about an essential term.

An option is a separate contractual obligation. It contains its own terms. And the lease has certain terms which may be essential. The hypothesis that I'm putting to you is that the parties would have entered into the lease without the option and that the option fails because an essential term in relation to the option part fails.

Do you accept that on the basis of applying Article 180 the lease agreement will still stand?

A. I think I gave the answer. I can only confirm that if in a Russian court it would be established that without an option such agreement would never be concluded, then the failure of the option would be fatal. If however, according to what the counsel presented, it was clear that both parties were perfectly happy, even without the option entering into the lease, and the lease was

crucial, then the failure of the option doesn't matter.

MRS JUSTICE GLOSTER: I think I've got the point you're making and I've got the answer the witness has given.

MR RABINOWITZ: Thank you, my Lady.

All right. I'm grateful for that, Mr Rozenberg. Now, we've been dealing with a situation where part of a contract fails because it contravenes the law and is therefore void. Can we consider the situation where the parties agree a contract but one term fails for uncertainty. The question is: does the rest of the contract survive in those circumstances; okay?

Now, can we just look at what the joint memorandum says on this point, it's again bundle G(A)6/1, tab 1, page 11, paragraph 30 G(A)6/1.01/11.

Just looking at paragraph 30, this says as follows:

"It is disputed whether it is possible for part of a contract to be non-concluded and for another part of the contract to survive."

You set out your position at subparagraph 1 of paragraph 30, you say:

"Mr Rozenberg maintains that this is not possible. Mr Rozenberg says that a part of a contract cannot be non-concluded (it can only be invalid), and the absence of an essential term makes the whole agreement non-concluded. Mr Rozenberg maintains that if the

parties intended to make a mixed contract, then the essential terms for each contract must be agreed or the mixed contract as a whole (both parts) is non-concluded. However, Mr Rozenberg considers that the concept of a mixed contract is not relevant for [present purposes]."

Perhaps you can glance at what Dr Rachkov says about this:

"Dr Rachkov maintains that [it] is possible. Again, for example, the parties agree a mixed contract of sale and loan. If the parties fail to reach agreement on an essential term for the loan contract, but reach agreement on all essential terms for the sale contract, and would have made the sale contract even without the loan contract, then the sale contract will be concluded and the loan contract non-concluded. In effect, the rule in Article 180 applies in that situation by analogy."

All right? So that's the difference between you.

Perhaps I can just go back to my hypothetical example and give you an opportunity to respond on this slightly different set of facts. Again, let us suppose that I agree to lease your property with an option to buy it at the end of the lease and, again, we agree all essential terms of the lease but we fail to agree all

essential terms of the sale option. Again, as a matter of fact, we would have both entered into the lease contract on the same terms even without the option to buy at the end.

Do you say, in this example, that you can get out of the lease and evict me from the property, if I've already moved in, on the basis that the failure of the option to buy causes the failure of the present lease?

- A. I'm very sorry, but what is the difference with the example we already considered?
- Q. In the first example we dealt with a situation where an essential term of the option was void. Here we're dealing with the situation in which an essential term of the option is simply not agreed. Do you say the result is different because we're dealing with a not agreed situation as opposed to a void situation? Or do you say that the outcome is the same?
- A. I think you just read, my position is that the essential terms for each contract must be agreed or the mixed contract as a whole is non-concluded. This situation is essentially clear.
- Q. So I just want to be clear about what you're saying, Mr Rozenberg. You're saying that in a situation where we have, as in my example, a lease and an option where the parties would have been very content for the lease

to be concluded without the option, the lease has all the essential terms agreed but there is a non-concluded essential term in the option, you say that the lease also will fail?

A. Again, I think we already had this problem in the first example. First you say both parties would be happy without the option, and then you say it was essential for the parties to have this option.

Q. No, that's not what I said at all. I said --

A. If it's irrelevant for the landlord whether there is option or there is not option, then the terms of the option are not essential terms, as I understand.

MRS JUSTICE GLOSTER: Can I just be clear, Mr Rozenberg. Using the language of Article 180, is a transaction invalid if terms haven't been agreed, or does "invalidity" reflect something else?

There's not a reference here to contract, one is looking at a transaction. Is invalidity something like a licence not being granted, or some other provision being ineffective, or does invalidity include a non-agreed transaction? I'm not quite clear what is meant by invalidity here.

A. The invalidity means that something happened not in connection -- probably not in connection with the will of the parties, because the licence was not obtained or

was recognised invalid, for example, or something else took place. As a result at least some actions which were supposed to be performed on the basis of this transaction will not be performed, and the question is whether the parties in any event would enter in this transaction.

By the way, even the question with the loan suggested by my colleague Dr Rachkov is not bad. For example, it's something nice to have, for example, to have a loan in addition to the sale of a car, but even without a loan parties would, for example, carry out the sale in any event. And with this loan, invalidity of the loan because of let's say currency problems, absence of the licence, of the creditor and so on, then would not invalidate the sale agreement because parties would like to enter into the sale agreement regardless of the part of the agreement which became invalid.

And I agree with this if the invalid part was not essential, in other words if the purchaser would not have money to purchase this car, and the loan was substantial, essential for the purchaser, then invalidation of the loan would kill the whole transaction.

It was nice to have, but in the absence of this loan the purchaser would find money somewhere else, maybe

with a high interest, but still would like to purchase this car, then invalidation of this part of the whole contract is not a deal killer, and then transaction remains.

Therefore 180 clearly states that if the court will come to a conclusion that even without the invalid part the transaction would be entered and carried out, then invalidation of a part doesn't matter.

MRS JUSTICE GLOSTER: But is invalidity directed at contracts that are not concluded at all because there's no certainty of terms?

A. It would bring to the conclusion that it would be non-concluded, again, if it would be clear that without the invalid part parties would never enter into this contract.

MRS JUSTICE GLOSTER: So invalidity can extend to contracts which are not concluded because a term is uncertain?

A. Because the term is uncertain.

MRS JUSTICE GLOSTER: Yes I see.

MR RABINOWITZ: Mr Rozenberg, I have to say, that is an answer that is helpful for my position but in all honesty I'm not sure that that's right.

MRS JUSTICE GLOSTER: I was only asking the question.

MR RABINOWITZ: No, indeed, and my Lady got an answer which I can tell your Ladyship is helpful to our case.

MRS JUSTICE GLOSTER: I can see that.

MR RABINOWITZ: But I'm not sure that that's right,

Mr Rozenberg, and can I just suggest something to you because I don't want this to go off on a false basis, although perhaps I should happily grab that.

Is there not a difference in Russian law between something being void or voidable and simply being non-concluded in the sense that the parties did not reach an agreement on a term?

A. Just again, my Lady, to be clear that the words are used correctly, because here the words -- a lack of clarity whether the parties would agree or not agree from the very beginning.

If the understanding is that intention of the parties was clear, that they would like to have the whole agreement performed, and one of the part became invalid, then in this situation it's clear that there was no situation when the agreement would be non-concluded.

Therefore, to avoid any misunderstanding, I have to say that in this situation invalidation of the part which was crucial for the parties leads to invalidity of the whole contract.

Q. I don't want to --

A. If I was understood in a different way I'm sorry, but

this is the clear statement of the law.

Q. Let me see if I can cut through this.

A. In other words, the question whether the agreement would be concluded or not depends on the evaluation of evidence from the point of view of will of the parties at the moment of the conclusion of the agreement.

If both parties understood that the whole agreement will be concluded, shall be concluded, there is no default rule, nothing is unclear, and one of the parts of the transaction becomes later invalid, not because of the parties, then the invalidity of the part of the transaction leads to invalidation of the transaction if it's clear that the parties would never have entered into the transaction without the invalid part.

MRS JUSTICE GLOSTER: Yes, I see.

So he seems to be agreeing with you that there is a difference, Mr Rabinowitz.

MR RABINOWITZ: For my Lady's note, Article 166, which your Ladyship will find on page 31 of G(A)4/4, deals with void and voidable G(A)4/4.02/1.

MRS JUSTICE GLOSTER: It's just the use of the word "invalid".

MR RABINOWITZ: Indeed, and your Ladyship will see at Article 166 that it says a transaction is invalid if it's void or voidable.

MRS JUSTICE GLOSTER: Right, thank you. That's the point I wanted.

MR RABINOWITZ: I thought that was the point.

MRS JUSTICE GLOSTER: I think it's common ground that that wouldn't include something that is merely not concluded.

MR RABINOWITZ: Yes.

Our position is, as is clear from what Dr Rachkov says, we say Article 180 applies by analogy, and that is the point I've been trying to put to Mr Rozenberg, having dealt with that.

Mr Rozenberg, rather than taking up more time on this, can I just ask you this. I gave you the hypothetical example of the lease and the option, and the option being invalid -- well, in the first case, invalid in relation to an essential term, and in the second case non-concluded because there wasn't agreement on essential term.

Your position is that it doesn't matter. In both cases the position is that the lease agreement fails as well because of the problem with the essential term in the option agreement, is that right?

A. Just -- the key point was that if all the parties would never have entered into the agreement without the invalid part then it would be fatal for the agreement.

Q. And if they would have entered into the agreement, that

is to say the lease agreement, regardless, then you accept that it would be valid, the lease agreement, do you?

A. This was the first suggestion of the counsel where I was a little bit misled that the party would be perfectly happy without the option, if I remember correctly.

Q. In those circumstances, you would accept that it would be valid, the lease agreement, yes?

A. If this is not the essential term, yes.

Q. Thank you for that.

Now, I want next to look at partnership contracts. We have been dealing with some general concepts but we now need to apply them to the particular contract we're concerned with here, which is a partnership contract. And a partnership contract or a joint -- what is it, a joint activity contract, is a particular type of contract in Russian law, correct?

A. A joint activity agreement, in parenthesis, a simple partnership, that's what we are talking about.

Q. And our concern is to understand what essential terms and default rules apply for a joint activity or partnership contract, and whether the 1995 agreement was sufficiently definite and complete to be a concluded and binding partnership contract, okay?

A. Okay.

Q. Now, can we look at what you and Dr Rachkov say about this matter in the joint memorandum, bundle G(A)6/1 again, page 11 G(A)6/1.01/11 paragraph 31.

You can see that the heading is "Simple partnership contract, also called joint activity contract".

Then we see at paragraph 31 that you and Dr Rachkov actually agree a number of points. Subparagraph 1, you agree:

"A simple partnership contract is the same as a joint activity contract. Both these words are used [in] Article 1041 to name the contract [described by that Article]. Dr Rachkov generally refers to this as a 'partnership contract' and Mr Rozenberg as a 'joint activity agreement', but these two... mean the same [thing]."

Then subparagraph 2, you agree:

"At the relevant times a partnership contract was provided for by Article 122 of the Fundamentals (which applied in the period from 1 January 19395 to 1 March 1996) and Article 1041 of the current Civil Code (which applied from 1 March 1996)."

So just making sure that we're clear about this, when the 1995 agreement was made, the relevant provision of the law relating to the partnership contract was Article 122 of the Fundamentals, correct?

A. Yes.

Q. And it's common ground that the Fundamentals were a mini Civil Code put in place in the early 1990s as part of the transition to a market economy in Russia, that's right, isn't it?

A. Yes.

Q. Article 122 of the Fundamentals was supplemented by the general rules in Articles 1 to 454 of the Civil Code, including Article 432 which we've looked at, because these articles had already come into force in 1995, correct?

A. Yes.

Q. But the rules on particular contracts in Articles 455 to 1109 of the Civil Code didn't come into force until 1 March 1996. At that point, Article 1041 would have replaced Article 122 of the Fundamentals, correct?

A. Yes.

Q. Now, that all sounds terribly complicated, and you raise a specific point about the continued application of the 1964 Civil Code which we'll get to. But so far as essential terms are concerned, in fact the complications don't need to concern us because in fact you and Dr Rachkov agree that Article 122 of the Fundamentals was essentially similar to Article 1041 of the Civil Code; they're basically the same in that regard, are

they not?

A. Yes, they're very close.

Q. We actually see this if you look at page 12 of the joint memorandum, if you look at subparagraph 4 G(A)6/1.01/12.

A. Yes.

Q. You see that you say that:

"The essential terms for a partnership contract are the same under Article 122 of the Fundamentals as under... 1041 of the current Civil Code."

So can we look then at the provisions of the Fundamentals. Can you go, please, to -- it's actually in J2/6, tab 32.

MRS JUSTICE GLOSTER: There isn't a tab 32 in J2/6.

MR RABINOWITZ: Sorry. The reference I have here is J2/6 --

MRS JUSTICE GLOSTER: I've got 38.

MR RABINOWITZ: 38, sorry. J2/6.38 at tab 32. It's page 182 J2/6.38/182.

These are the exhibits to your second report, and if we look, we can see what Article 122 says, "Agreement on Joint Activity", it's the first two sentences:

"Joint activity without formation for this purpose of a legal entity shall be established under the agreement between its participants. Under [a] joint activity agreement (simple partnership agreement) the

parties (participants) undertake to pool their contributions, integrate their efforts and act jointly in order to achieve [a] common business objective or other objective not contrary to... law."

Okay?

A. Yes.

Q. Now, perhaps we can look at Article 1041 of the Civil Code, just to see the extent to which that has got any differences. G(A)4/4, tab 2, page 73 G(A)4/4.02/73.

A. I have the Civil Code here, it's not a problem. Okay, Article 1041.

Q. 1041. On the left-hand side of the page, you see Article 1041 entitled "The Contract of Simple Partnership". Just looking at the first paragraph:

"Under a [simple partnership contract] (a contract on joint activity) two or more persons (the partners) undertake the duty to join their contributions and act jointly without the formation of a legal person to acquire profit or achieve another purpose not contrary to a statute."

So both of these provisions speak of the parties agreeing to pool or join their contributions and integrate their efforts and undertake joint activity in order to achieve a common business objective or goal or other objective or goal not contrary to law, correct?

A. Correct.

Q. Now, if we then go back to the joint memorandum,  
page 11, just to look at paragraph 31(3)  
G(A)6/1.01/11.

A. Yes.

Q. At the bottom of page 11 you can see that you agree  
that:

"A partnership contract envisages a joint activity  
of the partners towards a common goal without formation  
of a legal entity. This common goal must be [a lawful  
one]."

If you go over to page 12 and you look at  
subparagraph 5 at the top of the page, you see that you  
agree also that:

"All essential terms must be sufficiently defined.  
It would not be sufficient for the parties literally to  
agree to 'combine... contributions and act in pursuance  
of a common goal' without any detail."

So we all agree, do we not, that the parties must  
agree more detail than that?

A. Yes.

Q. Then just looking at subparagraph 6, you address the  
concept of a contribution which the party must agree to  
make, and you agree again:

"The concept of 'contribution' is very wide.

A party can contribute property or skills, efforts or services. It is not essential [you say] that property be contributed. There is nothing objectionable about a partnership contract in which each [party] agrees to contribute only efforts or services."

Correct?

A. Yes.

Q. Then just looking at subparagraph 7, you address the concept of a joint activity which the parties are to undertake, and you agree also this:

"The agreed activities may be the same as the contributions made by either party, particularly where the contributions are made in the form of skills or efforts. In this case, the term on contributions and activities of the partners will coincide. Such term must be sufficiently defined."

So where the parties are to contribute efforts, I think what you're agreeing here is that those efforts may also comprise their agreed activities provided that they are sufficiently defined, correct?

A. Yes.

Q. Now, thus far you and Dr Rachkov agree, but if we then look at paragraph 32, we can see that you dispute the precise nature of the essential terms of a partnership contract.

Now, to some extent there is agreement between you, because you both agree that a partnership contract must reach a sufficiently defined agreement on, first, the parties' contributions, secondly, their joint activities, correct?

A. Yes.

Q. And third, the common goal that those efforts are directed towards.

Where you disagree is on how precisely these matters must be defined, and we see that in paragraphs 32 and 33 of the joint memorandum. It really relates to the certainty of what the parties are to do and the goal that they seek to define, correct?

A. Yes.

Q. While we're on paragraph 32, just looking at paragraph 32(1)(d), you say that the essential terms for partnership contract include:

"The shares the parties will hold in the common property, in case the parties did not wish them to be equal."

So your suggestion here, Mr Rozenberg, is this right, is that the shares the parties will hold in the common property are not necessarily an essential term but will become so if the parties do not intend their shares to be equal. And in that event, you say, their

respective shares are an essential term which must be agreed or the contract will fail?

A. Yes, because if there is no agreement between the parties reflected in the agreement but the default rule works and there are no objections against it, it's not necessary for the parties to determine the shares.

Q. Right. And we come back to the question of default rules because you accept, I think, that there are default rules governing the shares of the party in the common property.

Let's just have a look at what you say, if you go to paragraph 37, which is on page 15 of the joint memorandum G(A)6/1.01/15, just looking at paragraph 37(2), you say:

"It is agreed that the Civil Code provides default rules by which, unless the parties agree to the contrary or unless otherwise follows from the circumstances or legislation ...

"The parties will hold an equal share in the common property..."

And you refer there to Article 245, correct?

A. Yes.

Q. Then you each add an observation:

"Mr Rozenberg observes, however, that where the parties decide to depart from this default rule but fail

to finally agree otherwise, the default rule will not apply."

And we've talked about that already.

"Dr Rachkov observes, as noted above, that the default rule will only not apply if the parties have made clear that they must reach agreement on that term before there can be a contract."

So just pausing there, the position appears to be this, that there is a default rule which provides that the parties will hold an equal share in the common property, correct?

A. Correct.

Q. That is the default rule to be found in Article 245 of the Civil Code, which is numbered less than 454, and which therefore applied in 1995 when the 1995 agreement was made, do you agree?

A. Yes, because at that time the only legal basis for this was Article 245. Articles of the part 2 were not in effect yet.

Q. And third, I suggest, the mere fact that the parties tried but failed to reach agreement on their respective shares does not make this an essential term. The default rule can still apply. Do you agree?

In other words, they try and agree what the shares are going to be but they fail to reach agreement, in

those circumstances the default rule can apply?

A. Now I'm trying to be more careful because from the counsel's statement it's unclear whether the parties tried, failed and agreed that the default rule should apply, or tried, failed but still insist that the shares should not be equal. In other words, disagree with the application of the default rule. This is the key point.

Q. All right. This goes back to the general point we've already discussed I think, Mr Rozenberg, and I'm not going to get into that again.

As I've already indicated, and as Dr Rachkov has made clear, our case is that the default term would only become an essential term -- I'm not going to go into it. You know what my position is.

Can we look at what other default rules may apply to a partnership contract, and can we look, if you're still on page 15 of the joint memorandum, at paragraph 37, subparagraph 1. And here you agree that the Civil Code applies another default rule, namely the value of the parties' contributions will be deemed equal. But do you see that that is at Article 1042.2; do you see that at 37.1?

A. Yes.

Q. If we just look at paragraph 33 of the joint memorandum for the moment, at the bottom of the page, subparagraph

33(1)(b), you say that one matter which the agreement must define is:

"Evaluation or value of contributions (primarily if contributions comprise intangible assets, or services)."

So I think you're saying, are you, that a term on the evaluation of contributions is an essential term for which, under the Civil Code as it applied in 1996, there is a default rule, correct?

A. In what paragraph are you reading this?

Q. Paragraph 33(1)(b), you talk about how precisely the parties' contributions must be defined, and you say that the contributions must include:

"Evaluation or value of contributions..."

Do you see that?

A. Yes.

Q. And then if you go back to page 15, looking at 37(1), you say that:

"The value of the parties' contributions will be deemed equal ..."

My point to you is that there is a default rule which applies in those circumstances, that's reflected in your paragraph 37(1), is it not?

A. The law states that the contributions shall be deemed equal on value otherwise established by the agreement of the parties or by the concrete circumstances. This

article was not in fact at the moment of 1995 agreement, but now it exists, I agree.

Q. Indeed.

A. And I indicated why I double-checked what counsel said.

I checked what in 33 was said because I indicate here that Mr Rozenberg maintains that the agreement as required by Russian courts must define.

Then just the following text, because it was based, for the '95 agreement, on the court's practice, but still Article 1042 was not in fact at the moment of '95 agreement.

Q. Mr Rozenberg, I wasn't trying to catch you out with Article 1042.2 and when it applied. It is a default rule under the Civil Code and, as I think I said, since the article has a number higher than 454 we know that it didn't apply in 1995?

A. Correct.

Q. In fact, it only applied from 1 March 1996, correct?

A. Yes.

Q. And that then gives rise to this question, whether there was prior to this in 1995 any corresponding default rule here, correct? That is the issue?

That is the issue, isn't it, Mr Rozenberg? We know that Article 1042 is a default rule but that it only applied from March 1996. Now, the question is whether

there was in 1995 a corresponding default rule, that is where you and Dr Rachkov disagree, is it not?

A. As far as I remember, we both agreed about the shares. It was not quite clear about the basis maybe for Mr Rachkov in his cross-examination, but my view is always that for the shares, the default rule was always 245 in the absence of any other default rules in the Fundamentals.

Q. Indeed, Mr Rozenberg, but we're not dealing with shares here, we're dealing with contributions, which is why we're looking at 1042.1, which only applies from March 1996. And there is an issue as to whether, notwithstanding that 1042.1 only applied from March 1996, there was nonetheless a default rule that would have applied in 1995, do you understand?

A. I remember that the only default rule which applied to the partnership agreement for shares and contributions was 245, and there was also Article 437, as far as I remember, of the old Civil Code regarding profits and losses. But I don't have under my hand the old Civil Code.

Q. All right.

Mr Rozenberg, I want to show you some materials which are relevant to the question as to whether there was a default rule in relation to contributions that

applied prior to 1995 and therefore would have applied to the 1995 agreement.

One gets, I suggest, some assistance on this from some of the old books which deal with this issue and I want to show some of those to you. Can we start, please, by looking at what Professor Sukhanov said in his 1993 textbook. You will find that at G(A)7/1, tab 11. The English starts at page 99 G(A)7/1.11/99.

Let me ask you this about Professor Sukhanov, Mr Rozenberg. He is, is he not, another senior jurist who was one of the architects of the Civil Code, correct?

A. Yes.

Q. So let's just see what he says, page 99 in the English, and if you turn, please, to 98.001 G(A)7/1.11/98.001, just so that you can see that he is the author of chapter 46, which is what we're going to look at, as well as the editor of this book. Okay?

MRS JUSTICE GLOSTER: Mr Rabinowitz, please may you identify for me the paragraph in the joint memo where the dispute between the parties in relation to the default rule, or the application of any default rule prior to 1996 is identified?

MR RABINOWITZ: Paragraph 54.2 G(A)6/1.01/18.

MRS JUSTICE GLOSTER: 54.2, thank you.

MR RABINOWITZ: It's a rather opaque reference to this, my Lady.

MRS JUSTICE GLOSTER: That doesn't seem to me to be addressing it.

MR RABINOWITZ: I think the point came out of Dr Rachkov's evidence yesterday relating to the fact that there was this default rule. I think you'll recall I took him in re-examination to some of the materials.

MRS JUSTICE GLOSTER: Yes, okay. So it's not actually addressed --

MR RABINOWITZ: It's not sufficiently clearly addressed in the joint memo for me to be able to point you to something which says very clearly that this is the issue.

MRS JUSTICE GLOSTER: Yes, okay.

MR RABINOWITZ: I apologise for that.

Now, if you have 7/1 at page 98.001, I think I've already made this point with you, you see that Professor Sukhanov is the author of chapter 46 as well as the editor of this book, called "Civil Law in Two Volumes". Do you see that?

A. Yes.

Q. And if you go to page 100, please, do you see in the middle of the page the paragraph beginning "The participant", do you see that?

A. Yes.

Q. He says this, and bear in mind obviously this is his 1993 book, Mr Rozenberg:

"The participant to the contract is allowed to provide any property as a contribution: cash funds, securities, goods, real estate or the rights to use it, items of intellectual creativity (patents, know how etc.). Moreover [he says], the participants' contributions are not obliged to be equal, although they are assumed to be so unless there is a special agreement to this effect."

Then he says:

"But in any event it is vital that they are precisely defined because this consequently defines the size of the share in the profits or losses."

So what Professor Sukhanov is saying is that the parties' obligations are not obliged to be equal although they are assumed to be so in the absence of special agreement, do you see that?

A. Yes.

Q. And so, again, what Professor Sukhanov appears to be saying, is he not, as far back as 1993, is that there is a dispositive rule or a default rule by which the contributions of the parties are assumed to be equal. That is correct, is it not?

A. Unless there is a special agreement to this effect, yes.

Q. So you agree with me?

A. Yes.

Q. And then, just looking at the next paragraph,

Professor Sukhanov says as follows:

"The contribution of a participant of a partnership may also be expressed in terms of various services provided by the participant for the common objective, including labour and activities requiring special knowledge and so [on] and so forth. Because each participant is obliged to provide a defined property contribution for the common objectives, it is impossible for a situation to arise whereby one of the participants would be denied the receipt of a part of the profit, or on the contrary the imposition of a part of the losses."

Just focusing on the last sentence here, Professor Sukhanov appears to be saying that it is impossible for the situation to arise where one of the parties would be denied either the receipt of part of the profits or the imposition of part of the losses, and the reason is, is it not, of course, because the dispositive rule, the default rule of equality, will apply if the parties do not establish for themselves how they will share the profits and losses of their joint venture, do you agree?

- A. I understand of Professor Sukhanov whether it will be impossible for such a situation to arise, not because the default rule exists and assigns at least some share in the contributions to everybody, but simply because each participant is obliged to make contributions to provide some concrete property as a contribution. This is the sense of the statement.
- Q. Well, that's fine, but if they haven't agreed what the contribution -- what the value of their contribution is, then the dispositive rule will apply and the value of their contributions will be said to be equal. That's what Professor Sukhanov says in the first paragraph that we looked at?
- A. In the first paragraph, contributions are not obliged to be equal but they are assumed to be so unless there is an agreement, that's correct.
- Q. So that's the position from 1993.

And can we just very briefly see what the Soviet scholars said on this topic. If you've got bundle 7/1 there, can you go to tab 3, please. The English starts at page 18, it's a commentary of 1973 G(A)7/1.03/18, the Russian is at page 15 G(A)7/1.03/15.

You can see that the work, "Soviet Civil Law", you can see that the work is edited by Professor Krasavchikov, do you see that?

A. Yes.

Q. If you turn to page 19, however, in the English, you can see that chapters 30, 34 and 44 were written by VF Yakovlev, do you see that?

A. VF Yakovlev.

Q. And this is right, isn't it, that he became Professor Yakovlev and he served as the distinguished chairman of the Supreme Arbitrazh Court between 1992 and 2005?

A. There is no such position, distinguished chairman. He was chairman of the Supreme Arbitrazh Court.

Q. He was chairman and he was distinguished, very well.

Can we just look at page 19.001 G(A)7/1.03/19.001.

I just want you to see that chapter 44 was written by Professor Yakovlev, it's the "Joint Activities" chapter, do you see that?

A. Yes.

Q. Okay. Now, let's just see what he says. If you look at page 21 G(A)7/1.03/21 in the English, and the heading is, if you're following in the Russian, "The duty of the participants in the contract."

A. 21, right?

Q. And this is dealing with joint activities contract, page 21.

A. Yes, I've found it.

Q. So he's dealing with joint activities contract, and this is what he says in relation to the duties of the participants in the contract:

"The [duties] of the participants in the contract consists in general of taking part in joint activities in order to achieve the business aim set by the contract. Specific participation in joint activities may consist of making contributions in cash or other property, performance of work in the field of production or organisation, covering the costs provided by the contract, [or] a combination of all or some of these forms of participation in [the] joint activities."

This is really in line with the point upon which you and Dr Rachkov agree, that contributions can either be property or work, yes?

A. Yes.

Q. Then in the next paragraph Yakovlev says this:

"The amount of the contribution of each of the participants in joint activities in property or in work is determined by agreement between the parties. If not otherwise established by agreement, the amount is assumed to be equal for all participants. If [the] property is transferred for the needs of [the] joint activities only for its use or operation, but not as the joint property of the participants in relations, the

amount of the contribution is determined not by the value of the property but by the value of the service rendered."

So the author here, Yakovlev, is confirming that even under the 1964 Civil Code the dispositive rule, or the default rule, was that the amount of the contribution of each party was to be assumed equal, do you agree?

A. That's what I can read. I cannot find quickly this rule in 1964, but maybe --

Q. But that seems to be what he is saying?

A. That's what he is saying, yes.

Q. All right. My Lady, we started at --

MRS JUSTICE GLOSTER: That would be a convenient moment?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Very well. I'll take 15 minutes.

(11.28 am)

(A short break)

(11.47 am)

MR RABINOWITZ: Mr Rozenberg, can we go to the joint memorandum again, at page 17, paragraph 50 this time G(A)6/1.01/17.

You see at paragraph 50 in the middle of the page, we see that it's agreed that:

"Where a partnership contract has been concluded,

property contributed by the partners, and property emerging as a result of the joint activity, is common property unless otherwise provided by legislation or the parties' agreement."

It may just be worth seeing what you say about this in our fourth report. Can you go, please, to bundle G(A)3/1, tab 2, page 113 G(A)3/1.02/113.

Just looking at paragraphs 153 and 154, you say:

"Under Article 124 of the Fundamentals, monetary funds or other contributed property of the parties to the agreement, as well as property created or acquired as [a] result of their joint activity, shall be their common property.

"Similarly, pursuant to Article 1043 of the [Russian] Civil Code, contributions made by the partners to the joint activity, and property [created or] acquired ... as a result of [their] joint activity, is common property of the partners unless otherwise provided by statute or agreed."

I think I'm right in saying that the property created or acquired as a result of the joint activity, which is common property, includes profits and income for the joint activity, correct?

A. Fruit of revenues, as indicated in the law, yes.

Q. That's equivalent to profits and income.

A. Yes.

Q. Very good.

Now, just going back to the joint memorandum, bundle 6/1, page 17. Can we just look at paragraph 54 of that, please G(A)6/1.01/17.

Just looking at subparagraph 1 of paragraph 54, you see that:

"It is agreed that...

"Profits received by the partners as a result of the joint activity or from the use of common property are to be distributed proportionately to the value of the partners' contributions or, prior to 1 March 1996, their share in the common property unless [otherwise agreed]."

So profits and income are to be distributed proportionately, and let me just suggest this. So after 1 March 1996, when part 2 of the Civil Code came into force, they are to be distributed proportionately to the value of the parties' contributions. And prior to then, in 1995, they are to be distributed proportionately to the parties' share in the common property. Correct?

A. Yes.

Q. We know that the default rule for both contributions and common property is that the parties will share equally, the parties can agree upon another division but that is the default rule, we've seen that, yes?

A. Yes.

Q. So the position is, is it not, in 1995 and in the following years, the default rule is that profits and income are to be distributed equally unless the parties agree on a different share or division; that's right, isn't it?

A. It is correct.

Q. Thank you. Now, what I want to look at next is how precisely the contributions, activities and goals of the partners must be defined, and if you have the joint memorandum, can I ask you, please, to go back to page 12, paragraph 33, towards the bottom of page 12 G(A)6/1.01/12.

We see there that there is a dispute between you and Dr Rachkov as to how precisely the parties' contributions must be defined. At subparagraph 1 you refer to three matters which you say must be defined. At (a) you say:

"The amount or numeric characteristics of [the] contributions (where the contributions are to be not services, but countable things)".

Then at (b) you say:

"Evaluation or value of contributions (primarily if contributions comprise intangible assets or services)".

Then at (c) you say:

"The order, timing and process of their making [and that's the partners' making] of contributions (if they cannot be made simultaneously with [the] conclusion of [the] agreement)."

One can see from paragraph 33(2) that Dr Rachkov doesn't agree with you about these matters. Can you just read to yourself what he says. (Pause)

A. Yes.

Q. So Dr Rachkov accepts that the parties must agree how or what it is they will contribute, but he doesn't agree that they must define the order, timing and process by which they will do so. He also doesn't accept that they must define a value for their contributions; that's right, isn't it?

A. Right.

Q. Just looking at paragraph 34, page 13, we see that you and Dr Rachkov dispute how precisely the agreed activities must be defined. We see there is a reference back to the heading "Certainty of essential terms" so we know that this has to do with essential terms.

If we go back to page 8, just to remind ourselves of what you say about this, it's paragraph 21

G(A)6/1.01/8. You see that you and Dr Rachkov agree certain things about essential terms, and subparagraph 1 you agree that:

"The parties must [agree] the essential terms of the contract with sufficient certainty to define [their obligations]."

Correct?

A. Yes.

Q. And then subparagraph 2 you further agree that:

"The contract must impose an obligation, and under Article 307, an obligation must be to undertake (or to refrain from undertaking) a 'defined act'."

Yes?

Then in subparagraph 3, we see that you agree that a defined act may refer to a defined activity or a course of conduct, correct?

A. Yes.

Q. Then you add this proviso, you say:

"... provided that, in Mr Rozenberg's view, in case of a dispute a court is able to establish what specific steps were envisaged under such obligation."

Then just looking at subparagraph 4, we see that you and Dr Rachkov agree that:

"The agreement must define the obligation with sufficient certainty such that it is objectively ascertainable (and a court can adjudicate) whether the obligation has been complied with."

A. Yes.

Q. Okay. And looking then at paragraph 22, just following this through to paragraph 22, still on page 8, we see that:

"It is disputed whether the joint activity or simple partnership agreement in particular must set out (or make it possible to identify) prescribed steps or specified acts that the parties are required to perform as an essential term of a joint activity agreement."

And in subparagraph 1 you state your position and you say this:

"Mr Rozenberg maintains that this is necessary, although if the steps that the parties are required to take can be derived from the nature of the activity that they are obliged to perform, then it is unnecessary to spell them out. However, where those specific steps are not clear from the nature of the activity ([that is] a description of a skill or service without particular steps), they must be expressly identified."

Just to make sure I understand what you're saying, Mr Rozenberg, you are saying I think this. First, that the contract may provide for the parties to pursue a defined activity or course of conduct, and the specific steps which the parties are required to take need not be spelled out, provided that those steps would in any event be clear from the nature of the agreed

activity, correct?

A. Yes.

Q. But you say that where those specific steps are not clear from the nature of the agreed activity, and you give the example of a description of a skill or service without particular steps, then you say the specific steps must be expressly identified in the agreement, is that right?

A. Right.

Q. And I think you also say, and I have in mind what you said at paragraph 33(1)(c) at page 13, that the agreement must therefore expressly identify the order, timing and process by which the parties are to make their efforts, is that what you say?

A. Yes.

Q. Again, can we just look at the way you put this in your report. If you go to G(A)3/1, tab 2, your fourth report, page 153 G(A)3/1.02/153, it's paragraph 300(a). We see that you say in the first sentence, dealing with the question of whether there was an agreement as to contributions, you say:

"As to Mr Berezovsky's supposed contribution, an agreement to 'lobby' or to 'raise finance' is not, in my view, sufficient."

Then you carry on and you say this:

"Mr Rachkov concedes (as he must) that if there was a valid agreement and the Claimant failed to perform his contribution, he would be liable in damages pursuant to Article 15 of the... Civil Code."

In fact I'm not sure that is what Dr Rachkov is saying but that doesn't matter for present purposes.

But just going on with what you have to say in this paragraph, you say in the last three sentences:

"But it would be impossible for a court to assess damages in relation to such an obligation; it is not sufficiently objectively definable. In addition, it goes without saying that such an obligation could never be specifically enforced. Consequently, it was not sufficiently precise to form the subject matter of a binding agreement."

Can we just take this in stages, Mr Rozenberg. In the first sentence, you say that damages could never be assessed in relation to an obligation to lobby or to arrange finance, correct?

A. For a court it looks like an impossible task to define, in the monetary form, damages in case of failure to perform such obligation.

Q. All right. So I think what I suggested to you was correct.

Then in the second sentence, you are saying that

such obligations could never be specifically enforced, that's right, isn't it?

A. Yes.

Q. So what you then say in your third sentence is that consequently such obligations are not sufficiently precise to form the subject matter of a binding agreement, is that a fair summary of your view?

A. Yes.

Q. And we see that you elaborate on this earlier in your report, in fact if you go back to page 148, paragraph 277 G(A)3/1.02/148, you see the paragraph beginning "Clearly":

"Clearly, the purported obligations of Mr Berezovsky and Mr Patarkatsishvili could not have been enforced through the Russian judicial system; the court could not bind Mr Berezovsky to use his 'connections' to ensure privatisation of Sibneft for his own benefit through the issuance of the August Decree or oblige Mr Patarkatsishvili to invoke his business contacts to achieve the agreed goal. It is impossible to determine an objective standard by which the performance of such obligations could be measured or damages for any non-performance assessed."

So a further point I think you are making here, and it's the last sentence, is that it is impossible to

determine an objective standard by which performance of an agreement to lobby could be measured; is that what you're saying?

A. Yes.

Q. Now, you deal with the same point, if we can just briefly look at it here, in your second report, that's bundle J2/5, tab 37 at page 131, paragraph 74, please J2/5.37/131. Do you have that? Paragraph 74.

If we just pick that up --

A. I'm afraid in this report I cannot find paragraph 74.

Q. Are you behind tab 37, page 131? (Pause)

So what you say, I'm just picking it up in the middle of that paragraph:

"Clearly, the obligations of Mr Berezovsky and Mr Patarkatsishvili could not have been enforced through the judicial system (the court could not bind Mr Berezovsky to use his high level connections to ensure privatisation of Sibneft through the issuance of the respective Decree or rule that Mr Patarkatsishvili hold his business contacts to achieve the said goal), which additionally proves absence of any legal meaning thereof."

In paragraph 75 you say:

"Therefore, it is clear that the contributions of Mr Berezovsky and Mr Patarkatsishvili would not be

recognised as legally meaningful under Russian law, and, as such, they cannot recall within the categories mentioned in Article 1042 of the ... Civil Code regulating contributions to the joint activity agreement, namely 'money, other property, professional and other knowledge, skills and expertise, and also business reputation and business contracts'."

I think there is a typo in paragraph 75, that should presumably say "business contacts" rather than "business contracts"?

A. Of course, business contacts.

Q. Then in paragraph 76, I think you summarise your view, you say:

"To summarise, the alleged 1995 Agreement did not and could not give rise to any enforceable obligations between the parties and, therefore, as a matter of Russian law, it could have no legal nature and/or force, and could not possibly give rise to [the] joint activity agreement under Russian law."

To sum up what you're saying, Mr Rozenberg, it is, is it not, at least on this point, that an agreement to lobby or to raise finance is not legally meaningful and cannot be a contribution to a partnership contract because, you make three points, you say first it is impossible to identify precisely how the agreement

should be performed, correct?

A. Yes.

Q. And then you say, secondly, the obligation could not be specifically enforced if the promissor refuses to make their agreed contribution, correct?

A. Yes.

Q. And third, you say it's impossible to determine an objective standard by which the performance of such agreement could be measured, that's your third reason, correct?

A. It's impossible to assess, to evaluate the amount of damages if they are not performed, that's correct. In addition, later, I also specified some important points regarding contribution in the form of lobbying services because again such contribution cannot get any protection in the court in case of dispute.

Q. Yes, I was about to show you that. If you go to page 149, I think in the same report, paragraph 123 J2/5.37/149, you see you say:

"In the doctrinal view of Russian ... law, 'service is a means to satisfy individual need of a person, which is connected with non-material result of the performer's actions, permitted by current law and order, on a paid basis'."

Then you say this:

"Under Russian civil law services which go beyond the framework permitted by the law (such as the services of a paid killer, to give an extreme example) or services which do not have civil law contents (such as the services of, say, a fortune teller) may not be subject to legislative regulation applicable to civil law services..."

Yes? That's what you say?

A. Yes, yes, and the next, mm-hmm.

Q. I certainly do not disagree with you that a paid killer is not entitled to be paid for his services, but can we look at your suggestion that a fortune teller would not be entitled to payment for, let's assume it's her services.

MRS JUSTICE GLOSTER: That's a sexist assumption, Mr Rabinowitz.

MR RABINOWITZ: We'll make it his services then. I could make some other assumptions about that which wouldn't, no doubt, go down well.

Let's take the fortune teller, shall we, Mr Rozenberg, because I have some difficulty with your suggestion that a fortune teller or indeed a lobbyist or a person who arranges finance is not entitled to payment for their services. Again, I wonder if we can test this with a hypothetical example.

- A. About the person who arranges finance, I didn't say this. I indicated that since it was absolutely unclear what kind of raising finance would be performed, this specific obligation is unenforceable. And also I didn't indicate that it's contrary to law, like in case with lobbying services.
- Q. All right, we'll come to those points, but let's just deal with the fortune teller. Let us suppose that a fortune teller agrees to tell my fortune in return for £10. He is to tell me my fortune and then I am to pay him £10. Okay?
- A. Okay.
- Q. If the fortune teller breaks his promise and refuses to tell me my fortune, I can quite see that it may be impossible to identify what fortune he would have told me and that I may be unable to show that I've suffered any particular damage from his failure to tell me my fortune. I can see that it may, in those circumstances, be difficult or impossible for me to obtain a court order compelling him to tell me my fortune. I can see all of that, Mr Rozenberg. But the position is quite different, is it not, where the fortune teller has in fact told me my fortune, yes?
- A. What is the question? You paid -- in the first situation you paid money and the fortune teller received

money and didn't tell you anything.

Q. And in that situation, where he doesn't tell me anything, I can quite see it would be difficult to go to court and get an order compelling him to tell me my fortune.

A. No, it's clear, at least under Russian law, it's necessary to go to the police and it's a fraud and you will get the money.

Q. I'm sure that's so.

But the position is different, is it not, Mr Rozenberg, where the fortune teller has in fact told me my fortune.

A. Right.

Q. Yes?

A. Yes.

Q. Because once the fortune --

A. But "yes" doesn't mean the end of the story. The position is different, and then what?

Q. Let's just see if it's different, or how it's different.

Once the fortune teller has told me my fortune then I would suggest that I would become obliged to pay him the agreed price of £10, do you agree?

A. This is the problem with Russia. If you voluntarily pay money to the fortune teller it's fine, nobody will be prosecuted. But if you refuse, then the fortune teller

will have problem because his or her services will not be recognised as obtaining court protection in Russian courts, and he or she will stay without money.

MRS JUSTICE GLOSTER: I suspect fortune tellers get their money upfront, don't you?

MR RABINOWITZ: They may well do that, my Lady. I've never used him or her.

A. Moreover, in the worst case scenario, if the court will see that it's done on a systematic basis then there may be some troubles for the fortune teller, but it's another story.

Q. Let's take a different example because fortune tellers are obviously treated specially.

Let's take a different activity. Let's take a situation in which you meet me and you say to me "I hear you have an interesting life, I will give you £10 if you tell me your story, your life story", okay? Now, again, before the contract is performed it may be difficult for anyone to ascertain what that story will be, but let's assume that, in fact, I do tell you my story, it may not be as interesting as you hoped, but I do tell you that story, and I then want the £10 from you.

Do you say in those circumstances that a Russian court would have any difficulty in saying, "The contract

has been performed, you have to pay the £10"?

- A. As far as I understand, it's something like agreement either to prepare some kind of memoirs or to give an interview or to prepare something else for publication, I see nothing wrong here.
- Q. And that would be so even if you had no idea what my telling you that story was going to involve, whether that was going to be a long story or a short story, you had no idea what the content of that story was going to be?
- A. It's the same like obligations to build something in your courtyard or to do some other work. Of course ideally the agreement should specify everything to get court protection later in case of problems, but it depends on the concrete case. If nothing were specified, he will face problems obviously in the court.
- Q. You see, I suggest to you, Mr Rozenberg, that activities like that, whether it be story-telling or indeed lobbying, and I understand your other objections to lobbying, or arranging finance, certainly once they have been performed they are capable of constituting the subject matter of a contract and giving rise to a contractual payment obligation, do you agree or not?
- A. Some payment obligations, if it was agreed with sufficient certainty, yes. But if it was as vague as

you described, just an interview or some recollections without any specification, then chances are high that such agreement will be considered as non-concluded.

Q. Well, what I'm suggesting to you is this, Mr Rozenberg, that in order for an agreement to be performed, and to give rise to binding payment obligations, it is not necessary that it should have been possible at the outset to identify the specific steps that the parties were required to take, at least with any greater precision than "You will tell me my (sic) story" or "You will do the lobbying" or "You will arrange finance"?

A. It depends, it's impossible to make such general conclusion because otherwise we will come to a strange result that, for example, interview in one sentence, "I had a wonderful life", period. And then the request to be paid would be sufficient and enforceable. Everything depends on concrete circumstances.

But ideally, the more precise your agreement is the higher your chances are for obtaining court protection in case of dispute. If everything is performed, everything goes without problems, it's fine and we all understand the court will not be involved. But if you anticipate that there may be problems, then ideally you go to a lawyer and prepare a comprehensive and very clear agreement.

Q. I think, just picking up on what you said, I think you accept that if everything is performed and there is no dispute about the fact that it has been performed, then that will get the protection of the Russian law, correct?

A. I said that if everything was agreed without dispute and performed without dispute, and all the parties are happy, then there is no basis for the involvement of the court. But whether everything was legal or not quite, it's an additional question like with the fortune teller.

Q. All right, that's very helpful.

Can we just look at one or two authorities on this. Can I ask you, please, to go to bundle G(A)4/5 at tab 36 G(A)4/5.36/125.

At tab 36, Mr Rozenberg, you I hope have informational letter number 48 of the Presidium of the Supreme Arbitrazh Court. I think this is exhibited to your fourth report. The English is at page 125, I think the Russian starts at page 127 if you prefer to see it in the Russian.

A. Yes, of course.

Q. Again I think you agreed that information letters of this kind play an important role in the understanding and interpretation of Russian law?

A. Yes.

Q. So can we just look at what this letter says. It's entitled, "On certain issues of judicial practice arising when disputes are considered relating to contracts for the provision of legal services".

If you look at section 1:

"In accordance with section 779 of the ... Civil Code under a contract for the paid provision of services the contractor undertakes on the instructions of the client to provide services (perform certain actions or conduct certain activities), while the client undertakes to pay for those services."

Then if you look at the next paragraph:

"In considering disputes it is necessary to proceed from the fact that the said contract may be deemed concluded if it lists specific actions that the contractor is obliged to perform, or indicates the specific activities which he is obliged to conduct."

So the Presidium is saying, is it not, that a contract for services may be deemed concluded if it either lists specific actions that the contractor is obliged to perform or it indicates specific activities that he is obliged to conduct. Do you agree?

A. Yes.

Q. And then looking at the next sentence of the same

paragraph:

"In cases where the scope of the contract is defined by an indication of a specific activity, the range of possible actions by the contractor may be determined on the basis of negotiations that preceded the conclusion of the contract and correspondence, established practice in the mutual relations between parties, normal... practice, subsequent conduct of the parties, etc."

Perhaps we can just break down what the Presidium seems to be saying here. Firstly saying that the contract may be deemed concluded if it indicates a specific activity to be performed, even if that activity may be performed in a range of possible ways, do you agree?

A. Yes.

Q. Second, it is saying that the range of possible actions can be determined on the basis of prior negotiation or discussions, or established practices, or normal business practices, or the subsequent conduct of the parties. Again, I take it you agree with that?

A. Yes, there is even a reference to the appropriate article of the Civil Code. Hard to argue about.

Q. Now, the existence of a range of possible actions shows that it may be a matter of judgment for the service provider to choose from within that range which specific

steps to take. That is true, is it not?

A. It's true, but it's clear from this letter that if still actions and terms are not sufficiently defined, it may be up to the court to decide what had to be done.

Q. Well, indeed, but you'll accept at least this, that the range -- the existence of a range of possible actions shows that it may be a matter of judgment for the service provider to choose from within that range which specific steps to take? (Pause)

Isn't that obvious, Mr Rozenberg?

A. For me not quite clear. Could you please indicate what concrete words state this?

Q. I'm not saying the words state this; I'm saying it follows from what they've said.

The existence of a range of possible actions, which is what they're contemplating here as a contract involving, shows that it may be a matter of judgment for the service provider to choose from within that range of possible actions what specific steps to take. You may be engaging a person in the sort of activity where there are a range of ways in which he can deal with it and it's a matter of judgment as to what way he chooses to deal with what you've engaged him to do?

A. I think if it's more or less standard activity, some more or less standard services for a customer, it

doesn't matter what concrete steps a lawyer would choose, even in preparation for litigation, for example. But if it really matters, and something unusual is anticipated, I think both parties should agree what concrete steps shall be taken, shall be chosen, to avoid any misunderstandings and, in the worst case scenario, court dispute in the future.

Q. Indeed, I was actually going to give you that very example.

If you engage a lawyer to appear for you, to argue your cause in some matter to try to get you a particular result, you don't have to specify in advance exactly what it is you say he should do in order to get that cause, which witnesses to call, which evidence he should adduce. You leave it to him, having engaged him to conduct that activity, to choose within the range of activities what exactly he will do in order to get you what you want. Correct?

A. Yes. In general, yes.

Q. Now, can we then look at section 2 of this letter, towards the bottom of page 125, and the first sentence says:

"According to section 781 paragraph 1 of the ... Civil Code, a client is obliged to pay for the services provided him within [the] deadlines and in accordance

with the procedure indicated in the contract."

Then the next paragraph:

"In considering disputes relating to payment for legal services rendered in accordance with a contract, arbitrazh courts must be guided by the provisions of section 779 of the ... Civil Code, according to which a contractor may be deemed to have properly fulfilled his obligations in performing the actions... indicated in the contract."

So the Presidium is saying here that in the context of disputes of a payment for legal services, the court should be guided by this provision of the Code under which the contractor is to be deemed to have properly fulfilled his obligations if he's performed the activities indicated in the contract, that's right, isn't it?

A. Yes.

Q. So again, Mr Rozenberg, the question for the court is whether the contractor has done what he promised, do you agree?

A. It's up to the court.

Q. Indeed, it is up to the court so I think you are agreeing. The court must decide whether the contractor has done what he promised, correct?

A. Right.

Q. Then in the next sentence the Presidium says:

"At the same time one should proceed from the fact that refusal by a client to pay for services actually provided to him is prohibited."

A. Right.

Q. So where services have been provided they must be paid for appears to be what they are saying, correct?

A. Yes, presuming that of course there were no violations of the agreement of the service provider.

Q. Indeed, and presumably they were the contracted-for services?

A. Right.

Q. If we then look at the next paragraph at the bottom of the page and on to page 126:

"At the same time [the] contractor's claim for payment of remuneration should not be allowed if the claimant bases said claim on a contract term making the payment amount for services dependent on a judgment by a court or government body which is to be arrived at in [the] future."

So what the Presidium seems to be saying here is that the contractor can't include a contract term which makes his fee dependent on a judgment by a court or government body which is obviously to be arrived at in the future, correct?

- A. Just any claims regarding favourable court or governmental decisions are not enforceable in courts, correct.
- Q. And what it appears to be prohibiting here are legal success fees, correct?
- A. It's not only legal success fees, because other state authorities are mentioned. Therefore I understand, and according to this paragraph, it's not only legal services fees, just any contracts which put the remuneration in connection with favourable decisions, either of courts or other state authorities, are legally meaningless.
- Q. You may say that, Mr Rozenberg, and indeed you do say that about Makayev, but it's perfectly plain that this is an information letter on certain issues of judicial practice arising when disputes are considered relating to contracts for the provision of legal services. That is what this is about, is it not?
- A. This is the heading, but this paragraph does not mention legal fees and clearly indicates that any claims connected with favourable decisions of state authorities will not get court protection. This particular paragraph doesn't mention legal fees. Sometimes it happens the main issue considered here are legal -- payments for legal services, but the last paragraph is

a little bit broader.

MRS JUSTICE GLOSTER: Could I ask you this, an agreement with an architect that he will get paid a contingency fee in the event that the local authority gives planning permission, is that illegal under this provision?

A. As I understand, it's illegal.

MR RABINOWITZ: I suggest to you, Mr Rozenberg, that is completely wrong and we will deal with that when we get to Makayev. I'm going to suggest to you that you have expanded Makayev out of all natural proportions but we will come to that when we get to Makayev.

A. Just to avoid any misunderstanding, I understood your question, my Lady, that the remuneration of architect, we leave aside his professional work as architect, will depend directly on the favourable decision of local authorities regarding some construction issues.

MRS JUSTICE GLOSTER: Yes, I have an agreement with an architect to build my house, I have a fixed fee of \$50,000 plus a percentage increase in the event that the planning permission is favourably granted by the local authority or the planning authority.

A. Still generally I confirm my question only with just specification. It's entirely at the discretion of the local authorities or simply there is some provision, regulation that if the architect prepared everything

correctly, then such licence or approval shall automatically be done?

MRS JUSTICE GLOSTER: No, let's say it's --

A. It's a discretion --

MRS JUSTICE GLOSTER: -- putting up blocks of flats on green belt or something like that so it's a discretionary --

A. Discretionary. This is the key point because the same -- like in an agreement between a construction company and a person who will allegedly contribute their licence to carry out construction in the centre of the city, for example, and again it's at the discretion of the mayor's office, it's not automatically done if the project is very good, then again such terms which connect the remuneration with favourable decision which is at the discretion of the governmental authorities will be illegal.

MRS JUSTICE GLOSTER: Yes, I see, thank you.

MR RABINOWITZ: You're introducing discretion into your answer there, Mr Rozenberg, "Discretion. [That's] the key point". But do you say there is a basis for that in Makayev? Where's the discretion in Makayev? You're dealing with a case which is simply the application of the law.

A. First of all I use the word "favourable" but "favourable" means based on connected with favour which

is discretionary. You may do favour to somebody or you may deny favour, and this is discretionary because there are some functions of governmental authorities which, using legal terminology, should not be unreasonably denied if you prepare all the documents correctly. You have to get your new passport if your old passport expires, for example, and there are some organisations which carry out clerical work, collecting necessary papers, doing paperwork and submitting later all the papers to the governmental authorities in order to get the passport, which practically automatically will be issued.

Or in order sometimes to do the -- to give approval for let's say just replenification of your apartment, there are some regulations. You want, instead of let's say three rooms, to have two rooms. Again, in the past, it was sometimes discretionary. Now there are certain regulations and it's clear that it cannot be considered as favourable decision and, therefore, organisations preparing all necessary paperwork are entitled to get payment just for their work, not for the favourable decision but for their work because, if the work is done properly, then their approval shall be done automatically. The same to some extent just may apply to companies which prepare documents for obtaining visas

in foreign embassies.

MR SUMPTION: Can I just point out that there's a rather important missed type in the [draft] transcript at 84, line 11 which might be better sorted out at this stage than later. The last word on line 11 I do not think is what the witness said but perhaps that can be clarified.

MRS JUSTICE GLOSTER: Can you look at it, please, Mr Rozenberg, line 11 of [draft] 84.

A. "... cannot be considered as favourable decision..."  
"... will be illegal".

MRS JUSTICE GLOSTER: Yes, thank you.

MR RABINOWITZ: Mr Rozenberg, we'll come to Makayev in due course but while we're on this document, let me ask you this. Makayev is a case, at least on its face, dealing with legal services as indeed is the informational letter. It's right, isn't it, that you haven't been able to identify a single case outside of the legal services area to support your contention that any contract which involves a success fee being paid in order to achieve a particular result, take the example of the architect, is prohibited as a matter of Russian law?

A. I don't think there are many cases because, frankly, in such situations participants of these transactions or arrangements -- they are mostly called this way in

Russia -- never go to courts because they understand that instead of civil law matter they may have to deal with the criminal law matter.

- Q. Why, Mr Rozenberg? Take my Lady's example of the architect who gets a slightly enhanced fee if, as a result of his activities, there is planning permission granted for a particular part of what he's going to do. Why should he be worried about the criminal law, just because of such a contract?
- A. Because when it's done on the basis of discretion, a party, the service provider, who would like to have such arrangement, will probably expect -- unfortunately, my Lady, I have to guess but I'm trying to explain why there are so few cases of this kind in courts. So the person who insists on including such provision in the agreement expects that discretionary decisions of governmental authorities will always be in his or her favour. Unfortunately, taking into account the widespread corruption, especially in the construction area in our country, just there is a serious reason to anticipate that somebody among governmental authorities is expected to help this architect if he or she is so confident that all discretionary decisions will always be favourable, because otherwise it doesn't make sense for him to include this provision.

Again, this is very(?) commonplace, I would say, in a country where unfortunately corruption is not exception. Therefore, cases when some remuneration depends on favourable decisions are extremely, extremely rare, I would say. It's not the situation when parties would like to go to courts.

- Q. You seem to be suggesting that the only time anyone would ever include a fee which provides a benefit for having achieved a particular result is where they have some corrupt intention in mind. Might it equally not be possible, Mr Rozenberg, that such an arrangement would be made in circumstances where the service provider knows that he will have to do a great deal of work to achieve a particular result and that, if that result is achieved, it will be of enormous benefit to his client? No corruption at all.
- A. It's better to concrete -- just concrete cases. I was asked first why such cases are very rare and indeed, in my practice, I can hardly remember any civil law agreement where parties would like to have a clause which would put remuneration in dependence of a favourable decision of governmental or court authorities. Let's put the court aside, of course, it's the success fee and in general in law firms it's not greeted(?) but --

MRS JUSTICE GLOSTER: I'm not understanding you. If you could just look back at [draft] page 88, lines 8 and following. You say, "I can hardly remember any civil law agreement where parties would like to have a clause...", can you just explain what you mean by the following lines from 12 onwards?

A. Well, a clause which would put remuneration in dependence, making remuneration dependent on a favourable decision of governmental authorities.

MRS JUSTICE GLOSTER: So you're saying you've not come across --

A. No.

MRS JUSTICE GLOSTER: -- agreements where there is a provision for a success fee or a contingency fee dependent on a favourable decision by government authority?

A. By governmental authorities, yes, correct. Therefore I have serious reason to anticipate that, in the absence of corruption, if parties understand that it's impossible to predict whether decision will be favourable or not favourable, they never include such clauses since the key point for remuneration is performance of work and performance of work -- due performance of work does not depend on the favourable or unfavourable decision of authorities.

MRS JUSTICE GLOSTER: I suppose it's possible, if they did have such an agreement with their architect, they wouldn't put it in a written agreement anyway?

A. They could put it in the written agreement, but if everything goes well, just of course it's possible to pay; but in case of dispute, such clause would never be enforced and it's, by the way, one of the reasons why nobody does it. But another reason, as I said, because mostly parties understand very well what is the basis for remuneration, good work or good connections with favourable -- with appropriate people, let's say, in governmental authorities.

MR RABINOWITZ: We'll come to deal with what Makayev says.

But just on the information letter which we have open at the moment, can I just ask you this: the Presidium in this letter is not prohibiting lawyers, or indeed anyone else, from recovering fixed fees which are due regardless of a case, that is correct, is it not? Regardless of the outcome of the case?

A. Of course legal work, like any other work, shall be paid.

Q. Shall be paid?

A. Shall be paid.

Q. So I think you're agreeing with me?

A. Perform legal services shall be paid, nothing to discuss

as I understand.

- Q. And there's nothing wrong with charging a fixed fee regardless of the outcome?
- A. A fixed fee for the work?
- Q. Yes.
- A. Regardless of the outcome.
- Q. Yes.
- A. Of course and what is dealt with, I think it's clear.
- Q. The reason -- Mr Rozenberg, there's a difference between saying work shall be paid for, and saying that the work shall be paid for by reference to a fixed fee. Do you follow? It could be an hourly rate, in which case there wouldn't be a fixed fee, but there is nothing here in this information letter, I think you will agree with this, where the Presidium says you cannot agree a fixed fee in respect of work which will be payable regardless of the result of the case?
- A. Fixed fee is not prohibited in this case, like in any other services agreement.
- Q. Good, thank you.

Just lastly on this, can we look at page 126 G(A)4/5.36/126. We just see -- I don't think I need to bother with that. We can put this away.

I want to go back, if we can, just to talk about the question of certainty of contract, and I want to

consider a hypothetical example again with you, if I may. Let us suppose that Mr B agrees with Mr A that in return for a fixed fee he would lobby the state to create and privatise a company that would own shares or assets in a state enterprise, the energy enterprise, okay? So what they agree is lobbying in return for a fixed fee, all right?

Mr B doesn't guarantee that his lobbying will succeed, he promises to try and persuade the state to do what they want, and he was to be paid this fixed fee regardless of whether his efforts succeeded. And let us assume, because I don't want this to be clouded by other things, that it was written down and it was intended to be binding and it was entirely certain.

Let me ask you this: do you agree that this would be a concluded contract under which Mr B agreed to perform a defined activity lobbying the state for a defined purpose?

- A. As far as I remember, lobbying is not indicated in legislation -- in legislative acts. Usually what we understand is some activity connected with drafting legislation, organising publications, proposing some changes in legislation, and it has some general aspect. It's not connected with one concrete decision because, with one concrete decision, it's unclear what concrete

work shall be done.

Services, when they are legal, when we do not speak about using personal connections in order to get quick and easy favourable decision of governmental authorities, services mean concrete work, there should be some substance. If in order to achieve some goals including, let's say, privatisation, it's necessary to prepare some kind of draft legislation, draft regulation, maybe to organise some meetings, conferences, discussions, publications, to persuade people who later either make pressure, or just somehow contribute to adaption of changes in the legislation. Then these kind of services, if you call them lobbying, would be perfectly legal, but if you speak about finding the right person who will arrange the favourable decision for a concrete amount of money, then in my view still it will be illegal(?), but maybe you didn't explain all the details of the work which is anticipated to be performed. Because I think the key point here is what concrete work will be done under the label of services, ie lobbying services.

MRS JUSTICE GLOSTER: Do you have political lobbyists in Russia?

A. We don't.

MRS JUSTICE GLOSTER: You don't?

A. We don't.

MRS JUSTICE GLOSTER: So for example if you had a, I don't know, grain and food trades association, who wanted to lobby for a change in an act of parliament, would they be at liberty to pay somebody to talk to politicians, to publish in the newspaper the need for a change to some law?

A. As I said, we don't have regulations regarding this. When I said we don't, I mean we do not have official legal forums for it. In practice, of course there are groups, social groups, industrial groups who try to promote favourable changes in legislation --

MRS JUSTICE GLOSTER: And presumably they're paying someone to do that, aren't they?

A. Just, again, if somebody carries out publications, organises meetings, conferences, these payments are perfectly legal. But, of course, again there is financing of political parties by oligarchs, for example, and then it sometimes becomes questionable.

But there is no legal basis regulating such activity, therefore I had to answer your question, my Lady, whether we have political lobbyists, it's not an activity which have concrete legal forums, like for example lawyers' activity or advertisement agencies' activities and so on.

MRS JUSTICE GLOSTER: Yes, I see, thank you.

MR RABINOWITZ: Dr Rachkov says, as you know I think,

Mr Rozenberg, that there are political lobbying firms in Russia, as indeed there were in 1995. Do you recall him saying that, paragraph 217 of his fourth report?

A. I read that Mr Rachkov mentioned lobbying firms which do concrete work, but I don't want to argue about words.

I understand that there is no legal basis for activity of individuals who achieve favourable political decisions or favourable political changes.

Q. You see, what you agreed with me about the information letter was that there was nothing there which prevented a fixed fee being paid regardless of the result, do you remember that?

A. Yes.

Q. And the example I've put to you is of Mr B agreeing to be paid a fixed fee regardless of the result of his lobbying activity. Do you follow?

A. I do.

Q. So do you agree that you could have a concluded contract under which Mr B agreed to perform a defined activity, lobbying, for a defined purpose? Because I think you gave a long answer but I'm not sure you actually answered my question.

A. I guess to answer your question we have to have real

substance of the services, because lobbying does not specify, does not define anything in the context of Russian existing legislation.

Q. Well, you say in the context of Russian existing legislation, and it may be that you're referring here to contracts which are named in the Civil Code, is that what you're referring to? That there is no named contract of lobbying in the Civil Code?

A. This is included too.

Q. Yes, because you accepted, I think, in the joint memorandum that the fact that a contract is named or unnamed doesn't mean that it can't -- sorry. The fact that a contract is an unnamed contract doesn't make it any the less a contract, correct?

A. Correct.

Q. So the fact that you don't have legislation specifically identifying lobbying as an activity is really neither here nor there?

A. It's important because in the absence of any legal definitions you have to specify sufficiently what kind of work the service provider is expected to do. Because if we write that it will be legal services, it's clear, transportation service, it's clear. If you write lobbying services, it needs to be clarified.

Q. It needs to be clarified because there are a range of

possible activities that could be carried out, correct?

- A. It should be clarified in the range, I would say, the volume of activity which is expected to be paid under the label "lobbying services" should be determined.
- Q. We saw earlier from the authority that I've just taken you to that it is perfectly possible to have an activity specified in an agreement where there is a range of ways in which that activity could be carried out. Do you remember that?
- A. And we both agreed that the court will assess whether it should be remunerated.
- Q. Indeed, the court will assess it. But the mere fact that there is a range of ways in which this activity could be carried out doesn't make it a non-contract, do you agree?
- A. I understand that you speak about enforceable contracts, because a contract may be unenforceable, and in order to have an enforceable contract for lobbying services it should be crystal clear what kind of services shall be provided and on what basis they will be paid.
- Q. Now, assume for the purposes of this hypothetical example that Mr B in fact carried out certain activities, okay, so that it was possible for a court objectively to determine whether Mr B in fact performed his side of the bargain.

- A. Theoretically we can assume it, and I think I gave examples of lobbying activity which may be subject of a civil law contract, like drafting new legislation, organising publications, meeting and conferences and so on. Such type of services, such type of works which should be paid on the basis of a contract within the agreed amount are not illegal.
- Q. In a situation like that, the court would be able to decide whether Mr B has actually lobbied the state as he had agreed he would?
- A. I think the correct answer would be not whether Mr B lobbied the state but whether Mr B performed the services connected -- just indicated in the agreement, ie drafting legislation, organising publications, meetings, conferences and so on. Then it would be possible for the court to assess the evidence available.
- Q. Very good. It's also possible, I think you would agree, in a situation like the one I've described in my example, that there may in fact be no dispute about the matter. That's to say that Mr A may accept that Mr B did what he promised and that the result was in fact achieved.
- A. If there is no dispute then there is no need to go to the court.
- Q. I think also that you will accept that the public policy

prohibition against success fees that we see in the information letter, and indeed as we see in Makayev, would certainly not apply to the example I've given you where the fee was a defined fee and it was agreed to be payable whether or not the activity succeeded?

A. If there were only services and not some use of personal connections to achieve certain results, definitely it would not contradict the public policy.

Q. All right. Now so far we've considered examples, in this hypothetical example, of a contract for services when the fee is fixed, okay? But, of course, the parties may agree another form of quid pro quo, the parties may agree that the person providing the services should not be paid a fixed fee but should instead share in the fruits of the services, yes?

A. Provider of services will share in the fruit of the services. It will be a complicated scheme but preliminarily I see nothing wrong here.

Q. Nothing wrong with that. Thank you for that, that is very helpful.

Can you just give me one moment, Mr Rozenberg, please. (Pause)

Now, I want, if I can, next to just pick up something that you say in your fourth report at paragraph 333, G(A)3/1 at tab 2 G(A)3/1.02/162. It's

page 162. You say at paragraph 333:

"As I have explained above, there are some circumstances in which Russian courts have held that, although a joint activity agreement would have been considered non-concluded at its inception, the fact that the parties have performed that agreement without demur prevents them from arguing that they should not be bound by the agreement."

Then in paragraph 334 you say that the principle does not apply in this case. And we will look later at the reasons that you give.

Can we just turn back in this report to page 105, please, paragraph 125. Here you point out what Dr Rachkov says, and you say:

"Mr Rachkov contends that where the parties have performed the contract without dispute, Russian courts have confirmed that the contract will be deemed concluded regardless of whether the original agreement omitted essential terms, or was too vague or insufficiently defined."

In the next paragraph you say this:

"I accept that where it can be demonstrated that a contract has been fully performed, the documentary evidence of its performance may be taken into consideration by a Russian court when assessing whether

a contract is or is not concluded. I therefore accept the validity of the principles espoused in Babenko ... Zhilischnik ... and Sokolniki. In my view those cases were [rightly] decided."

I wonder if we could just have a look at Babenko to see exactly what it is deciding. Could you please go to bundle G(A)2/2, tab 29.

So the English starts at page 61 and if you look at the second paragraph, you can see what the claim was about G(A)2/2.29/61:

"Sole trader NF Babenko ... applied to [the] arbitrazh court with a claim against sole traders ... Chebatkov, ... Ryagin, ... Volvich, [and] ... Gorbov for a voidance of joint activity agreement of 1 [February] 2006."

Then in the third paragraph, we see that third parties, the Federal Tax Service of Russia and a Mr Antonyan were invited to take part in the case. Do you see that?

A. Mr Antonyan was participate -- yes.

Q. In the fourth paragraph we see it says:

"By the decision of 24 [March] 2008, upheld by the Court of Appeal ruling of 3 [July] 2008, the claim was dismissed."

In effect what was happening was that Babenko was

trying to get a joint activity agreement declared as non-concluded and he succeeded in the lower court. Do you see that?

A. Yes.

Q. Sorry, he failed in the lower court, I'm sorry. They upheld the joint activity contract.

A. In the first and appellate courts, the claim was dismissed.

Q. So Babenko failed.

Then we see that the court says this:

"The reason for the decisions was that the agreement had been performed from the time of its execution, and no uncertainties had arisen for the parties as to the scope of the agreement in the course of its performance. Sole traders [usually] made their contributions, and there is not dispute as to the type, size of the contribution and terms of profit allocation. There are no grounds for [the] voidance of the agreement."

So this is right, isn't it, the reason for the decision of the lower courts was, as you see, that the agreement had been performed and that, at that time, there were no disputes which had arisen as to that performance, yes?

A. Yes.

Q. Then in the next paragraph, we see that Mr Babenko

appealed and he said that the parties had not agreed the essential terms, translated here as "substantial terms".

You see:

"In his cassation appeal ... Babenko ... is asking to reverse the decision and the appeals court ruling, and issue a new court decision satisfying the claim. The appellant notes that [the] contents of the agreement do not amount to a simple partnership agreement which in law gives grounds to a joint property. The intended joint activity and joint obligations cannot be identified from the terms of the agreement. Neither the scope of activity nor actions required to achieve the intended goal are identified. Agreement of 1 [February] 2006 does not contain substantial terms [I suggest that is essential terms] related to [the] size and features of contributions by simple partnership members, or to joint property, terms of profit allocation, terms of administration of the joint business of the partners."

So he was saying, was he not, that a number of what he said were essential terms had not been sufficiently agreed, correct?

A. Yes.

Q. Then at the top of page 62 G(A)2/2.29/62, we see in the last sentence of that top paragraph that Mr Babenko also said that:

"Cash payments, as per debit slips, to ... Babenko and other members were made on the basis of independent freight transportation agreements, not a simple partnership agreement."

Do you see that? So there were payments which had been made and Babenko were saying: these payments reflect not a simple partnership but rather the fact that people were being paid for independent freight transportation agreements. Do you see that?

A. I want to check it in Russian to be sure that the translation is correct. (Pause)

Babenko claimed that the basis for payments were independent agreements of transportation but not the simple partnership.

Q. Indeed. So in this sense at least bearing a similarity to this case, payments were being made, there was a dispute as to really whether the payments reflected the fact that there was a partnership or whether they reflected in fact simply a different arrangement at all, namely independent transportation agreements. Do you agree?

A. Yes.

Q. Yes. And then two paragraphs further down, we see that the Federal Tax Service opposed Babenko's appeal; in other words the Federal Tax Service considered that

Babenko's partnership contract was a fully concluded contract?

- A. In Russian, I see that the Federal Tax Service considers that the decision of the court of first instance and of the appellate court are legal and justified and asks(?) not to cancel them.

MR RABINOWITZ: Yes, I think you're agreeing with what I put to you.

Now, in order to see -- my Lady, I'm about to go to -- it's not a convenient moment but it will take too long to get to a convenient moment.

MRS JUSTICE GLOSTER: Okay, I'll rise now and sit again at 2 o'clock. Thank you very much.

You mustn't talk to anybody about your evidence over the break.

THE WITNESS: I know.

(12.58 pm)

(The short adjournment)

(2.00 pm)

MR RABINOWITZ: Mr Rozenberg, we were dealing with Babenko which I hope you still have open, 2/2 G(A)2/2.29/62.

A. Yes.

Q. I think we had just had a look at the top of page 62, where one sees that Mr Babenko was disputing whether the payments he received were made pursuant to a joint

activity agreement, and he was claiming they were on the basis of an independent freight transportation agreement.

In the middle of page 62, you see it says this:

"North Caucasus Circuit Federal Arbitrazh Court, having considered the case, arguments of the cassation appeal, having heard the persons involved in the case, believes that the appeal cannot be upheld for the following reasons."

In the next paragraph the court summarises the terms of the joint activity agreement. As you see it says:

"As shown by the materials in the case, on 1 [February] 2006 the parties executed a joint activity agreement whereas members of simple partnership undertook to join efforts and act jointly to achieve common business goals -- transportation of freight to Krasnodar Krai."

Krasnodar Krai is Krasnodar province, is that the right?

A. Krasnodar region.

Q. Just carrying on with the same paragraph:

"The same of the simple partnership -- SV Chebatkov ST. According to paragraph 1.3 of the agreement the partnership is set up for the term of 2 years. The agreement is valid from the time of its execution until

1 [February] 2008 ... According to paragraph 2.1 of the agreement members of the partnership undertake to contribute cash and other assets to support its activities."

So it appears from the last sentence that the parties are to contribute cash and other assets to support the partnership contract. It does not appear from this at least, Mr Rozenberg, that the partnership contract defined the parties' contributions any more precisely than that, correct?

A. Correct.

Q. So just looking at this, the contract did not for example define the amount of the contributions or the size or value or order, timing and process by which they were to be made, or at least the federal court did not consider these matters to be relevant or material, correct?

A. Yes.

Q. If we look then at the next paragraph, towards the bottom of page 62, we see that the court says:

"NF Babenko ST, believing that this simple partnership agreement is void, filed a claim to arbitrazh court. In his claim Babenko referred to the vagueness of the scope of the agreement, absence of terms related to types, times and terms of

contributions, lack of certainty as to the common purpose of the partnership."

Those, of course, are very similar to the objections that you make in your reports about the contract in this case, Mr Rozenberg, correct?

A. Not quite.

Q. Okay.

A. The big difference is that in this case the court referred first to the agreement in writing which was executed in February 2006, and indicated that during two years this agreement in writing was performed in a way which makes impossible to dispute the performance as Mr Babenko does, because there are documents confirming that all activity, joint activity, took place and the payments were done with the reference to the agreement of February 2006, what makes allegations of Mr Babenko that performance really did not correspond to the agreement baseless.

In other words, two main points are indicated here. The agreement in writing, which is rather clear, and the payments with reference to this agreement. In other words, the performance is done according to the agreement and cannot be disputed anymore. In this situation, even the issue of contributions which were not specified enough has nothing to do with allegations

of Mr Babenko that payments were different in comparison with the agreement. This is the difference.

- Q. All right, well we'll see if that really is a difference in this case, Mr Rozenberg.

The point I was really putting to you at the moment was about the vagueness scope of the agreement, absence of terms related to types, time and terms of contributions. I'm not suggesting that's the only point you make about the 1995 agreement, but this is similar to the point you make about vagueness of terms. You say in this case some of the terms were too vague, it didn't specify types, times and terms of contributions, et cetera. That is all I was trying to put to you here. Do you follow?

- A. I did, but if there were not written evidence in the case of Babenko, maybe the vagueness would be fatal as well. It's hard to guess.
- Q. We will see that in fact the agreement in Babenko wasn't clear as to why the contributions were being made, that is why there was a dispute as to whether those payments were being made because of an independent freight agreement or because of a simple partnership, do you follow?
- A. In the case of Babenko, after two years of performance which could not be put in question, because written

evidence confirmed even the monetary transfers, just exactly in accordance with the agreement and written reference to this agreement.

In this situation -- I can show you that in Russian just it's indicated that in the payment orders on the basis on which Chebatkov paid the correspondent portion of the profit as basis for the payment is indicated the agreement of February 2006.

- Q. It wasn't only written agreements. The court also took into account, you can see this at page 63 G(A)2/2.29/63, the explanations provided by the partners. It took into account all of these matters in trying to work out what it was that the agreement was about, whether it was a simple partnership agreement or in fact an independent transportation agreement that led to these payments being made.
- A. It's the obligation of the court to assess all the evidence available, including --
- Q. Indeed.
- A. -- explanations of the parties.
- Q. Indeed, and it did that. And despite the fact that there was a potential ambiguity, having taken into account all of the evidence, it concluded that there was a binding agreement here, a simple partnership, correct?
- A. According to the civil legislation, some ambiguity can

be sometimes fixed on the basis of the investigation in the court of the performance if this performance is not questioned in -- is not disputed.

Q. Indeed.

A. As I understand, the conclusion of the court here is that this vagueness could not affect the final resolution because it was clear that during two years everything was performed strictly in accordance with the agreement, and during these two years there were no disagreements.

Q. That was in fact very much the point I was going to make to you, Mr Rozenberg. Because what we have here is a case where, on its face, you have an agreement which is vague as to the scope of the agreement, there are terms which are absent, and the court says, "Well, given that it has been performed, and it's been performed for a period of two years, none of these points are of any relevance at all." I don't want to overstate it, none of those points is sufficient to treat this contract as an invalid contract. Do you agree that is what this case says?

A. That is what the court said.

Q. Just on the point about what it was that the court took into account, if you for example look at page 63, you can see that the court says on page 63:

"The courts established also that documents disclosed in the case [and then there's a list of documents] (debit slips, cash book statements, invoices, explanations by sole traders...)"

The explanations by sole traders that are referred to there related to the explanations that had been given to the tax authorities previously, do you recollect that?

- A. Just in this sentence, the court states that it took into account both explanations by sole traders and tax audit materials.
- Q. Yes, but in fact some of the explanations by the traders that they're taking into account were explanations that had been given to the tax authorities when they first investigated; that's right, isn't it?
- A. Apparently, yes. I didn't have a chance to look at the materials of the case.
- Q. Just looking at the next paragraph, if you're on page 63:

"Having established from explanations provided by the partners and payment documentation that the sole traders had contributed their vehicles and their labour to the simple partnership, and that during performance of the agreement... no disputes about type and size of contributions, terms of allocation of profit from joint

activities had had arisen between the parties, the courts correctly concluded that there were no grounds for avoidance of the disputed agreement, and rightly dismissed the claim."

So this is an illustration, is it not, that where you have a contract which is actually performed with no disputes at the time as to what needs to be done, one can't later come along and say, "Well, that is an invalid contract because you didn't agree sufficiently some term or other," correct?

A. More important that not only you did agree sufficiently because, according to the allegations of the claimant, it was not sufficiently agreed, but more important that when the court considers the case there is sufficient evidence that it was performed according to the agreement as it was concluded.

Q. But provided the court is satisfied that it was performed, the fact that at the outset there were gaps doesn't matter, in the sense that it's not a sufficient basis to treat the contract as an invalid contract.

A. Sometimes, when it's relatively simple and the numerous documental evidence confirms the performance, I agree with you.

Q. All right. Thank you very much.

Now, I want to move on to the next question which is

whether what the parties agreed was valid. We've dealt with certainty, and this is going to deal with the issue of lobbying.

I would like to start with your view that, quite apart from certainty, lobbying cannot ever be a valid contribution to a partnership agreement.

We touched on this this morning, and we've looked at information letter number 48, but I want, if I may, to look at the analogy you draw between that situation and the present case.

Can we begin by looking at how this is dealt with in the joint memorandum. It's G(A)6/1, tab 1, page 13, we're looking at paragraph 35 G(A)6/1.01/13.

A. Yes.

Q. In subparagraph 1(a) you say, it's the first sentence:

"Mr Rozenberg maintains that lobbying is not capable of being a contribution under a joint activity agreement protected by Russian law as this transpires from the position of the RF Constitutional Court, which provides that those who lobby may not claim remuneration for doing so which depends on a favourable government decision, as such remuneration will not be subject to civil law protection."

This is a reference, is it not, to Makayev, correct? That's the Constitutional Court decision that you're

referring to?

A. Yes.

Q. Before we go to Makayev, which we will do, I just want to explore a little further what you say here.

Could we please go to paragraph 306 of your fourth report, bundle G(A)3, tab 2, page 155 G(A)3/1.02/155. If you have paragraph 306 there, just looking at the first sentence you say this:

"Finally, a contribution to a joint activity agreement may, of course, consist in utilising business contacts (subject to the comments I made earlier about vagueness)."

So here you were accepting that, subject to your point about vagueness, using business contacts can be a valid contribution to a partnership contract, correct?

A. Just the whole paragraph I think deserves to be read.

Q. I will go through the whole paragraph, I just want to take it bit by bit, if I may.

A. Yes.

Q. So do you agree that you accept here, subject to your point about vagueness, that using business contacts can be a valid contribution to a partnership contract?

A. I agree, I confirm.

Q. Just looking at the second sentence, you say:

"I disagree, however, that lobbying services are

capable of being such a contribution under Russian law."

Then in the next sentence you say:

"It has been held that a party who rendered services the remuneration for which depended on a favourable governmental decision (in that case a success fee arrangement for lawyers was considered) may not claim any compensation for these services under Russian... law. This is the conclusion of the..."

And that's Makayev again, is it not?

A. Correct.

Q. Then you set out a paragraph from Makayev which you say expresses the Constitutional Court's conclusion in that case, and you can read that to yourself, if you will.

(Pause)

A. Okay, we read it yesterday.

Q. All right. So let me be clear that I'm going to suggest that this is not in fact the actual conclusion of the Constitutional Court at all. We will look at Makayev, but the actual conclusion that the court reached was that the current law prohibiting legal success fees, that is information letter number 48, is constitutional.

Do you accept that?

A. Where Constitutional Court ruled that the activity of governmental officials represent execution of people's will and is not subject to civil law regulation, and

therefore civil law contracts, which make dependent civil law rights and obligations on favourable decisions of governmental officials, including courts, cannot get court protection. In other words, it's a clear statement of the court that a situation when money or some material benefits follow the favourable decision of governmental authorities, cannot be considered as legal and subject to court protection. It's a clear fight against corruption and I cannot add anything.

Q. The only point I was trying to make to you, Mr Rozenberg, is this: you suggest that this is the conclusion of the Constitutional Court, and what I'm suggesting to you is the conclusion of the Constitutional Court is much narrower. The conclusion of the Constitutional Court -- this may have been part of its reasoning, but the conclusion of the Constitutional Court was that the current law prohibiting legal success fees, and that is information letter number 48, is constitutional.

A. First of all, let's make clear that if we try to interpret somehow the Arbitrazh Court decision as contradicting the Constitutional Court ruling, under Russian law decisions of Constitutional Court are highest legal value. Strictly speaking, even decisions of the Parliament can be put in doubt by the

Constitutional Court.

And of course the Supreme Arbitrazh Court cannot, on the rule, cannot prevail in case of disagreements, though I don't see any disagreement by the way, but just in case, if you do, if you'll find any disagreement between the Supreme Arbitrazh Court and the Constitutional Court, then according to the law on Constitutional Court, my Lady, the decisions of the Constitutional Court of the Russian Federation have the highest legal force regarding all individuals, governmental and other authorities and organisations in the Russian Federation. Therefore, whether we can interpret this way or that way, the decision of the Supreme Arbitrazh Court is irrelevant.

However, how I understood the decision of the Supreme Arbitrazh Court is that it doesn't mean that the parties cannot agree between themselves about the terms, and in any event, their fees for legal services shall be awarded. But the Supreme Arbitrazh Court never ruled that courts should uphold claims for additional compensation for success in litigation. And, moreover, I notice that even the Arbitrazh Court decision, besides courts, governmental officials were also indicated, like in the reasoning of the Constitutional Court.

Therefore, I am sorry if we spent so much time on

it, but my position is firm and clear that monetary remuneration or other material benefits in civil law agreements cannot depend on the favourable decisions of governmental authorities. And only one of the cases which may take place in real life regarding these circumstances is the success fee arrangements between lawyers and clients. But both the Constitutional Court and Supreme Arbitrazh Court ruled much broader, in my view, that works and services shall be paid, but additional remuneration dependent on the success in courts or success in governmental offices has no legal protection in courts and otherwise.

Q. Mr Rozenberg, that was a very long answer to a question I don't think I asked. I wasn't beginning to suggest that the Supreme Arbitrazh Court and the Constitutional Court decisions were inconsistent, in fact I was suggesting that they were inconsistent (sic).

But actually all I was making was a very narrow point, maybe not even one worth making, which is that you have expressed this as the conclusion of the Constitutional Court, whereas I say it is not the conclusion of the Constitutional Court. The conclusion -- it's part of its reasoning, I'm not disputing that, but you have taken one paragraph of reasoning in isolation from the rest of the judgment and

put it in your report and called it the conclusion. That is what you have done, and I think you've commented on that already.

What I would like to do, however, is just take you to a passage of the judgment of Judge Bondar in Makayev itself where he comments on the approach that you have taken to this.

If we can go to Makayev, it's bundle G(A)4/7, tab 93 at page 8 G(A)4/7.93/8. Now, Judge Bondar was one of the judges who decided with the majority of the Constitutional Court, so he's not a dissenting judge, but he wanted to issue a side opinion expressing his own view. You can see at page 8 he says:

"Having voted for the final conclusion [of the] Constitutional Court..."

Do you see that?

A. Yes. I prefer to look at it in Russian.

Q. All right, I'm sure.

If you go to page 9 G(A)4/7.093/9 Judge Bondar expresses his separate reasoning. And just looking at the bottom of page 9, do you see he says -- perhaps we should pick it up from the paragraph before:

"Before we proceed to analyse the above issues that bears upon the true content and significance of the conclusions reached in the Resolution with respect to

'success fees', the following should be noted. One may not discern the true meaning of this -- or any other -- Resolution of the Constitutional Court of the Russian Federation without considering the fact that any decision by the Constitutional Court is a unified, wholesome act of constitutional justice whose inner structure and content are predicated upon the logic of constitutional and legal arguments of essence to successful assessment of specific legal norms contested in particular cases; taken together, they determine the final conclusions that form the core of any decision of the case."

Then he says this:

"Consequently, it would be a mistake to interpret the legal position stipulated in the Resolution as a mere sum total of separate statements or raise each of these statements to the level of an independent legal position of the Constitutional Court."

What Judge Bondar is saying is that it is a mistake to take a separate passage made in the reasoning and elevate it to the level of an independent legal position of the court. Would you agree that that's what he's saying?

- A. I think that reading the following sentences is the idea that Mr Bondar doesn't object against the reasoning in

general, but simply states that absolute prohibition against success fees may be questionable.

But, by the way, success fees is the trigger for the consideration of the whole issue and -- though in the opinion of Mr Bondar has no legal consequences because the majority clearly ruled in favour of the resolution. And moreover, Judge Gadzhiyev even emphasised stronger the importance of such approach in light of necessity, broadly speaking, to fight against corruption.

But what Mr Bondar says is I think understandable, that total prohibition of success fee maybe is too strong approach. I would like to state that, in my view, it's probably the softest situation regarding dependence of material remuneration in civil law contracts on favourable decisions because, clearly, success fee follow professional efforts, are connected with professional art of those who perform services. And very often we can assume that it's the result of work and clearly has nothing to do with using of personal connections and so on. But even in this situation, the Constitutional Court preferred to be more severe than maybe from the point of view of equity and fairness, one should think, and apparently Mr Bondar thinks this way.

Still the Constitutional Court considered that in

order to fight clearly against corruption and regarding success fees, it's necessary to be very strong and severe.

MRS JUSTICE GLOSTER: Mr Rozenberg, it would help me if your answers were a bit shorter, I know it's difficult when you're discussing legal concepts, but if you could kind of peg your answers to the questions I'd be grateful.

A. I will shorten it immediately. I'm sorry, simply I was asked so many times about this decision, therefore since before lunch we already discussed it I thought that I have to answer it.

MR RABINOWITZ: At the moment I'm just asking about Judge Bondar.

A. But very shortly I can say that regarding other governmental officials who are mentioned both -- other governmental authorities, besides courts, mentioned both in the Constitutional Court decision and in the Supreme Arbitrazh Court, it's absolutely clear that with decisions in such cases, professional efforts usually have nothing to do with the results and, therefore, application of this decision is rarely(?) substantiated and necessary in light of the explanation of the Constitutional Court.

Q. Judge Bondar was the presiding judge in this Constitutional Court, was he not?

- A. Frankly I did not pay much attention to it --
- Q. You can see that if you go to page 1.
- A. -- but it happens sometimes that the presiding judge only has dissenting opinion.
- Q. He's not dissenting, Mr Rozenberg, he is with the majority but he wants to make it clear that people do not take this case out of context. He makes it clear in the first part of his judgment, beginning at page 8, he says:
- "Having voted for the final conclusion ..."
- He wants to say something. Do you see that?
- A. I think that the necessity not to take out of context is reasonable, and what is the question to me?
- Q. You accept that it's reasonable. He's specifically warning in the context of this case that you shouldn't take reasons out of context and elevate them to the status of a legal principle, and that is what I suggest you have done here.
- A. My understanding is that it's connected with absolute prohibition against success fees.
- Q. Well, maybe it is connected with that, and that is what he's concerned should not be understood by this judgment, because he doesn't want it to be elevated outside of the context in which he's dealing with it.
- A. Is that a question?

Q. Well, I think I've got your answer to that question, but if you want to respond to that don't let me stop you, if you can make it short.

MRS JUSTICE GLOSTER: Mr Rozenberg, are you saying that his statements here about the fact that there may be circumstances in which success fees are acceptable is limited to success fees in legal cases?

A. That's what -- how I read it.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: So in a case, Mr Rozenberg, let's see if we can understand that. In a case specifically concerned about success fees relating to legal services, you say Judge Bondar warns against elevating this to a principle which prohibits success fees in legal cases, but you say he wasn't saying anything about the possibility of elevating success fees in a context not before the court, that is to say in the context of any other governmental decision; is that what you say we should understand Judge Bondar as saying?

MR SUMPTION: Maybe the witness should be invited to read the whole of that eight-line question.

MRS JUSTICE GLOSTER: Could you read the question, please, Mr Rozenberg, on the screen.

A. "So in a case, Mr Rozenberg, let's see if we can understand that. In a case --"

MRS JUSTICE GLOSTER: I think it might be easier,  
Mr Rabinowitz, if you break the question down.

MR RABINOWITZ: I will do that.

Your answer to my Lady's question, Mr Rozenberg,  
appears to suggest that when Judge Bondar warns against  
extending the principles in this case too far, what he  
is warning against is extending the principles of this  
case to all legal success fees. Is that what you're  
saying?

A. Again I understand that I cannot take too much time of  
the court, but I understand the conclusion of Mr Bondar  
as the following G(A)4/7.93/10:

"Therefore, in and of itself (ie, by the letter of  
it) the final conclusion made by the Constitutional  
Court does not preclude the use in Russian legal system  
of alternative regulatory models for paying legal fees  
that do not directly follow from yet are not excluded by  
the constitution of the Russian Federation."

Therefore my view is -- maybe I am wrong and I have  
to study this opinion again, my view is that it is only  
regarding legal fees in the legal system, it is not  
regarding favourable decisions of other governmental  
authorities.

Q. So you're saying that whilst he's qualifying this  
prohibition in relation to legal services, he is not

qualifying it in relation to any other services involving any other governmental decision. Is that what you're saying?

- A. My understanding, though it doesn't mean that I agree with Mr Bondar, but my understanding that he was concerned that this resolution, though he doesn't argue about the reasoning, may affect alternative methods of payments of legal fees which have some justification in his view.

MRS JUSTICE GLOSTER: Can I just be clear, as I understand it, you're saying that the decision of the majority extends or is not limited to the illegality of contingent legal fees but extends to other fees which are dependent upon the decisions of state authorities?

- A. Yes, my Lady.

MRS JUSTICE GLOSTER: But so far as what Judge Bondar is saying about his concern that this case shouldn't be taken out of context, you're saying that his concerns are only addressed at contingency legal fees?

- A. Yes, absolutely correct.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Right. Thank you for that.

Now, this point that you make here is not a point that you raised in the reports you submitted in the strike-out in 2008 and 2009, is it, Mr Rozenberg?

- A. What I remember in my report, I was emphasising the decision, and the principle that favourable decisions are not covered by civil law regulations. I try to be very short, we already spent so much time. But correct me if I'm wrong, I thought it was clear from the report.
- Q. I think in this report it's clear. My point is this is not a point you had previously taken until this report, but I'm not going to spend --

MRS JUSTICE GLOSTER: Mr Rabinowitz, do we really need to go back and make the point? You can make the point in submission if you think it takes me further.

MR RABINOWITZ: All right. I think we have Makayev in front of us, I'm not sure I need to go through the detail of this with you, Mr Rozenberg, but let me just be very clear on what I am going to submit. I am going to submit that it is abundantly clear from the reasoning of the Constitutional Court in this case that it was dealing with a specific context, that is to say legal services, and that what the court was concerned about was the public policy relating to access to legal services. Do you follow?

- A. I do, but I disagree.
- Q. I understand that you disagree. What I am also going to be submitting is that it is clear from every other passage in this report -- and I don't want to take up

time going through it because the court has gone through this -- that there was a specific focus in this case on legal services, and that the specific focus on legal services is simply inconsistent with the way in which you say we should interpret this case. But you disagree with that?

A. Unfortunately I have to disagree because all such cases considered by the Constitutional Court are initially connected with concrete facts and circumstances. But decisions of the Constitutional Court are usually much broader, and this is the case, because the trigger was the issue of success fees in representation of clients by lawyers, and the result was the conclusion applying to any remuneration following favourable governmental decisions.

Q. What I do want to show you in Makayev is just another passage from Judge Bondar which you can see if you go, please, to page 12 under point 2.3 of Judge Bondar's opinion. So G(A)4/7, [tab 93], page 12  
G(A)4/7.093/12. It's point 2.3.

Judge Bondar is dealing here with the ability of federal legislators, if they wish, to legislate for implementing some form of contingency fees, which he plainly thinks they can do.

If you then go to the paragraph which begins "This

conclusion", do you see that paragraph?

A. Yes.

Q. He says:

"This conclusion is also corroborated by the fact that in the case under review the Constitutional Court set about to verify constitutionality of 'success fees' from the standpoint of a particular agreement subject to civil law, namely, a commercial service agreement, and therefore, the legal opinion stipulated in the Resolution can hardly be considered universal and apply to all possible types of civil agreements for legal services or the entire scope of appropriate [regulations] in the society in general."

Do you see that, Mr Rozenberg? Second paragraph from the end of page 12.

A. Yes, I can read it.

Q. So you have Judge Bondar here expressly confirming his view that the decision in Makayev is limited to success fees in legal services contract, and:

"... can hardly be considered universal and apply to [other] possible types of civil agreements for legal services or [to other types of contract] in general."

A. In the first place, even Judge Bondar put the legal services, and speaking about entire scope, I don't see that he mentioned specifically governmental officials.

It's a very broad statement and probably there is some reasoning here, I don't want to argue, but my view is that still we have to follow the resolution adapted by the majority of judges.

Q. You see, Mr Rozenberg, I suggest that this contradicts your view that Makayev can be applied by analogy to partnership contracts involving neither legal services nor success fees, but you presumably do not agree with me?

A. Of course I do not agree because for theoretical analysis it's interesting to read the opinion of Judge Bondar, but, as lawyers, we have to analyse only the resolution of the Constitutional Court.

Q. Okay, now we can leave Makayev and legal success fees. Can you go next, please, to bundle G(A)7/1 at tab 9. At tab 9 you should, I hope, have the decision of the Supreme Arbitrazh Court in the case of Kitoi, do you have that?

A. Yes.

Q. The Russian begins at page 87 G(A)7/1.09/87 and the English at page 89 G(A)7/1.09/89.

You can see from the top of this report that this decision, Kitoi, was decided on 9 December 2009, so nearly three years after Makayev. Makayev was decided on 23 January 2007, yes?

A. Yes.

Q. So on page 89, just looking at the third paragraph, we see that the claim was by Kitoi, LLC Kitoi, against Mr Bukhaev for a declaration of ownership of 60 per cent of an uncompleted extension to a shop in the city of Ulan-Ude, correct?

A. Yes.

Q. Then in the next paragraph, immediately below the words "The Court established", we see that:

"The claim was upheld by [three levels of lower court]."

Do you see that?

A. Three courts, yes.

Q. Then just picking this up about three quarters of the way down the page you see that the Supreme Arbitrazh Court says this:

"Having studied the arguments in the appeal and the judgments in the case, the judicial panel of the Supreme Arbitrazh Court concluded that the case should not be referred to the Presidium of the Supreme Arbitrazh Court due to lack of grounds for supervisory review..."

So what it appears is happening here is that the judicial panel of the Supreme Arbitrazh Court is refusing permission to appeal to the Presidium and is in effect upholding the lower court's decision which

granted Kitoi's claim, correct?

A. Yes, it's a very widespread situation, they mostly reject such petitions, and it's very rare when the Supreme Arbitrazh Court takes the case for reconsideration.

Q. Right. We can see what the facts of the case are if you look at the next paragraph:

"When examining the case, the courts established that a simple partnership contract was concluded between Kitoi and Bukhaev on 27 April 2007, [according to] which they undertook to [pool] their contributions and act jointly in order to build the 'Extension [to] the Kedr Shop' and also agreed that the facilities built as a result of their activities be deemed to be in [joint] shared ownership: Bukhaev to hold a 2/5 stake and Kitoi to hold a 3/5 stake in the [joint] shared ownership of the facilities."

So what was happening here was the parties made a partnership contract. What they agreed to do was to act jointly to build an extension to I think it's a Kedr shop, and they agreed that they would hold it in agreed shares, Bukhaev was to have 40 per cent and Kitoi 60 per cent, yes?

A. Yes.

Q. If you go to the bottom paragraph on that page, you can

see that the court sets out the terms of the contract, clauses 1.2.1 and 1.2.2 of the contract:

"... the parties indicated that Bukhaev's contribution would be: the right to lease a plot of land with a designated cadastral number for the construction of the facilities, design estimate documentation for the facilities, drafted at his expense, and the necessary arrangements and technical conditions, and Kitoi's contribution would be: obtaining formal permissions for the construction --"

Mr Rozenberg, can you just push your mic up a little bit.

"... Kitoi's contribution would be: obtaining formal permissions for the construction of the facilities and its commission into operation, and the construction of the facilities at Kitoi's own expense and using [his] own materials."

So it's clear from that that Kitoi's contribution, as you see, was to be obtaining of formal permissions, and there were two permissions, first for the construction of the facilities and then for their commission into operation, yes?

A. Yes.

Q. And the formal permissions that Kitoi was to obtain would be governmental, would they not?

A. They would be issued by some state officials.

Q. Yes.

Then in the next paragraph on page 90

G(A)7/1.09/90 the court says:

"During the examination of the case no evidence was presented to indicate that [the above] contract between the parties had been [adjudged] illegal or invalid or terminated in accordance with due legal process."

Then in the next paragraph it says:

"On 11 July 2008, Bukhaev registered his ownership rights to the uncompleted and disputed facilities."

Now, it may be worth, if we can, just going to the lower court judgment to see what Bukhaev had to present to register his ownership rights.

In bundle G(A)7/1 can you go, please, to tab 19. At tab 19 you see the first instance decision in Kitoi, the English starts at page 174 G(A)7/1.19/174.

Then if you turn to page 177 G(A)7/1.19/177 you can see just below the middle of the page the following, you see the paragraph beginning:

"From the explanations of the representative of the third party ..."

A. Yes.

Q. "... the Directorate of the Federal Registration Service for the Republic of Buryatia, it follows that State

registration of the right of ownership of the incomplete construction work took place on the grounds of the documents produced by ... Bukhaev: the decision of the Property Management Committee of Ulan-Ude on making [the plot] available on lease, the lease contract ... the construction permit ... the project documentation for the work and the technical passport of the 15 April 2008."

So what one sees from that is that Bukhaev, when he registered his ownership, he presented a construction permit dated 22 April 2008, do you see that?

A. Yes, yes.

Q. And so it seems likely, does it not, that Kitoi actually performed its promise and obtained the construction permit, correct?

A. Yes, but I understand that it's just routine paperwork in rather big volume which is subject, of course, to evaluation. And I mentioned earlier that some work in preparation of passports, visas, other documentation, which mostly is not discretionary because here we don't see any competition between Kitoi and some other applicants regarding formal registration or formal documents concerning construction work. I see no inconsistency with the public order in this case.

Q. Well, it was always possible that the permission would

be refused, Mr Rozenberg, that must be a possibility?  
If you need permission and you have to apply for it,  
that must be a possibility?

- A. It looks like in this case it would be refused if documentation is not prepared properly. It's not the situation when the mayor decides whether to give this plot of land to this applicant or to that applicant.

I frankly see here no favourable governmental decisions which could be issued this way or that way, like in court disputes for example.

- Q. Well, Mr Rozenberg, the favourable government decision here was the grant of the permit, and plainly it was a permit which could be refused, correct?

- A. Theoretically visas can be refused and passports can be refused, but if all documents are prepared properly usually it doesn't happen. And I understand here the situation is more important whether it's discretionary or not, and it looks like it's not discretionary, to issue the permit if construction is prepared according to the existing regulations.

- Q. But the point you make about it being clear that he would get what he wanted, the same could be made for a legal case, Mr Rozenberg. You could have a case in front of the court where, as long as you turn up with the right documents, you will get the order that you

want if the law is applied. But on your interpretation of Makayev, you can't have a legal success fee even for that sort of arrangement, isn't that right?

- A. I understood even the opinion of Judge Bondar in a different way, it mostly applies not decisions which are absolutely clear, because if there is practically nothing in the dispute, and I can hardly imagine why Commercial Court would consider something which is crystal clear, as you say, there is always some discretion. But in Bondar case, the key point is that Judge Bondar considered that it may depend on professional level of performance of services, but --
- Q. You see, Mr Rozenberg -- sorry, I don't want to interrupt you. Carry on.
- A. To make it short, I think it's clear that the meaning of the Constitutional Court decision is fight against corruption. If you see that it's a routine documentation which has to go through a registration process then there is no basis for application of this Constitutional Court decision.
- Q. You see, Mr Rozenberg, what I suggest is that you appreciate that Kitoi, decided three years after the Constitutional Court case Makayev, is completely inconsistent with your interpretation of what Makayev represents because, if you are right about what Makayev

represents, and it extended, for example, to the contribution that one is making towards a partnership, Kitoi could never have been decided in the way that it was.

Do you want to comment on that?

- A. I'm afraid we were already told that it's better to be short here, and again I can only say that in this case I say my indication that it was a favourable governmental decision which could be issued in a different way, because what is the basis to reject the proper documentation submitted for construction permit?

If I fill out properly all documents for the new driver's licence, of course it's the governmental official's decision, but there is no basis to reject the petition. And in such situations, in my view, the Constitutional Court's decision is not applicable.

- Q. But you could have corruption even in a situation like that, Mr Rozenberg, you could have someone who, for whatever reason, doesn't want a Kedr shop built there, and they pay a government official to refuse it. There might be opposition.

This case is not saying: well, it depends on whether there's any opposition to it; it's saying there is nothing wrong with this being a contribution to the partnership.

A. As far as I can see, this issue was not even the focus of the court dispute regarding Makayev.

Q. Can we just go back to the Supreme Court decision in Makayev at G7/1 tab 9, page 90 G(A)7/1.09/90.

We saw I think that Mr Bukhaev had registered the Kedr extension in his own name without telling the registration service about the partnership contract. So what was happening in this claim was that Kitoi was suing for recognition of its 60 per cent share in the Kedr extension, do you remember that?

So what I want to show you, Mr Rozenberg, is what the court says at page 90 happened in the lower court. You see it says:

"The first instance court concluded that there were grounds to recognise a 3/5 stake of the joint shared ownership of the uncompleted facilities in favour of Kitoi on the basis of the terms of the contract concluded between the parties on 27 April 2007 and the circumstances of the case which the court established, concerning the performance by the parties to this contract of their obligations. Those terms correspond to the provision of Article 7.3 of [a law on investment activities in RSFSR], which defines the rights of joint ownership of the subjects to an investment process in uncompleted facilities."

Then the next paragraph:

"According to the terms of the contract, after the facilities are commissioned, the facilities are to be apportioned and the actual floor space to be allocated today each of the parties is to be determined, taking account of their respective contributions. An analysis of the arguments in the application for supervisory review revealed that they do not establish the grounds provided for by Article 304 of the... Code."

So what happened here, Mr Rozenberg, was that Kitoi obtained the construction permit and commenced construction. While the construction was still underway, Mr Bukhaev registered the uncompleted building in his sole ownership, and Kitoi's claim was for recognition of its 60 per cent share in the uncompleted building. And that claim was granted because the partnership contract was valid and because the law of 1991 permits ownership of uncompleted property under construction. Do you agree?

A. And the court indicated it as the basis for the judgment.

Q. Yes.

A. Yes, I agree.

Q. And so -- I don't need to deal with that, I've put that point to you already I think. All right, I've already

suggested to you that Kitoi is inconsistent with what you say Makayev says and I'm not going to go back to that.

I want to consider next with you the concept of a silent partnership. Can I ask you, please, to go to bundle G(A)7/1, tab 22 at page 225 G(A)7/1.22/225. If you're at page 225, on the bottom of the left-hand side, going over to the top of the right-hand side, you should have Article 1054.

A. Yes, "Silent Partnership".

Q. That's right. Can we just see what it says:

"A contract of simple partnership may provide that its existence will not be revealed to third persons (a silent partnership). The rules provided by the present Chapter on the contract of simple partnership shall be applied to such a contract, unless otherwise provided by the present Article or follows from the nature of the silent partnership."

So, at least from 1 March 1996, it was possible to agree that a partnership contract would be kept silent from the third parties. That's right, isn't it?

A. After March 1996.

Q. Yes. Do you agree?

A. Yes, I agree.

Q. All right. And then just looking at subparagraph 2, do

you see it says:

"In relations with third [parties], each of the participants in the silent partnership shall be liable with all his property for [the] transaction that is he [concludes] in his name [and] in the common interests of the partners".

Then subparagraph 3:

"In relations between partners, obligations that have arisen in the process of their joint activity shall be considered common."

This is right, isn't it, where a silent partnership is agreed, each partner is liable to third parties for transactions concluded in his name and the common interest, but obligations are common as between partners and must therefore be shared as between partners?

A. Is it a question?

Q. Yes. Do you agree with that? Where a silent partnership is agreed, each partner is liable to third parties for transactions concluded in his name in the common interest, but obligations are common as between partners and must therefore be shared as between partners.

A. That's what the law says.

Q. So you agree. And the concept of a silent partnership suggests, does it not, that the shares may be registered

in the name of one partner who may owe obligations towards the silent partner, correct?

A. The shares would be registered in the name of one partner, and then what happens?

Q. He may owe obligations towards the silent partner.

A. But these are different questions. Silent partnership indicates that something is not disclosed, but registration of common property is a different issue.

Q. I'm just asking you whether the concept of a silent partnership suggests that you could have shares registered in the name of one partner, that's to say the non-silent partner, in circumstances where he may owe obligations towards his silent partner, which is to say the partner whose name is not --

MRS JUSTICE GLOSTER: I don't understand the question.

I don't understand why share registration has got anything to do with the concept that's being discussed in this article.

MR RABINOWITZ: I'm going to skip that line if your Ladyship --

MRS JUSTICE GLOSTER: I can see what the article says.

A. Because -- I'm sorry, my Lady, there are special regulations regarding ownership and registration of ownership rights, and it has nothing to do with the concept of silent partnership. These are different

areas, and silent partnership cannot prevail if we consider rules regarding registration, either securities or real estate.

MRS JUSTICE GLOSTER: Can I just ask you this: this silent partnership rule we've just been looking at in Article 1054, if A has a contract with B, and C is B's silent partner, can A sue C under this article that says that the -- under Article 2 here, 1054.2.

A. Just A and B are partners and C is not?

MRS JUSTICE GLOSTER: No, A sues C. B is a partner with C. C is the silent partner. Can A sue C directly, or does A sue B who sues C for an indemnity?

A. It depends on the facts, but of course silent partnership does not prevent from being defendant in case of dispute, so there is no prohibition.

Moreover I would say that silent partnership means that they do not disclose some matters. But regarding ownership, by the way, and there is some publication, I think I indicated in my report, that regarding carry out ownership rights, it's impossible to follow completely the terms of silence because ownership shall be disclosed to third parties.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: Now, I want to ask you about split ownership and personal obligations, and I think we all agree that

you can't have split ownership as a matter of Russian law.

But what I want to explore with you is the circumstances in which you can have ownership in the name of one person, but that person is then subject to personal contractual obligations owed to another person, do you follow?

A. Personal contractual obligations may exist for an owner, for a non-owner, no question, no dispute.

Q. Yes. And among the obligations that the parties could agree in the circumstances is that, on demand, the party who is the registered owner of the shares will register the other person's co-ownership interests, that could be a personal contractual obligation which he could accept, yes?

A. It's a terrible problem. Of course not. Because what you are saying, if I understood the counsel correctly, I'm sorry, my Lady, is that the owner, legal owner, who has registered assets in this case, securities as I understand, may be obliged by a contract at the request of another person to transfer ownership title to this person.

Did I understand you correctly?

Q. Well, to register the other person's co-ownership interest, in other words instead of all the shares being

registered in his name alone, he will transfer -- he will produce a change to the register which reflects the fact that there is another owner as well. Why can't that be the subject of a contractual obligation?

A. Just if it is a purchase and sale, and it's clear that there will be transferal right, it's okay. But I understood you, if I am correct, that it will be done on a demand.

Q. There is an agreement that what will happen is that the person says at some point, "If I ask that you do this, you will do this"?

A. But "at some point" means at any moment, correct?

Q. Well, at a particular point in time, yes.

A. This means that the concept of ownership under Russian law is entirely violated. This means that a person is a legal owner of some property, registered owner. And though according to the law he has full right of possession, disposal and use of this asset, in reality he does not determine the legal destiny of this property. At any moment his ownership right will be terminated at demand, and this means that it will be a complete violation of Russian law, because the owner cannot be a little bit owner. The owner determines completely the legal destiny of the object of ownership. Only the owner decides at what moment he or she will

dispose of this property.

MRS JUSTICE GLOSTER: But if I have ownership of a car and I enter into a contract to sell you the car and to transfer your name to the vehicle title registry, why does that offend concepts of ownership? I own the car until you're registered but I enter into a personal obligation, not an in rem obligation, to transfer the car to you. Why is that a problem?

A. It's perfectly legal, my Lady, but this means that there is a purchase and sale agreement and the registration of the title may take some time, but it will, of course, happen. But what -- and the former owner, ie the seller, will not be the owner from the moment -- if it's a car, from the moment of conclusion of the agreement, it will take some time with registration.

With real estate, the transfer of ownership title will be registered, it also takes some time. But it doesn't mean that there is no purchase and sale agreement. What I understand, it's the agreement that one person remains legal owner and another person becomes de facto owner, and nobody knows at what moment --

MRS JUSTICE GLOSTER: No, I don't think that's what's being put to you. I think what's being put to you is that A is the owner of the property, let's say securities,

registered as the owner of the securities, but enters into a contract with B that because B has provided or will provide services to A, A will, at the request of B at any date in the future, register B on the title to the securities as joint owner with A.

Why does that offend notions of property?

- A. Unfortunately it contradicts the law, because "at any moment of the future" means that during indefinite time there will be split ownership. A will be the legal owner and B will be the real owner. This means that indefinitely B will be the real owner covered by A's title, and the owner can be only the sole owner. And it seems to me that we have(?) agreed with Dr Rachkov that split ownership contradicts Russian law.

Otherwise, it's a violation of numerous laws regarding ownership, regarding legal capacity, regarding sham transactions. Numerous violations. I'm not sure that you will allow me to discuss it in details.

MRS JUSTICE GLOSTER: No, just a second, let me just see.

This is an agreement to have joint ownership on the register of securities, it's an agreement that B's name will be added to that of A and they will be joint owners, joint registered owners.

- A. Excellent, no problem. Then they should go and register or agree about the moment in time when it should be

carried out. Usually, of course, in reasonable time to avoid any accusation that it's a fiction. But registered common ownership is allowed by law, and if they agreed that services will be provided, and for these services registered co-ownership shall take place, they should go and register, or may agree that it will be done.

MRS JUSTICE GLOSTER: Are you saying that if there is a fixed time for the performance of the obligation to register B's name, that's all right, but if it's an uncertain date, it's not all right?

A. Yes, that's correct.

MR RABINOWITZ: Can we just test that, Mr Rozenberg. Let's take the situation of an option. Let's say party A has 100 per cent of the shares in a particular company registered in his name, and he grants an option to party B, the option exercisable for a period of three years, which gives party B the right, if you like, to acquire the option, it doesn't really matter -- sorry, to acquire the shares, for a period of any time extending for three years, which will mean that if that option is exercised, A will have to transfer 50 per cent of the shares into B's name.

Do you say that that contradicts or conflicts with the principle of split ownership just because he has

a right which he can exercise at any time in those two years to require half the shares to be transferred to him?

A. I understand there will be an agreement of an option, of a purchase and sale agreement between two parties.

Q. There's an option there. Does that, in your view, offend against the principle of split ownership?

A. Usually either option or preliminary agreement on future purchasers and sale is allowed by law, but you specify the terms of this agreement and carry it out according to the terms.

What you said that at the month, in the indefinite future, the ownership title will be transferred. This is the split ownership, but not the preliminary purchase and sale agreement or option agreement.

Q. Well, I'm not entirely following that because, for the period of time during which the option is exercised but hasn't yet been exercised, the person has the right to exercise that option which would require half the shares to be registered in his name. Now, leave aside how specified or how detailed the contract is, do you say that that does or doesn't infringe against the principle of split ownership?

A. Broadly speaking, either with option or preliminary purchase and sale agreement, I understand that there is

an agreement between two individuals that, for some consideration, there will be transfer of ownership title, and the question is only when. Here, as I already answered, my Lady, it's perfectly legal.

Q. Why should it depend on the precise nature of the personal contract which gives rise to this right?

A. Because ownership title may and shall be transferred on the basis of concrete civil law transactions. It can be purchase and sale, it can be gift, it can be exchange trade, various bases, but then transfer of ownership title is perfectly legal.

But what you are suggesting is that A will be legal owner and B will be factual owner who will request the transfer of ownership title at request, at demand.

Q. I suggest I'm not suggesting that but I'm going to move on to something else.

Can you please go to bundle G(A)2/2 at tab 38, please. The English starts at page 183 G(A)2/2.38/183.

This is the work produced by Professors Makovsky and Khokhlov, do you see that?

A. Yes.

Q. It's the introduction to the Civil Code, and they were two of the architects of the Civil Code, were they not?

A. Many people claim they were architects.

- Q. Well, maybe so, but would you dispute that Professor Makovsky was indeed one of the architects?
- A. Indeed, he is a very reputable legal scholar.
- Q. Thank you. If you go then to page 193 G(A)2/2.38/193, do you see the heading "What the Civil Code allows and what it requires"?
- A. 193?
- Q. 193.
- A. Yes.
- Q. They say this:
- "The well-known phrase 'what is not forbidden is permitted' is applicable to the highest degree [of] civil legislation, for one of the basic principles of civil [law] is the principle of free disposition by each person of the civil law rights belonging to him.
- "The Civil Code in essence opens with this principle, proclaiming in its first article that citizens and legal persons 'obtain and exercise their civil law rights by their own will and in their own interest[s]'.... This principle is formulated even more precisely in Article 9, where it is said that citizens and legal persons 'at their discretion exercise the civil law rights belonging to them'... It is made concrete in a number of other provisions of the Civil Code that discuss the right of the owner of property to

take 'at its discretion ... any actions' with respect to this property..., on the impermissibility of compelling anyone to conclude a contract..., on [determination] by the parties of the terms of the contract at their discretion..."

Now, there are of course certain limits to freedom of contract, as the learned professors go on to point out in the next paragraph. But I take it you accept that freedom of contract was a fundamental principle of Russian civil law in 1995 and 1996?

A. I accept it.

Q. I think you agree that the parties are free to agree either a contract that is specifically named in the Civil Code, or a contract that is not specifically named in the Civil Code provided that the contract is not contrary to law; that's right, isn't it?

A. I fully agree.

Q. Can we just look at what Professors Makovsky and Khokhlov say about the English concept of a trust, if you go to page 262 G(A)2/2.38/262.

A. Yes.

Q. The heading "Entrusted administration of property"?

A. Yes.

Q. "Entrusted administration of property (Chapter 53 of the Civil Code). The contract of entrusted administration

of property and also entrusted administration of another's property on the basis of [legislation] are mentioned in [part 1] of the Civil Code..., which articles do not contain, however, any detailed rules on [these forms] of obligations that is new for Russia. In the Second Part of the Code, the rules on this contract are included as the analogue of a 'trust' -- an institution hasty borrowed from an entirely different legal system and unsuitable for full application outside this legal system. Unknown to the Russian law, the 'splitting' of the right of ownership between the two owners, on which the 'trust' is based, and the absence of special means for protection of 'entrusting' that lie at the [heart] of this institution have required the transfer of these relations to the plane of contract."

Do you see that?

A. Yes.

Q. Can we just focus on the last sentence. So what the professors are saying is that the absence of any form of split ownership under Russian law required the transfer of relations that would, in England, be governed by trust to the plane of contract. Do you agree that that is what they're saying?

A. They mention chapter 53 of the Civil Code, and I know that, according to the rules regulating entrusted

administration of property, the legal owner remains the legal owner, and the person to whom entrusted administration is assigned remains a manager, indicating in all transactions that he is acting only on the basis of the trust arrangement.

And therefore there is absolutely no distinction between legal and factual owner, there is a person who is managing the trust. Therefore splitting -- well, of course, it's a label. The authors indicate here "splitting", but splitting, according to Russian law, does not mean like it happens in English trust, as I understand, that the legal owner will act according to the instructions of the real owner. Under Russian law, the legal owner on the contrary gives instructions and the person who gets the property for trust always indicates that he is not the legal owner at all.

- Q. Would you agree with this, that the contract of entrusted management, in which the owner transfers possession to an agent, is an example of relations between owner and agent that are governed by contract?
- A. Yes, but frankly I don't see any splitting of ownership here, although the respected authors wrote about splitting. I'm afraid it's a confusing label about splitting.
- Q. With respect, I don't think it's confusing at all.

I think what they're saying is: we don't have a trust concept in Russia, and therefore many of the things that you achieve by using a trust in -- he's obviously talking about England -- we deal with by use of the plane of contract. We obviously don't achieve the exact same result because we can't, because we don't want to split ownership. In effect what they're saying is you can achieve a lot of the same thing by using contracts, do you agree?

- A. My main point is that in Russia the agent, as you say, is a person who has nothing to do with legal ownership, and he, on the contrary, even maybe sometimes without necessity, must indicate that he is not the owner, that he is only the manager, on each and every transaction, what is absolutely contrary to the concept of splitting ownership.

MR RABINOWITZ: My Lady, I'm about to move on to a different topic. Subject to your Ladyship --

MRS JUSTICE GLOSTER: That would be a good moment. Quarter of an hour, and I'll sit until 4.30.

MR RABINOWITZ: That would be very helpful, my Lady.

(3.22 pm)

(A short break)

(3.37 pm)

MRS JUSTICE GLOSTER: Yes, do start, Mr Rabinowitz.

MR RABINOWITZ: Mr Rozenberg, I'd like to turn next to your point that Article 434 of the 1964 Civil Code applied to invalidate the 1995 agreement.

Can we begin, perhaps, by going to your fourth report, bundle 3/1 at tab 2, page 70 G(A)3/1.02/70. At 3/1, tab 2, page 70, we see your point number 4. You say:

"The alleged agreement violates Article 434 of the 1964 Civil Code (as defined below) because it is not made to satisfy personal needs. Consequentially, the agreement, even if concluded, is void."

Can we just then remind ourselves of what Article 434 of the '64 Civil Code in fact provides. If you go to bundle G(A)4/4, tab 3 at page 83 G(A)4/4.03/83, do you have it?

A. Yes, I do.

Q. If you look at the last two sentences in Article 434 you see it says:

"Citizens may conclude a joint activity contract only to meet their own personal domestic needs.

"Joint activity contracts between citizens and socialist organisations are not permitted."

So there appear to be two prohibitions here, are there not? First, a prohibition on partnership contracts between citizens other than to meet their

personal needs and, secondly, a prohibition on partnership contracts between citizens and socialist organisations even if those contracts are purely to meet the citizen's personal domestic needs?

A. Yes.

Q. Now, the 1964 Civil Code was, of course, a Soviet Civil Code, and obviously the Communist authorities did not take kindly, at least in theory, to private individuals amassing vast wealth, that's correct, isn't it?

A. Broadly speaking, yes.

Q. And so, as we can see from Article 434, all the Soviets would allow citizens to enter into partnership contracts for was to satisfy their personal needs, and what they had in mind, presumably, was food on the table or a roof over their head, that sort of thing, yes?

A. I think that Soviet citizens had a little bit more than bread and a roof.

Q. I'm sure they did.

A. It's broad, of course.

Q. I think if there's one thing we can all agree on in this case, though, it's that the ambitions of Mr Berezovsky and Mr Abramovich were not limited to that?

A. I agree.

Q. So had the 1995 agreement been made in 1964 it would undoubtedly have been void as contrary to Soviet

prohibitions, that's clear, is it not?

A. I would say stronger. In this year, there was special article of the Criminal Code for private entrepreneurship.

Q. Right. Let's just do one thing at a time.

The question for us is whether these Soviet prohibitions continued to apply in 1995. Now, you're aware, are you, that Professor Sukhanov says that Article 434 of the 1964 Civil Code did not apply in 1995? I can show you an article.

Can you go, please, to G(A)7/1. I think you need out 7/1 and also 2/5 as well, because we need to look at both.

Tab 11 of 7/1. If you're in tab 11 of 7/1, could you go to 98.001, please G(A)7/1.11/98.001.

We've got out two volumes because we don't have the whole extract in one place unfortunately. I just need to show you something from 7/1 and then we're going to go to 2/5.

If you're at 98.001 you can see from that that this is the 1993 edition of Professor Sukhanov's book, do you see that?

A. Yes.

Q. And you can also see Professor Sukhanov is the author of chapter 46, among other things, top left-hand side; do

you see that?

A. Yes.

Q. And then if you go back to page 97.001

G(A)7/1.11/97.001, the English is at 98.001

G(A)7/1.11/98.001, you can see, and perhaps you can tell us, this is a chapter on joint activity agreements, correct?

A. Yes.

Q. All right. Now, unfortunately the page that I want to take you to is in another place, it's in 2/5. I just needed to show you that so that we could be clear on what I was showing you at 2/5.

In G(A)2/5, can you go, please, to tab 25

G(A)2/5.25/112.

MRS JUSTICE GLOSTER: Just for the record, I don't seem to have the page that's on the screen on my Magnum.

I don't know why that is.

MR RABINOWITZ: 97.001.

MRS JUSTICE GLOSTER: I don't have 98.001, I don't know why not.

MR RABINOWITZ: I can tell your Ladyship you're not missing much, it simply identifies the date of the --

MRS JUSTICE GLOSTER: That's fine. I'm sure it will get on there some time, but just so you don't think I've got it.

What's the next document?

MR RABINOWITZ: More importantly is 2/5 at tab 25. If one goes to page 114 G(A)2/5.25/114 one has an extract from the relevant chapter in English. And what we have is Professor Sukhanov in 1993 saying as follows:

"Previously [partnership contracts] were distinguished on the basis of their participants, since the law did not permit the simultaneous participation in such contracts of legal entities and individuals (furthermore the latter, according to Article 434 of the Civil Code, were allowed to enter into such agreements only for satisfaction of their personal everyday needs, and not for commercial purposes). This was the direct consequence of fundamental differences in the legal regime regarding state and personal ownership. New civil legislation abolished these unjustified limitations, and accordingly the grounds for differentiating between such agreements fell away."

Do you see that?

A. Yes.

Q. So the first point to note is that Professor Sukhanov considers, and this is in 1993, that Article 434 at some point in time prohibited partnership contracts between citizens and legal entities, do you see that's the way he puts it?

- A. It seems to me that he is focusing on it.
- Q. So he says 434 was about prohibiting partnerships, among other things, partnership contracts between citizens and legal entities. And then it's plainly his view, you will accept this I think, writing in 1993, that Article 434 of the Civil Code had been abolished and no longer applied?
- A. I'm ready to agree with you. It seems to me that here he attacks directly the agreements between legal entities and individuals which were prohibited entirely under the old Civil Code regarding individuals, it's in parenthesis, and for me it's not entirely clear although I'm ready to agree with you.
- Q. You are ready to agree with me, thank you for that.

Perhaps we can just look at another commentary to see if that assists still further. In the same volume which is 2/5, can you go to tab 26 G(A)2/5.26/120.

MRS JUSTICE GLOSTER: Sorry, are you agreeing that that's his view, or are you agreeing with his view?

- A. I agree that this view is a little bit unclear but I don't want to waste time, and I'm ready to agree that it may apply to both.

How it's read, especially in English, it looks like he is directly attacking the prohibition of joint activity agreements between individuals and legal

entities, which were completely prohibited by the Soviet Code. But in parenthesis it mentions -- and also, by the way, there was restriction regarding individuals and whether the following sentence applies to both, only to what -- besides parenthesis, it's not absolutely clear --

MRS JUSTICE GLOSTER: I see that, but do you agree with his view, with the conclusion he reached? Do you personally agree with the conclusion he reached?

A. Personally I don't agree.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: You don't agree.

I'm grateful, my Lady.

Let's have a look at another commentary then. If you go to tab 26, which I think is the next tab, the English begins at page 120 G(A)2/5.26/120.

This is a commentary by someone called Mr Saveliev, he's an author who you yourself cite in your fourth report, is he not?

A. Of course, yes.

Q. If you turn to page 121 G(A)2/5.26/121, do you see he also says:

"The Fundamentals also removed the prohibition under the former legislation on the simultaneous participation of citizens and legal entities in a joint activity

(simple partnership) contract."

A. Yes, it's correct.

Q. Do I take it that you would disagree with Mr Saveliev as well?

A. Yes, I respectfully disagree.

Q. All right.

Can we then just look at what you say in your report, G(A)3/1, tab 2, page 133 G(A)3/1.02/133, and I want to look at paragraph 220, please.

At paragraph 220, you say:

"Indeed, even today a citizen may not enter into a joint activity agreement for an entrepreneurial purpose unless he or she is a registered entrepreneur: see Article 1041 of the... Civil Code. This provision has been applied on many occasions to render an agreement in violation thereof invalid. Finally, it is striking that there is no Russian court decision upholding any joint activity agreements concluded between individuals for business purposes at the relevant time ([that is] in 1995...)"

So, am I right, your suggestion is that because even today a citizen cannot make a partnership contract for entrepreneurial purposes, therefore it is reasonable that in 1995 the old Soviet prohibitions continued to prohibit citizens from making partnership contracts for

anything other than basic supplies?

- A. I'm afraid it's a simplification of my arguments. I realise that this question is not very simple and I respect other views.

But, as a lawyer, if asked regarding the law applicable at this moment, in 1995, I have to take into account two main factors. Number one, at this moment, Article 434 formerly was the only rule of the special part of the civil legislation regulating this type of agreements. The special part of the Civil Code was adapted and took effect only in 1996.

At this moment, this part was not replaced by anything, and the question was whether it contradicted or didn't contradict other normative acts which my respected colleague, Dr Rachkov, enumerated. I don't want to waste time on this.

So the question is: was Article 434 in effect at that time, or there was some vacuum, and practically no other article of the Civil Code regulated the joint activity or simple partnership agreements.

When such situation arises, usually the best guidance is the court practice. There are three court decisions, not one but three consecutive court decisions. The lower court, the appellate court and the cassation court. This dispute, Salata case, went

through all instances of the judicial system available at that time. And, by the way, even today, because the Supreme Arbitrazh Court interferes very rarely, and only when it disagrees; when the Supreme Arbitrazh Court agrees they do not show up on the picture.

In other words three courts, including the highest cassation court, ruled with reason, and we have this in the materials of the present case, ruled that Article 434 applies if the agreement is not concluded -- if the joint activity agreement with participation of an individual is not concluded for the personal needs. The courts indicated that, if it is for apartments, for parking places, for cars, for other personal needs, it's fine. If it's for systematically obtaining of profit in entrepreneurship then it's prohibited. This is what the courts said.

And second factor, the development of legislation. I can see, and I wrote about it, that in 1964 there were strong restrictions. After 1995, still there are restrictions, they look a little bit softer but still are rather severe because the most serious sanctions, complete invalidation of agreements if there is no registration of individuals participating in such transactions, it's broadly applied by Russian courts after 1995.

Since the whole legislation during the period in question developed gradually and in other areas, whether it's currency, bank accounts, other economic freedoms, there were more such shocking changes.

My view is that simply in the period in question, in 1995, joint activity agreements connected with entrepreneurial activity for individuals were available if such individuals were acting in some legal forms, and to have a form of legal entity to establish either limited liability company or closed type joint stock company with only one founder was quick and easy. Everybody knows it was practically the same procedure, like becoming registered entrepreneur.

Therefore, my understanding was that for fiscal purposes the legislators did not allow, in the period of question, the activity of individuals who are not registered at all. This was my conclusion though I agree that there may be different views.

Q. All right. Mr Rozenberg, I really don't want to stop you giving relevant evidence, but it would help if you try to make your answers a little shorter and responded to my question.

MRS JUSTICE GLOSTER: I think we've got the picture here. He's got his view and he accepts it's reasonable to hold an alternative view.

MR RABINOWITZ: An alternative view. All right.

I do need to explore I think with you, Mr Rozenberg, and I'm sorry that this will take time, but, you see, part of what you are saying apparently in paragraph 220 seems to relate to agreement for entrepreneurial purposes and registered entrepreneurs.

I just want to be clear that there is no confusion as to the concept of entrepreneurial activity, because this is a matter which arises not only in this context but it also arises in the context of limitation in Article 205 of the Civil Code, okay? So I just want to see if I can very quickly try and get rid of any confusion about this.

Can we just look, please, at bundle G(A)6/1, page 40, paragraph 127 G(A)6/1.01/127. In paragraph 127, this is in the context of 205, you say:

"... it is agreed that Article 205 cannot be applied at all where the claimant is an individual entrepreneur and the claim arises out of entrepreneurial activity."

Now, there is a dispute as to how this applies, and I just want to be clear that the authority which confirms this is expressed in precisely these terms and no wider.

Keep the joint memorandum to hand, but can you please take up bundle 4/3 and go to tab 103, page 63

G(A)4/3.103/63. We have here the Plenums of the Supreme Court and Supreme Arbitrazh Court producing a resolution. If you look at paragraph 12, you can see that in the first sentence they confirm that:

"A request by a party to [apply a limitation period] shall constitute grounds for the dismissal of the claim..."

In the second sentence of the same paragraph, they say that such a request:

"... does not prevent the court from considering an application by a claimant who is a citizen to honour the reason for missing the limitation ... period and to restore it, which the court may grant, provided the circumstances are proven as set forth in ... 205 ..."

I'm not worried about that for present purposes.

In the next paragraph they say this:

"The courts shall keep in mind that the limitation of action period missed by a legal entity, as well as by a claimant who is an entrepreneur for claims related to their business activities is not subject to restoration regardless of the reasons why it was missed."

I've emphasised the words "business activities", but it's right, is it not, that the Russian word which is used is the same word that appears in Article 23 of the Civil Code which I think Professor Maggs translates as

entrepreneurial activity?

A. I confirm.

Q. So just going back to the joint memorandum at G(A)6/1, page 40, paragraph 127 G(A)6/1.01/40, you agree that Article 205 cannot be applied where the claimant is an individual entrepreneur and the claim arises out of entrepreneurial activity; do you see that?

A. Yes.

Q. In paragraph 128 we see in subparagraph 1 that you say:

"Mr Rozenberg maintains that Mr Berezovsky may be considered to be acting as an individual entrepreneur since his alleged activity (and rights allegedly arising therefrom) was of economic nature, and that this would deprive him of the right to rely on Article 205."

Now, this concept of economic nature that you use there is slightly ambiguous. Can we just very quickly look at how you put it in G(A)3/1, tab 3, in your report, page 207, paragraph 51 G(A)3/1.03/51. Here you say:

"Furthermore, if one interprets the alleged 1995 Agreement as a valid joint activity agreement governed by Russian law..., the activity of the parties to such agreement would inevitably be deemed by a Russian court to be business or entrepreneurial activity."

Do you see that?

A. Yes.

Q. So having said in the joint memorandum that the alleged activity was of an economic nature, here you say that it would inevitably be deemed to be business or entrepreneurial activity?

A. Yes.

Q. Okay?

A. Because Article 434 did not indicate clearly that only entrepreneurship is prohibited. It indicated that everything except personal needs, and I word it in connection with this to indicate that activity which is business entrepreneurial activity is not activity for personal needs.

The same regarding statute of limitation, because legal entities are mentioned there, and the whole understanding is that whether it's connected with business activity.

Q. I just at this point want to understand whether you say that the 1995 agreement involved entrepreneurial activity as defined in Article 2 of the Civil Code? Because I suggest it isn't clear, and just looking at what the Plenum said in the document we looked at at 4/3, tab 103, you see the Plenum spoke expressly of "entrepreneurial activity", using the same Russian words as are used in Article 3.

- A. I agree.
- Q. 23, sorry.
- A. I agree.
- Q. But you say in the joint memorandum that the joint activity was of an "economic nature". And then you say in paragraph 51 of your fifth report that the joint activity would be deemed to be "business or entrepreneurial activity". So you add here the word "business".
- A. Regarding the joint activity in connection with Article 434, it's not crucial, it's not critical. It's sufficient to determine whether this activity was aimed at personal needs or it was not.
- Q. All right. Just let me ask you this: do you say that a partnership agreement to acquire a controlling shareholding interest in a company involves entrepreneurial activity as defined in the Civil Code on the part of the partners? Or do you say that it involves other kinds of economic activity aimed at generating wealth?
- A. It is a difficult question and I wrote that it "may be considered" as entrepreneurial activity. We can read together the definition of entrepreneurial activity which is rather broad. The simple purchase of shares, of course, is not entrepreneurial activity, but how the

whole agreement and all the actions of the parties were formulated, it may give basis for consideration of this as entrepreneurial activity. So this question remains to be discussed.

Q. You see, Dr Rachkov is clear about this. Can you just go to G(A)1/1, tab 3, at page 188 G(A)1/1.03/188, do you see at paragraph 43 Dr Rachkov says -- I'm looking at the first sentence:

"Entrepreneurial activity is a narrower concept than economic activity, and does not encompass every activity that may be undertaken for commercial or business purposes."

Presumably you agree with that?

A. I agree.

Q. In the second sentence he says that both:

"... the Constitution and the Civil Code distinguish entrepreneurial from other economic activity."

Presumably you agree with that?

A. I think the first sentence is sufficient.

Q. Okay. But you don't dispute the second sentence, presumably?

All right, let's go over the page, page 189. If you look at paragraph 44, you'll see that Dr Rachkov says:

"Entrepreneurial activity is defined in Article 2 of the Code ..."

And he sets that out. If you look at the definition, it's actually set out here:

"Entrepreneurial activity is independent activity done at one's own risk directed at [the] systematic receipt of profit from the use of property, sale of goods, performance of work, or rendering of service by persons registered in this capacity by the procedure established by legislation."

Do you agree that acquiring shares in a company, being a shareholder, does not fall under this definition?

A. If Mr B and Mr A would come to purchase shares, and that's it, of course these actions should not be considered as entrepreneurial activity. With a broad activity, it's a question, but I don't want to insist. I wrote "it may be considered"; it's a question, it's of economic nature. It's not entirely clear, and frankly even all the activity under this agreement is not crystal clear.

Q. That's very fair.

A. Therefore I agree with you only that acquisition of share stock is not entrepreneurial activity, that's correct.

Q. That's very fair, Mr Rozenberg.

Can we just very quickly look at the constitution.

If you go to bundle G(A)2/1 at tab 2, please. The English, if you can go to page 51 of that G(A)2/1.02/51 you see that Article 34 at the top of the page says:

"Everyone shall have the right to use freely his (her) abilities and property for entrepreneurial and other economic activity not prohibited by law."

So that again draws a distinction between entrepreneurial activities and economic activities, I think you have agreed with that.

A. Of course, otherwise I would say no question at all.

Q. And the constitutional guarantee applies to each, does it not? Everyone has the constitutional right to use their abilities and property for each of those activities, entrepreneurial or other economic activities "so far as not prohibited by law".

A. If not prohibited by law, I fully agree.

Q. And where it says "so far as not prohibited by law", this does not mean, does it, Mr Rozenberg, so far as the Soviets did not prohibit it; that's not what the 1993 constitution means?

A. Three Russian courts ruled in a different way. And by the way, not long ago it was, not 1995 though, in connection with the facts which took place in '95, therefore I have to disagree.

Q. I just want to understand your position.

If a citizen went to the Constitutional Court in 1995 and said "I want to make a simple partnership contract to invest in a company to try to make a lot of money", this is in 1995, "I know I couldn't do this in Soviet times but can I do it now?" is it seriously your suggestion, Mr Rozenberg, that the Constitutional Court would reply "Sorry, you cannot do this, your Article 34 rights are limited by Soviet law and you will have to wait until we get around to amending them"?

Is that your evidence?

A. "I want to make a simple partnership", then according to the law in effect at that time he could register very quickly, within a week or two maximum, a limited liability company being one founder, or closed type joint stock company being one founder, with extremely small charter fund, it was just a ridiculous amount, and enter into any joint activity agreement, because then all his actions would be supervised by the tax authorities, no question.

This is the answer.

Q. All right. Can you put away 2/1, please, and go to bundle 2/4 at tab 8, page 50 G(A)2/4.08/50. This is the Constitutional Court decision in Kadet, and just looking at paragraph 3, which is the first paragraph you

see there?

A. Yes.

Q. "Article 8(1) of the Constitution... affirms freedom of economic activity as one of the foundations of the constitutional system. The principle of economic freedom constitutionally predetermines guaranteed powers comprising the basic content of the constitutional right to free use of one's abilities and property for entrepreneurial and other ... activity not prohibited by law. Exercising this right, enshrined in Article 34 (Part 1) of the Constitution..., citizens are entitled to determine the sphere of this activity and conduct the corresponding activity solely or jointly with other persons by means of participation in a business entity, partnership or productive cooperative, [that is] by means of the creation of a commercial organisation as a form of collective entrepreneurship, to select autonomously an economic business development strategy, use their property based on the guarantees of rights of ownership... [and then] and government support of fair competition... established by the Constitution of the Russian Federation."

So would you agree that what the Constitutional Court is here doing is affirming that citizens are entitled to determine the sphere of their

entrepreneurial or other economic activity, and to pursue such activity solely or jointly with other persons by means of a participation in a business entity or partnership?

- A. I agree, but correct me if I'm wrong, but in here I don't see for example that it's necessary for an individual to be registered, and the resolution was issued in 2004. By that time it was easy to participate in joint stock -- I'm sorry, in the joint -- in the simple partnership, and still the registration was required, but the Constitutional Court cannot go into such details.

It's a broad definition and I agree with that, but we should understand that everything should be done on the basis of the existing laws and regulations with certain sometimes formal restrictions.

- Q. You see, despite these ringing words of freedom, you're saying that citizens could not form a simple partnership contract with one another for much more than a sandwich or a basic commodity, is that your evidence?
- A. I need to be very brief. I already said that creating, very quickly, a legal entity, it's an equivalent of registration later. A citizen could be engaged in very sophisticated forms of entrepreneurship, not only preparing sandwiches. Because otherwise, we have to

agree that this activity could be carried out without any supervision of the state authorities, what is inconsistent with the principles of Russian and I think any other country's legislation.

MRS JUSTICE GLOSTER: So you're saying that it would have been all right -- if the individual had registered as an entrepreneur that would have made it all all right?

A. Definitely registered as individual entrepreneur later, and in 1995, probably to have full guarantee, it would be better instead of being registered individual entrepreneur to be acting through a legal entity, not as individual but as owner of limited liability company or closed type joint stock company.

MRS JUSTICE GLOSTER: So in 1995, an individual couldn't have registered as an entrepreneur?

A. In '95 he already could, but for the purposes of 434 it remains unclear whether it would be sufficient.

MRS JUSTICE GLOSTER: Yes, I see.

A. But I say it's equivalent either to be registered as individual entrepreneur, or to register as a limited liability company, the only founder, the only owner, and very low charter fund, let's say equivalent of \$100, no more. It was even lower at that time.

MR RABINOWITZ: Now, we saw, Mr Rozenberg, that you said in your fourth report, paragraph 220, that there is no

Russian court decision upholding any joint activity agreements concluded between individuals for business purposes at the relevant time, that's to say prior to part 2 of the Civil Code on 1 March 1996.

A. Only between individuals without legal entities, we never saw anything.

Q. You see, Dr Rachkov says that is not right, and can we just look at some of the decisions that he refers to. Can you go, please, to bundle 2/5 at tab 15, page 55 G(A)2/5.15/55, the Russian is at 52 G(A)2/5.15/52 and the English starts at 55.

This is a decision of the Supreme Court, as you see. It's B against S, you see that from the first substantive paragraph, just below the top. On page 55, below the heading "Established", we see that B, the founder of the company Respect, applied to the court with a claim against S, another founder and director of the company, for the compulsory registration of the transfer of ownership rights to a shop from S to the company Respect. Do you see that?

A. Yes.

Q. In the next paragraph, we see that the contract was a foundation contract made in 1993, and in the following paragraph we see that the wife of one of the parties applied to invalidate it. So that is what the claim was

about. Do you see that?

A. Yes.

Q. And there is no mention here of B or S being or needing to be registered entrepreneurs, correct?

A. Regarding entering into foundation contract.

Q. Yes, but do you see that there is no reference to them needing to be registered entrepreneurs?

A. But it's in connection of the entering in the foundation contract.

Q. Okay. If you then go to the last paragraph at the bottom of the page, you'll see that the court says as follows:

"In sustaining B's demand, the court proceeded from the fact that the joint economic activity contract and the creation of the limited liability company of 23 December 1993, concluded by the founders of the company -- S and B, contains a term in accordance with which the founders integrated their personal contributions for [the] joint economic activity, by depositing property in the form of a shop and car acquired by them for joint cash funds worth a total of 12 million-odd rubles, thus creating the company's authorised... capital."

So the court upholds the claim and proceeded on the basis that this was a joint activity contract, correct?

A. It's correct, but it's a bit confusion because, unfortunately, in some decisions of the Supreme Court and of the Supreme Arbitrazh Court, and of some writers, these agreements are also called joint economic activity agreements. However, these foundation agreements are not simple partnerships because we all agreed, as I understand, that the simple partnership is the joint activity without creation of legal entity. And these agreements are aimed at creation of legal entity and present a different category. We shall not be confused by this. They are subject to regulation of special norms regarding foundation of legal entities, either limited liability companies or joint stock companies, and of course they are not falling under the restrictions of Article 434.

I even remember that my respected colleague, Dr Rachkov, in one of his reports, indicated that joint economic activity agreements are not foundation agreements, that these are different categories.

Q. Well, can we just look at the document which you'll find at tab 10, G(A)2/5, tab 10, in the same bundle G(A)2/5.10/27.

A. Yes.

Q. This is a joint resolution by the Plenum of the Supreme Court and the Supreme Arbitrazh Court. Do you see it

says:

"A contract on the creation of a company being concluded by the founders of a joint stock company is a contract of joint activity on the foundation of the company and bears no relation to the foundation documents..."

- A. Yes. I said just I think two minutes ago that unfortunately both our supreme courts and some scholars created this confusion because, if we read carefully, and moreover understand carefully what it means, these are agreement on joint activity on the foundation of the company and it has nothing to do with simple partnership which are, on the contrary, aimed at joint activity without creation of any legal entity.
- Q. Mr Rozenberg, if you look at tab 8, if you go to page 21 of tab 8, I just want to show you another reference to this sort of contract. This is the Presidium of the Supreme Arbitrazh Court of the Russian Federation resolution. Do you see tab 8, page 21? G(A)2/5.08/21
- A. Yes.
- Q. "The foundation agreement is a joint activity contract between the founders on the creation of the joint stock company and is of a civil law nature. Accordingly, the demand to have it recognised as invalid is a claim to have a civil law transaction recognised as invalid."

Do you see that?

A. Yes.

Q. So isn't that again recognition that a foundation agreement is a joint activity contract?

A. But I already said that, unfortunately, our supreme courts and some scholars created this confusion, and forgive me, I want to be extremely brief but sometimes some legal terms are used in different meanings.

There is an English term "security" which may be used as collateral, as pledge, and at the same time something like absence of danger, security. And the same here, there are joint activity agreements aimed at creation of a legal entity where joint activity agreements on foundation of a company. And there are other joint activity agreements, ie simple partnerships, which on the contrary are aimed at activity without creation of a legal entity.

Different rules should apply, otherwise it's simply impossible to understand. And by the way, Dr Rachkov wrote in one of his reports, we can go to it, that these are different categories. We cannot consider joint activity agreements on foundation of companies as equivalent of joint activity agreements, parenthesis, simple partnerships, aimed at activity without creation of legal entity.

MRS JUSTICE GLOSTER: Why can't you have a joint activity agreement for the formation of a company which comes to an end once the formation of the company has been done?

A. We can, of course, and it should come to an end when the formation is done, that is absolutely correct. But still it's a different category because customary requirements to joint activity agreements, the personal participation is needed, activities of all the partners, but not simply execution of payment, one-time payment of a certain amount. These requirements applying to joint activity agreements are not applicable to agreements on creation of a legal entity.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: You see, Mr Rozenberg, Dr Rachkov refers to a number of cases in which partnership contracts made in 1994 were upheld. I'm not going to go through them all. They include cases of partnership contracts between a citizen and a legal entity not simply for personal domestic needs, and that is in his report, his sixth report, at paragraphs 29, 30 and 31, one of those cases being a Supreme Court decision. He also refers to cases of partnership among citizens, plural citizens, as well as legal entities. That's at paragraph 32 of his sixth report. And that includes a case where 12 citizens were party to the contract. He also includes other cases in

which foundation contracts, which are a form of a partnership contract, were treated as potentially valid.

You, on the other hand, have cited a single case, Salata, in which the Federal Arbitrazh Court struck down a partnership contract made in 1995 on the ground of Article 434. I'm not disputing that is what happened in that case. But I think you also accept that Russian judgments, especially lower court judgments, can sometimes be inconsistent and wrong, correct?

A. I think in any country court decisions may be wrong.

Q. That is a very fair comment. Not this court of course.

So I would suggest, Mr Rozenberg, that Professor Sukhanov, Dr Saveliev and the Supreme Court decision I have referred to are all right, that the end of Communism was indeed an end of Communism, and that restrictions of the kind found in Article 434 were washed away by the new constitutional and civil law freedoms; you dispute that, do you?

A. If either you or Dr Rachkov would bring me at least one decision, if not upheld at the appellate or cassation level, at least one decision of any court considering just this legal issue, not in general questions of payments, tax issues and other problems considered in the cases you indicated, but just this particular issue, whether Article 434 was applicable or not at that time.

And this decision would contradict the Salata case decisions, I am ready to entirely agree with you.

So far no one case was brought whether this particular issue was in the focus of the dispute, and the Russian courts usually -- Russian judges, and I think it was indicated in your submissions, Russian judges have so many cases, you sometimes can see the list schedule of cases, just ten minutes for one case, 15 minutes for the second case, and 15 cases for one day. And if the question is --

MRS JUSTICE GLOSTER: We sometimes have that too.

A. So if the question is regarding the amount which should be paid, why should the judge to look for another job and consider some other issues? Especially if it's not raised by any party.

But when this issue was in the focus, three levels came to this conclusion. How can I as a lawyer ignore all this without getting any support anywhere? In court we cannot bring Professor Sukhanov's or somebody else's opinions. The judges will laugh at us.

MR RABINOWITZ: I'm sure they won't. But can I ask one last question about this, I just want to clarify exactly what you're saying.

We saw Article 434 had two prohibitions, the one prohibition was about individuals entering into

partnership with legal entities, correct? And the other prohibition was about individuals entering into partnerships with each other for anything more than basic needs, yes?

A. Yes, and the prohibition to enter into agreement with legal entities, as far as I remember, was indicated only regarding socialist organisations.

Q. Well, "legal entities" in fact is the way it's put by Professor Sukhanov and others. But you accept, I think, that so far as the first of those prohibitions is concerned, that had gone by 1995?

A. Of course. There were no socialist organisations anymore.

Q. Well, in fact it refers, as we've seen in the literature, to "legal entities". What I want to understand from you is: is it your case that it is only the second limb that somehow survived, the restriction on partnership on individuals for anything other than basic needs?

A. Individuals had to enter into joint activity agreements not for personal needs in forms of legal entities, that's correct.

MR RABINOWITZ: All right. I suggest to you that you're wrong and Dr Rachkov is right but we're not going to go round that one again.

My Lady, this is in fact a convenient moment.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: I can tell your Ladyship, all I have left for Mr Rozenberg are the limitation issues. Depending on how it goes, it will take between one hour and three depending on how it goes, but I would expect, if we start at 10.00, we should easily finish in the morning. Overnight we will consider whether we need Professor Maggs at all.

MRS JUSTICE GLOSTER: Yes. You can deem having put all the points to him.

MR RABINOWITZ: That's my -- and I need to be clear with your Ladyship what the position is. Professor Maggs doesn't cover any other ground. In relation to two of the issues he suggests a further reason why he says his view is to be preferred. We need to take a view ourselves as to whether it really is necessary to go through that further --

MRS JUSTICE GLOSTER: But if, for example, in relation to a particular issue, he does say, "And there is an additional reason", it doesn't seem to me that I can be prevented from considering that reason.

MR RABINOWITZ: No, we're not for a moment saying that your Ladyship shouldn't consider it. But if for example it's in relation to an issue where we have identified

a series of reasons why that ultimate conclusion is wrong, then, in my respectful submission, it may not assist your Ladyship to hear us try and trash the further reason.

I'm not for a moment suggesting that the other side can't rely on Professor Maggs' further reason, but I suggest it just would not be an efficient use of time to go over all the same ground again.

MRS JUSTICE GLOSTER: Well, I can see that.

I'll hear from Mr Sumption.

MR SUMPTION: My Lady, I should point out that there is one aspect of Professor Maggs's opinion on which I would like to cross-examine him. In the circumstances, I do not think that it would be right for me to cross-examine him in an adversarial manner or using leading questions, I wouldn't propose to do that. But there is a particular aspect which Professor Maggs deals with, which other expert witnesses have not dealt with, on which I would like him to explain the basis of his view for your Ladyship's assistance.

So unless Professor Maggs is withdrawn by Mr Adkin, he may need to be called so that I may cross-examine him.

MRS JUSTICE GLOSTER: Right.

Mr Rabinowitz, I'll leave it to you, but I'm not

requiring you to go through the same exercise with Professor Maggs. I will take things as challenged.

If there's a different point, you can either leave it, as it were, for me to consider in the light of your reasons or you can challenge him, but I think that's a view you must take.

MR RABINOWITZ: I'm not suggesting that everyone says "That's fine," no one can rely on that at all, my Lady, that's very much the position.

MRS JUSTICE GLOSTER: You run the risk, but that's a matter for you, that if you don't challenge his additional reason, without that challenge I might be persuaded by it.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Yes, Mr Adkin.

MR ADKIN: My Lady, I'm grateful for that. That's precisely the approach that we propose to take as well. I quite understand that my learned friend doesn't want to replicate his cross-examination of Mr Rozenberg, but there are points that Professor Maggs addresses in his reports which are supplemental to those made by Mr Rozenberg. If my learned friend chooses not to cross-examine on those points --

MRS JUSTICE GLOSTER: Well, I'm not going to take them as accepted, I'm going to put them into the bucket and work

out what, at the end of the day, I consider the answer is.

MR ADKIN: My Lady, exactly. And he fails to cross-examine, as it were, at his own risk.

MRS JUSTICE GLOSTER: Well I don't think he's failing; the arguments will all be there.

MR ADKIN: Chooses not to.

MRS JUSTICE GLOSTER: He won't by default have accepted them.

MR RABINOWITZ: That I think is certainly my position and I'm grateful for your Ladyship's indication.

MRS JUSTICE GLOSTER: Okay, so we're not going to finish the evidence this week, it doesn't look like.

MR RABINOWITZ: It depends on how much history cross-examination there is. I understand from Mr Sumption that he will be very short. Mr Gillis is dealing with Mr Sumption's history expert. I don't think he's going to be very long but he is very likely to be longer than Mr Sumption is, from the sounds of it.

MR SUMPTION: My Lady, I think I will probably be very roughly an hour with Professor Fortescue.

Since, as I understand it, the point being made by my learned friends about Professor Service is that he doesn't say anything, it shouldn't take them very long to cross-examine on the subject.

MRS JUSTICE GLOSTER: Okay. Well, I'll sit at 10 o'clock tomorrow. I think, but I'm not sure, I may have a meeting before court but I'll try to be here by 10.00.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: Again, don't talk about your evidence to anyone.

Very well. 10 o'clock tomorrow.

(4.32 pm)

(The hearing adjourned until  
Friday, 2 December 2011 at 10.00 am)

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(continued)

Friday, 2 December 2011

(10.00 am)

MR MIKHAIL ROZENBERG (continued)

Cross-examination by MR RABINOWITZ (continued)

MR RABINOWITZ: Good morning, Mr Rozenberg.

A. Good morning.

Q. Can we first move to deal with the issue of the limitation period for claims arising under Article 1064.

If we can take up the joint memorandum, it's at bundle 6/1, tab 1, page 37 G(A)6/1.01/37. If you look at paragraph 116, you can see:

"It is agreed that the [basic] limitation period for a claim under Article 1064 is three years, and that the limitation period runs from the date on which the claimant knew or should have known about the violation of his rights."

If you turn over the page to paragraph 118, at the top of the page, you see it's also agreed as follows, just looking at the first sentence there:

"It is agreed that, when the court at the request of the defendant establishes that limitation period has elapsed, the claim must be dismissed unless the Court restores the limitation period under Article 205 or it is an abuse of right for the defendant to raise a limitation defence contrary to Article 10."

So this is right, isn't it: where a claim is brought outside the three-year limitation period, it will be dismissed unless either the court restores the limitation period under Article 205, or it is an abuse of right for the defendant to rely on a limitation defence contrary to Article 10?

A. Yes.

Q. Then just looking at the next sentence of paragraph 118 of the joint memorandum, we see that you summarise your position and you say:

"Mr Rozenberg maintains that the latter options may take place only in highly exceptional circumstances, where either impossibility of the claimant to timely apply to the court or defendant's intentional actions effectively preventing the claimant to do so are established."

Can we just look at what Article 205 says, and we have it set out in the joint memorandum and we may as well take it from there.

Paragraph 119, just read that to yourself if you would. (Pause)

A. Yes.

Q. You're familiar with that. So it applies, does it not, in exceptional cases, and that, I think, is something you agreed at paragraph 120, subparagraph 1 of the joint

memorandum. It applies:

"In exceptional cases [where] the court considers that the reason for the lapsing of the limitation period is justifiable by reason of circumstances connected with the claimant's person (a serious illness, a helpless state, illiteracy [and the like]) ..."

Then if the claimant is a citizen, an individual, the court may defend their right and grant the claim; is that correct?

A. Yes.

Q. Then we see in the last sentence that:

"The reasons for [missing] the limitation period may be... justifiable if they existed in the last six months of the limitation period..."

Correct?

A. Yes.

Q. Still staying with the joint memorandum for a while longer. If you look at paragraph 120, subparagraph 2, we see that you and Dr Rachkov agree that whether Article 205 may apply obviously depends upon the particular facts of the case, yes?

A. Yes.

Q. And then at subparagraph 3, you also agree that:

"Article 205 does not [provide] an exhaustive list of circumstances that could justify a restoration of the

limitation period."

A. Yes, the list is not exhaustive but gives some guidance to courts.

Q. Indeed. Now, again, if you look at paragraph 121, I just want to see what is in issue and what is not in issue. You identify what is in dispute, and you say, we see this at subparagraph 1 of 121:

"Mr Rozenberg maintains that [the] Russian courts are, almost without exception, only prepared to restore the limitation period where the claimant is seriously physically disabled or incapacitated in some other way. He maintains that the standard is a strict one: what must be shown is the effective 'impossibility' [you say] of a claimant applying to the court in time."

That's your position, is it?

A. Yes.

Q. It must be effectively impossible?

A. It should be the situation when the claimant has no choice.

Q. Okay. And we can see what Dr Rachkov says, just looking at subparagraph 2. If you read that to yourself, you see he sets out his position there. (Pause)

Then just looking at subparagraph 3 of 121, again this is your position. You say:

"Mr Rozenberg maintains that the invocation of

'stress' or 'fear' by the claimant where such 'stress' or 'fear' was allegedly caused by the defendant is inadequate to satisfy the test under Article 205, as supported by court practice. Otherwise, a limitation period could rarely be successfully invoked because a claimant would simply need to allege 'stress' coming from the defendant's action and preventing the timely filing of the claim."

This in fact reflects a point you make in your reports, and I wonder if we can just look at what you say there. G(A)3/1, tab 1, page 46, and I want to look at paragraph 147 G(A)3/1.01/46 of your third report.

At page 46, paragraph 147, just looking for the moment at the first sentence, you say:

"The invocation of 'stress' or 'fear' [you say] is inadequate to satisfy the test under Article 205."

Then you cite the case of Guseletov.

In the same report, if you then turn to page 51 so we can see what you said at paragraph 160, subparagraph (d), you see the last sentence of that G(A)3/1.01/51. You say:

"... the Russian court practice is clear that [the] mere assertion of 'fear' (even fear of one's own murder) [you say] is generally insufficient for the purposes of Article 205."

Now, can I just make sure that I understand what you are saying here, Mr Rozenberg. You are saying that if a person is incapacitated and unable to sue, then Article 205 may apply. But if a person is in fear, even if in fear of their own murder, then Article 205 cannot apply. Is that your position?

A. It's not only my position, it's the position of Russian courts, and the case of Guseletov confirmed it because in this case it's clear that a person seriously feared to be murdered, and there were correspondent materials of the law enforcement authorities confirming it. But at the same time the facts assessed by the court indicated that the person was not completely paralysed and incapacitated by this fear, and therefore there was still options in the behaviour of the person. Therefore for this person the court did not restore the missed limitation period.

Q. I'm not going to get into the facts of Guseletov with you at the moment. It's in fact a case where the person who he was worried about murdering him had actually been arrested prior to the period of limitation beginning to run. But what I want to do is just test your general proposition that this could be Russian law.

Let us just take an example, if we may. Suppose that I have a claim that I wish to pursue and that

before I issue the claim, towards the end of the limitation period, gunmen surround my house and they say that if I leave my house or telephone for help I will be shot. I am frightened and the house is isolated and I remain inside. The limitation period passes. Do you say that Article 205 will apply in that case?

- A. It's always for the court to assess the facts. What you described looks like a person was really victim of serious crime already in the process of being committed, not simply some threats but a real crime committed in reality, in the particular short period of time, and the person was completely incapacitated. There was no way to go to the police, there was no way to hide somewhere, just the person was practically paralysed by gunmen.

In this situation, the probability that the court may assess the facts differently in comparison with Guseletov case is high.

- Q. I think the short way of putting that answer is that you would say that Article 205 would apply in those circumstances?

- A. Again, it always depends on facts.

- Q. Indeed.

- A. If I correctly understood you, the person had no choice. The person was completely incapacitated by gunmen surrounding his house.

Q. Very good. Now, what if the gunmen do not in fact surround my house but they don't need to because they're notorious gangsters, well known for violence, and they simply issue a threat to me that if I sue their associate I will be tortured and then killed in a particularly horrible way, and as a result of this threat, and because I don't particularly want to be tortured or die, I heed this threat against me issuing the proceedings and the limitation period expires.

Do you say in those circumstances Article 205 would apply or not?

A. Again, it's always for the court to assess the facts, but the way how you describe the situation, in my view, looks similar with rather numerous situations in our country when there were various threats of people connected with criminal circles.

I don't have the court practice supporting the petitions to restore missed limitation period on the basis of threats. Threats, unfortunately, sometimes -- I wouldn't say widespread, but still take place not very rarely. And in my view, in this situation, a person has choices. It's possible to apply to law enforcement authorities to go somewhere, just -- it's necessary to assess the facts but, as you described, the person was not paralysed and incapacitated.

Q. So you are saying that in a situation in which there is a credible threat made that if I issue the proceeding I will be murdered, and as a result I'm in fear of being murdered if I issue the proceedings, you say that that is not a basis upon which Article 205 could apply. Is that your evidence?

A. Again, it depends on facts. If, after receiving this murder, the person didn't go to the police, didn't go to the hospital because of some mental problems, there are no certificates from the law enforcement authorities, from the medical establishments, the behaviour of the person proved that he or she continued doing business, going to the office, acting in some other ways, then only the threat of murder which, unfortunately, is not exceptional in my view and according to the existing Russian court practice, probably will not be sufficient.

But, of course, you ask me every time to act instead of judges, it's difficult. But preliminarily, the way how you described the situation, it doesn't look that the claimant was paralysed, incapacitated, but there is available evidence which would be sufficient basis for a court to restore the missed limitation period.

Q. I don't want you to misunderstand that example, Mr Rozenberg, because I think you might have.

The threat of murder is if the person issues the

proceedings, in other words, the threat relates to the issue of the proceedings. So it's perfectly possible for this person to go about their everyday life because a threat is only a real threat should he issue proceedings. But your evidence, I take it, is the same, is it, that Russian law would not allow Article 205 to apply?

A. It is, because otherwise a restoration of statute of limitation will not be exceptional. And the way you described it still leaves a lot of things unclear: why the person, after having received this threat, did not do anything and actually was not incapacitated if it was a really very serious threat.

Q. You see, I suggest that that is an extreme position and doesn't accord with Russian law.

Let me put another example to you, I think I can anticipate your answer but let me put it nonetheless. Let's assume that the threat in the case that I put to you, the example I've put to you, is not that they will murder me but that they will murder my wife if I issue these proceedings. Is your answer that that too is not exceptional and that that is not a sufficient reason to suspend the running of the limitation period, or to restore the limitation period?

A. Well, mostly the Russian law considers close relatives

as persons as valuable for an individual as his own life or health, and if just the spouses live together and there is no evidence regarding just hostility(?) or anything else of course, I think it doesn't matter whether the threat was issued regarding the husband or regarding his wife or his child. Still the question remains whether the person was totally incapacitated, for example, went to the police and found out that the police was in conspiracy with those who were threatening him and there was no way to go anywhere just to find some other options where at least the person didn't think about finding some options, then I'm afraid that according to the existing Russian court practice, chances are not very high that only allegations of murder will be sufficient.

In Russian courts, sometimes we see threats of murder connected with various transactions, various problems in offices. Only threat of murder itself, not confirmed by other very serious facts, usually is not sufficient. That's what I can tell you on the basis of the existing practice. And you do not provide other evidence regarding involvement of other criminals and real incapacitation of a person in your suggestions.

Q. You see, Mr Rozenberg, you seem to be suggesting that threats of murder are not an exceptional circumstance in

Russia, but you cite cases in the context of Article 205 in which parties have had difficulty complying with the limitation period because they've taken a business trip.

Are you suggesting that business trips are exceptional or more exceptional than threats of murder in Russia?

- A. I am afraid either you misunderstood me or you suggest something totally different because, in the first example, when the threat of murder was real and government surrounded the house, I readily accepted your example as basis for restoration of missed statute of limitation.

Your other examples looked familiar to me with many cases considered by Russian courts because, as I told you, threats of murder are not exceptional. From time to time they happen between commercial men in various situations, unfortunately even in day-to-day life sometimes between neighbours, between sometimes relatives, threat of murder takes place.

Russian court practice usually does not take the threat of murder itself without serious facts serving as additional evidence as basis for applying rules which, according to the law, are exceptional. If the law dictates that it's exceptional, it cannot be applied on day-to-day basis. And with threats of murder, again,

unfortunately, but in real life courts will have to do it rather often.

It depends on facts, this is my final word.

Q. Okay, we have your answer on that then.

Can I just stay with your fifth report in bundle G(A)3/1, tab 3, and can we look at paragraph 45, please, on page 205 G(A)3/1.03/205. This is one of the other points you make about the way you say Article 205 applies, and you say:

"Secondly, Article 205 expressly states that the reasons for restoring the limitation period must be connected with the claimant's 'person'. This has been underlined by the Russian courts on many occasions. It has been held, for example, that Article 205 cannot be invoked where the incapacity in question relates to the claimant's spouse or other third persons..."

Then you refer to a St Petersburg court decision and you then say this:

"Consequently, Mr Berezovsky cannot, in any event, rely on facts relating to Mr Glushkov to invoke Article 205 himself."

Again, can I just make sure I understand your view correctly. Now, I think you accepted that in my first example, where gunmen surround the house and threaten to kill me and as a result I don't leave the house, that

that would be a sufficient basis to invoke Article 205, correct?

A. In my view, if the threat was real and the person was incapacitated as you described, yes.

Q. All right. Let's assume that instead of me being in the house, again my poor wife is in the house surrounded by gunmen and they threaten to kill her if I go and start the claim.

Just assume for the purpose of these examples, Mr Rozenberg, that all of these threats can be supported by evidence. I don't want you to suggest that, you know, you can't support these threats: these are the facts, they have threatened that they will kill my wife if I issue these proceedings. Are you saying that because the person who is incapacitated, or the person who is the subject of the incapacity by virtue of being surrounded and whose life is at risk is my wife, that in those circumstances Article 205 cannot apply to me, however much I love my wife and would rather she was not killed?

A. I think I already gave the answer saying that, in many situations, courts understand that life of wife or child may be as valuable for a person like his own, and the question investigated by courts in this situation is whether the threat or the condition of spouse or child

really incapacitated the claimant.

There is one case where the spouse was seriously sick and it wasn't a question of whether the claimant loved the spouse. The question was whether the sickness required claimant's presence and really incapacitated him. The same here. Answering your question, it's necessary to understand for the court assessing the facts that this threat addressed to the spouse, or even the child, really incapacitated the claimant. There was no choice, he had to behave only this way.

Q. I see. So it isn't your evidence that something done to a third person could never be a reason, a justifiable reason, for me not issuing the proceedings? You're not suggesting that?

A. I understand, and in my view courts understand the same way, that a person may be affected by serious threat to a very close relative as well as to himself and may become incapacitated by this threat. Therefore threats, serious threats, real threats, to wife or child may incapacitate the claimant therefore affecting his personality, and missed period of limitation, in my view, must be restored in such situations.

Q. I follow. So it's a question of fact, and you look to see as to the effect that the position affecting the third party has had on the potential claimant?

A. Absolutely correct. I wouldn't say -- I wouldn't choose an extremely narrow approach saying that if the threat is amongst the relatives it doesn't affect the claimant.

I agree.

Q. All right. Now, I just want to ask you about the suggestion that the test is one of effective impossibility, which is the way you put it in your report.

Do you accept that although you put it on the basis of effective impossibility, there are other commentaries and cases that put the test differently and, in particular, that they speak of circumstances creating a practical impediment or hindrance for the claim?

A. Practical impediment, practical obstacle, in my view creates impossibility, if it's a real obstacle.

Q. So you persist in saying it has to be actually impossible, do you, to issue the claim?

A. I understand the court practice I reviewed, and some scholars, that that's what moved Article 205. And again, though the list is not exhaustive but serves as some guidance, that's what Article 205 dictates to court.

Q. Again, I suggest that's an extreme position and is not supported by the commentators and certainly not by all the cases.

Can we just go to see what Professor Farshatov says about this. Can you go to bundle G(A)2/4 at tab 28 G(A)2/4.28/220. This is an extract from Professor Farshatov's work on "Period of limitation. Legislation: theory and practice", 2004.

In the middle of the page, you can see that Professor Farshatov, after identifying the elements of Article 205 and the fact that there is a discretion, says this:

"The above list of circumstances... is not exhaustive, and is subject to expansive interpretation..."

That is in the course of examining a particular case, other circumstances may also come to light which serve as grounds for restoration, in particular the death or loss of relatives, loss of or damage to property in connection with fires, terrorist acts or crimes.

This suggests that so far as Professor Farshatov is concerned, an expansive range of circumstances may potentially justify Article 205 applying. Presumably you agree with that?

- A. It's a very broad statement, very vague, so it's difficult to argue. But potentially, yes, again if the effect on the personality of claimant was as strong as

dictated by Article 205.

Q. You see also he gives examples of the death or loss of a relative being a sufficient basis, and, again, I take it you don't dispute that provided it has the requisite effect on the claimant, correct?

A. Absolutely correct. It depends on facts because sometimes a person is totally incapacitated by death of relative, and then one of English books, a trip to funerals(?) of the father, was the most pleasant event for the personage, so it depends.

Q. All right, you can put that away for the moment.

Can you go to bundle 4/8, tab 5 G(A)4/8.05/38.

This is an article by Professor Maleina on Article 205 and it's an article I think you cite in your report.

A. I think I remember it.

Q. In fact this is your translation of it, yes?

A. Not my personal translation.

Q. No, okay.

You see at the beginning of the article the professor writes of Article 205 that:

"The legislator speaks of possibilities to use this mechanism in 'exceptional cases'."

Then it says this:

"However, Article 205... is widely applied in the current court practice."

Presumably you accept that that is correct?

A. I'm sorry, because I was given the Russian text. What page in the English?

Q. It's page 38, it's the first --

A. The beginning, yes.

Q. Tell me if you want me to repeat the question.

A. Well, the beginning of the article is clear, and what is the question?

Q. You see that she says:

"The legislator speaks of possibilities to use this mechanism in 'exceptional cases'. However, Article 205... is widely applied in the current court practice."

My question to you was: presumably you don't dispute that?

A. It depends what she means. Broad, because, as I said, I remember this article. If you read the last sentence of this article it looks like it's a little bit in contradiction with this beginning of the article.

Maybe we need to be sure that the translation is correct.

Q. Don't worry, Mr Rozenberg, I'll go to that last sentence, and I suggest it's not in contradiction at all. But I don't yet, I think, have an answer as to whether you dispute what Professor Maleina says about

this being widely applied?

- A. Unfortunately I have to dispute it because, first, if the law indicates in 'exceptional cases', it's not quite clear for me why she wrote that it was applied broadly.

Of course, as counsel correctly indicated in the submissions, in Russia more than 1 million of commercial disputes are considered every year, and if you take even one tenth of per cent it will be already more than 1,000. Therefore several dozens of cases may look like broad application but, according to my practice and the practice of my colleagues preparing this report -- I even checked with my colleagues -- and we found out that nobody had in his or her practice restored missed statute of limitation.

The cases when the court recognised that the statute of limitation was missed I remember very well and I'm aware of them. But when it was restored we usually read in some publications. But neither I nor the lawyers whom I know ever had in their practice the case with restored missed limitation period. And now we read Maleina, who writes about a broad application. Before this, there was another article where it was indicated that the broad interpretation may take place. Unfortunately, it happens from time to time with scholars.

MRS JUSTICE GLOSTER: So you dispute the last sentence of that --

A. I dispute about broad application.

Again, if you take the whole of Russia maybe several dozens can be found, but if it's out of more than 1 million, it's just a small portion of per cent. And in the real practice of practising lawyers it's very difficult to find such cases.

I personally never have. I checked through 30 years of my practice, both in the Soviet Union and in Russia, I don't remember a single case where either at my petition or at the petition of the other side the missed statute of limitation was restored. Although I remember very well cases when this missed statute of limitation was confirmed -- applied by the court and the claim was dismissed.

MR RABINOWITZ: All right. That answer is clear.

Professor Maleina is in fact one of the writers that you cite yourself, is she not?

A. Yes.

Q. All right. For the reference, that's at your fifth report, paragraph 28, I'm not going to turn that up.

Can we just look at what else Professor Maleina says. If you go to page 41 G(A)4/8.05/41. Again I'm primarily focusing on Professor Maleina's focus on what

can constitute a justifiable reason, and she starts to deal with that towards the bottom of page 41, where she says:

"The third condition for reinstatement ... is associated with the estimation of the ground for missing the period of limitation."

The way she structures this article is to identify a series of grounds and then to comment on them. The first circumstance that she identifies here is state of health, and she says, this is the last paragraph on page 41:

"The courts take into account different diagnosis and conditions. The more so because there is no such diagnosis as 'a serious illness'. For example, the omission of the period of limitation was recognised legitimate because the copies of the contested decisions were served to the claimant when she was pregnant and had a high-risk pregnancy..."

Just pausing there, a high-risk pregnancy does not make it physically impossible to bring a claim, Mr Rozenberg.

MRS JUSTICE GLOSTER: Well, it all depends on the facts, doesn't it.

MR RABINOWITZ: Well, it does depend on the facts. What a high-risk pregnancy suggests is that there would be

stress associated with litigation and, because of that,  
the person who has a high-risk pregnancy is excused.

MR SUMPTION: With respect, my learned friend needs to refer  
the witness to the whole of the sentence and not just  
the first eight words of it.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: I'm perfectly happy to look at that.

"... had a high-risk pregnancy (late gestosis and  
risk of premature birth) due to which she was constantly  
treated either in hospital or as a non-resident  
patient."

So she wasn't incapacitated in the sense that she  
couldn't get to where she needed to get, was she?

MRS JUSTICE GLOSTER: Well, it just depends, Mr Rabinowitz.

I just don't think this is going anywhere, whether this  
particular claimant could or couldn't. It just depends.

MR RABINOWITZ: All right.

MRS JUSTICE GLOSTER: I get the point you're making.

MR RABINOWITZ: Yes. I'm not going to labour the point.

MRS JUSTICE GLOSTER: Whether this particular lady was or  
was not able -- that's a Friday pun, I think.

MR RABINOWITZ: That's a Friday pun. All right.

A. If you allow me, my Lady, I can only add --

MRS JUSTICE GLOSTER: Make a point but make it briefly,  
please.

A. I make it very briefly, that usually it depends if medical documents submitted. If they indicate that the condition was very serious such evidence usually impresses courts in my view, in my practice. So if it was described as very serious condition it could work.

MR RABINOWITZ: Let me just go to the last sentence of this article which is the sentence that you like, Mr Rozenberg. Page 43, you see she says:

"The justifiable reasons are those which entail the absolute impossibility of filing a claim or which cause a practical impediment to apply to the court."

So she's treating these two things as different, do you accept that?

A. In my view the translation is clear enough because, in Russian, "absolute impossibility" means that it's really absolutely impossible, and "practical impediment" in this context is in line with that.

In other words, in my view, this last sentence to some extent contradicts the words about very broad application of Article 205.

Q. You see, I suggest the last sentence contradicts your position. Your position is that it has to be effectively impossible, and what the last sentence actually says is that, in addition to circumstances where it is impossible, Article 205 could also be

applied where there is a practical impediment.

Do you dispute that?

- A. I understand at least the Russian sentence that "absolute" covers the meaning of the sentence, and it's not something easy and not problematic. It indicates that it's really something exceptional, I mean in line with the wording of Article 205, and not leading us to the conclusion that broad application is justified.
- Q. Can we look at one or two cases, and I'm not going to take you to too many cases because in a sense what we're interested in is the principle rather than particular cases.

Can you go, please, to bundle G(A)4/2, tab 94, the case of Shirokikh G(A)4/2.94/298. We are not really interested I think in the claim itself, what we're interested in is the reasons why the limitation period was missed and whether that reason was regarded as justifiable, so let's just focus on that.

If you turn to page 299 G(A)4/2.94/299, halfway down the page, do you see the sentence beginning:

"The court established that LI Shirokikh learned of the resolution ..."

Do you have that paragraph?

- A. Yes. If I understand, this is the case regarding the resolution of the general meeting of shareholders.

Q. Correct.

A. And the issue relates to the missed limitation period for appealing, complaining against the resolution.

Q. Yes. And what I'm interested in, in this, Mr Rozenberg, is the last sentence here:

"The Arbitrazh court rightly did not acknowledge [the claimant's] bringing action to a general court to protect his labour rights, or his receiving outpatient treatment between 18.04.2003 and 30.04.2003, as exceptional events, because they could not be treated by the court as having hindered bringing action to the Arbitrazh court to seek [the] invalidation of the resolution of the shareholders' meeting."

The way the court appears to be putting it here is by asking whether these were matters which hindered the bringing of the claim. Do you say that is the court applying the wrong test because they should have asked, rather, whether it made impossible the bringing of the claim?

A. If you allow me, my Lady, just a small comment, because I'm not sure that we need to go too deeply in this case because general conclusions I made relate to commercial disputes. But with appeals, complaints, regarding either resolutions of shareholders meetings or sometimes even court decisions the practice is different.

The courts generally -- first, of course, the limitation periods are much shorter in these situations, and, second, courts do not consider restoration of limitation periods regarding resolutions of bodies governing the companies, or even sometimes court acts, as really putting at risk the stability and certainty of civil law relations, civil law rights and obligations.

I am ready to go much deeper regarding this concrete case, but I would definitely say that what I mentioned, speaking about my practice and practice of my colleagues, of course it does not relate to missed limitation periods regarding court acts and sometimes resolutions of shareholders meetings, courts are usually more liberal here, but if you suggest we can analyse more seriously the circumstances in this situation.

But generally, the approach that it's not the stability and certainty of civil law rights and obligations regarding general limitation periods, either three years or one year in commercial disputes, but regarding these relatively short periods connected with concrete decisions the approach is different.

Q. Mr Rozenberg, are you suggesting that the severity of the tests varies depending on the length of the limitation period, that sometimes it's a test of impossibility but for shorter periods you have some

different test, is that your evidence?

A. Regarding resolutions of shareholders meetings, the approach may be a little bit softer according to my observations. But I am not denying that the law should be observed, and let's check the facts how they are presented here. However, just I simply need to make clear what I said not to be misunderstood, because for decisions, concrete acts, either of governing bodies or courts, the approach is different in comparison with other disputes.

Q. I think you may be agreeing with what I'm going to put to you.

Isn't it in fact the case that the test is always the same but how it applies will depend on the facts of the particular case?

A. Well, again, what I remember from the court hearings I affected, usually the facts which are assessed are regarding resolutions of shareholders meetings, it's not whether the claimant was totally incapacitated and was in such serious condition, like with bringing other claims. But theoretically, the court may indicate absolutely the same grounds for rejecting or restoring the missed limitation period.

I am here to say what I observed, what I noticed during long practice. But let's see, we can go into

concrete facts if you wish. But mostly, it's again the assessment of facts, it's at the discretion of courts.

If I mention that, for example, medical documents impress courts, according to my practice. It's not clearly indicated in laws. But this is the conclusion I made, and other practice lawyers would confirm the same --

MRS JUSTICE GLOSTER: Right, I think you've given your answer on this question.

Please can you go on, Mr Rabinowitz.

MR RABINOWITZ: I'm just going to take you to one other case of a similar sort. In the same bundle can you go to tab 93, the case of Puls, O against Puls G(A)4/2.93/293.

If you're on page 293 at tab 93, if you look at the third paragraph, you see that the Arbitrazh Court had dismissed O's claim as being out of time. Do you see that?

A. Yes.

Q. Then in the next paragraph we see that this was reversed by the Court of Appeal.

Then if you go to page 294 G(A)4/2.93/294 over the page, just below the middle of the page, you have the paragraph beginning "As evidence of the validity", do you see that?

A. Yes.

Q. "As evidence of the validity of her reason for missing the limitation period, the claimant submitted medical statements ... which show that beginning 14 December 2001 and for a period of 7 months, O was prescribed a regimen of strict bed-rest, followed by ambulatory care from October 2002."

So it looks as though she was confined to bed for a six-month period followed by a period of ambulatory care.

Is ambulatory care care which doesn't involve, presumably, being confined to a bed, correct?

A. I apologise, but it's necessary to study documents in case of serious issues, medical expert may be called. It's the question of assessment of facts.

Q. You see, I entirely agree with that, Mr Rozenberg, we don't disagree about that. The question is whether there's some principle involved which really does suggest it has to be actually impossible.

Because this is a case where, although you could take a view that for as long as she was confined to bed it was actually impossible, once she was not confined to bed it might have been difficult for her to start the proceedings, and therefore there was an impediment to it, but it wasn't actually impossible. Do you agree

with that or not?

A. I think it's for the court to assess the facts and to decide whether it was impossible or not impossible, but...

Q. All right. Now, I'm not going to go through all of these cases because, as you say and I agree, it always depends on the facts, and we're just interested in the principle.

I just want to see if I need to take you to the St Petersburg case, I don't even think I need to take you to that. Let me just check about the St Petersburg case.

I think we've agreed that even a problem with a third person can be sufficient as long as it has the requisite effect on the claimant, you would say it means actually impossible, I would suggest the test is lower. But the point is you could have a situation in which something done to a third person could be a reason, provided it does really create a real problem for the institution of the claim?

A. As I answered already, unfortunately I had not such cases in my practice, but my reading of the law and of some court cases indicating that it's necessary to investigate what was the condition of the spouse, and whether the claimant had to stay with the spouse all the

time, indicates that the claimant may be perfectly healthy. But if his or her spouse needs care then the facts are and shall be assessed by courts as affecting the personality of the claimant.

Therefore, you call them third persons, I would say just persons close to the claimant may be taken into account.

Q. That's all I was going to ask you about Article 205, Mr Rozenberg, I think we've discussed the principles enough. Can we then just talk about abuse of rights and Article 10, please.

If we go to G(A)2/1, tab 6, page 105, we have Article 10 on the left-hand side G(A)2/1.06/105, it's rather small print, headed "Limits of Exercise of Civil-Law Rights", the first paragraph provides that:

"Actions of citizens and legal persons taken exclusively with the intention to cause harm to another person are not allowed, nor is abuse of a legal right allowed in other forms."

The second sentence is concerned with competition and that doesn't concern us.

Then the second paragraph of Article 10 provides that:

"In case of failure to observe the requirements provided by Paragraph 1 of the present Article, the

court, commercial court, or arbitration tribunal may refuse the person protection of the right belonging to him."

So the idea is that you're not allowed to act exclusively with the intention of causing harm to another person, and nor are you allowed to abuse a legal right in other forms. That's Article 10.1, correct?

A. Yes, that's what the law states.

Q. If you do one of these two things, then the consequence is the court may deny you the protection of your right, correct?

A. Yes.

Q. Let's just see what you say about this in your joint memorandum because I think the dispute between you and Dr Rachkov here is very narrow indeed. Bundle 6/1, page 39 G(A)6/1.01/39.

A. Yes.

Q. If you look at paragraph 122, you see it says:

"It is agreed that Article 10 may be invoked by the claimant in rebutting the limitation period defence. Where this occurs, the court may prevent the defendant from applying the consequences of a limitation defence if the fact of abuse of right[s] by the defendant is established."

Do you see that?

A. Yes.

Q. So you accept that in principle a claimant may rely on Article 10 in rebutting a limitation defence, correct?

A. In principle, yes, the law gives a basis for it.

Q. Can we just then look at the circumstances in which you say this may occur. If you go back to page 38 of the joint memorandum and you look at paragraph 118, we looked at it in the context of Article 205 but let's just look at it with Article 10 in mind G(A)6/1.01/38. Here you agree that:

"... when the court at the request of the defendant establishes that limitation period has lapsed, a claim [may] be dismissed unless the Court restores the limitation period under Article 205 or it is an abuse of right for the defendant to raise a limitation defence contrary to Article 10. Mr Rozenberg maintains that the latter options may take place only in highly exceptional circumstances, where either impossibility of the claimant to timely apply to the court or defendant's intentional actions effectively preventing the claimant to do so are established."

I think what you accept here is that where the defendant's intentional actions effectively prevent the claimant from bringing his claim in a timely manner, then Article 10 may be invoked?

A. Yes.

Q. Just to be clear about what you mean here, can we then go to paragraph 123 of the joint memorandum G(A)6/1.01/39.

A. Yes.

Q. You say at 123(1) that you maintain that:

"... for Article 10 to apply what is required is that the defendant, by his particular actions, intentionally prevented the claimant from timely bringing his/her claim. Mr Rozenberg maintains that this concept is applied by the courts extremely rarely in circumstances having nothing [to do] with the present case."

Again that's your acknowledgement that as long as there is intention that is enough.

I just want to take you to, if I can, your report at G(A)3/1, tab 3, page 213 G(A)3/1.03/213.

You say at paragraph 73, just picking up from where you say "I should clarify":

"... I should clarify [what I mean] when I speak of 'intention' I am referring to both 'direct' and 'indirect' intention. I do not mean that it need be shown in all cases that the abusing party specifically had it subjectively and consciously in his mind at the relevant time that his acts would cause the claimant to

miss the limitation period ('direct intention'). Rather [you say] it must be possible to conclude that a person in the position of the defendant would reasonably have foreseen ... that the claimant would be prevented from bringing the claim in time ..."

So I think what you're saying there is that if Mr Abramovich intimidated Mr Berezovsky and could reasonably have foreseen that this would cause Mr Berezovsky to miss the limitation period, then Article 10 would apply to exclude Mr Abramovich's limitation defence. Is that right?

- A. Well, I'm afraid this description is closer to negligence, but indirect intention means that the person was indifferent to the consequences, maybe the result will come, maybe it will not. But I think that it's just a broad view, a little bit I would say more liberal than the view of some scholars who think that, for Article 10, the direct intention is required.

My view that indirect is also possible; but indirect, it doesn't mean that committing intentionally some actions a person wants to reach only one concrete result. The person may be indifferent, understanding that these actions may bring to this result and may not. But it's difference between direct and indirect intention.

- Q. The expression you use here is "reasonably foreseen", and I take it you're not departing from that. As long as it can be reasonably foreseen that the person's act will have this consequence, you accept that that would be enough?
- A. It's one of the elements, but with negligence a person still would prefer to avoid the consequences, even if they can be reasonably foreseen. With indirect intention the person doesn't want to avoid the consequence, the person is simply indifferent regarding them.
- Q. The issue, as I understand it, between yourself and Dr Rachkov is that whereas you accept that as long as there is intention, direct or indirect, that is sufficient. Dr Rachkov says as long as there is a causal effect, or a causal relationship between the act of the defendant and the claimant's failing to sue, or incapacity to sue, that is enough. Is that --
- A. Unfortunately, it's not quite in accordance with the law which still mentions the word "intention" because, as you described, again it can be done by negligence. Only the result and casual (sic) link would be sufficient.
- But intention -- the law does not clearly mentions direct intention but still intention is required.
- MR RABINOWITZ: All right, Mr Rozenberg, thank you for that.

My Lady, I don't have any further questions for  
Mr Rozenberg.

MRS JUSTICE GLOSTER: Yes, thank you very much.

Mr Adkin?

MR ADKIN: My Lady, I have no questions for this witness.

MRS JUSTICE GLOSTER: Mr Sumption?

Re-examination by MR SUMPTION

MR SUMPTION: Mr Rozenberg, I wonder if you could be given  
bundle G(A)7/1, flag 6 G(A)7/1.06/38.

This is the case, you may recall being referred to  
it yesterday, of the lost original agreement and the two  
versions about the date of repayment of a loan.

Do you remember being referred to that case?

A. Yes, of course.

Q. I wonder if I can hand up -- we have had this uploaded  
on to Magnum but I'm not sure whether it's there yet --  
a copy of the article of the Civil Code that is referred  
to in this case. You will probably have it with you in  
another version. (Handed)

MR RABINOWITZ: It's actually G(A)7/2.05/17.

MR SUMPTION: Right, I'm grateful.

If you look at page 42 in the English version  
towards the bottom of the page you will see that the  
decision of the court was that the due date of the  
performance of this obligation must be determined in

accordance with the requirements of Article 810, sub-article 1. And you will find that Article there. Reading from the English, it's the second paragraph of Article 810, at sub-1:

"In cases where the period for return is not established [this is return of the loan monies] by the contract, or is defined as the time of demand, the sum... must be returned... within thirty days from the... receipt of [the] demands..."

Can you help us on which of the conditions for the application of this article to the loan agreement case in front of you was satisfied in this case? What was it in other words about the circumstances of this case that gave rise to the application of Article 810?

A. I think we need to read carefully what the court said:

"In the absence of the original loan agreement, the borrower is under the obligation to [repay] the loan considering that it has been proven that the lender has actually performed the obligation to extend the loan to the borrower and the due date for the performance of this obligation must be determined in accordance with the requirements of Article 110 (sic) section 1."

I think that here we cannot say that the agreement did not establish because the agreement existed.

Q. Yes. Have you finished your answer, Mr Rozenberg?

I don't want to --

A. Therefore the court came to a conclusion that the loan shall be repaid within 30 days from the request, from the demand of the creditor. I think on the basis of the demand, the court ruled that the loan shall be repaid.

Q. Understood. Now, the next question I want to ask you about concerns the principle set out in the Makayev case, which you were asked about, and in the information letter of the Presidium of the Supreme Arbitrazh Court.

For the transcript, the references are, in the case of Makayev, G(A)4/7, flag 93 G(A)4/7.93/1, and in the case of the information letter of the Presidium of the Supreme Arbitrazh Court, G(A)4/5, flag 36 G(A)4/5.36/125.

Now, I wonder if you can be given a copy of the transcript of evidence yesterday. It will come up on the screen but I want you to have the actual hard copy of the transcript so that you can feel free to move about if you want to.

You dealt with this in two places, the first being at pages [82] and following. If you look at page [82], you'll see that at the bottom of page [82], line [15], Mr Rabinowitz put to you a quotation from the information letter of the Presidium.

"At the same time [the] contractor's claim for

payment of remuneration should not be allowed if the claimant bases said claim on a contract term making the payment amount for services dependent on a judgment by a court or government body which is to be arrived at in [the] future."

And you were asked questions about that. And at page 83, line [25], you will see your answer is:

"This is the heading, but this paragraph does not mention legal fees and clearly indicates that any claims connected with favourable decisions of state authorities will not get court protection."

Now, if you would turn on to page 117, in the same transcript, Mr Rabinowitz is here putting to you the decision of the Constitutional Court in Makayev, and you summarise the principle you extract from that at the bottom of page 117, line 23:

"Where Constitutional Court ruled that the activity of governmental officials represent execution of people's will and is not subject to civil law regulation, and therefore civil law contracts, which make dependent civil law rights and obligations [upon] favourable decisions of governmental officials ... cannot get court protection. In other words, it's a clear statement of the court that a situation when money or some material benefits follow the favourable decision

of governmental authorities, cannot be considered as legal and subject to court protection."

Now, does this principle depend on the exact form of the money or material benefit that is going to be obtained depending on the favourable decision of the state official?

A. I don't think so. Just my word that:

"It's a clear fight against corruption and I cannot add anything."

Demonstrates that the form of material benefits may be different.

Q. Suppose that A and B enter into a contract, the effect of which is that B will try to procure a favourable decision from a state official and will only be paid if the favourable decision is made. How does the rule stated in the information letter and Makayev affect an arrangement of that kind?

A. Well, informational letter addressed still contingency fees arrangements, as far as I remember. Informational letter was narrower than the Constitutional Court decision, as far as I remember.

Q. Yes, and how does the principle set out in the Makayev decision affect an arrangement of that kind?

A. The Constitutional Court decision applies to much broader circle of situations connected not only with

legal fees but with activities of any governmental officials, and according to this decision, since we already discussed the law, just to be brief, where there is a corruption potential, where the consequence first favourable decision, and then some form of remuneration. In such situations, no court protection for those types of transaction. That's how I understand it.

Q. Now, suppose the agreement between A and B -- I'm going to slightly vary the facts. Suppose that the arrangement between A and B is that B will try to procure a favourable decision from a state official and A agrees that if and only if the decision of the state official is favourable to him, he will pay B a share of the financial benefit that he derives from the favourable court decision. How does the rule stated in the Makayev decision affect that sort of arrangement?

A. I think we have all conditions for conclusion that the Constitutional Court decision shall be applied directly and such transaction shall be considered invalid because the results, ie share in profit, just getting various material benefits later, will be in direct(?) dependence on the successful actions of B in obtaining favourable governmental decision.

MR SUMPTION: Thank you very much, Mr Rozenberg.

THE WITNESS: My pleasure.

MRS JUSTICE GLOSTER: Thank you very much indeed,  
Mr Rozenberg, for coming along and helping the court  
with your evidence.

THE WITNESS: Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Right, Mr Rabinowitz, it's  
Professor Maggs next?

MR RABINOWITZ: It's professor Maggs, he's Mr Adkin's  
witness.

PROFESSOR PETER MAGGS (sworn)

MRS JUSTICE GLOSTER: Please sit down, Professor Maggs, if  
you would like to.

Examination-in-chief by MR ADKIN

MR ADKIN: Professor Maggs, could you confirm, please, that  
you have no electronic equipment or mobile phones on you  
at the moment?

A. I don't have any.

MR ADKIN: My Lady, as with the other experts,  
Professor Maggs would like, if he may, to have with him  
a copy of his translation of the Russian Civil Code.  
That's what's in the blue folder in front of him.

MRS JUSTICE GLOSTER: Yes, fine.

MR ADKIN: Could you be given bundles G(A)5/1 and G(A)5/2.  
Could you turn, please, to the front of G(A)5/1  
G(A)5/1.00/1. Is the document there your first report

in these proceedings?

A. Yes, it is.

Q. Now, I understand that there's one small correction you wish to make to that report. Could you please turn to paragraph 50 which you'll find on page 17

G(A)5/1.00/17.

A. Yes.

Q. I understand you want to make a correction to that paragraph, could you tell us please what it is?

A. Yes, the date "1995" there should be "2000".

Q. That's the date in the first line, is it?

A. Yes.

Q. Thank you. Could you please turn to G(A)5/2 G(A5/2/1.

A. Yes.

Q. There should only be one document in that bundle. Is that your second report in these proceedings?

A. Yes, it is.

Q. Do these two reports represent your true opinion?

A. Yes, they do.

Q. And are they the evidence you wish to give of the matters on which you've been instructed in these proceedings?

A. Yes, it is.

MR ADKIN: Please would you wait there, I think Mr Sumption will have some questions for you.

## Cross-examination by MR SUMPTION

MR SUMPTION: Just one matter, Professor Maggs, could I ask you to turn to bundle 5/2, your second report, please.

A. Yes.

Q. And to paragraph 25 G(A)5/2/9. In this paragraph, you're dealing with the respects in which you say the 1995 agreement failed to deal with essential terms, and the question I want to ask you is directed to (a), where you say that the common goal was in your view insufficiently defined. You say:

"The primary remedy in contractual disputes under Russian law is specific performance. A Russian court would therefore be looking for terms [which] they could turn into an order to perform the contract. I cannot see how a court could formulate such an order with regard to the common goal [in] the 1995 Agreement."

Can you please tell us, what is the juridical basis, or the source material, on which you base the opinion that you express in 25(a) about the attention that would be given to the possibility of specific performance as opposed to, say, damages?

A. Well, if one looks at Article 12 of the Code, in its list of remedies it places specific performance above compensation. But, secondly, if one looks at Article 15 of the Code, when defining compensation, it essentially

would be related to the cost of obtaining alternative performance. So on either case, we have to know rather precisely what needs to be done, whether to order it to be done or to try to figure out what it would cost to get someone else to do it, if indeed anyone else was available who could do it.

Q. Thank you. Are you aware of any case law which throws light on this, or is your view based on an analysis of the provisions of the Code?

A. It's based on analysis of the provisions of the Code, and also what I think was something of a hangover from Soviet custom, particularly in the early days of the post-Soviet regime, because Russia did not have a market economy. You generally could not go out in the market and buy a substitute performance, and I think that attitude continued for some time.

Q. How long do you think it continued?

A. That would be difficult to say.

Q. I'm not asking you for a precise date, but if you can give us some rough idea of how long you feel that attitude persisted?

A. I think certainly during the 1990s.

MR SUMPTION: Thank you very much, Professor Maggs.

MR RABINOWITZ: My Lady, on the basis indicated yesterday, I have no questions for you, Professor Maggs.

MRS JUSTICE GLOSTER: Right, Mr Malek?

MR MALEK: No questions, my Lady.

MRS JUSTICE GLOSTER: Right.

Well thank you very much indeed, Professor Maggs,  
for coming along and assisting the court with your  
evidence.

THE WITNESS: Thank you, my Lady.

(The witness withdrew)

MRS JUSTICE GLOSTER: Very well.

I'll take the break, Mr Gillis, I think.

MR GILLIS: That would be very helpful because I'm  
imprisoned by Russian law at the moment.

MRS JUSTICE GLOSTER: Then we can get onto some history.

Very well, ten minutes.

(11.18 am)

(A short break)

(11.33 am)

MR GILLIS: My Lady, I call Professor Fortescue.

PROFESSOR STEPHEN FORTESCUE (sworn)

MRS JUSTICE GLOSTER: Please sit down, Professor Fortescue,  
if you would like to.

Examination-in-chief by MR GILLIS

MR GILLIS: Could Professor Fortescue please be provided  
with bundles G(B)1/1 and G(B)6/1.

Professor Fortescue, just while people are getting

the bundles, could you confirm that you don't have a telephone with you or a mobile device?

A. No, I have no telephone or mobile device with me.

Q. Thank you. Could you please turn to G(B)1/1 at tab 1 and turn to page 1 G(B)1/1.01/1. Is that the front page of your first report?

A. Yes, it is.

Q. Could you turn to page 113 G(B)1/1.01/113, can you please confirm that that's your signature?

A. Yes, that is my signature.

Q. Then could I ask you to turn to tab 2 in that bundle at page 140 G(B)1/1.02/140?

A. It's numbered differently as best I can see.

Q. Is that the front page --

A. 140, sorry, I do see --

Q. I'm afraid there are an awful lot of numbers there at the bottom right-hand side.

A. I do see it, yes.

Q. Is that the front page of your second report?

A. Yes, it is.

Q. Then if you could please go to page 168 G(B)1/1.02/168, and could you please confirm that that's your signature?

A. Yes, that is my signature.

Q. Now, could I ask you to go back to page 142

G(B)1/1.02/142.

A. Yes.

Q. Do paragraphs 4 and 5 there set out corrections which you wish to make to your first report?

A. Yes, they do.

Q. Subject to those corrections, can you confirm that those two reports are true to the best of your knowledge and belief and that they represent your true opinion?

A. Yes, they are true and represent my true opinion, to the best of my knowledge.

Q. And could I just ask you then to pick up G(B)6/1, and at page 1 do you have the joint memorandum which sets out the views of yourself, Professor Service and Professor Bean G(B)6/1.01/1?

A. Yes, I do.

Q. Could you turn to page 26, please, G(B)6/1.01/26 and again could you confirm that that's your signature?

A. Yes, that's my signature.

Q. And could you confirm that the statements attributed to you in the joint memorandum are true to the best of your knowledge and belief and they represent your true opinion?

A. Yes, I do.

MR GILLIS: Thank you. If you could wait there, I think Mr Sumption has some questions for you.

## Cross-examination by MR SUMPTION

- MR SUMPTION: Professor Fortescue, your report is substantially based on journalistic sources, is it not?
- A. Substantially, yes.
- Q. You acknowledge that the quality of press reporting is variable, even in reputable titles?
- A. Yes, I do.
- Q. And would you agree that much of the material in newspapers is based on sources which are not attributed and difficult to verify?
- A. Not sure that I'd say "much", but, yes, a considerable proportion.
- Q. And much of it is derivative from other newspapers?
- A. That's certainly a phenomenon in Russian newspapers.
- Q. Much of it subsequently turns out to be wrong as further information becomes available?
- A. That does happen, yes.
- Q. In particular, would you agree that there is a very striking difference between historical facts as they emerge when archives are opened, and the facts as they appeared to be from newspaper reports at the time?
- A. No, I don't think I would agree with that.
- Q. You wouldn't?
- A. No.
- Q. Well, perhaps Australian history has a very different

pattern to English.

Would you agree that there is very little archival material for contemporary or near contemporary Russia which can be used to correct journalistic sources?

A. Yes, I would agree with that.

Q. Now, obviously, much depends on what issue one is talking about, but would you agree that the reliability of press reports is particularly difficult to assess when the papers are reporting something that is said to have gone on behind the scenes in government?

A. Yes, that does make it difficult.

Q. Now, the affairs of private individuals and companies they control in a society like Russia in the 1990s, would you agree that that is another area where it is particularly difficult to assess the reliability of press reports?

A. It is difficult but possible I believe.

Q. Well, you acknowledge, I think, in your report that newspapers are vulnerable to planted stories which suit the interests of their source?

A. They are certainly vulnerable to planted stories, and that's one of the tasks that a specialist in this field faces, to sort out those issues.

Q. Yes, but he often has nothing to go by beyond guesswork?

A. No, I think you have more to go on than guesswork.

- Q. Would you agree that planted stories are a particular problem with individuals who are keen on self-promotion, for one reason or another?
- A. Well, I don't think it's a particular problem. It's a problem that we face in this area of study.
- Q. And perhaps particularly also, where the newspaper in question happens to be owned by that person, planted stories are a particularly common phenomenon in that context, are they not?
- A. There are newspapers that are owned by individuals who have a reputation for planting stories, one of those newspapers I find reasonably reliable.
- Q. I see, even when the story looks as if it may have been planted by its proprietor?
- A. If it looks like it was planted by the proprietor we don't have a problem. We know it was planted by the proprietor and we take appropriate measures.
- Q. So you discount it?
- A. No, you don't always discount it.
- Q. I'm not saying ignore it; you apply a discount to the weight you place on it?
- A. Yes, I would say you apply a discount, but even a discounted source can provide valuable information. Even the fact that you know it's been planted can sometimes be valuable.

Q. Would you agree that another area which is particularly difficult to penetrate in the case of Russia in the 1990s is the shareholding structure through which rich Russian businessmen hold their shares; that structure is often deliberately opaque?

A. Yes, I'd agree with that.

Q. Would it be fair to say that, for all of these reasons, journalistic sources for the period covered by the present dispute have to be approached with extreme caution?

A. Well, with caution. I suppose whether it's extreme caution or not, but certainly with caution, yes.

Q. Well, let's take an example which is dealt with in your report, the relative political influence of Mr Berezovsky and Mr Abramovich in the late 1990s. In general terms, would you agree that without access to the individuals involved or to records of the inner workings of government, it is particularly difficult to assess how much influence is exercised behind the scenes by somebody with no official position?

A. It's difficult. It's possible to come to an opinion. It's difficult to know of course whether your opinion is absolutely true or not, but certainly it's what you do in the sort of job that I do that you form opinions with greater or lesser degrees of confidence.

Q. And the confidence is inevitably lesser when you are dealing without access to the individuals involved or to records of the inner workings of government; that is a factor which means that you have to have less confidence in your opinions, doesn't it?

A. I'm not sure that I'd agree with that. Sometimes I'm quite confident in my opinion even when I don't have access to people within government and the source.

Q. Even when you have no first-hand information about these workings and no records, is that right?

A. Yes, sometimes I'm quite confident.

Q. Yes. Well, you're obviously a very confident spirit, Professor Fortescue.

Could you have a look in your first report at paragraphs 70 and following G(B)1/1.01/21.

A. Paragraph 17?

Q. This is a passage of your report that appears under the heading "Mr Berezovsky's diminished influence in the late 1990s".

A. I'm sorry, can I interrupt, I must have the wrong paragraph. Could you please --

Q. Look at page 21 of G(B)1/1, flag 1.

A. Yes.

Q. Do you see paragraph 70?

A. Paragraph 70, yes I do.

Q. It's the first paragraph of a section of your report dealing with Mr Berezovsky's diminished influence, you say, in the late 1990s, and in this section you also express a view about the relative influence of Mr Abramovich, do you not?

A. Yes.

Q. Towards the end?

A. Yes.

Q. Now, what you conclude at paragraph 78 G(B)1/1.01/23 is that there was no reason to think that in 1998 and 1999, that:

"... Mr Berezovsky was in a stronger political position than Mr Abramovich, and there is some evidence to suggest that (albeit behind the scenes) Mr Abramovich actually exercised more influence than Mr Berezovsky in the Yeltsin administration."

Do you see that?

A. Yes, I do.

Q. Now, what is your evidence for that statement?

A. Mr Berezovsky was, first of all, clearly subject to ups and downs in his political situation. At times he was being told that he was likely to be prosecuted or indeed charges were being offered. At other times it did appear that he was, let's say, reasserting himself, but it was a very, very fluid situation as far as

Mr Berezovsky was concerned, seemingly depending to some extent at least on who was the prime minister at the time.

In terms of Mr Abramovich, let's say it was a steadier trajectory. It would appear that he had contacts, and I am, as you suggested before, relying on press reports on these matters, but he had good contacts within the administration. Nothing was happening to him that would suggest that he was in political difficulties.

Q. Well, I think we can agree that he wasn't in political difficulties, but from what material would it appear that Mr Abramovich was more influential than Mr Berezovsky in this particular period?

A. The press reports that we've been talking about.

Q. I see. Are those the press reports referred to in this section of your report where you deal with this subject, 70 to 78?

A. Yes.

Q. Well now, let's have a look at that, shall we? You start, I'm looking at paragraph 70 --

MRS JUSTICE GLOSTER: Mr Sumption, sorry to interrupt, but the section where Professor Fortescue deals with Mr Abramovich's influence in the late 1990s actually goes from 64 to 69 as well.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: And there are quite a lot of press reports referred to there. I wouldn't want the witness to be confused.

MR SUMPTION: No, that is perfectly fair.

What you say, let's start at paragraph 64, shall we, Professor Fortescue G(B)1/1.01/19, you refer to the view of Mr Hoffman that:

"... by the time of [the] discussions in 1998 about replacing Prime Minister Chernomyrdin 'Roman Abramovich ... had become influential in Yeltsin's inner circle as well'."

That is a statement that Mr Abramovich had some influence. Are you able to assess from that statement what Mr Abramovich was in a position to do?

A. I wouldn't say that I could assess what he would be in a position to do. I would be able to suggest that he would be able to, if he had some interest in mind or something that he wanted to do, he could go to an influential person and try to have that brought about. I couldn't say what it was in every case that he might have wanted to do.

Q. You then quote a statement about Mr Abramovich acting for some time as the family's, the Yeltsin family's cashier or money man, and there were a lot of articles

to that effect, but you do not find them a sufficient basis, do you, for reaching a conclusion on the point?

I think you say that a bit later in your report.

- A. I think that's a pretty good case, as far as I'm concerned, of something that I think you referred to previously, that something appears in one place and has a sort of cascade effect, it's repeated over and over and over again.

In that particular case, reference to Mr Abramovich as being the Yeltsin family's cashier did come from one source, it was from Mr Khorzhakov in a press conference, and it was repeated over and over and over again.

Something you learn from looking at these press reports is you learn how much minor plagiarism there is in fact in newspaper journalism, very much the same words appearing over and over again. And certainly when you see that you do very heavily -- well, it depends on the original source, but you're aware that it comes from one source.

If you are genuinely doing this sort of research, clearly you're trying to get a sense that something you would put more faith in comes from a number of different sources. If there was somebody else who had worked in the Kremlin, who might also have their own personal agenda, but nevertheless if somebody else who worked in

the agenda (sic) said the same thing at a press conference, you'd give it a little more value. When only one person said it, you'd give it less value.

So in that particular case, as you point out, I say, I don't know whether it's true or not, but I don't feel particularly enthusiastic about that idea.

Q. Right. Now at paragraph 67 G(B)1/1.01/20, you quote somebody who suggests that candidates for posts in Mr Stepashin's cabinet were interviewed by people who included Mr Abramovich.

A. Yes.

Q. Is that something you believe?

A. I find that the actual account given by Mr Kasyanov, Mr Kasyanov was Mr Putin's first prime minister. At the time we're talking about he wasn't prime minister but he'd had senior positions in the government, first Deputy, Minister of Finance type levels, so he was an insider. He doesn't say there himself that he witnessed this, that he knew himself definitely, so it's hearsay on his part. Nevertheless I would have to say that that account that he gives of Mr Abramovich sitting there in an office in the Kremlin with a queue of people wanting to become ministers, or as candidates for ministers, and coming in and sort of being interviewed, I find that a little bit, well, hard to believe, to be honest.

Q. Right.

A. Having said that, I don't find it hard to believe that Mr Abramovich at the time was interested, had some awareness of who might become candidates for ministerial positions. He might well have rung them up or organised a meeting with them to discuss with them what their feelings were on different matters, to convey to them what his feelings were on different matters. And then he could well have gone to influential people within the Kremlin that he knew and said, "Look, you know, it seems to me that this person is a good candidate, this person seems to me to have some silly ideas on different things".

That version seems to me to be quite plausible. The way that Mr Kasyanov describes it, no, I don't think it could have happened in precisely that way.

Q. These things might have happened but you have no information to suggest that they did?

A. No -- well, I have information to suggest that they did, but that information is press reports and memoirs.

Q. That's why you say they might have happened rather than that they did?

A. Yes.

Q. Well now, you start the next section of your report by saying that you -- I'm looking at paragraph 70

G(B)1/1.01/21 -- by saying that:

"[You] do not know whether the [disputed] assertion in Disputed Statement 45, that from 1998, Mr Berezovsky had less contact with President Yeltsin's inner circle, is true. [It] is a question of fact which [you] cannot answer by reference to historical evidence."

Would you agree that that is not a promising start to an assessment of Mr Berezovsky's influence, whether rising or falling, in the late 1990s, if you do not have that knowledge?

A. I express -- well, I say I do not have that knowledge and that affects, needless to say, the way that I -- the degree of confidence with which I express matters, and it's open to other people to decide how much confidence they will approach what I say on these matters.

Q. Now, you go on -- just one point, Professor Fortescue. The quotation at paragraph 67 G(B)1/1.01/20, it's right, isn't it, that this quotation -- and I appreciate that you say you don't actually believe this particular statement, but it also doesn't in fact appear in the text written by Mr Kasyanov himself, does it? It appears in the introduction written by the journalist who was his co-author, Mr Kiselev, is that correct?

A. I don't know, I'd have to look at the source.

Q. Well, we can verify that for ourselves in due course.

A. Mm-hm.

Q. Moving back to the next section, paragraphs 71 to 75  
G(B)1/1.01/21.

A. Yes.

Q. You refer to the reverses which Mr Berezovsky  
experienced during the premierships of Mr Chubais and  
Mr Primakov?

A. Mr Chubais was not a premier but I understand what you  
mean.

Q. Yes, sorry, during that period of office.

Now, would you agree that although Mr Chubais is  
said to have got Mr Berezovsky dismissed from his  
position on the Security Council in November 1997,  
in April 1998, within a month of his departure, he was  
back in favour, Mr Berezovsky was back in favour, with  
a new appointment as executive secretary of the  
Commonwealth of Independent States?

A. First of all, I don't think I do say that Mr Chubais  
arranged to have Mr Berezovsky dismissed. I think that  
it was Mr Yeltsin decided to dismiss both of them, not  
one or the other --

Q. You're quite right that the decision would have been  
made by Mr Yeltsin, but I understand you to relate this  
to the disagreements between Mr Chubais and  
Mr Berezovsky?

A. Yes, that's correct.

Q. And it's right, isn't it, that within a month of Mr Chubais's departure, Mr Berezovsky was back in favour with a new appointment as executive secretary of the Commonwealth of Independent States?

A. Yes. And as I said before, his position at this time, and I suppose it's the nature of Russian politics at this particular time as well, things were very, very volatile and people's positions could change very quickly.

Q. Now, the executive secretaryship of the Commonwealth of Independent States was an influential appointment within the state, wasn't it?

A. Look, no, it wasn't very, very high in the pecking order, I think it's true to say.

Q. So wasn't high or it was?

A. It was not.

Q. It was, however, a function that meant that the occupant of that position was likely to have considerable involvement with the current problems in Chechnya; that's right, isn't it?

A. I'm sorry, I didn't quite hear what you said.

Q. That was a position that would require its occupant to occupy himself with the problems of the Russian State in Chechnya, would it not?

A. I'm not an expert, to be honest, on functions of the secretary of the CIS.

Q. You're not, right.

A. Because Chechnya is not part of the CIS so I'm not sure that that is in fact the case.

Q. Right. Well I'm relying, perhaps mistakenly, on what Mr Berezovsky himself says he did in that capacity, but if you're not an expert in that area I'm not going to test your knowledge any further.

Can we look at the further reverses under Mr Primakov. He became prime minister in September 1998, didn't he?

A. Yes.

Q. And was dismissed on 12 May 1999?

A. Yes.

Q. Are you aware, or were you aware at the time of your report, that in his previously unpublished evidence in his asylum application, and again in his evidence to this court, Mr Berezovsky said that some two to three days after being charged with currency violations and money-laundering by the public prosecutor, Mr Berezovsky went to see Mr Yumashev at the Kremlin in order to complain about Mr Primakov whom he believed had inspired that; are you aware of that?

A. I wouldn't say that I'm aware of it but I'm quite

willing to accept that that's the case. I could well understand that he would.

Q. It's an example, isn't it, of one of those quite striking facts which you do not find reported in the contemporary press but may tell you, when you find out about them, a great deal about how things were working?

A. If I found out -- if that was not recorded in the press at the time, and I can't guarantee that it wasn't -- it was subsequently revealed in the way that you said it was revealed, I wouldn't be surprised. I would have expected him to go along and make such a complaint at the time, and so I wouldn't be surprised to find out afterwards that he had done so.

Q. Would you have expected Mr Primakov to find himself dismissed within a fortnight of that meeting?

A. I would -- I wouldn't necessarily confidently say that the two were linked, if that was the implication that you were making.

Q. Well, his evidence was that he was a significant factor in bringing about Mr Primakov's dismissal, do you find that credible or incredible?

A. I find it plausible, yes, it's something to be considered.

MR SUMPTION: My Lady, the reference to that is Day 6, pages 138 to 143.

Now, that is, is it not, a fairly spectacular display of inside influence, you agree?

A. If that was exactly how things worked themselves out, yes.

Q. Now, there was some newspaper speculation at the time that Mr Berezovsky might have had a hand in Mr Primakov's departure, but would you agree that the details would not be known but for the evidence that Mr Berezovsky has given in the asylum proceedings and in his evidence in this action?

A. I'm sure that at the time in Moscow there was a lot of speculation along those lines, so there was -- well, I'll say no more than there was a lot of speculation at that time.

Q. Are you aware that the charges of money-laundering and so on against Mr Berezovsky, which were brought in April, shortly before Mr Primakov's departure, were subsequently in November dropped?

A. Yes, I'm aware of that.

Q. Does that surprise you?

A. No.

Q. Why not?

A. Sorry?

Q. Why not?

A. Why does it not surprise me? Because it was typical of

the use of charges, threatened charges against people at the time and subsequently, in the ups and downs of people's political careers, which as I said previously, were very volatile at this time.

Q. Now, you say at paragraph 77 of your report that the charges against Mr Berezovsky were resurrected whenever circumstances allowed it. Presumably you consider that circumstances did not allow it in November 1999 when these charges were dropped?

A. Yes, that would be a logical conclusion.

Q. And that was no doubt because of the very considerable influence that was still being exercised by Mr Berezovsky at that time?

A. We have to go back to the original assumption I think that Mr Berezovsky truly had a role to play and a serious role to play in the removal from power of Mr Primakov. I said that I found that a plausible position, but I couldn't say that I know with total conviction that that's the case.

Q. Let us assume that it is, okay? Would you agree that the circumstances which did not allow the charges to be proceeded with in November 1999, when they were dropped, were that Mr Berezovsky was in a position to exercise powerful influence behind the scenes over government officials?

- A. If we make that assumption, yes.
- Q. If we make the assumption about the dismissal of Mr Primakov, you agree?
- A. Hmm.
- Q. Is that right?
- A. Could you say it again, please?
- Q. I'm going to ask you to assume that Mr Berezovsky's evidence that he had a significant part in the dismissal of Mr Primakov is true, okay? Now, on that assumption, would you agree that the circumstances in November 1999, which resulted in the charges being dropped, are likely to have been that Mr Berezovsky was in a position to exercise powerful influence behind the scenes?
- A. I have to make the assumption, and think about what the consequences of the assumption is, but, yes.
- Q. Well now, that influence continued, did it not, until Mr Berezovsky fell out with President Putin in the following year?
- A. I'm just trying to think what other events happened in those periods, but --
- Q. Let me remind you that Mr Putin became acting president at the very end of 1999 as a result of the illness of Boris Yeltsin and that he was elected in his own right in I think April of 2000.
- A. March.

Q. March, you're quite right.

A. Incidentally Mr Yeltsin resigned, it wasn't because he was particularly ill, but we'll leave that aside.

Q. Well, that's a side-show.

A. Could you --

Q. Right, but would you agree that the influence of Mr Berezovsky persisted until he fell out with Mr Putin in 2000?

A. No, I wouldn't want to say categorically that his influence remained at that same level throughout that time, no.

Q. Do you not know one way or the other?

A. It was very volatile at the time and...

Q. Are you able to express an opinion on how, if at all, the degree of influence exercisable by Mr Berezovsky changed between November 1999 and the summer of the following year when he fell out with Mr Putin? If you don't know one way or the other I won't continue to ask questions on the subject.

A. No, I think his influence -- no, look, I'll say I don't know, because it's very hard to be certain whether these -- the influence, particularly at this time, was very, very uncertain, changed very, very regularly.

It would be -- I suppose if I sat down and reviewed the history absolutely carefully I might be able to come

to more careful conclusions. But, no, I would say that it's -- certainly he suffered a major reverse, of course, when Putin came to power. There's no doubt about that.

Q. Well, not immediately when Putin came to power I think but very shortly afterwards.

A. Shortly afterwards, yes.

Q. Now, would you agree that Mr Putin, whatever else one might say about him, is very much his own man and always has been since he was elected president?

A. Yes, I'd agree with that. I think we do tend to leap from that statement to saying that he never takes any notice of anything that anybody says and nobody can have any influence over him.

Q. I'm not suggesting that. Now, one thing is clear, is it not, that Mr Putin is a man who is not prepared to be pushed around by rich men?

A. He certainly wouldn't want to be, and a rich man would have to be very careful about trying to push Mr Putin around, yes.

Q. Yes. In particular, Mr Putin reacted, did he not, when he became president against the widely perceived fact that Mr Yeltsin had been pushed around by rich men? That was a widespread perception about Mr Yeltsin, was it not?

A. Yes, I would agree with that.

Q. Would it be fair to say that Mr Putin was anxious to demonstrate that he was not like Mr Yeltsin in that particular respect?

A. Yes, I'd agree with that.

Q. Now, you refer to Mr Putin's well-known assault on the oligarchs. Would you agree that his approach to the people who had made great fortunes in the 1990s was that he was not prepared to allow them to use their financial muscle to support opposition to the government?

A. Yes, I'd agree with that.

Q. Would you agree that oligarchs like Mr Khodorkovsky, Mr Gusinsky and Mr Berezovsky, who challenged the government, were generally imprisoned or driven into exile?

A. I don't actually -- with regard to Mr Khodorkovsky, I -- personally, it's not the standard view on these matters, but I believe that it wasn't just or even mainly his political activities, or purported or proposed political activities that led to the Yukos affair.

Q. I see.

A. In the case of Mr Gusinsky and Mr Berezovsky, where these people had major media holdings, I think there was a stronger political element to that. But with Mr Khodorkovsky, I think it was commercial issues,

taxation issues, not so much political.

Q. That is, I think you've just acknowledged, a controversial view which most people would not accept?

A. I'd have to say that, in recent years, the view that Mr Khodorkovsky was arrested and Yukos was destroyed for political reasons has become widespread, probably more widespread than it was at the time. It's one that I didn't -- I wouldn't say I rejected it out of hand, but I believe that taxation issues, getting the oligarchs to pay their taxes, to seize some assets, were a more important issue than Mr Khodorkovsky's political activities or proposed political activities.

Q. I see. Well now, those who stayed out of politics, among the oligarchs, like Mr Fridman, Mr Deripaska and Mr Abramovich, retained their wealth, or at least a significant part of it, did they not, under Putin?

A. Yes, we have to be careful here when we say "kept out of politics", what we mean. If we mean organising political opposition, saying nasty things about Mr Putin in your media outlets, if that's what I mean -- if that's what we mean by politics, yes. If we mean by politics, being involved in the policy process, I wouldn't agree with the statement.

Q. Surely the key to survival if you were a rich industrialist under Mr Putin was to keep a low political

profile?

A. Again, it depends on what you mean by political. If we are talking here about political in the sense of organising opposition, saying nasty things about Mr Putin in the media, yes.

Q. If we look at paragraph 96 of your first report, please, which is a part of your report in which you are dealing with Mr Abramovich's influence in the Putin administration. The relevant section starts at paragraph 94 G(B)1/1.01/28 and continues to paragraph 104.

A. Yes.

Q. Having dealt previously with his influence before Putin, you are now dealing with his influence after Putin's coming to power.

Now, you set out the propositions, with which you say you agree, at paragraph 95. And then, looking at the analysis, paragraphs 96 to 98, you cite some authors that you say support your view about Mr Abramovich's influence in the Putin administration, okay?

A. First of all, in those particular paragraphs, all I am saying is that there were such reports.

Q. Yes.

A. It is true that I go on and say that I think there is some truth to those reports, but what you're

particularly -- I am reporting those quotations there in 97, 98, not to support my view but to simply show that there were such views.

Q. I see. Well, if these are not the reason why you formed your views, then what reasons do you have?

A. As I said, I put those there as examples of the sort of reporting at the time. Certainly I would have formed my view on the basis of those sorts of reports, including those ones. There is actually a sentence in the Sakwa quotation that doesn't seem to me to be particularly believable, regarding coveting Norilsk Nickel, but those were the sorts of reports.

On the basis of those sorts of reports, and other such reports, I form the view that, yes, Mr Abramovich was -- had suggested that Mr Abramovich's influence with the Kremlin had increased in the first half of 2001.

Q. If you didn't believe or didn't attach importance to these reports, how did they lead you to that view?

A. As I said, there was one -- a few words in the report from Sakwa that I would not -- I find surprising, let's say. Those reports I presented as relatively typical reports of what was being said at the time, and then I formed my opinion on those sorts of reports, including many others that appeared at the time.

Q. Well, let's look by way of example at what Mr Sakwa

says. First of all, Mr Sakwa is a lecturer in politics at the University of Kent, isn't he?

A. Yes, he's a professor in politics at University of Kent.

Q. And he's the author of a number of published works on the oligarchs?

A. He's published a lot of works --

Q. One book and some articles?

A. Yes, that's correct.

Q. What you are quoting from is an article of 2008 in an academic journal. Perhaps we can turn that up, it's at G(B)2/7, flag 190. Could we please turn at flag 190 to page 156 where the article starts G(B)2/7.190/156. This is an article in the New Political Economy in 2008. At page 156, you see in the first paragraph there's a reference to a statement made by Mr Putin in the election campaign about:

"... the need to break the cosy relationship between big business and government. In early 2000 Putin had talked, in language reminiscent of ... Stalin's plan ... to 'liquidate the kulaks ...', of his aspiration to 'liquidate the oligarchs as a class', stressing the need to create a level playing field. His central idea was that special interests, above all the oligarchs, should be kept 'equidistant' from the government."

Would you agree that that can fairly be described as

being at least one of Mr Putin's central ideas?

A. Yes, I agree. However, I would qualify my agreement with that. If the interpretation of that statement is that the oligarchs -- no oligarchs any longer had any influence, I would not agree. Also I would not agree that it means that there was not in fact some -- there was not total equidistance between all of them so some nevertheless were closer than others.

Q. Well, some were in jail and some were in England and some were exercising influence; is that the point you're making?

A. That's the point that I'm making, yes.

Q. Does it follow from this particular central idea, as Mr Sakwa suggests, that:

"No longer were a select group of 'oligarchs' to have privileged access to the corridors of power or to hold the state hostage whenever the regime needed financial or other support."

That is a statement which you would endorse, is it?

A. No, it's not a statement that I fully endorse.

Q. I see. So you disagree with him on that point?

A. No. I think that overstates the extent to which Mr Putin wanted to remove rich business people from the policy process.

Q. Could we turn to page 159 G(B)2/7.190/159, please.

The first full paragraph in the page:

"Pervading the anti-oligarch campaign [this is Putin's campaign] there hung the suspicion that one set of tycoons was using the law and the presidency against another. In particular, Roman Abramovich, who in early 2000 had participated in the creation of a holding that controlled most of Russia's aluminium production, was known to covet Norilsk Nickel and Gusinsky's NTV. Other oligarchs, notably Mikhail Fridman at the head of the Tyumen Oil Company ... Oleg Deripaska and many more focused on developing their businesses and kept out of politics. They willingly accepted the new rules of the game, including clearing major initiatives with the Kremlin, and thus went on to become key figures in the new era. While business was now taken out of politics, politics entered ever more decisively into business. A new type of 'state oligarch' emerged, permitted to conduct business at home and, indeed, to go global as long as they recognised the Kremlin's claimed prerogatives."

Now, how much of that would you agree with?

- A. Again, it depends on what we mean by politics. Business was taken out of politics quite abruptly and brutally, if politics means organising political campaigns against Mr Putin, saying nasty things about him in the press.

If politics means being involved in the policy process, arguing for policy outcomes in your particular area of concern, I don't agree with that statement. The oligarchs were still very, very involved in the policy process regarding business and in very important areas.

Mr Putin -- I would say in those couple of -- first few years, up until the Yukos affair, and in some sense beyond, Mr Putin -- there was a period of cooperation and conflict. The cooperation at times was very, very close. For example, there was very, very major changes to the taxation laws in that period which required very close relationship between the oligarchs' major business, and Mr Putin and government policy makers. So we have to be careful here when we say "keep the business out of politics", it just does depend on what we mean by politics.

- Q. Now, admittedly, this paragraph is said to be no more than a suspicion, see the first line. So far as it carries any weight, it doesn't suggest, does it, that Mr Abramovich had any particular influence over Putin? On the contrary, what it suggests is that Mr Abramovich and other rich industrialists were allowed to do more or less what they liked in business provided that they stayed out of politics. That's what it's suggesting, isn't it, whether rightly or wrongly?

A. If politics means, as I've said before, organising political campaigns and saying nasty things about Mr Putin in the public arena, yes.

Q. Now, you also refer in the following paragraph of your report to an article by Paszyc and Wisniewska which is at G(B)2/6, flag 179 G(B)2/6.179/183.

Now, these two ladies are researchers, are they not, at an institution called the Centre for Eastern Studies which is based in Warsaw, is that correct?

A. Yes. Yes.

Q. This is an article, is it not, about certain major Russian industrial groups including, among others, Rusal?

A. Yes.

Q. It's not an article about political influence at all, is it, it's an article about industrial concentration?

A. It says -- the title is "Big business in the Russian economy and politics under Putin's rule".

Q. Yes, but reading the article, it is in fact about the way in which major industrial groups have been abled (sic), in the political climate that existed, to concentrate and increase their economic power?

A. Yes.

Q. Now, the paragraph from which you quote is at paragraph 3, which is on the bottom half of the first

page. Perhaps you would just remind yourself of that paragraph.

A. Sorry, I'm just getting back to the first page.

Paragraph 3 I think you --

Q. Paragraph 3 of the article.

A. Yes.

Q. Which is the summary, and it's the bit from which you're quoting.

A. Yes.

Q. Now, that paragraph in the context of the article as a whole is making the point, isn't it, that Mr Abramovich and others have been allowed to accumulate considerable industrial power, provided that they're not trying to turn it into political power independent of the Kremlin?

A. Yes.

Q. Now, if we turn on in your report to paragraphs 99 and 100 G(B)1/1.01/29, having cited those two sources, you go on to refer to persistent press reports that Mr Abramovich bankrolled the Kremlin, a proposition for which I think you accept there is no sufficient evidence?

A. That's correct.

Q. Now, is there any more to your suggestion that Mr Abramovich had significant political influence under

Putin than the sources which you cite in the following paragraphs, paragraphs 101 and 102?

A. Those are the -- I have those citations. I'm sure there are many more sources that I could have cited.

Q. Those are the best, are they?

A. I wouldn't even say that they are the best. Those are the ones that were chosen at the time.

Q. Let's have a look at them and see how far they take us.

Would you please turn to bundle G(B)2/2, flag 27

G(B)2/2.27/229. This is an extract from Mr Sakwa's book which was published in 2009, about a year after the article that we looked at a bit earlier.

A. Yes.

Q. Now, can you please identify -- I'm afraid it's a longish extract but you selected it which is why perhaps it's fair to ask you -- which bit of this extract of the book do you say supports your contention that Mr Abramovich was influential in Putin's Russia?

A. It's hard to read the photocopy here, I have to say.

It's -- perhaps if I could -- no, I don't --

Q. Well, I apologise for that and I entirely agree that it is, but if you can indicate the area of the extract that you had in mind, we may be in a position to ask you about it.

A. Yes, hang on. (Pause)

- Q. In your footnote, you refer to page 130 of the book, which is in the bundle numbering at page 234 G(B)2/2.27/234. These are a number of different extracts from the book. Does that help?
- A. Yes, I'm looking at page 130 and I don't see mention of independent influence over Putin including a close personal relationship.
- Q. I mean, as far as we can see, the only part of this extract which refers to Mr Abramovich is the first full paragraph to begin at page 130. But I wouldn't want to assert that too confidently if you have some other part that you want to refer to.
- A. I cannot. I can't remember offhand, if it's not on page 130 which is the one that I cite, where it might have come from in that source.
- Q. So would you agree that this particular work or at least the bits of it that we have that have been copied on your suggestion, they support the view that Mr Abramovich was able to avoid a disastrous falling out with the government of the kind that had destroyed Mr Khodorkovsky for whatever reason but they don't go any further than that?
- A. Could you repeat that question, please?
- Q. This work supports the view that Mr Abramovich was able to avoid a personally disastrous falling out with the

government of the kind from which Mr Khodorkovsky had suffered, but the book doesn't appear to go any further than that, does it?

A. I can't say on -- I can't remember everything that's written in that book, I'm sorry.

Q. I see. Could you please be given bundle G(B)2/3, flag 106. This is the next reference that you give in paragraphs 101 to 102. It's an article from Vedomosti. The English translation begins at page 299 of the bundle G(B)2/3.106/299.

A. Yes.

Q. Perhaps you could point us to the statement in this article that you say bears out your view about Mr Abramovich's influence under Putin. (Pause)

A. No, I can't find it there.

Q. You can't find anything there that bears it out?

A. No, I can't.

Q. Right. Well, let's look at the third and last citation that you give, G(B)2/4, flag 118. The English begins at page 41 in the bundle numbering G(B)2/4.118/41. This is an article by a Mr A Ryklin in a publication called Demokratiya. Can you tell us who Mr Ryklin is?

A. No, I don't know. He's just --

Q. So you don't know whether he's a person of any particular authority?

A. No.

Q. What is Demokratiya?

A. It's an online journal.

Q. Right. Now, can you tell us which parts of this article you had in mind as supporting your view about Mr Abramovich's influence?

A. Well, I think it's all about the relationship between Mr Putin and Mr Abramovich.

Q. What propositions do you extract from it that support your view?

A. It's suggesting that Mr Abramovich is able to get away with behaviour that other oligarchs are not able to get away with because of his relationship with Mr Putin.

Q. That is the view of Mr Ryklin, is it?

A. Yes.

Q. A man about whom you know nothing and whose authority you're not able to assess?

A. I wouldn't put a great deal of faith in that particular article, no.

Q. Did you identify these particular sources yourself or did somebody provide you with them?

A. I certainly know Mr Sakwa's book, "The Quality of Freedom", very well. I can only assume that the referencing went wrong this particular time. Certainly I found these sources myself.

Q. Right.

At paragraph 102 of your report G(B)1/1.01/29, you say by way of summary that you have seen no credible journalistic or academic writing which doubts that Mr Abramovich had influence over Putin.

Have you seen any credible or journalistic or academic writing which provides evidence that he did have such influence?

A. Certainly there's been a problem with the referencing here, and it is very difficult for me to say that these articles support the view that I'm putting forward. I should say as well that I expressed a view about Mr Abramovich's influence with some degree of caution, but, nevertheless, I'm confident that there are plenty of such sources.

Q. Let's have a look at your conclusion to this section at paragraph 104 G(B)1/1.01/30. You say that you would not find it surprising that Mr Abramovich was in a position to encourage state agencies, including the Kremlin, to "take steps helpful to him" if they were also beneficial to the Kremlin.

Is that a fair summary of what you're saying at paragraph 104?

A. Yes.

Q. What steps do you have in mind when you say that?

A. If I can set up a number of scenarios: I don't think Mr Abramovich could have come to Mr Putin and said, "Mr X is causing me problems, I know that Mr X is your good friend and a close ally, nevertheless I want you to help me take steps against him, to remove him as a competitor or whatever", I would find that quite implausible.

If Mr --

Q. And -- sorry, forgive me, I didn't realise you were continuing. Please go on.

A. If Mr Abramovich had come to Mr Putin and said "There's this Mr X, I don't think you know Mr X, or you're not interested in Mr X, he's a problem for me, can we do something about it, would you help me do something about it?", I think that would be probably unwise, an unwise thing to do in the case of Mr Putin, but I don't find it totally impossible.

Q. Right.

A. If Mr Abramovich came along to Mr Putin -- put it another -- no, I'll start again.

If Mr Abramovich knew that Mr X was causing Mr Putin considerable frustration and grief he could have two options, he could just say, "Okay, I'll leave things to go their own way and hopefully the outcome that I want will just simply happen because Mr Putin will take

measures on his own". The other possibility is that Mr Abramovich could have gone to Mr Putin and said, "Look, you know, Mr X is causing us both some grief, let's work together to do something about it", I find that quite plausible.

Q. Well, do you say that Mr Abramovich was in a position to encourage criminal proceedings against Mr Berezovsky and people associated with Mr Berezovsky by exercising influence with the Kremlin or its agencies? Is that your position?

A. I haven't engaged in that particular issue at all, no.

Q. I see.

Do you say that people generally believed that he was in a position to do that?

A. I wouldn't want to say that people generally believed, but it would certainly have been a widespread view.

Q. Well, I don't quite follow that. That appears to be a little internally contradictory; people didn't generally believe it but it was a widespread view, how widespread?

A. I couldn't say how widespread.

Q. Is it something that well-informed people would have thought, in your view?

A. Well-informed people might have been aware of the view, some would have thought it and some might not have.

I really can't comment.

Q. Is that a proposition that you can extract from any of the sources we've been looking at?

A. The particular sources that we looked at, I would say no.

Q. Can we turn to a slightly different subject covered in your report, Professor Fortescue, the loans-for-shares auctions.

Paragraph 131 of your report is where you make the point that I want to ask you about G(B)1/1.01/37.

What you say here is that in all cases of which you are aware, lenders who prevailed in loans-for-shares auctions ended up by acquiring large holdings of their own when the state's holdings were privatised or sold off by way of enforcement of security for the loans. Is that a fair summary of the point you are making?

A. No, the point I'm making -- perhaps I didn't quite understand your question, but the point I'm making in point 131 is that they were able to obtain shares through loans for shares, but they also obtained shares in other ways, and sometimes obtaining those shares in other ways provided them with the majority shareholding. Well, let's say obtaining shares through other ways plus obtaining shares through loans for shares provided them with a majority shareholding.

- Q. Are you under the impression, Professor Fortescue, that the loans-for-shares auctions were auctions in which it was possible for the successful bidder to obtain shares in the company in question?
- A. Yes, I --
- Q. That's your impression, is it?
- A. Yes.
- Q. So you're not aware that the loans-for-shares auctions were -- in fact what the successful bidder obtained in the loans-for-shares auctions was simply a pledge of the state's 51 per cent retained holding and a contractual right to manage the rights associated with that holding on behalf of the state?
- A. Yes, of course -- well, it wasn't always 51 per cent.
- Q. No, it wasn't.
- A. Obviously, clearly, the first stage of the loans for shares gave them that status that you've just described, and then the second stage, they obtained full ownership of the shares.
- Q. Well, you say the first and the second stage, the only stage of the loans-for-shares auction was an auction in which the successful bidder acquired, in the case of Sibneft for a period of three years, a pledge and a right to manage the rights associated with the state's holding of 51 per cent, and that was all, do you not

agree?

A. Could you say that again?

Q. The only right that the successful bidder obtained in a loans-for-shares auction was a pledge of the state's retained shareholding and a right to manage the rights of the state's shareholding on its behalf?

A. Yes. The result of the auctions were that.

Q. The sales by which the state transferred title to its shares were the separate sales in which the non-retained part of the state's initial holding was auctioned off, and that was a separate process, wasn't it?

A. No, the shares that were held in pledge were auctioned off in the second stage.

Q. Professor Fortescue, you may not be aware of the details, but let me summarise them and see how much you're familiar with them.

There are three stages, are there not? First, you have the loans-for-shares auction in which nothing is transferred, no property in shares is transferred, what is transferred is a pledge and a right of management.

A. Yes.

Q. Right. Then there is separately from that a sale of the non-retained shares, that's to say in the case of Sibneft the loans-for-shares auction conferred a pledge of 51 per cent, and in a separate process there was then

an auction of the 49 per cent that was being privatised?

A. Yes, okay.

Q. Then there's a third stage: if and when the state defaults on the loan --

A. Yes.

Q. -- then there is a realisation of the pledge which leads to an auction of the 51 per cent?

A. Yes.

Q. And those are three separate processes?

A. And the second process that you referred to might have been in between the first and the third, it might have been before the first, it might have been after the third.

Q. Indeed. Now, the suggestion has been made in this litigation on behalf of Mr Berezovsky that because all the other loans-for-shares auctions were followed by the acquisition by the lender of the actual title to substantial parts of the company's equity, then it is likely that Mr Berezovsky also did that.

Now, that's not a point that you make in terms in your report. Is it a proposition that you would support?

A. Could you say it again, please?

Q. The suggestion that has been made is that because all the other loans-for-shares auctions were followed by the

successful lender acquiring title to the shares, it is likely that the same was true of Mr Berezovsky, do you follow the point that's being made?

A. Hmm.

Q. Is that a point that you would support or is it a bit simplistic?

A. I haven't looked precisely -- well, I didn't see it as part of my function, to be honest, to look precisely at the Sibneft option, but, yes, I think that was likely.

Q. What do you think is likely?

A. That the same process would happen in Sibneft case as happened in the others.

Q. Well, when you say in your report:

In all the cases of which [you are] aware, the lenders who were successful in a loans for shares deal were also able to obtain further shares in the other sales so as to take ownership control ..."

When you say that, how large a sample are we talking about?

A. The major ones, the major loans for shares, the major resource companies that we're talking about.

Q. How many?

A. Well, if I look at my table, approximately seven.

Q. Well, there were only five cases, were there not, in which large stakes in companies that had been included

in the loans-for-shares programme were sold off by the state, they were Sibneft, Sidanko, Norilsk Nickel, Yukos and Surgutneftegas, would you agree? Five.

A. Yes. Five.

Q. In only two of those cases, is this right, namely Sibneft and Sidanko, were majority stakes sold off, would you agree?

A. In loans for shares?

Q. Yes -- well, no, majority stakes sold off of companies which had been included in the loans-for-shares scheme. Only in the case of Sibneft and Sidanko were majority stakes sold off in companies included in the loans-for-shares scheme?

A. Majority stakes sold off other than through loans for shares.

Q. Well, no shares were sold off through loans for shares itself, but if you take the companies included in the loans-for-shares programme, there were only two of them, a majority of whose shares were sold off in other sales.

A. I would just like to say one thing, it's just been for purposes of, well, convenience; when I say loans for shares, I do mean the two stages.

Q. Well, I'd like you to differentiate between them, Professor Fortescue, because the difference is actually quite important to the issues in this case.

A. Okay.

Q. We've agreed that there were three processes, there were the loans-for-shares auctions themselves and there were also what you refer to at paragraph 131 as the other sales through which it might be possible to obtain ownership control, okay?

A. Okay.

Q. I am differentiating between those two and I would like you to do so.

A. Can I just absolutely clarify, when I'm saying "other sales", I do not mean the sales of the shares that had been pledged. I mean sales of shares through other means, through investment tenders and so on and so forth.

Q. Well, there were two ways in which you could obtain ownership of shares in the companies included in the loans-for-shares programme, weren't there? Where a proportion of the state's shareholding was privatised, they were sold at auction and you could buy them at that auction, is that right? That was one way?

A. That was one way, yes.

Q. The other way, or another way, was that if the state defaulted on the loan which was secured by the pledge, there would then be an enforcement sale also by auction at which you could bid?

A. Again, I'm not absolutely confident that we're talking about the same thing. We did talk about those three stages and I'm clear on that. The second stage that you refer to, that is selling shares in ways that had nothing to do with loans for shares, they were through investment options, investment tenders, sometimes small proportions of shares were sold to workforces, under the general provisions of the privatisation programme.

Q. Yes.

A. So if we -- when we say loans for shares, we're talking about those initial options of the shares that were put up for sale through this programme.

Q. No, Professor Fortescue, we're not. Loans for shares were auctions of the right to make loans in return for a pledge of the shares. You agree?

A. Yes.

Q. Right. Now, I want to find out from you what your understanding is about the way in which you could obtain not just a pledge or a right of management but ownership of shares formally owned by the state.

A. Okay.

Q. One way was that you could bid in an auction for a proportion of the shares that the state had decided to privatise?

A. Yes.

Q. In the case of Sibneft, 49 per cent.

A. Yes.

Q. Agreed? Another way was that if the state defaulted on the loan --

A. Yes.

Q. -- as it, in most cases, did, you could bid in the sale of the shares that had been pledged which would then be sold by way of realisation of the security?

A. Yes.

Q. A third way I suppose is that you could buy them in the secondary market created by existing holders of privatised shares selling them, or by workers selling them if it was sold to the workers?

A. Yes.

Q. Right?

A. Yes.

Q. Any other methods?

A. Well, in that first category you referred to selling shares at auctions other than loans-for-shares auctions. There were other ways, investment tenders and so on, but I take your point. I think we are on the same wavelength.

Q. Okay. Well now, if you take the companies that were included in the loans-for-shares scheme, the companies in respect of which the state pledged part of its

holding in return for loans, right, there were only two of those companies, were there not, a majority of whose shares were in due course sold off by the state by whatever method, and they were Sibneft and Sidanko, do you agree?

A. Yes.

Q. Now, Mr Potanin's Onexim Group acquired Norilsk Nickel and Sidanko, did it not?

A. Yes.

Q. And Mr Khodorkovsky's Menatep Group acquired Yukos?

A. Yes.

Q. So we've got two oligarchs who provided loans for shares and who subsequently obtained a controlling stake in the companies which had been partly pledged to them, is that correct?

A. Yes.

Q. Surgutneftegas was acquired by its existing management, wasn't it, for red directors?

A. That's generally believed to be the case and I would certainly accept that as being the case.

Q. Right. So we've looked at how Mr Potanin acquired control of Norilsk Nickel and Sidanko, and how Mr Khodorkovsky got control of Yukos. Surgutneftegas was sold to the red directors, and the fifth case was Sibneft.

So the point being made about the likelihood of Mr Berezovsky acquiring ownership of shares is based, is it not, on just two examples of other oligarchs, Mr Khodorkovsky and Mr Potanin, agreed?

A. Yes.

Q. Now, are you really saying that because Mr Khodorkovsky and Mr Potanin prevailed in loans-for-shares auctions, and then went on to acquire controlling shareholdings of the relevant companies, Mr Berezovsky is likely to have done the same?

A. I'm not saying anything about what Mr Berezovsky is likely to have done.

Q. You're not?

A. No.

Q. I see. Would you agree that there was one significant difference between Mr Berezovsky's position and that of Mr Khodorkovsky and Mr Potanin, namely that Mr Khodorkovsky and Mr Potanin wanted to manage and build up the companies that they acquired? Would you agree that that was true of them?

A. I would say that's true of them.

Q. Mr Berezovsky, by comparison, had no particular desire to manage and build up an industrial group, did he?

A. I don't know.

Q. You don't know?

Now, one of the journalistic sources that you regard as particularly reliable is Chrystia Freeland, is that right?

A. Yes, I find it quite a good source.

Q. Yes, well you describe her as particularly good and reliable in paragraph 24.3 of your report.

A. Yes.

Q. Now, could you please turn to bundle G(B)4/1, please, at flag 7. This is her best known book I think, "Sale of the Century"?

A. Yes.

Q. About privatisation and loans for shares basically.

A. Flag 7, just a moment.

Q. If you've got flag 7 of G(B)4/1 you should be looking at an extract from that book.

A. I don't think I am.

Q. G(B)4/1.

A. Oh, I've got G(A).

Q. Well I'm not going to cross-examine you, you'll be glad to hear, about Russian law.

A. I did see that it was a Russian decree and I did get a bit nervous.

Q. I think we've all had quite enough of the Civil Code.

A. That looks better.

Q. Okay, flag 7, please?

A. Yes, I have that.

Q. Now, could we turn to page 46 in the bundle numbering G(B)4/1.07/46, page 128 of the book, I'm sorry, that this is rather small print too.

A. No, I can see that okay.

Q. Right. Now, this is a page, page 128 in the book numbering, which is about Mr Berezovsky. I won't ask you about his appearance, of which there is a rather odd description in the second full paragraph:

"Like most of the future oligarchs, by the late 1980s he had begun to dabble in the private sector. Like all of them, he built up his capitalist fortune using bricks -- often entire walls and buildings -- torn away from the decaying edifice of the Soviet State. But while most of Berezovsky's colleagues and competitors were empire-builders, hoping to found business dynasties which would endure for generations, he was a corporate nomad who danced from one venture to another, amassing money and influence along the way but always eventually pulling up his tent and moving on."

Is that an assessment of his business methods which you would endorse, or do you not know one way or another?

A. No, Mr Berezovsky has never been a major source of attention in my research and I certainly didn't write

about these aspects of his behaviour in my report.

Q. I see. Michael Ellman, is he another academic whose work you have a high regard for?

A. Yes, I do.

Q. Now, he identifies, doesn't he -- I think you refer to this at paragraph 265 of your report G(B)1/1.01/72 and you cite him in support of your view about the existence of a parasitic or predator state in Russia in the 1990s.

A. Yes.

Q. Mr Ellman identifies, doesn't he -- and perhaps we can turn to the work that you cite, it's G(B)2/6, flag 174 G(B)2/6.174/80.

This is an article entitled "The Russian Economy under [Yeltsin]". Mr Ellman cites a number of characteristics of what he calls the mutant economy of Russia under Boris Yeltsin. He lists them under the heading "Systemic change" where he says, four lines up from the bottom of the first page:

"Eight aspects of this mutant system were of particular importance."

Can I direct your attention to the first two which are summarised at the very bottom of page 80 and down to about halfway down page 81.

A. "Eight aspects of this mutant system were of particular importance", yes, I see that.

Q. The first two -- the first is:

"... the lack of an efficient state apparatus and the presence of a parasitic one. The collapse of the USSR and the creation of an independent Russia did not spawn an efficient state apparatus. Russia at the end of the [Yeltsin] era lacked a state that could reasonably be seen as [a] defender of the public interest. It had officials, who temporarily held particular positions, but they saw their offices largely as ... private fiefdoms from which they could temporarily enrich themselves. Appointments were frequently made for political or financial reasons and had little to do with technical or administrative qualifications."

He says later in that paragraph:

"This may be a major cause of the far greater ... depression in Russia than in Poland..."

Would you in general accept that characterisation of the Russian economy in the 1990s?

A. Yes. With only one, I think, qualification.

Q. Yes?

A. When it says "It had officials, who temporarily held particular positions..." and goes on, I wouldn't interpret that as meaning that all officials behaved in such a way.

Q. No, and I don't think that that's what Mr Ellman is saying.

The second characteristic that he identifies is:

"... the importance of opportunistic behaviour...

At all levels the important thing was control over economic resources (rather than formal ownership). In particular, the control over cashflow and the possibility of diverting it into one's own (foreign) bank account (or that of an entity under one's ... control) or using it to finance one's own luxury consumption was particularly important. It is characteristic of the situation that in 1998, prior to the 17 August crisis, the banks exported capital on a large scale, and immediately after the crisis transferred their remaining assets to other entities controlled by the banks' controllers, thereby robbing creditors."

Now, would you accept in general terms that the second characteristic which Mr Ellman identifies was a fair characterisation of the Russian economy in the 1990s?

A. Yes.

Q. Now, one of the non-journalistic sources on which you place particular reliance, Professor Fortescue, is a research paper of September 2000 written for the

World Bank by Joel Hellman and two of his colleagues.

Do you remember referring to that?

A. Yes, I do.

Q. Can we look at that at bundle G(B)2/6.

MRS JUSTICE GLOSTER: Give me the paragraph number in Professor Fortescue's report where he addresses this.

MR SUMPTION: It's G(B)2/6, flag 175 G(B)2/6.175/96. If I can just enquire of the witness who Mr Hellman is.

Is it right, Professor Fortescue, that the World Bank has for many years taken a particular interest in the economic effects of political corruption in opaque or closed political systems?

MRS JUSTICE GLOSTER: Sorry, Mr Sumption, I asked you the paragraph number in Professor Fortescue's report.

MR SUMPTION: I see. I'm sorry, my Lady.

MRS JUSTICE GLOSTER: It's just so that I can note it by the statement, the proposition he relies upon it for.

If you can't tell me now, tell me at 2 o'clock.

MR SUMPTION: Paragraph 35 G(B)1/1.01/12.

MRS JUSTICE GLOSTER: Thank you very much. In the first report?

MR SUMPTION: Yes.

My Lady, I think I'm going to be about five minutes, perhaps a little bit more with this witness. Would you like me to continue?

MRS JUSTICE GLOSTER: Yes, why don't you continue.

MR SUMPTION: Professor Fortescue, it's right, isn't it, the World Bank has for many years been interested in the economic effects of political corruption in opaque or closed political systems?

A. Yes.

Q. And they have a special section which has made a special study of this in different jurisdictions?

A. I'm prepared to believe you on that.

Q. Mr Hellman is a senior officer of the governance and public sector group of the World Bank which is concerned with these matters, is he not?

A. He was when that paper was written.

Q. Yes. Now, in dealing with the influence of wealthy businessmen over the government in Russia in 1990, I think that you have placed some emphasis on this particular paper?

A. Well, I cite it. I'm not sure that I give particular emphasis to it but I certainly cite it.

Q. Now, if you look behind flag 175 G(B)2/6.175/96, which is the article entitled "Seize the State, Seize the Day", Mr Hellman has developed, has he not, the concept of state capture as distinguished from petty administrative corruption.

If we look at page 99 of this article which is part

of the abstract G(B)2/6.175/99.

A. Yes.

Q. After the first break in the page:

"We unbundle the notion of corruption and in particular examine empirically the phenomenon of state capture on the basis of data from the 1999 Business Environment and Enterprise Performance Survey ... We contrast state capture with two other types of relationships between firms and the state -- influence and administrative corruption. Whereas state capture refers to the capacity of firms to shape and affect the formation of the basic rules of the game ... through private payments to public officials and politicians, influence refers to the same capacity without recourse to such payments. Administrative corruption refers to so-called 'petty' forms of bribery in connection with the implementation of existing laws, rules and regulations."

Now, that's a distinction which Mr Hellman is very well known for making when dealing with corruption, isn't he?

A. Yes.

Q. And his assessment is that Russia and the Ukraine have the highest state capture indices in all the regions studied in this paper, which essentially concerns

Eastern Europe. That's right, isn't it?

A. Yes.

Q. And is that an approach which you endorse? I understand from paragraph 35 that it is.

A. I'll have a look at paragraph 35 to make sure what it is that I endorse.

Q. You cite it, I think perhaps you need to look at 34 to 39, you are citing it in the context of the influence of the oligarchs over the Russian State.

A. Mm-hm, yes.

Q. Which I think you regard as a form of state capture in Mr Hellman's dichotomy, do you not?

A. Well, yes.

Q. You identify Mr Berezovsky as being prominent among the oligarchs responsible for state capture at paragraph 46, do you not?

A. Yes.

Q. Would you accept Mr Hellman's characterisation of state capture as a serious form of corruption?

A. State capture, yes, as he defines it, state capture, yes. I think that access and influencing of government is not necessarily corruption but, yes, I'd agree with that.

Q. But state capture of the sort Mr Hellman is talking about, and that you're talking about at paragraphs 34 to

39 and 46, that is a form of corruption, is it not?

A. Yes, I would say so.

Q. One last matter, Professor Fortescue, Chechnya is part of Russia, isn't it?

A. It is.

Q. Russia is a member of the Commonwealth of Independent States?

A. Yes.

MR SUMPTION: Thank you.

MRS JUSTICE GLOSTER: Right. Do you have any questions?

MR ADKIN: My Lady, I will have some questions.

MRS JUSTICE GLOSTER: Fine. I'll sit again at 2.05.

You understand, Professor Fortescue, that you mustn't speak about your evidence or the case with anybody, or communicate with anybody over the lunchtime?

THE WITNESS: Yes, I understand.

MRS JUSTICE GLOSTER: Very well. 2.05.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MR SUMPTION: My Lady, before we resume, could I just raise a point on this morning's transcript which relates to [draft] page 42, line 7.

This is part of Mr Rozenberg's re-examination, and I asked him the question based on a hypothesis about

a financial benefit being dependent upon the decision of a state official. In line 7, the words "favourable court decision", the word "court" does indeed appear on the tape and therefore quite properly on the transcript. That was a mistake on my part.

I have discussed this with Mr Rabinowitz who agrees that it is obvious, and must have been obvious to the witness, that I wasn't talking about a court decision but a decision of the state official, see the earlier part, and he is content that the answer should be read on that footing without the need to recall Mr Rozenberg to clear up this particular glitch.

MRS JUSTICE GLOSTER: Let me just read the answer. I didn't pick it up at the time.

MR SUMPTION: No, neither did I, and I was pretty surprised when it was pointed out to me that the word "court" was there. But we have checked on the tape and I did indeed say that, not intentionally but I certainly said it.

MRS JUSTICE GLOSTER: Well, he picks up the words "in obtaining favourable governmental decision".

MR SUMPTION: Indeed. So I think it's common ground that the answer can be read as if the word "court" wasn't there which it obviously wasn't meant to be.

Mr Rabinowitz isn't here, but I discussed this with him this morning and no doubt the transcript of what

I've just said to your Ladyship will be drawn to his attention.

MRS JUSTICE GLOSTER: Mr Gillis, that is all right, is it?

Or you weren't party to any of these discussions?

MR GILLIS: My Lady, I wasn't a party to the conversation but I don't think I needed to be, and I'm very happy to take it on the basis that that's what was discussed and agreed.

MRS JUSTICE GLOSTER: Very well.

Nobody else has any objections? Very well, the transcript shall be deemed to be read in that way.

MR SUMPTION: I'm grateful.

MRS JUSTICE GLOSTER: Right, Mr Adkin.

Cross-examination by MR ADKIN

MR ADKIN: Professor Fortescue, could you please turn to paragraph 272 of your first report, which is at page 74.

For the transcript that is G(B)1/1.01/74.

Do you have that?

A. I have page 74.

Q. Paragraph 272 sets out various statements which relate to informal arrangements in 1990s Russia. Would you look, please at statement 14.

A. Yes.

Q. You agree with that statement, do you not? If it helps you, you deal with these statements at paragraph 274.

A. Yes, I agree.

Q. Now could you please turn to paragraph 276

G(B)1/1.01/75 which reads as follows:

"In his book, 'Violent Entrepreneurs', Volkov notes that if pressed former Soviet managers might turn to the arbitrazh court but, especially before 1996, new entrepreneurs were reluctant to do so and were more likely to turn to criminal protection or resolution in the event of disputes over their business arrangements."

I think you quote Volkov over the page.

Now, you've put that in your report, I assume that is because you agree with that?

A. I agree with particularly the part about the new entrepreneurs. I'm less certain myself in terms of my own knowledge about what former Soviet managers might have done.

Q. Okay, well don't worry for these purposes about former Soviet managers, let's just focus on the new entrepreneurs.

You've said elsewhere in your report that you consider the court system, that is the Russian court system in the mid-1990s, to have been corrupt and that the legal system at that time was uncertain, and that there were major problems at that time in enforcing court judgments even if they could be obtained. Is that

a fair summary of your evidence?

A. Yes, I think that's a fair summary.

Q. Now, am I right in assuming that a reason why new entrepreneurs in the early to mid-1990s used forms of protection and resolution of their differences outside the legal or court system is because they did not consider that the legal system in Russia at that time was effective to protect their interests?

A. Yes, that's correct.

Q. Now, I want to understand, if I may, how your conclusions on that relate to your conclusion that Russian businessmen during that time, that is to say the early to mid-1990s, often failed to document their arrangements. I think your evidence is that they held various assets in informal arrangements and they made their agreements orally. That's your evidence, isn't it?

A. Yes.

Q. Do you say that Russian businessmen at that time adopted an informal rather than legally documented approach to their arrangements because, amongst other reasons, they did not contemplate that disputes over their arrangements would end up being resolved by the courts?

A. Yes, because they weren't confident that the courts would deal with them properly.

Q. I understand. Could you turn, please, to paragraph 83 of your report which is at page 25 G(B)1/1.01/25.

A. Yes, I have it.

Q. You have that, thank you. You talk here about the period after the resignation of President Yeltsin on 31 December, and I think my learned friend touched on that in his cross-examination. You say that Putin was not elected president until 26 March 2000 or inaugurated until 7 May 2000. Accordingly, for most of that period, that is to say December '99 to 26 March or May 2000, Putin was acting president rather than president.

"However, it was all but certain that Putin would become President, and I do not think that the distinction made any significant difference to his authority."

Now, I want to understand, if I may, why you say it was all but certain during that period that Putin would become president, would be elected?

A. There was a high expectation that he would win the election. He was genuinely quite popular at the time. A party that he had supported had won a parliamentary election I think in December 1999, so even on, let's say, electoral grounds that we might understand in this country, it was expected that he would win. There would be those who thought that there might be other

considerations that would help him win regardless of his popularity.

Q. And when you say it would be expected, do you mean it was expected generally within Russia at that time that he was going to win the presidency, from the time that he took over as acting president at the end of 1999?

A. Yes, I would say that.

MR ADKIN: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much.

Mr Gillis.

Re-examination by MR GILLIS

MR GILLIS: Professor Fortescue, you were asked about journalistic sources and the difficulties of establishing the position without access to archives, do you recall that?

A. Yes, I do.

Q. And I think you indicated that, despite the fact that it was difficult, there were circumstances in which you could be confident with various degrees of certainty as to the factual position?

A. That's correct.

Q. Now, could you please explain to the court what is the analytical process that you apply to the journalistic sources that you looked at in order to determine whether or not you felt you could rely upon those sources?

A. The first thing to say of course is that I wouldn't rely, if I possibly could use other sources, just on journalistic sources, and usually there is something else that you can rely on, and I might come back to them after I've spoken about the journalistic sources. But if I looked at a journal article or, more commonly, a newspaper article, I would obviously look to see which newspaper it was published in, and there are some that I would regard with greater regard than others and more likely to be protected from some of the difficulties that we talked about previously, earlier today.

To some extent I'd look at the journalist. I mean, in my own field, I work much more in the mining and metals industry, and there are journals that I read regularly, and I come to rely on particular journalists. But I also would look at the format of the article.

I'll take the newspaper Vedomosti, because it is perhaps the best example of this practice, but others follow it the same way, but Vedomosti is almost formulaic in the way that it presents its articles. It will have a section where it presents purely factual material, it might be statistical, it might be references to legislation, so you have -- usually down the side of the article. Usually they will cite some sources, often those sources will be "unnamed Kremlin

source" or something like that, in the same way that we're used to in western newspapers. Sometimes, of course, those references to "unnamed Kremlin source" is just as frustrating as they are if you read the same thing in an English newspaper: well, what does that mean? We have to try and understand what it means.

Generally then there will be, let's say, the journalist's statement on what the -- the information that they're trying to get across, and I suppose that might be where some of the difficulties might be. Usually Vedomosti and most other newspaper articles, in what I would call the respectable newspapers, will then cite or quote some independent experts, quite often they will be people in a more politically oriented article, say, from a think-tank of some sort, or somebody well-known as a political commentator. If it was a more economics oriented type journal, very often they cite people who work for investment banks, investment bank analysts and so on and so forth.

So in that one article you have those -- you have something to go on. It's not just somebody blathering on, if I may use that word; you have something to go on on where they're claiming that the information and the interpretation came from.

Then hopefully you will read other newspapers that

will present things in the same way, and sometimes they say exactly the same thing, sometimes they say very different things. Obviously, if all the newspapers always said exactly the same thing, well, you probably wouldn't need to read very many of them, and you would suspect that there was something going on. But normally they do say different things, and then it's my task as an analyst to try and decide which is the most plausible, believable view.

As I said at the beginning of my answer, that's not the only sources that I rely on. Obviously you can learn quite a lot, not just factual material and things that are undoubtedly true, like President Putin said at a press conference, but the way that that official material is presented can give you insight into how believable the newspaper articles might be.

Also, I live in Australia and I get to Russia every now and then. I suppose I sit in Australia reading newspapers most of the time because I don't have any other great sources, also the official websites of the president and the prime minister and so on. I form a view, and when I go to Moscow, not in any terribly formal way I would say, but I just go along and I ask sometimes casually, they might not even realise that I'm trying to check up, I ask people that I think would know

about these things through personal experience or close links to those places, just to get a sort of check on whether the impression that I've already formed is correct or not.

So that's basically the way that I would go about forming an opinion.

Q. Thank you.

You were asked about the difficulties of establishing share ownership where there were opaque structures, do you recall that?

A. Yes.

Q. Could I ask you to turn to paragraph 152 in your first report which we have at page 41 G(B)1/1.01/41.

A. Yes.

Q. And the table there shows for each of those six companies which were involved in those loans for shares, can you see in relation to what you have described as being the "Winning group and bid, stage 1", and then the "Winning group and bid, stage 2", which we see at the top of the table.

A. Yes, I can see that.

Q. In relation to each of those companies, you've indicated the person who you have described as being the key individual?

A. Yes, that's correct.

Q. Can you see that?

A. Yes.

Q. Could you explain what you mean by "Key Individuals" there?

A. Those are the people who were presented -- presented themselves or were presented at the time as being, well, I think I can say the majority shareholders, the dominant person in those particular firms. And I would say that subsequent events, well, at the time we are quite confident that those were the right people, and certainly nothing happened subsequently to change our mind -- or change my mind, sorry.

Q. Could I ask you this: so far as you are aware, is there any body of opinion that suggests that these two stages, these were not the key individuals that were involved?

A. No. I know of no other opinion.

Q. Thank you. It was put to you that no businessman had a privileged position of influence with the Kremlin since President Putin came to power.

A. Yes.

Q. Are you aware of any examples of businessmen, and please leave aside Mr Abramovich because he's the specific subject of this dispute, are you aware of examples of businessmen who appear to have a privileged position and ability to influence the Kremlin?

A. During the Putin presidency?

Q. Yes.

A. Yes.

Q. Could you identify them and explain how you believe they have benefited from their relationship with the Kremlin?

A. The benefits that the oligarchs received -- and when I say oligarchs, I'm talking generally -- under Mr Putin, sometimes they were collective, such as changes to the taxation system, changes to resource legislation.

In terms of specific benefits to particular individuals, it's not always easy to identify, whether that was because they were friends or had a relationship to Mr Putin or not, or whether it was simply the way things went commercially. I would say in that period, Mr Putin did work to at least give the appearance that he was not giving particular preference to specific individuals, and most of the appearance of benefits were collective benefits.

Q. Are you happy to name individuals that you say fall within this category?

A. Yes, I would say Mr Potanin, I would say Mr Alekperov, I would say all those people who benefited ultimately from loans for shares, as one way of describing them.

Q. Now, you were asked, in the context of the suggestion

that Mr Abramovich had influence, you were asked to look at an article by Professor Sakwa.

A. Yes.

Q. Do you recall that?

Could you be provided with bundle G(B)2 and turn to tab 2, flag 27. You were asked to look at [book] page 130 G(B)2/2.27/234.

A. Thank you.

Q. You were asked what in this article supported your view that Mr Abramovich had influence with Putin. You were asked to read the first full paragraph, I think.

MRS JUSTICE GLOSTER: It's page 234 for the transcript.

MR GILLIS: I'm obliged, for the transcript it's page 234, and page 130 in the book.

I think you were asked to read the paragraph that began "Abramovich at this time", do you see that?

A. Yes.

Q. Could I ask you just to look towards the end of that paragraph?

A. Yes.

Q. About five or six lines from the bottom, which reads:

"In September 2005..."

Just read to the end of that.

A. Yes:

"In September 2005 --"

Q. I'm sorry, just read it to yourself, that will be fine.

A. Sorry. (Pause)

Yes, I've read it.

Q. Re-reading that last part, does that assist you at all in terms of what parts of this article you were relying upon for the purposes of your report?

A. Yes, I think that helps.

Q. Could you explain to the court why you say that?

A. Because it discusses Abramovich's relationship with the authorities and the benefit that he was able to achieve -- gain from that.

Q. Could I then ask you to go back to your report, which we have at G(B)1/1, and go back to paragraph 131 which we have at page 37 G(B)1/1.01/37.

A. Yes.

Q. You were asked about the loans-for-shares scheme and you referred to the two stages.

A. Yes.

Q. Could I just ask you to clarify what you were meaning by the two stages?

A. Yes. Again, what I call loans for shares, there were indeed two stages. At the first stage, companies bid for a certain -- bid to gain management rights over a certain number of shares that would be held in security by that company after the company had loaned

the state a certain amount of money, and until such time as that money was repaid that company would have management, operational management control, over those shares. I don't know the precise legal terms, I'm sorry, but we would say held as a security. The second stage came into operation if the loan was not repaid by the state, in which case those shares would be put up for auction in order to collect the money that could be used to pay off the debt.

As it happened in practice, the same company that won the initial auction, so held the companies -- held the shares, sorry, in security, and managed the companies on that basis, they won the option when the loans were not repaid. So at that stage they gained ownership of those particular shares.

Q. In the event of a default on the loan, such that there was to be a subsequent auction, can you assist with who organised that auction?

A. In each case, as it happened -- no, sorry, I'll start again.

The company that held the shares in security organised the auction.

Q. Thank you. Moving on, it was put to you by reference to looking at paragraph 129 of your report that only two of the loans for shares were of a majority stakeholder, and

that was the case of Sidanko and Sibneft, do you recall that?

A. Yes, I do recall that.

MR SUMPTION: No, what was actually put was that in only two cases was a majority of the state's holding disposed of.

MR GILLIS: I accept the correction.

Could I ask you to be provided with bundle E5, and could I ask you to turn to tab 14 and page 169.

A. I don't have the file yet.

Q. No, that's fine. So that's E5, tab 14, at page 169 E5/14/169. This is the witness statement of Mr Shvidler. Can I ask you to look at paragraph 17?

A. Yes.

Q. There, as you see, Mr Shvidler is suggesting that:

"... in the case of Norilsk Nickel, the 38 per cent ordinary voting shares put up for sale gave 51% voting control because its share capital included also non-voting preference shares".

A. Yes, I see what he said there.

Q. Are you able to indicate whether, to your understanding, what Mr Shvidler says there is correct or not?

A. That is my understanding, yes.

Q. You were asked some questions about state capture.

A. Yes.

Q. And it was suggested to you that in paragraphs 34, 39

and 46 of your first report, so maybe we can just turn those up G(B)1/1.01/12.

A. Yes, I have them.

Q. I think it was being put to you that in paragraphs 34, 39 and 46 of your first report, you were talking about state capture as described by Hellman, do you remember the article -- the working paper that we had looked at?

A. Yes, I do.

Q. Now, could you please look at paragraph 34, and could I ask you this. Do you there describe this as state capture?

A. No, I don't use the phrase there "state capture".

Q. And can I ask the same in relation to paragraph 39?

A. No, I don't use the phrase there "state capture".

Q. And paragraph 46?

A. No, I don't use the phrase "state capture" in that paragraph.

Q. Can I ask you whether, in those paragraphs, the oligarchs' influence which you're describing, were you describing that in the sense of state capture, in the specific sense defined by Mr Hellman in his report, or not?

A. No, I wouldn't say in that very, very specific sense, no.

Q. And then finally, Mr Adkin asked you about informal

agreements?

A. Yes.

Q. And difficulties in enforcing agreements through the courts because of the weaknesses in the legal system.

A. Yes.

Q. Are you able to assist, and say if you're not, whether businessmen regarded informal agreements of that nature, or oral agreements of that nature, as being binding or nonbinding?

A. I would expect that they considered them to be binding.

MR GILLIS: Thank you. I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much indeed, Professor Fortescue, for coming along and giving your evidence.

THE WITNESS: Thank you, my Lady.

(The witness withdrew)

MS DAVIES: My Lady, we call Professor Service.

PROFESSOR ROBERT SERVICE (affirmed)

MRS JUSTICE GLOSTER: Do sit down.

Examination-in-chief by MS DAVIES

MS DAVIES: Professor Service, could you be given bundle G(B)3 and G(B)6, please. Starting in bundle G(B)3, could you turn to tab 1 at page 1 G(B)3/1.1/1, do you see the first page of your first expert report?

A. I do.

Q. If you could turn on in that tab to page 30, please, is that your signature?

A. That is.

Q. Then if you could turn to tab 2, you should see the first page of your second expert report G(B)3/1.2/36, and at page 38 do you see your signature?

A. On page 3 I see my signature.

Q. Page 3 of the internal numbering, page 38 of the right-hand corner?

A. I see, yes. Yes, indeed, yes.

Q. Can you confirm that the contents of both of those reports represent your true opinion?

A. I can indeed.

Q. If you could then take bundle G(B)6 at page 1 G(B)6/1.01/1, you should find the contemporary history experts' joint memorandum, do you have that?

A. Correct.

Q. If you turn forward to page 26, can you see your signature on that page?

A. I can, yes. Yes.

Q. Can you confirm that so far as opinions are attributed to you in this joint memorandum, they represent your true opinion?

A. I can confirm that.

MS DAVIES: Thank you very much, Professor Service. There will be some questions from Mr Gillis.

Cross-examination by MR GILLIS

MR GILLIS: Professor Service, good afternoon.

A. Good afternoon.

Q. Can I make it clear that no one doubts your expertise, but could I start by asking about your publications, and I think they are listed in appendix 2 of your report, so that's G(B)3?

A. Right.

Q. I think they're listed at page 34 G(B)3/1.1/34.

So can I just take this point quite quickly. You are the author of the Penguin History of Modern Russia, is that correct?

A. That is correct.

Q. And that's a general history of Russia from 1900 to the present day, is that correct?

A. Well, to the year 2009 when it was published. I'm not a futurologist.

Q. I accept that, and I think there were editions of the book in 1997, 2003 and 2009?

A. That's absolutely correct.

Q. In the most recent edition, is this correct, that the book now has three chapters running to about 50 pages which covers Russian history from the end of the Soviet

Union to 2009?

A. That's correct, and it has an afterword that rolls up the whole of the 20th century with the 21st century.

Q. Turning to your recent publications of books on specific subjects, I understand you have recently published a new book called "Spies and Commissars: Bolshevik Russia and the West"?

A. Yes, three weeks ago.

Q. So that's a book about the relationship between the Soviet Government and the western powers in the years up to 1917?

A. No, the book is about the years 1917 to 1921.

Q. I'm sorry. So it's in the years after 1917 but it doesn't touch post-Soviet history?

A. No, if you want my books -- my book that touches post-Soviet history, you would have to choose "Russia: Experiment with a People", which is specifically about that topic.

Q. That's what I was just going to come on to. But just looking through the rest of the published works, there was a biography on Trotsky in 2008, that's correct?

A. That's correct, yes.

Q. And before that you published a book called "Comrades! A World History of Communism", in 2007?

A. I did.

Q. There was a biography of Stalin in 2004?

A. That's correct.

Q. And in 2002 I think is when you published your only book which was focused specifically on post-Soviet Russian history, and that, as you said, is "Russia: Experiment with a People"?

A. That's correct, yes.

Q. Then going back, biographies on Lenin?

A. Yes.

Q. And in 1996 you published a history of the Russian Revolution from 1900 to 1927?

A. Well, it was the fourth edition of -- this is something I published years and years ago but that was its third edition, and I've now brought out a fourth edition, yes.

Q. And then before that you were engaged in a three-volume biography of Lenin?

A. Not quite correct. If you want to be absolutely pedantic about it, I didn't call it a biography because at that stage you couldn't get access to archives on Lenin, so I called it a political life. It was a study, in other words, of the political activity of Lenin. I do believe that archives and documents are important in the study of history.

Q. Well, we'll come on to that. Now, Professor Service, I'm not in any way suggesting that you don't have

relevant expertise on topics you address, but is it fair to say that, while you have written about post-Soviet history, the main focus of your writing has always been the Communist period, particularly Lenin, Stalin, and Trotsky, is that fair?

- A. I think if you look at my research over the period when I've had jobs, I have always had a commitment to looking at the whole of the modern Russian historical period as a whole. I'm very much against this chopping up of periods into little patches of time. It's very much my contention that in order to understand any number of years in modern Russian history you do have to have the big picture.

While it is true, however -- and I hope I'm not being too over-pedantic here -- while it is true that most of my books have been from the Soviet years, I was the co-founder of first the Soviet press group at the School of Slavonic Studies, and then of the post-Soviet press group, a group that met every single week to look at all of the newspapers that we could possibly get hold of in order to keep ourselves abreast with what was going on in the last years of the Soviet Union and the first years of the Russian Federation.

So I've always tried to unify a study of the contemporary Soviet or Russian scene with my earlier

interests. And I think this is the healthiest way of dealing with questions of Russian history.

MRS JUSTICE GLOSTER: The one that you've written relating to the post-Communist era is "Russia: Experiment with a People"?

A. That's correct. That's 1991 through to 2001/2002.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Can I ask you this. In addressing the post-Soviet period which, as you've just indicated to my Lady, you do in "Russia: Experiment with a People", is it fair to say that Russian business and Russian economy is not something you've written about except really in passing, is that fair?

A. The -- I don't think it -- it may be fair, but I don't think it really reflects what the purpose of that book was, which was to suggest that my colleagues who were economists and my colleagues who were political scientists were missing the broad horizontal range of everything that needed to be considered when we were looking at Russian public life in those years.

So it was an attempt to bring together politics, economics, culture, security, international relations, the lot. Because in order to look at one thing in Russian history, you have to look at the other things on that historical range, so that it's certainly fair to

say that I didn't concentrate in that book on business, but business was very much part of the range of those interests.

Q. Can I ask you, is this right: in "Russia: Experimenting with a People", I think it's chapter 9, at pages 137 to 151, that's the chapter which is entitled "Economising on Reform"?

A. Yes.

Q. And it's that chapter, is it, that addresses economic reforms in Russia between 1991 and 2001?

A. Yes, that's correct, yes.

Q. So that's 15 pages on the topic?

A. I can see what you're driving at.

Q. No, please --

A. No, no, I don't object at all to your questions.

Q. No, Professor Service, I made it perfectly clear I respected your expertise, I just want to establish the extent to which this has been the focus of your writings.

A. You're absolutely correct. I'm giving you an open goal on this --

Q. No --

A. -- because I'm insisting that in order to understand one topic in Russian life, you have to look at all of them. And academics who demarcate the horizontal range miss

the big picture and miss the necessary discipline that is required in order to understand this huge, amazing country, Russia.

Q. So can I just check with you that there is no other writing that we should be looking at where you've been discussing Russian economic reforms and Russian business practices?

A. Well, apart from my journalism, that is correct.

Q. Thank you.

Can I just move on to indicate an area which I won't be addressing with you, and could I ask you to look at your first report at page 24.

A. Yes.

Q. Can you see at paragraph 54 G(B)3/1.1/24 you appear to express a conclusion about the credibility of Mr Abramovich's witness evidence, do you see that?

A. Yes, I do.

Q. Professor Service, I'm not going to ask you about that because those are matters for my Lady, do you understand?

A. I do, and that has been brought to my attention since I wrote the report, that I've somewhat trespassed over the boundary from being a historian into being a putative judge, and I have no intention of laying claim to that status or dignity.

Q. And equally so, Professor Service, you sometimes criticise Professor Fortescue for not having considered Mr Abramovich's evidence, and I'm not going to ask you about that either.

Can I ask you this: in your previous publications, is it not the case that you have expressed the view that Mr Berezovsky was one of those who benefited from the loans-for-shares scheme?

A. I don't know word for word what I've said about this, but it is certainly the case that in the 1995 to 1996 business politics, Mr Berezovsky seems to have derived commercial benefit from the intersection of politics and business.

Q. Could I ask that you be handed G(B)4/1, tab 16, do you have this?

A. Yes.

Q. This is your book, the Penguin History of Modern Russia. Could I ask you to turn to page 175, looking at the numbers at the bottom right-hand corner G(B)4/1.16/175.

It's the left-hand page which I was wanting to look at, which is page 532 in the book. Three lines from the top of the page you write:

"He [and that's Yeltsin] agreed a secret deal with Boris Berezovsky and a handful of other exceptionally

wealthy businessmen who were commonly known as 'the oligarchs' whereby they would receive a lucrative stake in state-owned mining enterprises in return for bailing out the state budget and financing Yeltsin's... campaign."

Do you see that?

A. I do.

Q. Was that not referring to the loans-for-shares scheme?

A. Yes, it was, yes.

Q. Could I ask you to look at another excerpt which is in "Russia: Experiment with a People".

My Lady, I'm afraid this excerpt is not in --

MRS JUSTICE GLOSTER: It doesn't matter, I can see it on the screen.

MR GILLIS: My Lady, I think probably not. What we've done is prepared a bundle of handouts, or hand-ups.

MRS JUSTICE GLOSTER: I hope they're going on Magnum.

MR GILLIS: They will do, my Lady.

(Handed)

My Lady, I don't anticipate that I'm going to have to put all of these hand-ups to the witness but it's just quicker to have them all before the court in one go.

MRS JUSTICE GLOSTER: What, these aren't on Magnum?

MR GILLIS: No, but they will be put on Magnum.

Could I ask you to turn to tab 1.

A. Yes.

Q. This is from "Russia: Experiment with a People", do you see that?

A. Yes.

Q. It's the second page, and we've sidelined the passage that we would ask you to look at.

A. I see that, yes.

Q. There you say -- I'm sorry, it's on the fifth page, so that will be page 296. There you say:

"Berezovsky's trading empire grew exponentially. His financial group diversified still further by setting up a bank and buying up properties in Switzerland and the United Kingdom. It also took a large stake in the fuel sector of the economy, especially gas and oil."

Now, again, am I right in understanding that that's a reference to what you then perceived to be Mr Berezovsky's participation in the loans-for-shares scheme?

A. Yes, that's what I then perceived to be the case.

I have more reservations about this now in the light of what I've read since I wrote that book nearly ten years ago, but you're absolutely right, that's what I said in that book at that time.

Q. But that's my Lady's juris task, not yours.

Could I now move on to discuss with you methodological approach. In your first report, is this right, you criticise Professor Fortescue's reliance on journalistic sources and memoirs, do you recall that?

A. I do recall that, yes.

Q. I think for the record that's at paragraphs 6 and 12 of your first report G(B)3/1.1/2.

I think we can also see this reflected in your comments in the joint memorandum, and could I ask you to look at that, which we have at G(B)6/1, and could you turn to paragraph 9 which is at page 5 G(B)6/1.01/5.

A. We're looking at paragraph 9, yes?

Q. Paragraph 9. This is recording your comments on historical methodology. In subparagraphs 1 and 2, I think you've pointed out that Professor Fortescue's first report was heavily based on contemporary press reports and memoirs?

A. Yes.

Q. You go on to say:

"It is true that, as yet, there is not much else available for the history of Russian high politics and big business in the period under consideration..."

Do you see that?

A. I do, yes.

Q. Professor Service, is this right, you do not go so far

as to suggest that historians examining the period should ignore journalistic sources and memoirs, do you?

A. No, I don't. Could I explain what I do mean?

MRS JUSTICE GLOSTER: Yes, please do.

A. I mean that we have to be particularly tentative about what we say about the 1990s. At the moment, my next project is a history of the ending of the Cold War, and for that purpose I've been looking at the Defence Ministry documents, the Foreign Affairs Ministry documents, the Party Secretariat minutes and documents, I've got all sorts of ways of checking whether the New York Times or Pravda or Izvestia offered reliable reports, whether memoirs written by Gorbachev's close confidants or Reagan's close associates are also reliable.

MRS JUSTICE GLOSTER: Sorry, just stopping you. The Defence Ministry and Foreign Affairs Ministry documents that you're looking at are Russian and American, or Russian or American?

A. They are -- I'm particularly picking out Russian, yes. Well, Soviet.

MRS JUSTICE GLOSTER: Soviet?

A. Soviet, yes. So that some of the things that I thought I knew about the history of 1985 to 1991, when I was tracking it on a weekly basis through newspaper reports,

through listening to television programmes where Gorbachev and Shevardnadze were speaking directly, I can now check these things out. And some of those things that I thought I knew tentatively in 1985 to 1991 I now know I didn't know. Because the real happenings were a little bit different. Sometimes they were quite the opposite.

Now, what's really striking about the 1990s is how much we are being asked to rely upon a few newspapers and upon the memoirs of politicians who are obviously providing accounts that are riddled with personal bias.

Now, this is just basic, basic historiographical scepticism. I'm not being fussy here. I repeated in my second report what I said in my first report because I really strongly believe this, that we must be tentative about what we think we know about the 1990s when all we have to go on are what politicians and businessmen want us -- want to let us get access to.

MRS JUSTICE GLOSTER: Right.

A. And when the newspapers are owned by people who have their own biases. I mean, this is just standard historical methodology. So I'm not saying anything that any serious historian would disagree with.

MRS JUSTICE GLOSTER: I think you've answered the question.

Go on, Mr Gillis.

MR GILLIS: Indeed. Thank you.

I think what you indicate in paragraph 9(3) is that you have to exercise much caution, I think is the phrase you use two lines from the bottom of the page on page 5 that we're looking at. When you're looking at journalistic sources you have to exercise much caution, is that correct? That's the correct approach?

A. I think that's putting it mildly. I think sometimes we have to say: this caution involves us saying that what we think we know is only provisional and highly tentative, especially when there are so many cases in recent Russian history where what we thought we knew proved not to be true.

Q. It may well be that you cannot know for certain until such time as one has access to all of the archives, if ever. But as I understand it, you're not suggesting that until that stage comes historians should simply ignore journalistic sources; you are suggesting they should exercise much caution?

A. I would probably go further and say that they should make clear that what they think they know is only a tentative judgment based upon exiguous sources.

Q. Turning over the page to page 6, at the top of the page, at subparagraph 4, you indicate that historians should take the same approach to memoirs, is that correct

G(B)6/1.01/6?

A. Yes. Yes, I do. And that's notwithstanding the point that for demur I use newspapers and memoirs. This is not a contradictory position, one has to use the bricks that are available, but sometimes the bricks crumble.

Q. Professor Service, is that for the reason really that you give at subparagraph 9(2), so that's going back to page 5 G(B)6/1.01/5:

"It is true that, as yet, there is not much else available for the history of Russian high politics and big business in the period under consideration..."

So I suggest to you that having exercised the appropriate caution, and having evaluated those sources against all the other material, it is inevitable that those sources will play an important part in the historian's evaluation of the issues, would you agree with that?

A. I agree with it with the important caveat that when the range of sources is so limited, then the conclusions have to be all the more tentative.

Q. And could I just quickly ask you to look at what you have said about newspaper reports and memoirs in your first report, so that's going back to G(B)3/1. And could you turn to paragraph 12 at page 5 G(B)3/1.1/5. About eight lines up from the end of paragraph 12 what

you say is:

"Consequently, my own working assumption is that newspaper reports and memoirs are more useful in conveying a sense of the historical pattern of attitudes and practices than in evidencing the details of a particular political event or commercial transaction."

Do you see that?

A. Yes, I do. Yes.

Q. Now, Professor Service, is this right, that while you say that that's your working assumption, would you accept that in your published works, and no doubt having exercised much caution, you've relied upon what could be described as journalistic sources to establish specific facts?

A. Alas, that has to be the case if we're to have any continuous narrative at all for the 1990s. Regretfully, that is the case.

Q. And could I maybe just show you one example. In the additional bundle that I've handed up, could I ask you to go to tab 1 at page 122, which I think is the second page. There you say -- can you see the sidelined passage:

"The Yeltsin family made plenty of money whenever the opportunity arose or could be made to arise. The president's daughter, Tatyana Dyachenko forged links

with the multimillionaire financier and ex-academic Boris Berezovsky."

Now, I assume that you would accept that that's a statement of fact, not a reflection of historical patterns or attitude, is that correct?

- A. Yes. No, you're absolutely right there, and I can see what you're driving at.

Sorry, I beg your pardon, I'm meant to be addressing my remarks to the judge.

I can see the point of this link. This is a case of doing the best one can with the exiguous sources available.

- Q. And I think we can see from footnote 7, and then if you go to page 358 in this tab, that what you're relying upon there is Mr Klebnikov's book "Godfather of the Kremlin", is that correct?

- A. That's correct.

- Q. And I think you've identified in your first report, this for the record is paragraph 65 G(B)3/1.1/28, that Mr Klebnikov is a journalist who you've identified in your first report as having been accused by some reputable historians of exceeding evidence in writing, but he's fundamentally a journalistic source, is that correct?

- A. I think that's a bit unfair on the late Klebnikov. He

pushes his sources too hard. I think that Stephen Kotkin's reservations about Klebnikov's book are ones that I go along with, and that's why I put them into the first report that I wrote. In particular I think that there are materials that Klebnikov gathered that were very, very useful, but his interpretation was -- yes, it was on the sensationalist side.

Q. Professor Service, what I would suggest to you is that in your published works you're willing, no doubt having exercised much caution, to reach factual conclusions on the basis of journalistic sources?

A. I am.

Q. Do you agree?

A. Sorry to butt in on you there.

That is the case, I have done this. What I'm trying to indicate in my first and second report, however, is that underpinning this is a methodological scepticism that one can't always bring out in a book of the kind that I was trying to write, "Russia: Experiment with a People".

Q. Could I just ask you to look at Professor Fortescue's second report which we have at G(B)1/1, tab 2. He responds to your criticism as to his methodological approach at paragraphs 10 to 16, which we have at pages 145 through to 151 G(B)1/1.02/145.

Can you see that at paragraph 16, Professor Fortescue states that he has not accepted any source without critical analysis and he rejects your criticism. Do you see that? I'm sorry, if I'm rushing you. Would you like to read paragraph 16?

A. I haven't found it yet.

Q. I'm sorry, page 151 G(B)1/1.02/151.

A. There we are, yes I've got there, yes.

Could you possibly repeat the question?

Q. What I suggested to you is that there Professor Fortescue states that he has not accepted any source without critical analysis and that he rejects your criticisms. I just wanted to see that you saw that was what he was saying.

A. Yes, I see that he has said that, yes, I remember reading that, yes.

Q. Professor Service, what I would suggest is that, just as it was appropriate for you to rely, after critical evaluation, upon journalistic sources for the purposes of your publication, so too it was appropriate for Professor Fortescue to rely upon those sources after critical evaluation for the purposes of reaching the conclusions he expressed in his report. Would you agree with that?

A. I don't agree with that analysis, mainly because I think

that in my work on the 1990s I have tried to avoid pinning substantial acute matters of public policy or official practice on memoirs or newspaper reports. I've tried to -- you're right, in certain instances I have described events on the basis of those two types of report but I try to keep this to a minimum.

Q. And Professor Service, what I would also suggest to you is that, if you had been willing to engage in the critical evaluation of those sources, it ought to have been possible to reach agreement on various statements that remain disputed. But I assume you would disagree with that, would you?

A. I think I must draw attention to the fact that we spent two days in this joint meeting and we went through every single disputed statement, Professor Bean, Professor Fortescue and myself. We attempted as thoroughly as we could to come to agreements. But where there was a division of minds, we left it at that and agreed to disagree.

Q. Well, Professor Service, could we just start with -- I'm not going to go through all the disputed statements, obviously, but could we just start with transfer pricing.

Could I ask you to look at page 21 of the joint memo, so that's at bundle G(B)6/1, and at page 21,

G(B)6/1.01/21.

Could I ask you, unless you recall it, to read through section H, which is on transfer pricing. So we have the statements on paragraph 28 and 29, and it goes over the page where we see the Professor's comments at paragraph 48.

A. Oh, yes, I remember this. Yes.

Q. Now, the section is dealing with really four statements about transfer pricing, is that correct? Looking particularly at paragraph 29.

A. Yes.

Q. I'd suggest to you that they're setting out a very general introduction to the phenomenon of transfer pricing, is that correct?

A. I think the word "general" is very apposite here.

Q. Nowhere is it suggested that the mechanism identified applies universally or invariably, is that correct?

A. Well, typicality, to my mind, implies some kind of pattern being suggested.

Q. And these statements, they've both been endorsed by Professor Fortescue and Professor Bean, is that correct?

A. That is correct, but if I may enter yet again a reservation, having read the witness statements of Shvidler and -- Mr Shvidler and others, I came to the conclusion that there was extraordinary variety in the

way that these methods of transfer pricing were conducted.

And it's for that reason that I entered that caveat, and I'm sorry that it appears that I should have made, you know, a greater attempt to come to an agreement, but I saw my duty as being to say what I really thought.

Q. Well, undoubtedly it was and still is. But what you say at the end of paragraph 48 is that you say

G(B)6/1.01/22:

"... the evidential basis of these statements remains too weak to encourage confidence in generalisations of this nature."

Do you see that?

A. I do see that, yes, and I stand by that. I was very much taken with Mr Shvidler's evidence when I read it over the course of the summer. I was very, very persuaded that there was enormous -- you might almost say imaginative variety about the way that Russian businessmen sought ways to get their money abroad.

Q. But what I suggest to you is that certainly aspects can clearly be established as being evidentially correct or not. I mean, for instance statement 30, which refers to:

"Russia did not introduce legislation regulating transfer pricing until 1999 ..."

That's objectively verifiable, isn't it?

A. You have a point about the particular number there.

It's the whole bunching of this description of transfer pricing to which I took objection.

Q. Well, can we just look at what you've said in your first report about transfer pricing, so we have that at G(B)3/1, and it's at paragraph 40, which is at page 18 G(B)3/1.1/18.

At paragraph 40 you say:

"I have little to add to what Professor Fortescue writes about low tax zones, transfer pricing and capital flight in the two decades after communism. What must be borne in mind, however, is that within the general picture there was room for much variability."

Then you refer to what Mr Shvidler has said.

A. Yes.

Q. Professor Service, what I suggest to you is that the statement that you were being asked to agree or disagree was not trying to encompass all variations, it was just trying to indicate to the court typically how transfer pricing could be done.

What I would suggest to you is that what you have said in your report really provides no proper basis for continuing to dispute that these statements are fair and accurate. Would you comment on that?

A. Well, I fail to see the logic of that proposition. I've made it very clear in my first report, paragraph 40, that Mr Shvidler's fifth witness statement points up the variety of methods by which transfer pricing was conducted, and I allude to this in the joint report, my caveat in the joint report, to which attention is now being drawn.

Q. Well, what you're saying in your paragraph 48 in the joint memorandum is that the evidential basis of these statements remains too weak. So this is going back to page 22 in the joint memorandum bundle G(B)6/1.01/22.

Is it not fair to say that the statements that you were being asked to agree are accurate and there is an evidential basis for them, but of course there are many different ways in which it could be done?

Is that not fair?

A. Could I just ask for that very long sentence to be repeated?

MRS JUSTICE GLOSTER: Put the question more simply,

Mr Gillis, please.

MR GILLIS: What I was pointing out to you is that, in your paragraph 48 in the joint memorandum, bundle 6 at tab 1, you are saying that you believe that the evidential basis for the statements remains too weak. What I was suggesting to you is that a fairer and more accurate

approach, given what you're saying was the impact of Mr Shvidler's statement, would be to recognise that the statements about transfer pricing arrangement were fair and accurate, but simply to recall that there are many different ways in which this could be done, which is fundamentally, if you look at the first sentence, what Professors Fortescue and Bean have said.

- A. You are quite correct that there is evidence for a general pattern, but the extraordinary variety of transfer pricing has to be brought into play here.

I have been a touch on the fussy side in insisting that I didn't want to use the same phrasing that Professors Fortescue and Bean agreed upon, because they've got the same caveat basically as I have got and I wanted them to go for my phrasing and they stuck to theirs.

- Q. But in substance you don't disagree with how Professors Fortescue and Bean have put the point, is that right?

- A. Well, I would put it slightly differently, that I thought at the time that they basically agreed with me, and I wanted them to just simply say that in the words that I was proposing.

But this was a very amicable meeting that we had over two days and once or twice we just agreed to

disagree.

Q. All right. Well, Professor Service, I must move on.

Could I move on to loans for shares?

MRS JUSTICE GLOSTER: Should I take the break, Mr Gillis, is that a convenient moment?

Very well, ten minutes.

Don't talk about your evidence to anybody.

(3.22 pm)

(A short break)

(3.40 pm)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Professor Service, I now want to look at loans for shares and discuss with you who was able to acquire interest in the valuable companies which were sold eventually under the loans-for-shares scheme.

So could you start by looking at the joint memorandum, which is G(B)6/1 and it's at page 15.

G(B)6/1.01/15. Could I ask you to read statement 2 and the comments at paragraphs 31 and 32. (Pause)

A. Ah yes. Yes, yes.

Q. And is this right, statement 2 is endorsed by Professor Fortescue, but in very brief summary your objection at paragraph 32 is that you don't accept that political influence or connection to the Yeltsin administration was necessary in order to succeed in the

loans-for-shares deal? And also that you are not satisfied that the loans-for-shares scheme was envisaged to lead to ownership of shares, is that correct? Is that what you're essentially saying at paragraphs 32 and 33?

- A. I'm saying quite a lot more than that. I'm objecting to this horrible word "oligarchs" that stops us thinking clearly about what was the relationship between business and politics in the 1990s and in the 2000s. This was a word that was introduced as a sort of shorthand, but it has started to involve us thinking that there was a very separate cast, a stratum of big businessmen who were qualitatively different from the other big businessmen. That's really important to challenge.

MRS JUSTICE GLOSTER: I see what you've said in your report about it and your comparison, I think, with the position in Greece.

MR GILLIS: Exactly.

MRS JUSTICE GLOSTER: I've read all of that.

MR GILLIS: I wasn't going to look at that at all.

MRS JUSTICE GLOSTER: That's why you put it inverted commas all the time?

- A. Yes, sometimes I've failed to do it, and I think that's a sin, I really ought to be consistent.

But the question I was asked was: is that what I'm

getting at in 31 and 32? I think if you look at what I say in my report, and what I say in 31 and 32, you can see that underpinning this is a challenge to the assumption that there was some sort of oligarchy, and that big businessmen of a particular kind, who had separated themselves off from the rest of the big businessmen in Russia, and were recognised as such by the politicians, that this was the case and that they were essentially or largely ruling Russia.

And this is just such a phenomenal misjudgment about what was going on, and that brings me back to what I said in my "Russia: Experiment" book. This is why I wrote a book, to challenge the standard orthodoxy of a lot of my colleagues in the 1990s when they were writing about politics and/or business.

So that's what I'm getting at in 31 and 32 and this is not a minor point.

MRS JUSTICE GLOSTER: Yes.

A. It's really essential for the understanding of politics and business in the 1990s and the year -- and the years that followed.

MR GILLIS: Professor Service, I was asking you about paragraphs 32 and 33, not 31, because I wasn't wanting to go into this question of whether it was a Greek concept of an oligarchy or just businessmen that

exercised influence. But let me move on.

A. Well, can I make a comment on that? That it's not a Greek concept, it's a concept that has spread to the study of politics in all of the centuries that have followed.

It's a meaningful word, that it's ruled by the few, and I do not think that these big businessmen ruled Russia. They had influence, they had influence in certain sectors, we always have to ask about the depth of that influence and the breadth of that influence, and we should just simply stop using the word until we are able to show that these few businessmen ruled Russia.

In fact, of course, they didn't. It was the politicians who set the commercial strategy for the government in the 1990s, the politicians were in charge. He was an incompetent, drunken, sickly ruler, Boris Yeltsin, but he and his fellow politicians, and the businessmen who became politicians temporarily, such as Boris Berezovsky, these were the people who were in charge.

It wasn't a business oligarchy and it's not a trivial point.

MRS JUSTICE GLOSTER: No, well, I think you've made it.

MR GILLIS: Thank you.

Can I now ask you to look at statements 3 to 6,

which are over the page, on page 16, and read paragraph 34 which has your comments and Professor Fortescue's comments G(B)6/1.01/16. (Pause)

A. Yes, I've read them.

Q. Statements 3 to 6 are endorsed by Professor Fortescue but, is this right, you're saying that you simply can't reach any conclusion at all about what happened in the various loans for shares deals?

A. Well, I'm coming back -- I'm sorry to be a total bore and I won't be quite as emphatic and noisy as I was a few minutes ago. The evidence for all of this is our beloved newspaper reports and ever-loved memoirs. We've got to be very, very cautious about it, about saying that we really know the history of the 1990s.

Q. But you are saying that you can't express any conclusions in relation to the various loans-for-shares schemes that are detailed in paragraphs 3 to 6; that seems to be what you're saying, is that right?

A. I'm saying that the full complexity of what really went on is still not so clear as to allow us to agree to this general description.

Q. Can I just ask you to look at what you said in your first report about loans for shares, and if you could go to G(B)3/1 at page 8 G(B)3/1.1/8, and it's paragraph 18.

A. Yes.

Q. Now, what you say there is:

"The account of the privatisation process given by Professor Fortescue offers more or less the conventional picture among analysts in... the West. There are certain aspects of that process, however, where there is room for amendment or expansion."

Now, am I right in saying that there you are commenting on paragraphs 105 to 167 of Professor Fortescue's first report where he comments on and endorses statements 2 to 6 which we've just been looking at?

A. I can't off-the-cuff remember the exact numbers. Is there any way of my checking that?

Q. Certainly. If you can take up G(B)1/1, and it's at pages 31 to 45 G(B)1/1.01/31.

A. Yes.

Q. If you can see page 31, at the top of the page, it starts with the title heading "The privatisation of Russian state owned assets in the 1990s and the loans for shares auction", which is the same title heading as we have above your paragraph 18.

A. Right.

Q. Professor Fortescue's report runs from paragraph 105 to paragraph 167, which goes through to page 46.

As I understand it, going back to paragraph 18 of your report G(B)3/1.1/8.

A. Yes.

Q. You're saying that Professor Fortescue offers a more or less conventional picture among analysts in the west, is that correct?

A. Yes. And then I say why I object to this picture, yes.

Q. All right, just taking it in stages. So at paragraph 18 then, you certainly aren't suggesting that there was anything which suggests that the statements in 2 to 6 were incorrect; because can I suggest you're endorsing what Professor Fortescue is saying and he is endorsing statements 2 to 6.

A. I intended to make an exposition there of how I think the relationship between business and politics ought to be understood in the 1990s, so I took the opportunity there to indicate that I think that the -- that by and large the politicians were in charge, and the impression given occasionally in Professor Fortescue's report is that it was the other way round.

Q. But Professor Service, if I can ask you to look at the remainder of this section in your report -- so picking up at paragraph 19 G(B)3/1.1/9, and it runs through to paragraph 33 G(B)3/1.1/14 -- where, as you discuss the concept of oligarchy, I would suggest to you that

there's nothing in that section of the report which suggests either that you believe or that there's any evidence to show that it was possible to acquire a company under the loans-for-shares scheme without political connection or influence. Would you accept that?

A. I think I do accept that. I don't think I contradict that anywhere in the report.

Q. And can I also suggest to you that in this section you do not give any suggestion that any of the facts set out in statements 3 to 6 about the acquisition of Yukos, Norilsk Nickel, Sidanko or Sibneft are incorrect, and that's correct as well, isn't it?

A. Now, we're going back to the joint report, are we?

Q. No, I'm looking at your report.

A. Oh, I'm sorry. So what would you like me to look at?

Q. Having generally endorsed Professor Fortescue's account at paragraph 18, then in paragraphs 19 through to 33, what I'm suggesting to you is that there is nothing there that suggests that any of the facts set out in statements 3 to 6 about the acquisition of Yukos, Norilsk Nickel, Sidanko or Surgutneftegas are incorrect, and would you agree with that?

A. I see what's being asked. Sorry, I've been a bit slow on the uptake there.

I at no point contradict this picture given in statements 3 to 6.

Q. Thank you.

Can we just look at what you say in your published works, and could I just ask you to be handed G(B)4/1, at tab 15, which I think is at page 145 G(B)4/1.15/145.

Are you at page 145?

A. I'm on 146 at the moment but I'm getting there.

Q. It's 145 in the bundle but it's actually page 146 in the book. So 145 at the bottom right-hand corner and then if you look at the -- it's page 146 in the book.

Can you see at the top of the page, it's picking up from the third line:

"Yeltsin could offer financial inducements ..."

Do you see that?

A. Yes.

Q. There you say:

"Yeltsin could offer financial inducements to politicians and administrators who could influence the result of the election in his favour.

"But there was a price to pay. As part of the deal, the oligarchs were given temporary ownership of the shares in the chief companies working in the lucrative mining areas. The nickel industrial sector was a particular attraction. These acquisitions became

permanent when the government predictably proved unable to pay off the loans on time. Thus the 'oligarchs', while rescuing Yeltsin, piled up the mountains of their wealth still higher and reinforced the dependence of the political establishment upon their favour."

Do you see that?

A. I do. I would like to say that if I ever had a second edition of this book I would not use the word "ownership" in the second line of that para. I'd use "managerial control".

Q. Instead of "temporary ownership"?

A. Yes.

Q. That would be fine, I can understand why you would wish to make that correction.

But what I would put to you is that there you are expressing the view that it was the oligarchs, and I don't want to get into a definitional debate about that, it was the oligarchs through their political connection with the Yeltsin administration who were able to acquire companies under loans for shares. Do you accept that?

A. The evidence is that those people who became known as oligarchs were the ones who made the most lucrative of the deals in this period, just before the election of 1996.

Q. But that now appears to be something that you refuse to accept in the joint memorandum when one goes back to paragraph 32. G(B)6/1.01/15

A. Ah, I see what the point is. I see what the point is.

Q. What you're now querying is:

"... whether the available evidence suggests that prior 'close connection to and political influence with the Yeltsin administration' were a prerequisite for the securing of the right to become a lender under the loans for shares ..."

A. I was merely driving at the point there that the connections between the businessmen who did make a profit out of the loans-for-shares scheme, generally speaking, were tight. However, whether this was the case for all of the deals that were done in that period, I don't think we have the evidence for that. The full evidence, in other words, for the business history of Russia in the 1990s is just not in yet.

Q. And can I suggest to you that you seem to express the view in your book that it was predictable that the loans would not be paid off and that the companies included in the loans for shares would be sold, do you accept that's what you were accepting in your book?

A. I would -- I could envisage another scenario in 1997 that the world oil price rocketed, that Boris Yeltsin's

health improved, that the politicians got a burst of energy, that they didn't actually have, as we know, in 1997, and that extraordinary ingratitude would have been shown by Boris Yeltsin because he had a history of doing this. So that I'm not sure, at all, that the evidence is strong enough for us to be able to say that this was a fixed set of deals from which there was no wriggling out.

Q. Well, what I suggest to you is that in your book you're indicating that you regard it as being predictable that the loans would not be repaid, but that's now something effectively you refused to agree in statement 33 of the joint memorandum, is that right?

A. I think that it was predictable if conditions didn't change. However, in the broader -- in the broader framework of the possibilities of the years after 1996 it might have been highly likely but it wasn't certain.

Q. No, all right.

And then, finally, you express the view that the acquisitions would become permanent as a result and therefore that it was the lenders who would be able to acquire ownership of the companies, is that correct? That's what you're indicating in the book?

A. That is correct, yes, that is what I'm saying in the book, yes.

Q. Then again that's something that you seem to be refusing to accept in paragraph 33 of the joint memorandum G(B)6/1.01/16?

A. I am indeed adding a caveat in the joint memorandum which is not in the book. I mean, this is the right of every scholar, to finesse his judgment in the light of more information as it starts to come in, but also more thoughts that one has about the subject about which one is writing. I mean, it's a rare scholar who has had the same opinion through the post-Communist years about contemporary Russia. I can't think of any of my colleagues who have held one single basic view all the way through.

Q. Well, Professor Service, I can understand you might want to qualify for exceptional changes in world oil prices or something like that, but will you not agree with me that in fact what is set out in the disputed statements here, at statement 2, as a summary description of the loans-for-shares scheme, is in fact not open to any serious political debate?

A. This is statement 2?

Q. Yes, so that's at page 15 G(B)6/1.01.15.

A. On page 15.

Well, of course, I'd have to have my usual rant about "oligarchs", so I would never have signed up to

that with that word in there. But quite apart from that, indeed the deals were beneficial for those businessmen who could participate in them.

Q. So is there any objection apart from the use of the word "oligarch"?

A. Well, it's not a small objection. I don't want to go over that again but --

Q. We understand the point you're making, take that as read.

A. I think that, as it stands, question 2, as long as it's not connected up to -- sorry, statement 2, as long as it's not connected up to statement 3, isn't implausible. But we grouped these statements together when we considered them and that's why I expressed reservations about signing up to them, and that's why Professor Fortescue and I disagreed.

Q. All right. Well, I'll come on to statement 3.

Can we just look at the details of the loans for shares in a little bit more detail. We have them set out at statements 3 to 6. But can we first just start by establishing that we don't disagree about what the loans-for-shares deals were, and can I ask you to look at Professor Fortescue's first report which we have at G(B)1, tab 1, and can you look at page 36 G(B)1/1.01/36.

Can you see, we have the table at the bottom of page 36 running over to the next page. There Professor Fortescue sets out what I believe is uncontroversial, namely the enterprises which were placed into loans-for-shares schemes. He shows 12 enterprises as having participated in the scheme. Do you see that?

A. I do, yes.

Q. Do you see that the largest asset measured by starting price was Norilsk Nickel, where a block of shares was provided as security at an auction with a starting price of \$170 million, do you see that?

A. Yes.

Q. Then we have Yukos for 150 million, and then Sidanko, Sibneft, Surgutneftegas. And then there are the ones where the starting bid was for \$50 million or less, and Lukoil, NLMK, and so on. Do you see that?

A. I do, yes.

Q. Now, I assume you don't disagree with any of that, is that correct?

A. I have no serious objection to any of that.

Professor Fortescue's expertise is greater than mine on these particular companies.

Q. All right. So now, what I would like to do is I'd like to just concentrate on the six biggest deals, which are

Norilsk Nickel, Sidanko, NLMK, Yukos, Lukoil and Surgutneftegas, because those are the ones -- plus NLMK, which are covered by statements 3 to 6 in the joint memorandum. Do you see that?

- A. I do. Can I make a comment at this point? Because I think it might hurry the inquisition along.

What I don't like about statement 3 there, or sub-statement 3, is the emphatic way in which it is said that only those with close connections to and political influence with the Yeltsin government were able to secure the rights. There's no evidence for this whatsoever.

- Q. I see.

- A. I hope that clarifies --

- Q. Professor Service, I think what we're now looking at, or what I was trying to look at, is statements 3 to 6 over the page at page 16 where we're dealing with the specifics of the various companies G(B)6/1.01/16.

- A. Right, I'm sorry. I thought we were dealing with statement 2.

- Q. No, I tried to move on from statement 2, just to look at the details of the companies in the loans-for-shares deals.

- A. I am not totally happy, as I've said, with statement 2.

- Q. No, well, I think we've got your answers on that.

As I say, what I want to do is look at the six largest companies, Norilsk Nickel, Sidanko, NLMK, Yukos, Lukoil and Surgutneftegas, because those, adding in NLMK, are the companies that are covered by statements 3 to 6.

A. Yes.

Q. As you can see from paragraph 34 in the joint memorandum G(B)6/1.01/16.

"Professor Fortescue agrees with these statements. [And you indicate that you have] difficulty with these statements as they stand since the extremely complex details of the business transactions are not yet available in public evidence and there was anyway much difference between one transaction and another; he adds that he anyway cannot see the relevance of the transactions to the current legal dispute."

Do you see that?

A. Yes, I do, yes.

Q. What I would like to do see if we can agree this: do you accept that in relation to all of those loans-for-shares deals, the person who won the auction to give a loan in return for control over the shares being offered, ultimately acquired the shares when in the event the state defaulted?

A. Yes, that seems to be the case.

Q. So can I just -- let's start just with Norilsk Nickel, Sidanko and NLMK, because these are the companies associated with Mr Potanin and Mr Prokhorov.

Is it right that you accept during 1995, during loans-for-shares auctions, the Interros group companies gained control of blocks of shares in Norilsk Nickel, Sidanko, the oil company, and NLMK, the steel producer?

A. My position is that we do not know the precise details of the business transactions that we're talking about here.

MRS JUSTICE GLOSTER: That's your main point?

A. That is my main basic point, and that these general statements about what actually happened in each of the loans-for-share deals aren't yet convincing because what documentation is available is too slim.

MR GILLIS: All right. Well, just having clarified what the dispute is, maybe I can show you some.

So is this right, that you're not willing to accept then that when the state defaulted on the relevant loans other Interros group companies acquired the blocks of shares which were under the management of those companies?

A. No, it's very clear that the end result is as you described, but the precise negotiating tactics and understandings I don't think we do yet know.

Q. Can I just clarify this with you: do you dispute that Interros and Uneximbank, which was part of the Interros group, were controlled by the oligarchs Potanin and Prokhorov?

A. Were controlled by the big businessmen?

Q. Big businessmen.

A. I don't dispute that.

Q. You don't dispute that last proposition.

Well, can I just show you some documents which are in the public record which I will suggest to you show that the factual position is really quite well established. And could I start by taking you to print-outs from the Interros and the Norilsk Nickel company website, and that's in the additional bundle at tab 2.

MRS JUSTICE GLOSTER: Mr Gillis, you're not going to complete your cross-examination of Professor Service this evening, are you?

MR GILLIS: No, I'm not.

MRS JUSTICE GLOSTER: I'm happy to sit until 4.30 but I don't see any point sitting until 5.00, it's been a long day.

MR GILLIS: No, my Lady. I wouldn't finish by 5.00.

Do you have tab 2 and can you see this as the print-out from the Interros website?

A. Yes.

Q. Could you please read the section which we have at the top of the page, entitled "Foreign Trade Consulting and Banking and Finance"?

A. Yes.

Q. They explain the foundation of Interros and Uneximbank and also that Mr Potanin and Mr Prokhorov became partners in those companies, do you see that?

A. I do.

Q. And then if I can ask you to come down that page to look at "Investment in Industrial Assets", and, again, the sidelined passage, can you see it then says:

"In 1995, during pledge auctions, Interros group companies gained control of blocks of shares of Norilsk Nickel, the Sidanko company and NLMK and then Northwest Shipping".

A. I see that, yes.

Q. Just to be clear, "pledge auctions" is a translation for the Russian expression of "loans for shares", is that right?

A. Yes.

Q. So would you agree with me that that makes it clear that the Interros group won the loans-for-shares auctions for those four companies; would you agree with that?

A. I don't know the status of this document, I'm afraid.

Isn't it a document by businessmen about themselves?

Q. So you wouldn't be willing to accept even something that was stated on Interros's own website?

A. Well, this is a methodological point again that the history -- I'm asked to give evidence here as a historian, I don't accept anybody's word, just because they say that something happened, without the kind of evidence to back it that does not come from the person who is saying it.

So there has to be a sort of -- in a perfect world, there has to be a multiplicity of sources to corroborate anything as having happened or not having happened.

I don't think this particular -- it's likely that this is true but why should we accept it?

Q. All right. Well, let's just move on.

Then coming down to the bottom of that page, it deals with the auction of the block of Norilsk Nickel shares under management. Can you see the bottom sidelined section on that page indicates that:

"In August 1997 a commercial tender with investment conditions was held. At this tender the block of shares of Norilsk Nickel was acquired by one of the Interros group of companies."

Do you see that?

A. I do see that, yes.

- Q. So I would suggest to you that that makes it clear that Interros also won the second stage auction to acquire the Norilsk Nickel shares.
- A. Yes.
- Q. Do you agree?
- A. This is what they're saying about themselves, yes.
- Q. All right.
- A. I would just add the reservation that the statements by big businessmen in Russia in the 1990s about what they did or did not do are riddled with cases of falsification, obfuscation and the rest of it. One has to be very, very careful about accepting anything from any of them.
- Q. But this is a print-out from the Interros website in November 2011. Now, even though it's the statement of what happened historically, are you still saying that you're not willing to accept this as evidence of what was happening in the loans for shares in relation to Norilsk Nickel?
- A. I have no specialist knowledge of that particular deal but I do have a fundamental, you might call it, philosophical scepticism that comes into play when I see statements by big Russian companies about themselves. This would be a lot more acceptable as a historical record if it was by someone else.

MRS JUSTICE GLOSTER: Mr Gillis, were there accounts of Interros for the period '95, published accounts?

MR GILLIS: I'll make enquiries.

MRS JUSTICE GLOSTER: Because if there were, and it will be a big if, then it will all be a matter of record, wouldn't it?

MR GILLIS: We'll make enquiries. It may well be that at that stage --

MRS JUSTICE GLOSTER: This may just be one particular line of enquiry, but --

MR GILLIS: My Lady, we'll make enquiries.

Could I just ask you then to turn over to tab 3, and I suspect I'll get the same reply.

Here we have the print-out from the Norilsk Nickel website and, again, you can see from the top of the page this is November 2011. In the middle of the page, can you look under the heading "RAO Norilsk Nickel was Born", and can you see there it says that:

"The control packet of shares, that's 38 per cent of the shares, or 51 per cent of the voting shares, was retained as state property, and in November 1995 was put forward at a mortgaging auction as a result of which Uneximbank became the nominal holder of the control packet of shares in Norilsk Nickel."

Do you see that?

A. Yes, I can see that. Yes.

Q. It goes on to say:

"On August 5, 1997 a commercial investment competition was held for the controlling 38 per cent. It was acquired by the investment company, Swift, which represented Unexim's interest."

Do you see that?

A. I do see that, yes.

Q. Again, are you not willing to accept that as establishing that, in relation to Norilsk Nickel, the company that acquired the rights of management under the loans for shares, ultimately ended up acquiring those shares on default?

A. I accept that this is likely to have happened but I don't think that a single source is a dependable way of establishing history beyond a set of tentative suppositions.

I hope I'm not being too fussy about that, but Russian companies have an appalling record of misleading -- big Russian companies have an appalling record of misleading the public about what happened in the 1990s.

Q. Well, as an expert in the area, are you aware of any sources which are indicating that anybody other than Interros ended up acquiring Norilsk Nickel?

A. No, I'm not. No.

Q. Can I then just turn to look at the position of Sidanko. Again, you've refused to agree to the statement in relation to Sidanko, which is statement 4, and can I ask you to turn over in the additional bundle at tab 4.

A. Yes.

Q. Again, this is a print-out, tab 4, it's a print-out from the Interros website. Can you please read the fourth paragraph which, again, has been sidelined:

"Having mobilised financial resources, the group, Unexim MFK, won the auction and received management of 51 per cent of Sidanko's shares. As per the auction conditions, shares were later purchased."

Then:

"At the beginning of 1997, MFK, whilst fulfilling obligations to the government, held an investment contest with commercial conditions and offered the aforementioned 51 per cent shares for sale. The block of shares was purchased by Interros oil company."

Do you dispute that or are you willing to accept it?

A. Well, I think if I could say ditto here for what we've already discussed in the previous segment, I would say ditto. This is a company talking about itself in a rather barren economy of Russia in the 1990s. It's...

Q. Again I would ask you, as an expert in the field, is

there any suggestion that anybody other than Interros acquired the Sidanko shares?

A. No, you're quite correct about that. That's the likeliest thing.

Q. And NLMK, can I ask you to turn to the fifth tab. Again, from the Interros website, and in the third paragraph, which again has been sidelined, can you see it indicates:

"By the mid-1990s, financial investors began consolidating large packs of NLMK. As such Unexim-MFK during pledge auctions received management, and later -- ownership of approximately 15% of MFK."

Again I would suggest to you that it makes it clear that it was the Interros group which won both stages of the NLMK loans-for-shares auctions and acquired the shares; would you agree?

A. Well, again, I would repeat that companies saying things about their own past history don't tend to have my automatic confidence. It's very, very likely to be the case that what you say is correct but, as historians, we're not in a position to be absolutist in what we think about the business history of the 1990s because the sources are so tenuous.

MRS JUSTICE GLOSTER: Were any of these companies obtaining capital from western sources?

A. I don't know.

MRS JUSTICE GLOSTER: I mean, were there any public prospectuses or anything of that sort? Were there any IPOs in relation to any of these companies?

A. For these companies in the mid-1990s, I simply don't know.

MR GILLIS: Professor Service, understanding your historian's caution of not wanting to commit yourself to a position until all available sources of evidence are available, and accepting that and understanding that, what I would still suggest to you is that there is ample evidence that Mr Potanin and Mr Prokhorov, having won the original loans-for-shares auctions, ended up with the ownership stakes in Norilsk Nickel, Sidanko and NLMK.

Subject to your caveat about all sources of information not being available yet, are you willing to accept that that's the position?

A. I'm afraid words have just been put into my mouth.

I have never today or at any other time said that you need all sources of information. That is an egregious misrepresentation of my position as a historian. I'm used to working with slender sources for some of the most contentious periods in modern Russian history. So it's simply not the case that I'm arguing for

a perfectionist position here, but I do think that if the evidence that we've been asked to look at is restricted to newspaper reports, memoirs and the glossy brochures of Russian companies, we're not really getting very far with historical assessment.

Q. But I think you have accepted in respect of Norilsk Nickel and Sidanko, and I'll ask the same question in relation to NLMK, no suggestion that anyone else other than the Interros group acquired NLMK?

A. That appears to be the case.

Q. All right.

Can I try and deal with Yukos and Mr Khodorkovsky more briefly. Again, this is the subject of one of the disputed statements, so I think going back to G(B)6/1, at page 16 G(B)6/1.01/16.

Can you see, if you look at disputed statements 3 and 6, you dispute the statement that Mr Khodorkovsky took control of Yukos under the loans-for-shares deal, you can see what it says there. And then you're disputing statement 6 that, in relation to Yukos, the individual or individuals who controlled the lender under the loans-for-shares scheme were able to acquire the government share when it defaulted on the loan and to take control of the company. So you're disputing that?

A. I'm looking now, I think possibly, at the wrong bit of the page.

You are want me to look at page 16, is that correct?

Q. Yes. Bundle 6.

A. Yes. And you want me to --

Q. Statements 3 and 6.

A. Under B?

Q. Under section B, yes "Details of other loans for shares..."

A. Well, I am being very, very fussy, yes.

In general terms, I think 3 and 6 are acceptable, but the extremely complex details of these business deals, I think, we do not yet have the evidence for them.

Q. But in terms of the Fundamentals, would you accept that Mr Khodorkovsky and his Menatep Group won the loans-for-shares auctions in respect of a shareholding of 45 per cent of Yukos, and that, in due course, Mr Khodorkovsky and the Menatep Group ended up owning that stake?

A. Whether it was exactly 45 per cent I have no means of knowing, but generally speaking, Khodorkovsky and Potanin, yes, won those deals.

Q. Thank you.

MRS JUSTICE GLOSTER: Choose your moment, Mr Gillis, will

you?

MR GILLIS: My Lady, that's probably a convenient moment.

I was going to move on to Surgutneftegas so that would be convenient.

MRS JUSTICE GLOSTER: Right.

Professor Service, I'm sure you've got better things to do at the weekend but please don't discuss your evidence with anybody or communicate with anybody about it or discuss the case.

THE WITNESS: I understand, yes.

MRS JUSTICE GLOSTER: You understand the point. Very well.

Mr Gillis and Ms Davies, what time do you want to start on Monday?

MR GILLIS: 10.15?

MS DAVIES: That's fine by me, my Lady.

MRS JUSTICE GLOSTER: How much longer do you think you're going to be with Professor Service?

MR GILLIS: I think I will be another hour and a half, possibly a little bit shorter. I will look at the transcript. I think I can see what Professor Service's response is going to be in relation to the other loans-for-shares companies so it may be that I can move more quickly.

MRS JUSTICE GLOSTER: Yes.

Mr Adkin, how long are you going to be with

Professor Service?

MR ADKIN: I don't anticipate having any cross-examination of Professor Service. There is then Professor Bean.

MRS JUSTICE GLOSTER: Yes, I've seen him sitting there patiently.

How long, Mr Gillis, do you think you're going to be with Professor Bean?

MR GILLIS: I think maybe an hour, an hour and a half, something like that.

MRS JUSTICE GLOSTER: So we should finish by lunchtime with a bit of luck?

MR GILLIS: Certainly by the end of the day.

MRS JUSTICE GLOSTER: Certainly by the end of the day.

MR GILLIS: My Lady, I'm cautious.

MRS JUSTICE GLOSTER: Okay, 10.15 then.

Apart from Professor Bean's statement, which I've read, there's nothing else?

MR GILLIS: My Lady, no.

MRS JUSTICE GLOSTER: So it's just Professor Bean. Will there be any submissions on Monday about anything?

MR GILLIS: I don't think so.

MS DAVIES: I don't think so, my Lady. If starting at 10.00 would improve the prospects of us finishing in the morning, may I just raise that as a proposal, so that we don't all have to troop back after lunch.

MR GILLIS: I'm perfectly content to start at 10.00 as long as it doesn't come with the condition that therefore we have to have finished by lunchtime.

MRS JUSTICE GLOSTER: No, no. Well, let's start by 10.00 if there's a chance then.

The only other thing is I would ask you, when you're preparing your closing submissions, if it is possible technically, to hyperlink the documents, if that's possible.

MS DAVIES: My Lady, certainly speaking for ourselves, in the draft in process we've been adopting the bracketing which should allow it. We do understand that there was a time lag between our opening getting hyperlinked but it is now hyperlinked on Magnum, we understand, as is the claimant's opening. So it may be that when you receive it from us next week it won't immediately be hyperlinkable but that with some technical assistance from Magnum we can make it so.

MRS JUSTICE GLOSTER: Yes, it doesn't need, so far as I'm concerned, really to be hyperlinked until the New Year, but it would be helpful if, come the New Year, it is hyperlinked.

MS DAVIES: We certainly have that in mind in the drafting process, and we're adopting the same bracketing for that reason.

MRS JUSTICE GLOSTER: Because it is extremely helpful.

Very well. Have a nice weekend.

(4.33 pm)

(The hearing adjourned until  
Monday, 5 December 2011 at 10.00 am)

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Monday, 5 December 2011

(10.00 am)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

PROFESSOR ROBERT SERVICE (continued)

Cross-examination by MR GILLIS (continued)

MR GILLIS: Good morning, Professor Service.

A. Good morning.

Q. On Friday, we were looking at disputed statements 3 to 6 which we have in bundle G(B)6 at tab 1, if that could be provided to Professor Service at page 16

G(B)6/1.01/16. As you may recall, I was taking you through six of the loans-for-shares transactions, do you recall that?

A. I do, yes.

Q. We'd looked at four of them, Norilsk Nickel, Sidanko, NLMK and Yukos.

A. Yes.

Q. And you had been explaining to my Lady the basis of your reluctance as a historian to express a concluded view given what you perceived to be the quality of the information available, and the fact that further information may subsequently become available that might impact the issue. Do you recall that?

A. I do recall that. That's a very fair summary.

Q. Now, the two other loans-for-shares transactions I was

wanting to consider with you were Surgutneftegas and Lukoil.

In order to see if we can cut this short, and to avoid the need to look at the further documentation we have in the additional bundles, I was wanting to see if we could agree the following propositions. If I could start with Surgutneftegas, which is the subject of disputed statements 5 and 6. Can I suggest to you two propositions and let me give you both of them first of all before you comment on them, to see if we can agree them.

The first is this: in relation to Surgutneftegas, will you agree with me that the information currently available indicates that Mr Vladimir Bogdanov and his partners took control of a stake of a little over 40 per cent of Surgutneftegas in the loans-for-shares auctions and ended up purchasing that stake following the state's default. That's the first proposition that I'm putting to you by reference to the currently available information.

The second proposition that I --

A. Could I just have a go at that one because that was a huge sentence.

MRS JUSTICE GLOSTER: Well, look at it on the screen.

MR GILLIS: I agree. If you look at it on the screen.

I would like also to put the second proposition to you as well.

A. Okay, I'm very sorry.

Q. No, not at all.

The second proposition which I was going to suggest to you is this, that as an expert in the area, would you also agree that there are no sources known to you indicating that Surgutneftegas was acquired by anyone other than Mr Bogdanov and his partners? So I'm only asking you to comment by reference to the currently available information. Do you see?

So those are the two propositions that I was wanting to put to you.

MRS JUSTICE GLOSTER: I think you should scroll back actually because it's difficult to follow otherwise.

A. Well, is that the end of your question?

MRS JUSTICE GLOSTER: Do you want to scroll back, Professor, and have a look at the first two questions. If you want assistance with that, please ask for it.

It starts at line 1 on [draft] page 2 really.

A. I think if I master this technology at this point...

Right, I've looked at proposition 1 and I can't see any objection in the light of the available evidence to proposition one.

MRS JUSTICE GLOSTER: So you accept that the information

currently available indicates that Bogdanov and his partners took control of a stake of a little over 40 per cent?

A. That -- as far as I'm aware, that's correct, yes.

MRS JUSTICE GLOSTER: Okay. Can you scroll down to the second one then, please.

A. And the second proposition seems to be correct too.

What I've been trying to say, though, is that what appears to have been the case is not necessarily what is provably historical reality. It's also true that since the beginning of the millennium we know now much more about the diversity of the whole commercial history of the 1990s than we knew at the time.

I'm not a business expert, I'm not a legal expert. I'm constantly saying that, in order to understand this period of history in the 1990s, we have to take a very broad view and we have to maintain philosophical scepticism.

MRS JUSTICE GLOSTER: Yes, Professor, what I don't know the answer to and I wonder whether you can help me on this is the following: if any of these companies were raising capital from the western markets, you'd have thought they would have had some sort of offering memorandum or circular or IPO document of some sort that would indicate some of these matters which one would have

expected would have been signed off by their auditors or corporate finance advisers or something of that sort, and I was just wondering (a) whether you knew whether any of that sort of information was available, and (b) whether you'd had a look at it?

- A. I'm afraid I don't know any of that information and therefore I haven't had a look at it.

MRS JUSTICE GLOSTER: Right, okay. Thank you.

MR GILLIS: Professor Service, could I then ask you the same in relation to Lukoil, which is the final company that I was going to ask you to look at, and this is looking at Lukoil and Mr Alekperov, so again can I put the two propositions to you and see if you are content with those.

The first is this, that in relation to Lukoil, would you agree with me that the information currently available indicates that Mr Alekperov took control of a 5 per cent stake in a loans-for-shares auction and ended up purchasing that stake following the state's default. So that's the first proposition.

Then the second proposition is, as an expert in the area, would you also agree with me that there are no sources known to you indicating that the stake in Lukoil was acquired by anyone other than Mr Alekperov?

- A. Well, I give exactly the same answer as before. I have

no reason to doubt the veracity of what counsel has just mentioned, but I'm open to the possibility that we can be surprised, because we have been surprised about a lot in Russian history. And I made that point I think sufficiently clear on Friday that, in comparison with the Gorbachev period which is much more open to public scrutiny, we know so little in reality about the political and commercial history of the Yeltsin years and even less about those of the Putin years.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Thank you. So Professor Service, would you agree with me then that in respect of the six loans-for-shares transactions we've looked at, the government defaulted on the debt in each case?

A. Yes, indeed, yes. I think that's the conventional wisdom.

Q. And in each of the six cases that we've looked at, would you agree with me that on the basis of the currently available information, the winner of the original loans-for-shares auction became the owner of the pledged stock?

A. That is also my understanding.

Q. Thank you. Could I now just move on to the characteristics of the buyers, and this is looking -- I'm going to stick with the same six transactions, so

that will take us to look at Mr Potanin,  
Mr Khodorkovsky, Mr Alekperov and Mr Bogdanov.

Can I start with Mr Potanin: would you accept that  
in 1995 Mr Potanin was a politically connected  
individual?

A. Well, there we are. This is a moot point. What earth  
is a politically connected individual? I think it  
really depends on what counsel is implying here, and  
this was one of my problems when going through the  
disputed statements, that they could possibly be seen to  
be very loaded.

I don't personally know what a politically connected  
businessman is. Does it mean that if they go to the  
Reform Club and they sit with an MP that they're  
politically connected? In the English language, yes,  
possibly, but it's a very vestigial connection. If  
something more than that is being implied, then I would  
like the term to be unscrambled. Because I'm testifying  
as a historian, not as a commercial operator.

Q. I understand that. If we can look at the facts then.  
Is this correct, that in the 1980s Mr Potanin worked in  
the government Ministry of Foreign Trade?

A. Correct.

Q. And is it correct that by 1995 Mr Potanin had close  
links with President Yeltsin's administration?

A. That's also correct.

Q. Particularly with Anatoly Chubais, the head of the State Property Committee?

A. With Chubais.

Q. Chubais.

A. Yes.

Q. And that Mr Potanin was in a position to propose the loans-for-shares scheme to Mr Chubais?

A. He would have -- I can agree with all of that, but my comment would be that the assumption is that proposals always come from the businessman, and I would challenge that. The evidence for that is not conclusive. And my general understanding of the politics of the 1990s is that the strategy of the government, not just in politics but also in economics, was set by the politicians. And until the evidence becomes absolutely conclusive in the opposite direction I would be very, very wary of assuming that men like Potanin were the instigators of the big strategic bail-out deal that happened in 1995 to 1996, and that's why I think we have to be a little bit fussy about terms like politically connectedness.

Q. I'm not asking about whether all proposals came from businessmen, but just concentrating on the loans-for-shares proposal, would you accept that

Mr Potanin was instrumental in proposing the loans-for-shares scheme to Chubais?

A. "Instrumental" is another rather awkward word to deal with. Was he involved in the discussions that led to the loans-for-shares deal? Yes, he certainly was. He was one of the instruments. But who was handling those instruments? That's another question. Who was in charge of the process? That's another question, a much more fundamental question.

Q. Could I ask you to look at the additional bundle at tab 15 --

MRS JUSTICE GLOSTER: Mr Gillis, I don't want to stop your questioning, but at the end of the day I've got to decide what Mr Berezovsky's role was, haven't I, and I can only get limited assistance from the extent to which these other businessmen were or were not involved in their particular --

MR GILLIS: I would accept that, my Lady, but at the same time --

MRS JUSTICE GLOSTER: Again I do not want to stop you because I can see you might wish to draw a parallel, but the extent to which I'm going to go into the detail of all this on the documents --

MR GILLIS: Well, maybe I'll just try and take it a little bit more quickly. The concern was that it was being

suggested that Mr Potanin was an industrialist. Maybe I can just concentrate on the facts then.

Would you agree that from August 1996 to March 1997 Mr Potanin was the First Deputy Prime Minister of the Russian Federation?

A. Yes, you're obviously completely correct about that.

Q. So --

A. And his political connectedness then was very substantial.

Q. And so would you accept this, that Mr Potanin was involved in politics as well as business? He was not just an industrialist?

A. We're talking about what period now?

Q. The period 1995 through to 1997.

A. Because in your previous -- in the previous comment, I heard 1996-7 I thought.

Q. Well, take it from 1995 through to March 1997.

A. My view is that Potanin became politically involved over those years, 1995 to 1997. My comment again would be that wariness has to be applied to any possible assumption that here we have an instigator in Potanin. My view is -- my tentative view on the politics of the 1990s was that the politicians were in charge, and that insofar as the businessmen became politicians they did so at the invitation of the politicians who had

a strategic view of their own.

Q. Professor Service, could I just ask you to look at G(B)4/1 at tab 15 G(B)4/1.15/1. This is your book, "Russia: Experiment with a People", is that correct?

A. Yes.

Q. If we can go to page 144 in the bottom right-hand corner, that's the page numbering in the bundle G(B)4/1.15/144. Going to the page numbering in the book, at page 145, which we have at the top right-hand corner, can you come down to the bottom paragraph on page 145 in the book, can we pick up about four or five lines from the bottom:

"In deepest secrecy, the businessman ... Chubais brought together a group of businessmen who became known as the 'oligarchs'. They included [Mr] Abramovich ...Aven ... Berezovsky ... Fridman ... Gusinsky ... Khodorkovsky and ... Potanin. Although the legal spending limit for [the] Presidential candidates was \$3 million, Yeltsin's campaign team probably had as much as \$500 million at their disposal. Yeltsin could offer financial inducements to politicians and administrators who could influence the results of the election in his favour."

Then you go on to say:

"But there was a price to pay. As part of the deal,

the 'oligarchs' were given temporary ownership of the controlling [shareholders]..."

So that's going into the loans for shares.

So would you accept that that is, at least at that stage, your description of what was happening, that in return for the influence that they were able to bear, they obtained interests under the loans-for-shares stake.

A. Yes, I do. If I were writing this book today I might not simply call Anatoly Chubais a businessman, because he started out as a new politician in 1991 to 1992 who turned himself, to everyone's astonishment at the time, into a businessman. But at the time he was bringing these people together; he straddled both worlds, more than any other single individual in Russia at the time I think.

Q. Can I then just move on to Mr Khodorkovsky, just to establish his political background, if I can use a more neutral phrase.

Is this correct, that by 1995 Mr Khodorkovsky already had taken a political job as a deputy minister to the Minister of Fuel and Energy in the Gaidar government?

A. Yes, I can't confirm that absolutely from memory but I'm assuming that you have done your homework.

Q. Well, you had better check that I have done, and it's not a memory test on your part.

A. No.

Q. If you could look at the additional bundle at tab 16. If you can turn to page 299. The sidelined passage there which goes over the page:

"... Khodorkovsky became an adviser to Vladimir Lopukhin, Gaidar's minister of fuel and energy. The Gaidar cabinet was in office for less than a year, and the carving up of the oil industry had just begun, amid much uncertainty. When Khodorkovsky took the job with Lopukhin, he did not want to leave Menatep Bank, so Lopukhin created an informal position, with the rank of deputy minister, putting Khodorkovsky in charge of the energy ministry's 'investment fund'."

So is that correct?

A. Thank you for drawing that to my attention. I think Hoffman is entirely reliable on this sort of thing.

Q. So Mr Khodorkovsky himself was involved in politics as well as business, he was not just an industrialist?

A. He was not just an industrialist, no. He was involved in politics, that's not the same as running the political show.

Q. No, I accept that, but he was in a position possibly to at least seek to influence the politicians?

- A. I agree with that entirely. I think we're actually becoming closer and closer on this. These businessmen in this period, some of these businessmen, did become politically active, institutionally involved, which is -- perhaps you don't agree with this, or perhaps counsel doesn't agree with this -- that's not quite the same as, it's not at all the same as running the whole political system.
- Q. I think I've already shown you the passage in your book, "Russia: Experiment with a People", which also explains that Khodorkovsky was in the same grouping, if I can put it in that way, as Potanin?
- A. He was in a grouping of businessmen, that's not to imply that he was permanently or fundamentally tied to a set of relationships with the others in the group, and, in fact, everything I've heard since I wrote my book about the very richest of businessmen in the late 1990s suggests that the rivalries among them were very, very intense indeed.
- Q. Can I come on to Mr Alekperov and, is this correct, that Mr Alekperov spent the 1980s working in the Siberian oilfields which became part of Lukoil?
- A. Correct.
- Q. Then from 1987 to 1990 he was the general director of Kogalymneftegas, one of the production units that became

part of Lukoil?

A. Correct.

Q. Would you agree that that was a role that would now normally be described as being a red director?

A. It would indeed, yes. Yes.

Q. And that was an important and powerful position within the Soviet system?

A. It was an important position within the Soviet system. It was one of very limited power. I wouldn't say that that indicated someone who was very high up in the system.

Q. Mr Abramovich, in his evidence, said that a red director would have very great power and influence in their region and not just within the company. For my Lady's note, that's Day 16, page 151, at line 19.

Is that something you would agree with or not?

A. Well, I'm not here to agree or disagree with Mr Abramovich, I don't know in what context he said that this was a powerful position. It's certainly true that red directors, where the enterprise was the single big economic activity in a particular region, a director in that kind of situation, perhaps in a far-flung area of the Soviet Union, would be a person who had considerable influence within that region, that's certainly true. I'm loathe to go any further than that.

Q. Then in 1990, Mr Alekperov was appointed to the government as first deputy minister for the oil and gas industry, is that correct?

A. That's correct, yes.

Q. And would you agree that he lobbied for the creation of Lukoil while in his position as deputy minister for oil and gas?

A. That also appears to be correct.

Q. And that he retained his position as deputy minister until 1993 when he left to take full-time control of Lukoil, is that correct?

A. I believe that's correct.

Q. So would you agree that Mr Alekperov had a political position in that relevant time?

A. I would indeed agree.

Q. And that Mr Alekperov was himself involved in politics as well as business. Again, he was not just an industrialist I would suggest to you?

A. That's a very fair point.

Q. And would you agree that Mr Alekperov's political position assisted him to create and take control of Lukoil?

A. I believe that to be the case.

Q. And then if I could turn to Mr Bogdanov, and this is in relation to Surgutneftegas, is it correct that

Mr Bogdanov became the general director of Surgutneftegas in 1984 while it was still a state-owned production association?

A. That's correct.

Q. And Surgutneftegas was then created as a vertically integrated oil company in 1992, is that correct?

A. I believe that's correct.

Q. And Mr Bogdanov was then appointed both as the chairman of the company's board of directors and the president of the company?

A. Correct.

Q. And so, again, would it be correct to describe Mr Bogdanov as being a red director?

A. Yes. I mean, this isn't a -- the term "red director" came into being in the 1930s when Stalin conducted his industrialisation campaign, and it referred to people who were politically reliable insofar as the Stalin administration was concerned. It's a rather sloppy term when it goes through the years. All it really means by the middle of the 1990s is someone who had a job running an enterprise at the end of the Soviet Union and survived into the new business environment with a similar post in private industry. I'm not sure it gets you very far as a term beyond that.

Q. It connotes a person of power and influence, I would

suggest, not just within the company but also within a region?

A. I'm afraid I don't agree with that at all. That's an extraordinary definition of red director.

Q. Is it correct that Surgut is a very remote Siberian region?

A. That's certainly correct, but "red director" does not imply someone who had a huge regional influence. It certainly does not imply that. This is just a technical point, you're simply wrong about that.

Q. Would you agree it in relation to Mr Bogdanov and his position within Surgut?

A. You can -- one can call Mr Bogdanov a red director if one wants to draw attention to his appointment career before 1992. That's really all that the term is indicating to you, to one.

Q. Forget about the term "red director", and just concentrating on Mr Bogdanov and his position within Surgutneftegas and Surgut itself, a remote Siberian region, would you accept that he was a person of great power and influence?

A. I think that within his enterprise and within his region he exercised as much power as anyone. I'd be hesitant to go beyond that point.

Q. Is this correct: the Surgutneftegas management, led by

Mr Bogdanov, I would suggest to you were able to use their control of their company and their influence to exclude other bidders in the loans-for-shares transaction?

A. That appears to be the case. I'm quite comfortable with what has just been said.

Q. And if I could just ask you to go to tab 16 in the additional bundle, so tab 16. If I could take you to page 318. This is from Hoffman's book, "The Oligarch", which I think is an author you cite in your report, is that correct?

A. I do cite Hoffman in my report, yes. Certainly I do, yes.

Q. And could I just ask you to look at the second full paragraph which starts:

"On the same day as the Yukos auction ..."

A. This is page 3?

Q. 318.

A. Thanks.

Q. So:

"On the same day as the Yukos auction, Potanin snapped up another oil company, Sidanco, winning 51% of the shares for the 130 million. The two [other] oil generals, Alexperov and Bogdanov, also won loans-for-shares auctions for pieces of their companies,

Lukoil and Surgutneftegaz respectfully. The Surgut auction was an especially graphic example of how the Chubais ideals of openness and competition were ignored in practice. Outsiders were warned in advance by the Surgut management not to make a bid, and the airport in Surgut was closed that day, so other bidders could not fly in to buy part of the company. They did not."

In the context of Surgut, would you agree with that?

A. Most of my information about that auction comes from Hoffman, so I think he did a thorough job there.

Q. Thank you for that.

Would you agree, I'm just sort of trying to summarise, and I can see that summarising is not something you like to do because it possibly takes you to a level of generalisation that you're not entirely comfortable with, but is this correct, that on the basis of the information currently available, for the loans-for-shares packages in Yukos, Norilsk Nickel, Sidanko and NLMK, they were acquired by Khodorkovsky and Potanin, both of whom had held political positions and, I would suggest to you, had political connections and influence?

A. Firstly, I love to summarise. I think a historian who doesn't make connections and seek out patterns, even on a tentative basis, is not worth his salt.

My objections to what counsel has been saying over the past few days is that I don't like his summaries, I don't like his starting points, including his linguistic and terminological starting points because they reflect a misunderstanding of what was going on in Russia in the 1990s.

But on the specifics of what he has just said, I've got no objection at all.

MRS JUSTICE GLOSTER: Right.

A. But I think it is my job here to be picky, because what is implied in the language and the terminology affects the chronology and also the contents of the relationship between politics and business, and that's too big an objection for me to overlook what I think.

MR GILLIS: Then in respect of the loans-for-shares packets in respect of Lukoil and Surgutneftegas, what I would suggest to you is that those shares were acquired by persons who could be described as red directors, and I understand your concern about that phrase, but they were acquired by persons who had influence within the company and also within the local region. Would you agree with that?

A. I think possibly counsel has got his questions written down already, and although I have cauterised his use of the term "oligarch" I have yet to succeed with the term

"red director".

But leaving that aside, I think that the substantive empirical analysis that he has offered is unobjectionable.

MRS JUSTICE GLOSTER: Right. Subject to the caveats you have presented earlier?

A. Yes.

MR GILLIS: Thank you.

Could I -- no, I'll move on from that.

Could I then move on to the question of political influence. Professor Service, I think we can see from your report that you were asked to look at the question of political influence in two aspects, and I think we can see this at paragraph 4(d) of your first report which we have at page [2] G(B)3/1.1/2.

You were asked to consider the question of political influence, first, as regards Mr Berezovsky's political influence in the 1990s and then, secondly, Mr Abramovich's political influence in the 2000s, can you see that?

A. Yes, I can, thank you.

Q. I think you expressed a difference of opinion with Professor Fortescue in respect of both of those areas?

A. That's correct.

Q. Now, Professor Service, I'm not going to ask you about

Mr Berezovsky's political influence because Mr Abramovich and his legal team have accepted in this action that Mr Berezovsky did have political influence, and that he was able to use that influence to get the Russian Government to create Sibneft and sell the rights to manage Sibneft.

For my Lady's note, that's Day 2 at page 7.

So the only point that I want to ask you about is Mr Abramovich's perceived and actual political influence in the 1990s. Do you understand?

A. Yes, I do.

Q. So could I ask you to take out the joint memorandum which we have at bundle G(B)6, at page 14 G(B)6/1.01/14. Could I ask you to read that section G to the bottom of the page, so that's statements 47 and 48. (Pause)

A. I've done it, thank you.

Q. Thank you. So can we leave aside terminological disputes about the definition of "oligarch"?

A. Yes, we've put that behind us.

Q. We've not put it behind us, we understand your position in relation to it.

A. I'm sorry that counsel hasn't put it behind him, but if that's his --

Q. No, Professor Service, if you prefer to view it as

putting it behind us I'm happy to put it in that way.

A. Excellent.

Q. As I understand what you're saying here, you accept that there were widespread press reports, both that certain oligarchs held a favoured position with the Putin administration and that Mr Abramovich was one of those oligarchs. But you say that those reports' existence does not mean that it was necessarily true?

A. Well, that's correct, yes. That's my opinion, yes.

Q. What I'd like to consider with you is the middle ground between those two positions, as it were. And the question is whether a reasonable person who was aware of the circumstances and the press reporting at the time could conclude that Mr Abramovich did hold a position of favour and influence within the Kremlin. Would you accept that that was a view that a reasonable person could come to?

A. A reasonable person might want to say "A lot of what I read in the press is complete bunkum, it may or may not be true".

What is very clear is that Mr Abramovich was a successful businessman in the 2000s, that he was not in disfavour with the Putin administration, that he worked in political posts in Chukotka. But whether special favour was shown to him by the Putin

administration doesn't come from Putin himself, doesn't come from Abramovich himself, it comes from press reports. And Russian press reports are subject to the limited reliability that we went through on Friday.

Q. Professor Service, I'm not trying to suggest that a reasonable person couldn't come to the opposite view, I'm just asking you whether a reasonable person, seeing these press reports, could come to the view that Mr Abramovich did hold a position of favour and influence in the Kremlin, as you seem to suggest, or accept, was being widely reported in the newspapers?

A. My experience of Soviet citizens, and since the fall of the Soviet Union, Russian citizens, is that those who are reasonable and astute maintain a very, very high degree of scepticism about what they read in the newspapers. That is the way that they were acculturated in the Soviet times and it has not left them. That's one of the reasons, for example, why there are so many Russian jokes, "anekdoti". That's why the politicians are continually ridiculed in contemporary Russia. Russians on the whole have been given little reason to trust their politicians.

So my general feeling is that a reasonable person would take everything he read in the newspapers with a pinch of salt. Perhaps I'm meeting the wrong sort of

Russian from the point of view of it's perfectly possible that I've not met Russians who are more gullible than the people I meet in connection with my work. That's certainly a possibility to which I'm open. But my general feeling is that Russians have a huge amount of scepticism about what comes over to them in the public media.

Q. Well, Professor Service, I'll try to take it shortly and I'll just take you to one example(?).

Do you say a reasonable person reading these reports could not believe that Mr Abramovich had influence?

A. I believe that press reports have an influence on the way that reasonable people would think about politics, it would lead them to consider that it was quite a possibility that Mr Abramovich was in favour, but not to assume some kind of stronger influence on Mr Abramovich's part as to suggest, for example, that he was some kind of instigator of public policy, and that's what I'm edgy about. That's why I'm reluctant to swallow a general statement of this kind without these sort of reservations, these sorts of reservation.

Q. Would you accept that the Russian people were also very sceptical about the nature of the relationship that existed between the oligarchs and the politicians?

A. I think I would put it more robustly than that. I think

that up to the year 2000 most Russians hated the big businessmen who were generally referred to as the oligarchs, and that this explains the ease with which Vladimir Putin managed public opinion after the year 2000 when he got rid of Berezovsky, Gusinsky and then Khodorkovsky.

Q. Can I just take you to one example and just ask you about this. One of the authors you cite in your report and your published works is Anders Aslund, is that correct?

A. That's correct.

Q. He was formally a professor at the Stockholm School of Economics, and economics adviser to the Russian and Ukrainian Governments.

A. That's correct, yes.

Q. And in March 2001, Professor Aslund told the Washington Post that he believed that Mr Abramovich exercised a controlling influence over parts of the Russian Government, were you aware of that?

A. I'm aware of that article, yes, and I noted when reading it that it's likely to be one of those articles where you're halfway through a tutorial or a class and a journalist rings you up and says that he has a work panic on and could you give him a quick quote on some such subject or other, and you agree to do it at the end

of a class or the tutorial, and you help them out, and then the thing appears in the press next day and you have no control over the contents of that quotation, and no means of come-back.

I would prefer to judge what Anders Aslund has to say through his books rather than through a quotation by a journalist who is panicking to hit a deadline.

Q. Professor Service, I put to you that quite a lot of that is speculation on your part.

For my Lady's note, the article is B(B)1.02 at page 72 B(B)1.02/72.

Professor Service, I would suggest to you that that's not the type of comment that Professor Aslund is going to make lightly, and that if it was his view in 2001 that Mr Abramovich held a position of influence over the Russian Government, that was a view that could be well held by other persons reading the widespread press reports that you have referred to?

A. Well, I don't resile from what I've just said. I know the article to which reference is being made. Aslund is an extraordinarily prolific writer on the Soviet and post-Soviet Russian economy. If we want to know what he thinks or thought about the relationship between business and politics in the period since the fall of the Soviet Union, the best thing to do is consult his

books and articles written in his own hand.

- Q. Professor Service, could I ask you to look at Professor Fortescue's report, which we have at G(B)1/1, at paragraphs 97 and 98, which is at page 28 G(B)1/1.01/28.
- A. Sorry, I'm not -- I'm to look at 98, am I?
- Q. If you could look at 98, that's an article in 2002. Can you see that?
- A. I can.
- Q. By those authors. Again, they are expressing the opinion that Roman Abramovich is in a position of some influence with the Kremlin. Is that fair?
- A. Yes, that's what they're saying, yes. And I'm not saying that Abramovich isn't influential in discussions in the Kremlin, I'm just worried about the implications of the scale of that influence. Of course Russian politicians talk to the big businessmen of today.
- Q. Professor Service, what I would suggest to you is the fact that well-known academics with expertise in the area could reach the conclusions that we've seen them expressing about Mr Abramovich's influence meant that it was a view that could reasonably be reached by others reading those press articles?
- A. Well, I don't find Richard Sakwa's comments are quite as categorical about the push given by Mr Abramovich to

Mr Putin as counsel is implying, and I'm not convinced that this is an accurate picture of Russian politics in the year 2000 to 2001, not provably anyway.

Q. Could I move on to "State Action to Attack Private Business Interests", and could I ask you to take out the joint memorandum which we have at bundle G(B)6. Could I ask you to turn to page 24 G(B)6/1.01/24, which is topic 4. This is dealing with "State Action to Attack Private Business..."

Can you see that?

A. Yes.

Q. Could I ask you to read statement 57 and the response in paragraph 52. (Pause)

A. I see, yes.

Q. All right. Now, again, we've put the issue about the definition of "oligarchs" behind us.

A. Yes.

Q. What I understand you to be saying is that you agree with subparagraphs 1, 2 and 3, essentially that raiding and actual or de facto confiscation of private businesses through improper measures by Russian State agencies did occur, I think you're accepting that?

A. Yes, I am. Yes.

Q. So for convenience we'll just refer to that as raiding, but you do not agree with points 4 and 5 because you do

not accept that the available evidence proves that confiscation of private companies frequently occurred at the prompting of oligarchs?

A. As far as I know, no one has done a survey of business confiscations, I don't know of any academic article to that effect, and that's why I disliked the rather sweeping generalisation and the word "often".

Q. What I would like to do is just sort of clarify the scope of the disagreement. I raise the point because statement 4 does not suggest that this conduct frequently occurred at the prompting of oligarchs. It says that it:

"... often occurred at the prompting of or in collusion with businessmen, including prominent oligarchs ..."

So if you consider the position with respect to businessmen generally, including but not limited to oligarchs, and also with respect to the conduct being either prompted by or in collusion with businessmen, is the statement one that you're prepared to agree with?

A. If --

Q. Leave aside the question of "often" or "frequently", just for the moment.

A. Ah, right. So did this behaviour occur in the 1990s, that big business --

- Q. I think we're looking at the period from 2000 onwards.
- A. From 2000, of course, yes.
- Q. Including the period 2001 to 2004.
- A. Yes. Did this kind of behaviour occur from 2001 through to 2004? Yes, it did. I think we can agree on that.
- Q. Thank you. So is your objection really in relation to the suggestion that it happened often at their instigation?
- A. My guess is that it happened often, but I'm asked to testify here on the basis of what I can demonstrate. And "often" is a loaded word that I would row back from. And that's one of the reasons I -- at least the main reason why I pulled back from sub-point 4.
- Q. I think you are saying there that you guess it happened often, but would you accept that it was sometimes prompted by or in collusion with businessmen -- I'm just trying to see, because it may well be for the court's purposes, Professor Service, that it doesn't actually matter whether it often happened or whether it sometimes happened, so it may be that we can just move on from this dispute.
- A. I may even have used the word "sometimes" myself so I'm entirely happy about that reformulation.
- Q. Thank you.

Could I then move on to the question of oral

agreements, which I think is the last topic that I want to address with you. This is the use of undocumented commercial arrangements in Russia during this period.

A. Ah, right, yes.

Q. Just to remind you, could I ask you to take out the joint memorandum and turn to page 18 G(B)6/1.01/18. Could I ask you to look at section C which starts at the bottom of page 18, do you have that?

A. Yes.

Q. If I could ask you to read statements 16 to 18 and then your comment at paragraph 40. (Pause)

A. Yes, I've caught up, yes.

Q. Thank you. So in summary, I think what is being suggested here is that it was common for Russian parties to enter into oral and informal ownership agreements in Russia in the 1990s, and Professor Fortescue indicates that he agrees with that.

I think we can see at paragraph 40 what you say is that you disagree with these statements for the reasons stated in your first report. Can you see that?

A. Yes.

Q. Now, what I'd like to do is just look at your first report about this topic, because what I want to suggest to you is that it's not easy to divine from what your report says why you reject the statements we've just

been looking at. So could I ask you to look at your first report, which we have at bundle G(B)3, and I think this section starts on page 15 G(B)3/1.1/15. At paragraph 34, you start by saying:

"The picture drawn by Professor Fortescue ..."

And I think we can see from the title heading that this section is actually referring to paragraphs 242 to 310 in Professor Fortescue's report where he is dealing with business practice in Russia in the early 1990s and early 2000s. I don't think I need to ask you to turn that up.

What you say is:

"The picture drawn by Professor Fortescue of Russian business practice in the 1990s is broadly in line with [the] scholarly work on the subject..."

Then you explain what you intend to add. So you say there's a:

"... need for an explicit historical understanding of this phenomenon and deal with the weaknesses and limitations of the views which he expresses."

I would suggest to you that there, there's no suggestion that you agree with Professor Fortescue's general conclusion?

- A. I think that Professor Fortescue pulled out the side of business practice that was informal, and that's what

I intended to express concurrence with. I don't have any doubt that a lot of what went on was oral and undocumented.

Where his report, though, is less than helpful is its lack of attentiveness to documented written material. Some of that material relates to share ownership documents, some of it relates to what I am hoping in the years ahead we will find out about political and commercial practices in the diaries, the notes, the minutes of meetings that must have been kept in the 1990s and 2000s, but the evidence of which, as yet, has not come to light. And if you will recall, I mentioned that the immediate preceding period of Soviet history, 1985 to 1991, is now replete with such additional evidence.

I cannot believe -- it just contravenes all of the bounds of common sense to assume that nothing was written down, everything was done on a handshake, that when Mr Potanin or Berezovsky or Abramovich met each other, they consigned everything to the recesses of their brain and relied entirely on memory. For me, that conflicts with common sense. It also conflicts with --

MRS JUSTICE GLOSTER: I think that's a matter for me, isn't it, at the end of the day.

A. I'm sorry, I'm trespassing again.

MRS JUSTICE GLOSTER: All I'm interested in is your experience and knowledge of historical position.

A. Well, then I'm sorry about that, my Lady. I've trespassed again.

MRS JUSTICE GLOSTER: It doesn't matter, but let's have your evidence on the...

MR GILLIS: Professor Service, what I was going to ask you to do, in paragraph 34 you seem to have expressed broad agreement with the view that Professor Fortescue has expressed.

A. As one side of the coin.

Q. Well let's just go through it. And then what I would suggest to you is that in paragraphs 35 and 37, you essentially endorse the account that Professor Fortescue is giving about the chaotic business environment which he says encouraged the adoption of informal and oral arrangements?

A. That's correct.

Q. And is this correct: you would not dispute that there was a strong incentive for Russian businessmen to disguise the beneficial ownership of their assets; would you agree with that?

A. I also agree with that in general terms. Without -- well, I mustn't trespass again.

Q. And then in paragraph 37 you say in the last sentence

G(B)3/1.1/16:

"To be a businessman was not an easy option -- and the new businessmen of Russia, distrustful of official authority but hopeful of making a profit, often operated with highly informal methods and -- let it be said -- sometimes with scant respect for the law."

Do you see that?

A. I can, yes.

Q. So again, I suggest there that you are really saying two things. You're saying firstly that businessmen often operated with highly informal methods, and second that you're saying they sometimes operated with scant respect for the law?

A. I do indeed say that, but I then go on to say that this extraordinary, extreme informality was counterparted by an appreciated need for some kind of documentation in other areas of commercial practice.

Q. Then, Professor Fortescue (sic), at paragraph 38, in the first two sentences, you say that:

"Among the informalities identified by commentators was a sketchy attitude to drawing up and signing explicit and binding contracts. Professor Fortescue's report clearly explains the prevalence of this --"

Sorry, Professor Service, the first two sentences of paragraph 38 say:

"Among the informalities identified by commentators was a sketchy attitude to drawing up and signing explicit and binding contracts. Professor Fortescue's report clearly explains the prevalence of this contractual 'innocence'."

A. Yes, I think that Professor Fortescue, in dealing with that side of the coin, does a very clear job.

Q. Thank you.

Then I think it's at the top of the next page where you start to add the reservations G(B)3/1.1/17, we can see at the top of page 17 you then go on to say:

"Nevertheless sketchiness is not the same as ... complete absence of documentation. Mr Shvidler's Fifth... Statement draws attention to documents involved in the registration and transfer of shares..."

Then in the middle of that paragraph, you go on to say:

"There were -- and are -- things that remain unrecorded. But there was an obvious risk in doing business exclusively on the basis of a handshake, and everyone knew that certain procedures such as the formal registration of shareholdings would need to have taken place if ever the question of judicial enforcement ... [arose]."

Do you see that?

A. Yes.

Q. Then I think at the end of that paragraph, you then say you offer those comments as a caveat on the general points about sketchiness made by Professor Fortescue?

A. Yes, I'm -- I thought Mr Shvidler's evidence was really quite plausible on this, and of course when I had -- when we had the joint meeting in San Francisco, this was something that Professor Bean was particularly revealing about and confirmed what Mr Shvidler had emphasised.

Q. Mr Shvidler, I think, was indicating that documentation would be created through the process of share registration. Is that correct?

A. That's correct, yes.

Q. Can I now ask you just to look at Professor Fortescue's second report.

A. Yes.

Q. Which we have at G(B)1/1. Can I ask you to go to page 158 at paragraphs 45 and 46 G(B)1/1.02/158.

Could I ask you to read paragraphs 45 and 46.

(Pause)

A. Yes.

Q. And Professor Service, what I was going to suggest to you is that your analysis in your first report, which we've just looked through, I would suggest is very much in line with what Professor Fortescue is saying here.

You say that transactions would tend to create some paper trail, for instance in relation to registration of shares, but at the same time there may be oral or informal arrangements between the parties as well, and that the documentary record of a transaction could be sketchy; would you agree with that?

- A. I would add the other side of the coin, that we do not have the right to assume that the paper trail ends at the point where share ownership records are made. I hesitate to go any further than that because I'm aware that this is not my business here. But I think I am allowed to say that if the years 1985 to 1991 have yielded up records we previously didn't know existed, the likelihood is that the same will happen to subsequent years of Russian political and business history.

- Q. Can I just try some propositions on you and see whether you would agree with this.

First, would you accept that one of the consequences of the high risk business environment which you identify existed in Russia, and I think maybe you had the result that often people sought to do business within groups of people who they knew and trusted?

- A. Yes, absolutely agree. Whether they trusted them I'm not sure but -- fully trusted them, especially in

business, I'm not so sure about that now. Probably I'm less sure about that than when I wrote the "Russia: Experiment" book, because I've done further work on the big businessmen but not published it, and I'm pretty sure that their mutual rivalries and enmities were very extreme in the 1990s.

Q. Secondly, I think you accept in the joint memorandum that the Russian court system could be inefficient and ineffective, I think we see that from paragraph 38 of the joint memorandum; would you agree with that G(B)6/1.01/18?

A. I can't see how anyone would disagree with that statement.

Q. And, Professor Service, what I would suggest to you is that it flows that when contracts were made between individuals who knew and trusted each other, and who expected to be able to resolve issues by negotiation, there was a lower incentive formally to document contracts; would you agree with that?

MRS JUSTICE GLOSTER: Again, to what extent is that directed to his historical knowledge or expertise? It sounds to me like a kind of logical proposition.

MR GILLIS: My Lady, I think maybe it is more of a logical proposition, but I wished to see whether Professor Service, on the basis of his experience, was

willing to agree to it.

- A. I'm not sure if I would agree to it. The fact that you trust someone doesn't mean to say that you don't write something down.

In a country whose history is riddled with episodes where people paid a very, very heavy price for doing what they did, thinking that they were in line with the current administration's desires, and then those desires changed, there is a tradition of -- a long tradition, going back before the end of the Communist period, for people to get others to sign their records so that they can cover their backs for any future unpleasant contingencies.

So to that extent, I'd be reluctant to subscribe to the general proposition that counsel has just expressed.

- Q. Even between people who trust each other, is that what you're saying?
- A. I think that the rumbustious, dangerous business history of Russia after 1991 induced businessmen in particular to hedge their bets about what degree of trust they could have in any other individual. It was worse than the Wild West in as much as very quickly in the second half of the 19th century the judges and the sheriffs in the newly claimed parts of the USA came to impose a degree of order that has really yet to be imposed on

post-Communist Russia even to this day.

- Q. Professor Service, I think you accept, do you, that in the Russia of the 1990s, many Russian businessmen took steps to hide their assets; do you agree with that?
- A. Well now, if we're moving on from that then, yes, I think it's very clear that they -- that businessmen did have an incentive to try to hide their assets.
- Q. Professor Service, what I would put to you is that where there was a perceived need to conceal ownership of assets, one method that could be used, and was used, between people who trusted each other was an oral agreement whereby one would hold assets on behalf of the other. Would you agree with that?
- A. The evidence for that proposition is not as conclusive as counsel suggests.
- Q. Maybe not as conclusive, but would you accept that there is evidence that indicates that that was an arrangement that people entered into?
- A. I think there is no substantial evidence to that effect, and I think that here we do have to look at the dangers of not recording in some sort of way what was going on in the 1990s, and in similar periods of uncertainty in the history of modern Russia the same phenomenon is observable.

So I'm afraid I don't accept that proposition, I

don't think the evidence for it is substantial.

Q. You may say it's not substantial, but are you willing to accept that there is evidence that indicates these types of oral arrangements were used?

A. Well, the proposition that there were oral arrangements is a strong one. It's robust, it's believable.

What isn't believable, to my mind, is that individuals who were staking hundreds of thousands of rubles, I'm not talking about billions of rubles even, would be prepared to consign their framework of arrangements to some sort of mental recess of memory and totally to a depository of assumed mutual trust.

This is not a -- this is not, to my mind, convincing in the light of the history of the country that we're talking about, or indeed the history of any country that I know anything about.

Q. Professor Service, what I would suggest to you is that it makes sense, if you have a relationship of trust and a desire to conceal ownership of assets?

MRS JUSTICE GLOSTER: Again, that's a proposition of logic rather than a proposition based on his historical expertise or experience.

MR GILLIS: Maybe then I can just ask you to look at one article, just to get your comments on it.

A. Could I just intervene, am I allowed to intervene?

MRS JUSTICE GLOSTER: Yes, please do.

A. I've never lived in a country where there is so much pressure on one to get documentation for the contingency that an undesirable contingency, an undesirable occurrence might arise from an agreement or an incident that one is involved in. So that big Russian businessmen didn't cease to be Russians when they became rich, and the framework of understandings, both politically and economically but fundamentally culturally too, didn't change when they became rich.

MR GILLIS: Well, can I just ask you to be handed G(B)2/4 at tab 141 G(B)2/4.141/167, this is an article from Vedomosti. Could I ask you, if you can just look at the beginning of the article. And if I could explain to you, it's an article dealing with the dissolution of the partnership between Potanin and Mr Prokhorov, two of the most prominent Russian oligarchs, in 2007.

Would you agree that the assets in which they were partners included Norilsk Nickel, which was one of the most valuable companies in Russia?

A. Yes, I would agree with that, yes.

Q. If you can then turn to page 169 G(B)2/4.141/169, and if you could read the third and fourth paragraphs, which is the paragraph that starts:

"For a long time ..."

(Pause)

What I would suggest to you, Professor Service, is that from these paragraphs you can see that Mr Prokhorov was complaining that some business assets to which he was entitled had been transferred to a third party company and were not held by the main KM investment vehicle.

And Andrey Klishas, who was the president of Norilsk Nickel, gave an explanation for how those assets were held. And one can see in that second paragraph that you have read, he is saying:

"'In parallel to KM Invest' there existed a group of companies created by ... Barbasheva. The shares of the companies mentioned were not registered in the names of Prokhorov and the Potanin: there was an oral undertaking between them and Lena's staff... the nominee shareholders of these companies."

What I would suggest to you is that that is just an example of how, even in 2007, people who could be described as oligarchs were using oral agreements in relation to holding of assets?

- A. I agree with the one side of the coin that counsel has exhibited to us, but I would go on to say that, one, Vedomosti is not a newspaper of record. There are all of the weaknesses and vulnerabilities of reports by

journalists that we talked about on Friday. And, two, it doesn't flow from those two paragraphs that an oral understanding was unaccompanied on both sides by some kind of consignment, literary consignment of the understanding, so that they would not have to rely only on memory. The likelihood is, therefore, that the journalist simply took at face value -- the journalists, I think, actually -- took at face value what was being said to them.

Journalists have a very hard time in extracting the truth from devious and purposive businessmen and their representatives.

Q. Professor Service, what I'd suggest to you is it's perfectly clear that it's being said it was an oral undertaking. If it was a documented undertaking that issue simply wouldn't arise, would it?

A. I'm afraid I haven't been clear enough and I apologise for that.

I could well believe that this oral undertaking did happen at the time as an oral undertaking. I could -- I think I'd have to be -- physical violence would have to be applied to me to believe automatically that that was the end of the matter and that neither side in this very, very complex business relationship didn't write something down about what they had agreed.

Q. Professor Service, what I would suggest to you is that your first report is acknowledging that in many respects that is how business was being done in this informal atmosphere where documentation was sketchy. So I would suggest to you that, in the light of what you've said in your first report, it should come as no surprise to you to see that actually here we have an example of oligarchs doing business on the basis of an oral understanding only.

A. I think, if I were writing that first report again, I would have clarified my exposition in the way that I've tried to do in the last five or ten minutes.

I do not think and did not think, but obviously didn't make it sufficiently clear, that oral understandings, a quick handshake in a shady bar in a French or Russian hotel, was all that happened when these vast sums of money were at stake between men who never really trusted each other. I find that deeply implausible.

MR GILLIS: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much. Mr Adkin?

MR ADKIN: My Lady, I have no questions.

MRS JUSTICE GLOSTER: Yes, Ms Davies.

Re-examination by MS DAVIES

MS DAVIES: Professor Service, just one matter for which

you'll need the joint memorandum in bundle G(B)6, tab 1, and the transcript from Friday. The transcript from Friday is just being given to you, Day 37, at pages 166 to 167.

While you're waiting for that, if you want to turn in the joint memo to pages 15 and 16 G(B)6/1.01/15. Now, if you could look at the transcript at pages 166 to 167, and just to remind you, Professor Service, you were being asked some questions about the statements in the joint memorandum relating to the loans-for-shares scheme, and in particular you can see at page 166 my learned friend Mr Gillis was putting to you the question of whether:

"... the disputed statements here, at statement 2, [are] a summary description of the loans-for-shares scheme [that] is... not open to any serious political debate?"

A. Yes.

Q. Now, if you'd like to look in the joint memo at statement 2 on page 15, just to remind yourself of that, you see statement 2 has five subparagraphs, 1, 2, 3, 4 and 5 G(B)6/1.01/15?

A. Yes.

Q. And remind yourself of the contents of all of those.

(Pause)

Then if you could look in the transcript at page 167, at line 10, do you see an answer from yourself:

"I think that, as it stands, question 2, as long as it's not connected up to -- sorry, statement 2, as long as it's not connected up to statement 3, isn't implausible."

Do you see that answer, page 167, line 10?

A. Is it actually 166, line 10?

Q. Page 167, line 10:

"I think that, as it stands..."

A. Right, I see.

Q. Sorry, the numbering is a bit confusing.

A. Yes, I see, yes.

Q. You see the answer:

"... as it stands, question 2, as long as it's not connected up to -- sorry, statement 2, as long as it's not connected up to statement 3, isn't implausible."

I wonder if you could just clarify for us what you meant by statement 2 and statement 3 in that answer?

A. The connections between statements 2 and 3, I think I gave a rather fuzzy answer on Friday there.

Q. Well, when you were referring to statement 2 in that answer, can you clarify whether you were referring to the whole of statement 2, including all of its

subparagraphs 1 to 5 on page 15, or whether you were referring to something else?

A. I think we're talking about the sub-numbering, aren't we, here? Sub-statements 2 and 3, as I recall.

MS DAVIES: Thank you very much, Professor Service. I have no further questions.

MRS JUSTICE GLOSTER: Right.

Thank you very much indeed, Professor Service, for coming along to give your evidence and assisting the court. You may be released now.

THE WITNESS: Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Very well. I'll take the break now for ten minutes, and then we're having Professor Bean, is that right, Mr Adkin?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.38 am)

(A short break)

(11.50 am)

MR ADKIN: My Lady, I call Professor Bean.

MRS JUSTICE GLOSTER: Just before Professor Bean is sworn, are we likely to finish this witness before the luncheon adjournment?

MR ADKIN: Mr Gillis?

MR GILLIS: I think not. I may need to run over by 20 minutes, but I'll try not to.

MRS JUSTICE GLOSTER: It doesn't matter, I just need to know for my own arrangements. Very well, thank you.

PROFESSOR BRUCE BEAN (sworn)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MR ADKIN

MR ADKIN: Professor Bean, can you confirm, please, that you have no electronic equipment or mobile phones on you?

A. I have none.

Q. Thank you.

Could you please be given bundle G(B)5/1, and you should find at the front of that bundle a document G(B)5/1.00/1. Is that your first and only report in these proceedings?

A. Yes, it is.

Q. Now, I understand that you have a very small correction that you want to make to paragraph 11 which is at page 5 G(B)5/1.00/5.

A. Yes.

Q. Could you tell us what that is, please?

A. Yes, the third sentence says:

"In June 1998 I left Coudert Brothers [and joined] Clifford Chance as [a] partner ..."

I left on a Friday, which was May 29th, and June 1st

was Monday when I joined Clifford.

Q. Thank you.

Subject to that correction, does this report represent your true opinion?

A. Yes, it does.

Q. And is this the evidence you wish to give on the matters in which you've been instructed in these proceedings?

A. Yes, it is.

Q. Could you please be given bundle G(B)6/1, there is I think only one tab in this bundle. This is the joint memorandum G(B)6/1.01/1.

A. Yes.

Q. So far as this document contains opinions which are attributed to you, do they represent your true opinion?

A. Yes, they do.

MR ADKIN: Thank you, Professor Bean, if you would just wait there.

Cross-examination by MR GILLIS

MR GILLIS: Professor Bean, can we just start with your career before you moved to Moscow in 1995.

A. All right.

Q. You started your legal career in 1973 as an associate lawyer in New York, first with Simpson Thatcher, and then Patterson Belknap Webb & Tyler, is that correct?

A. Yes, but I would say that my career began the year prior

when I clerked for a judge on the second circuit, but yes.

Q. Thank you. And then for five years, from 1980 to 1985, you went in-house as a lawyer at the oil company Atlantic Richfield?

A. Yes, I did.

Q. Then from 1985 to 1992, you were general counsel in an American financial services and insurance group, AmBase, is that correct?

A. AmBase was the name we ended up with, yes.

Q. Then from 1992 until 1994, you worked as an investment banker in the US?

A. Yes, that's correct.

Q. And then moving on to the position in Moscow, you lived and worked in Moscow from March 1995 until July 2003, is that correct?

A. Yes, that's correct.

Q. And just briefly, from March 1995 until June 1998, you worked for the US law firm Coudert Brothers, rising to become the managing partner of their Moscow office?

A. Yes, with the correction that I actually ended at the end of May, but -- that's the correction I just made.

Q. End of May.

Then from May 1998 you moved to Clifford Chance where you were the head of corporate and foreign direct

investment until June 2002 before returning to the US  
in July 2003, is that correct?

A. Yes, that last year I was of counsel.

Q. Of counsel.

A. But I was in Moscow at that time.

Q. Just to be clear --

MRS JUSTICE GLOSTER: What's the difference between being  
a partner and of counsel?

A. Well, a partner was paid. And of counsel, I was there  
if they needed me, and if they had needed me I was paid.

MRS JUSTICE GLOSTER: Yes, I see.

A. It's an American concept that I brought to Russia  
actually.

MRS JUSTICE GLOSTER: Right. So you had another job  
from June 2002?

A. No, I did not.

MR GILLIS: Just to be clear, at the time you were admitted  
to practise law before the Bars of the State of New York  
and California, is that correct?

A. Yes, that's correct.

Q. So you were qualified to practise American law, not  
English or Russian law, including at the time you were  
working for Coudert and Clifford Chance in Moscow?

A. That is correct.

Q. It's also right, is it, that in Moscow you practised as

a transaction lawyer, not as a litigator?

A. That's certainly correct.

Q. Thank you.

Now, in your report at paragraph 12 G(B)5/1.100/5, you say that while you were in Russia, you acted for:

"... a large number of very substantial business clients and in a number of ... significant business transactions."

I think that's paragraph 12.

A. Yes, I see that.

Q. Professor Bean, you give a list of your clients and contacts in Russia in appendix 2 of your report, and could I just ask you to turn to page 43 G(B)5/1.00/43?

A. Yes.

Q. There you list your past clients.

A. Well, I guess the ones I could recall, yes. It would not be an exclusive list, it would not be an all-inclusive list.

Q. Am I right in understanding that this is a list of the clients and contacts from your time in Russia?

A. Yes, but at both firms.

Q. In both firms.

A. Yes.

Q. I think that you've listed 29 past clients, and if you'll take that from me?

- A. I will.
- Q. Of those 29 past clients I think -- and again if you'll take this from me -- that 19 are US or UK companies, like BP, Texaco and Proctor & Gamble, and there's one Italian company, Fiat, and another is a Japanese company, Toyota, is that right?
- A. Well, at the ultimate parent level where that name comes from, yes.
- Q. And then there are I think a few UK or US/Russian joint ventures, such as Polar Lights and the Sakhalin Island projects.
- A. Well, again, Sakhalin and all of those -- all of those entities that actually operated in Russia operated through local joint stock companies or some legal entity, juridical entity.
- Q. But Polar Lights, that's a Conoco/Rosneft joint venture, is that correct?
- A. It was Conoco at the time, now I think it's Conoco/Rosneft.
- Q. And the Sakhalin Island project, that was Shell and Gazprom?
- A. It is now Shell and Gazprom, it was originally Mitsui and Marathon and two others. Shell and Gazprom both came in much later.
- Q. Then I think there are five Russian companies, that's

Group Menatep, Gazprom, Inkombank, Renaissance Capital and Red October Chocolate Factory, is that right?

A. Those are Russian ownership, I suppose, yes -- well, they're certainly Russian companies, yes.

Q. Without getting bogged down in the exact percentages, is it right that your practice in Russia predominantly involved acting for very large non-Russian companies considering or making investments in Russia?

A. Early on, yes, before the financial crisis in 1998, that was certainly true. Afterwards, we did a great deal more of the Group Menatep, for instance, and some of the others were Russian companies going offshore, that is to say -- "offshore" is a strange term -- outside Russia. And again, I didn't actually list all of the companies, I listed the ones I could think of at the time.

Q. Thank you.

I think then, just to bring the position up to date, Professor Bean, you're now a professor at Michigan State University?

A. Law School, yes.

Q. I think we can see that from paragraph 8 G(B)5/1.00/5.

A. Mm-hm.

MRS JUSTICE GLOSTER: Was Brunswick Capital a Russian-based company?

A. Well, again, my Lady, they were all Russian based in

that they were Russian legal entities. I think Brunswick was actually a foreign capital that had come in and adopted that name, although, in the early '90s, any western name was good for PR, so even if it had been all Russian -- but I'm sure that that company -- I'm 84 per cent sure that that company was foreign based.

MRS JUSTICE GLOSTER: Foreign capital?

A. Yes, my Lady.

MRS JUSTICE GLOSTER: And Renaissance was foreign capital or Russian capital?

A. Renaissance was principally funded, I believe, by Mr Potanin eventually, but it began as a foreign funded operation, yes, my Lady.

MR GILLIS: So Professor Bean, can I start just by trying to establish what I hope will be common ground between us by reference to your report and the joint memorandum.

The first point, on which I don't think there's any real dispute, relates to the high level of risk which businesses faced in operating in Russia in the 1990s.

A. Risk, what -- I mean --

Q. Well, could I ask you to look at paragraph 50 of your report. We have that at page 19 G(B)5/1.00/19.

A. Yes, I have it.

Q. In paragraph 50 there, you are saying that:

"... by the mid-1990s ... [there was an] uncertain

... legal environment, overly aggressive tax inspectors, outmoded tax regimes based upon turnover, unhelpful, obstructionist governmental agencies and bureaucrats, potentially unreliable courts which could be exploited by aggressive competitors, and political uncertainty..."

Do you see that?

A. Yes.

Q. As I understand it, you accept that there was a high risk business environment in Russia in the mid-1990s, is that correct?

A. Well, if all these conditions mean high risk, yes.

I mean, it was possible to make money but it would have been much easier to do it in London.

Q. But what I think you're saying is that businessmen dealt with those difficulties not through the use of informal oral agreements but by moving ownership and transaction arrangements offshore; is that a fair summary of your position?

A. Well, I mean, you couldn't deal with -- I did say that and I do agree with that, but, I mean, that wouldn't have resolved any issues with unhelpful obstructionist government agencies or bureaucrats, for instance. But, as to ownership and major transactions, yes, you would want to be offshore and choose foreign law.

Q. So there's that high risk environment which you've

identified.

The second aspect, which I think may be common ground, I think that you accept that one of the ways in which Russian businessmen responded to the risks which you have identified was by hiding their assets, their agreements and the beneficial ownership of Russian companies. Is that correct?

A. Well, I did say that. I mean, I'm not -- does this still relate to paragraph 50?

Q. No.

A. Okay.

Q. Maybe I could ask you to look at paragraph 39 of the joint memorandum which we have at bundle 6, page 18 G(B)6/1.01/18.

A. Yes.

Yes, I see that.

Q. So is that common ground also, I mean there you are saying that you accept there was:

"... a widespread perception that government agencies and officials might act improperly in a way which threatened businesses and that many businessmen took steps to hide assets and transactions ..."

A. Yes, that's exactly what I said. I stand by that statement.

Again, that doesn't solve all your problems, but it

solves problems relating to ownership. And certainly, if you're offshore, the law is more reliable and you can avoid taxes.

Q. But can we agree that throughout the 1990s and the early 2000s there were strong incentives for Russian businessmen to conceal beneficial ownership of assets and many of them took steps to do so?

A. There were certainly incentives and many did, that's correct.

Q. Thank you. Then I think the third area of common ground is this: I think you accept that Russian businessmen made oral arrangements in the late 1980s and very early 1990s, that's before the dissolution of the Soviet Union, is that correct?

A. Well, I think we need to elaborate on that. Oral arrangements, of course there were many, many oral arrangements, and the rules did change, I mean the rules of conduct did change for Russian -- for people operating in Russia, whether they were Russians or foreigners, after that early period.

Q. Can we see what you say at paragraph 50 of your report and that's at page 19 G(B)5/1.00/19.

A. Yes, I have it.

Q. The third sentence there -- maybe I should start with the second sentence:

"Arrangements intended to be legally enforceable were not expressed only as oral agreements. There may earlier have been instances of informal oral arrangements, particularly under the uncertain conditions of the first Gorbachev [era], but by the mid-1990s, it is my view that the uncertain Russian legal environment ..."

And then you go on to say: had led to ownership of Russian businesses being moved offshore.

Do you see that?

A. I do see that.

Q. Am I right to say that the view you're expressing there is that before ownership of Russian businesses were taken offshore, the uncertain conditions may have led to informal oral arrangements?

A. Well, again, "informal oral arrangements" could relate to many, many things, only one of which would be whether the entity was offshore, or whether an agreement for a particular transaction was to be governed by foreign law.

We can't just talk about business, we have to talk about the ownership, we have to talk about taxes, transfer pricing. I mean it's all different. But, yes, it is certainly true that from the 1980s, the late 1980s, Russian businessmen and people operating in

Russia knew that it made sense to be in part offshore. For instance, Cyprus had a 4.25 per cent tax rate which was wonderful, and that also helped.

Q. But particularly in relation to the tax aspects, one can see that moving offshore would be particularly advantageous.

In terms of dealing with questions of ownership and seeking to conceal ownership, would you accept that that is something that could be done through the use of oral agreements?

A. Not in my experience.

Q. All right. Well, we'll come to your experience.

A. Okay.

Q. The fourth point that I was wanting to see if it was common ground is: would you accept that one of the consequences of the high risk environment was a tendency to do business, if possible, with close and trusted friends?

A. Well, I mean, business is done with people you think you can make money with, that's how you pick your business partners in a transaction.

I noted Professor Service's comments. It seems to me, on trusted friends, my understanding is that the real circle of trust were the people that, in the Soviet era, you sat at the kitchen table and complained with,

and that would have been a very, very small group. It would be highly coincidental if that particular group could later do you some good in business.

Q. But would it not be natural, in the high risk environment that you've identified, to seek to do business with people who you felt you could trust?

A. I guess that's always the case, yes. That's true in Delaware and New York as well.

Q. Thank you.

Can I just now identify something which I'm not going to be suggesting to you before we get to the main issues. First, I'm not going to be suggesting to you that it was the practice for Russian parties entering into arrangements with foreign investors to make those agreements orally. So I think we would accept that where one is talking about companies like BP or Texaco or Proctor & Gamble, there arrangements were not being entered into orally; do you follow?

A. Yes.

Q. The second point is that I was not going to suggest to you that significant corporate acquisitions generated no paperwork at all. I think we can agree that it was unavoidable that ownership of shares in Russia, Russian companies, would generate paperwork --

A. Well --

Q. If I can just finish.

A. Please.

Q. -- at least in respect of the actual share register.

A. Well, curiously enough, share registration in Russia is not reflected on a piece of paper, it's electronic, but yes, there would always be that and you could have a print-out of your interest from the share register reduced to a piece of paper. Yes, you could.

Q. Exactly so. The issue I would suggest to you is whether other aspects relating to beneficial ownership might remain undocumented, so that I suggest is the issue. Do you understand?

A. I understand your suggestion, yes.

Q. Thirdly, I'm not going to suggest to you that in the mid-1990s Russian businessmen never made use of offshore jurisdictions, either for making contracts between themselves or for ownership of their business assets; do you follow?

A. Yes.

Q. On the other side of the fence, can I try and identify the scope of your evidence. Firstly, I assume you would accept, would you, that it remained possible in the mid-1990s to use undisclosed oral nominee arrangements as a way of holding assets in Russia and disguising their beneficial ownership. Would you accept that?

A. I'm not sure I understand that. We're talking now about ownership of a juridical entity which has been created in Russia?

Q. Yes.

A. Okay, and by definition the ultimate -- the ownership of 100 per cent of the entity must be recorded on the share register. So that's recorded, and we're going to agree that that's the equivalent of paper?

Q. Yes.

A. Yes, okay. Given that it's registered in the name -- I mean, the typical example would be it's registered in the name of a Cyprus company, which has a legal name, or it's registered in the name of a Gibraltar, BVI or Isle of Man or one of these other tax-favourable jurisdictions, and that would be clearly recorded as a piece of paper, or from the share register.

Having done that, you don't know who it is that owns those offshore entities. That's correct. You have to go offshore to look at the share register there.

Q. Is that your answer?

A. Yes. What did I leave out?

Q. The answer to the question.

I was just asking whether you accepted that undisclosed oral nominee arrangements could be used as a method for holding assets in Russia and disguising

their beneficial ownership?

A. I mean, is anything possible? Yes. I guess I'm not sure what piece of it you're getting to but maybe you'll make that clear.

Q. I'm just wanting to get your evidence as to whether or not you are excluding the possibility that oral nominee arrangements, if I can put it in that way, could be used in the mid-1990s in Russia as a means for disguising beneficial ownership?

MRS JUSTICE GLOSTER: Are you putting "could" in the sense of legally as a matter of Russian law, or are you saying, Mr Gillis, they were used?

MR GILLIS: Well, I would put it in the sense of "could legally" and move on to "were being used"?

MRS JUSTICE GLOSTER: Let's take it in stages.

The first question is: do you accept, Professor Bean, that they could be used as a matter of Russian law?

A. Yes, my Lady. If we had Cyprus companies showing 100 per cent ownership of a Russian joint stock company, any arrangement could be made among Russians, if that's the limit, among Russians as to the ownership of that Cyprus entity.

MRS JUSTICE GLOSTER: Does Cyprus have bearer shares, for example?

A. I believe they did, but I can't give evidence on that.  
I think they did at the time.

MRS JUSTICE GLOSTER: Right. But a Panamanian company,  
you're accepting, for example, that an oral agreement  
might be made in relation to the bearer shares of  
a Panamanian company as between Russians?

A. Yes.

MRS JUSTICE GLOSTER: Could have been?

A. Could have been, yes.

MR GILLIS: Professor Bean, I would suggest to you not  
merely "could have been", but such arrangements were  
made between Russian businessmen; would you accept that?

A. For certain I was only there eight years and I only saw  
what I saw. I never saw that.

Could it have happened? Yes, it could happen.

Q. Professor Bean, I'll come in a moment to your  
experience. But what I would suggest to you is that  
where there was a relationship of trust between  
businessmen, and there was a perceived need to conceal  
the beneficial ownership of one of them in the assets  
that were jointly made, they may well choose to do that  
by way of an oral agreement, particularly in  
circumstances where they were not being advised by the  
likes of Coudert Brothers or Clifford Chance; would you  
agree with that?

A. Is it possible? I suppose it's possible.

Q. Thank you. What I would like to put to you, Professor Bean, is that neither the sources you cite in your report, nor your own experience at Coudert Brothers and Clifford Chance, provides a sound foundation for contending that Russian businessmen who trusted each other and who wished to conceal beneficial ownership of assets would necessarily have used offshore arrangements as opposed to oral agreements, would you agree?

A. Well, again, we're -- when I say offshore arrangements, at the first instance, that's the ownership of the Russian legal entity, and that was very easy to put offshore. My experience at Coudert and at Clifford as a lawyer, certainly nobody ever came and said, "We've got this secret agreement offshore, how does it work?" That never happened in eight years.

Furthermore, I never heard of that happening, you know, whether in the informal conversations that we had at the International Lawyers' Group or with the American Chamber of Commerce or just -- I mean, unfortunately lawyers tend to talk to lawyers and have their friends as lawyers and I never came across that.

Q. But would you accept that if Russian businessmen had entered into informal oral arrangements, in order to conceal beneficial ownership, that is not something that

they are likely to be disclosing to other persons?

A. I can tell you that they did not disclose that to me, that part, I can certainly agree.

Q. Can I look at what seem to be the sources that you rely upon in your report as being the basis of the views that you have expressed. I think one source that you rely upon is a quotation from David Hoffman's book "The Oligarch" which we see at page 49 of your report.

That's at paragraph 49 --

A. Paragraph 49 or page 49?

Q. Paragraph 49, page 18 G(B)5/1.00/18.

A. That I can handle.

Q. There you refer to the resentment of the -- I think in paragraph 49 you say, the resentment of the oligarchs' wealth:

"... did not of itself lead to 'informal ownership' but contributed to the widely observed [phenomena] of [ownership offshore] ..."

Then we can see that in footnote 21 you refer to a statement in Hoffman's book at page 447 in which he's talking about the offshore network operated by Mr Khodorkovsky, do you see that?

A. I see it, yes.

Q. And it says in the footnote:

"Khodorkovsky's far-reaching offshore network was

typical for Russian big business. All the other oligarchs -- indeed, thousands of Russian businessmen -- did the same thing, although many on a scale less grand. Every month, by very rough calculations, up to \$2 billion slipped out of Russia in wire transfers, phoney import-export documents, oil shipments and other means..."

Do you see that?

A. I do, yes.

Q. Now, what I would put to you is that, while this citation from Hoffman shows that Russian businessmen were using offshore companies, and I would suggest often for transfer pricing, and we don't dispute that --

A. Mm-hm.

Q. -- it does not, I would suggest, touch upon the question of whether Russian businessmen were also making oral agreements between themselves. Would you accept that?

A. Oral agreements between themselves, of course. That's how you get any deal started.

Are you meaning oral agreements between themselves or among themselves with respect to the ownership of offshore entities?

Q. Indeed.

A. Okay. Well, does this footnote go either way? I don't know. I happen to know a great deal about

Khodorkovsky's offshore networks since I've written a chapter in a book on it, and what this says -- what Hoffman says here is that thousands of Russian businessmen did the same thing, that is to say they had their ownership offshore. That was for many purposes, including taxes, including obfuscating ownership if they wanted to do that, including choice of foreign law as an option for dispute resolution, all of those things would make sense and were presumably part of the mix.

But you would want to be offshore -- I mean, almost everybody wanted to be offshore just because they were the people that knew very well that you could manipulate the judicial system.

- Q. I understand the desire to be offshore. What I'm asking you is that Hoffman is not saying anything about the use of oral arrangements between businessmen, Russian businessmen, to disguise beneficial ownership of shares. And I would suggest to you that that's something that could even be imposed on top of an offshore structure.
- A. Hoffman does not say that. I suppose you could impose that, sure, yes.
- Q. Professor Bean, could I now just turn to your experience in Moscow working for Coudert and Clifford Chance. Can I put to you that what you have done is essentially to extrapolate from your experience dealing with your

clients at those firms, and I don't dispute that experience, to conclude that Russian businessmen were not in the practice of using undocumented oral agreements for, amongst other things, concealing beneficial ownership.

Would you accept that is the basis of the opinion you are expressing before the court?

A. Certainly my opinion is based on my experience, yes, and while there were millions of Russian businessmen trying to do transactions, the major transactions, the large transactions were the ones that we were involved in. So I would want to draw the line somewhere.

The little shop owners never came to lawyers, for sure, and my exposure within the firms and within the lawyer groups that I participated in, there was no -- I mean, they were people that could afford our outrageous hourly rates, they were not little people.

Q. Exactly.

Professor Bean, what I was going to suggest to you is we've already seen that the majority of the clients you were working for in Moscow were not Russian individuals or companies, they were international companies, that's correct, isn't it?

A. Again, with the same qualification as before, that is to say if the majority were -- the source of funds and

business idea came from offshore, but again, everybody dealt with Russian legal entities.

Q. What I would suggest to you is that it wouldn't be appropriate to extrapolate from your dealings with international companies, such as BP or Texaco, to reach conclusions as to the practice of Russian businessmen, would you agree?

A. Perhaps not. But the Khodorkovsky experience I had, which was fairly extensive, over three and a half years, four years, that that is certainly typical -- I'm assuming that it's typical of how major oligarchs, to use a forbidden word, operated.

Q. That would give you one insight. The Khodorkovsky work was from what date?

A. Basically after the crash, so it would have been from some time in late '98, probably.

MRS JUSTICE GLOSTER: Did you do any joint venture deals, or that kind of deal, as between Russian businessmen?

A. My Lady, the first thing we learned was don't do a joint venture. That was what we learned. Were there transactions where the foreign party would own part of a legal entity and the Russians would own part of a legal entity? Yes. Our advice was always: you need the majority. But the typical joint venture going into foreign jurisdiction, that was never successful in my

experience.

MRS JUSTICE GLOSTER: I'm not sure you're quite answering my question. My question was: did you ever advise on deals where, whether it was a joint venture or a majority acquisition or whatever, the client on your side and the client on the other side were both Russian businessmen?

A. Oh, yes. Oh, yes. They were both Russian individuals, but they'd almost always have some offshore entity through which we operated, and through which they operated, for tax reasons, ownership reasons, et cetera.

MRS JUSTICE GLOSTER: What I'm interested in is whether your experience related to situations where, irrespective of the interposition of offshore entities, the ultimate beneficial owners on both sides of the deal were Russians as opposed to simply Texaco or BP or something?

A. Oh, yes, I would say especially dealing with the Yukos shareholders at the end. Yes, most of those transactions were done with Russian parties on both sides. Most. Some of them --

MRS JUSTICE GLOSTER: What was your involvement in the Khodorkovsky transaction? Who were you advising there?

A. We were advising -- the way the Khodorkovsky -- the Yukos shares were held, 80 to 70 per cent, depending on what number you like, were held offshore through exotic trusts which are actually referred to in one of the

footnotes. So they were already offshore, they had enough money, they could afford us, and they wanted to make sure that those transactions were done properly. If they were done properly with another Russian entity, almost invariably that entity also would have a Cyprus or a Gibraltar entity. But the ultimate beneficiaries of the transactions were Russian individuals or citizens.

MRS JUSTICE GLOSTER: On both sides?

A. Yes.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR GILLIS: Can I just look at the Russian clients that you were working for, that you've identified.

A. The ones that I've identified, yes.

Q. That you've identified. We've seen from the CV that that was Group Menatep?

A. Yes.

Q. Gazprom, Inkombank, Renaissance Capital and the Red October Chocolate Factory. Is that correct? Those are the Russian ones you've identified I think?

A. Well actually -- okay. Again, not to be picky, the Saint Springs investment, which is seven up from the bottom, that was an investment by the US Government fund in a completely Russian transaction that was owned by and created by an American businessman.

I'm not sure how that responds to your question. It was all Russian.

Q. It was all Russian?

A. Yes.

Q. But given that it was an investment by a US government fund, inevitably, that's going to be fully documented. I wouldn't suggest otherwise.

A. Good point, yes.

Q. Going back to the five companies we've identified, would you agree that we can exclude Gazprom from that list in the sense that it was a state-owned company which would not be involved in an attempt to disguise beneficial ownership from the Russian authorities?

A. Oh, I think that's completely wrong, with respect.

Q. Is it?

A. Yes, it was controlled -- by the time Mr Putin came to power, more than 50 per cent of Gazprom was held outside the government, in private hands. There were enormous numbers of good and not so good transactions involving Gazprom where people tried to buy shares before it was completely legal to buy shares in Gazprom. So by definition, almost all of the Gazprom transactions were trying to disguise ownership. This particular transaction was -- and I'm trying to think -- it almost had to be -- I don't recall the law controlling it but

most loan transactions at this time were done under New York law. Whether Gusinsky borrowed from Gazprom under that, I'm not sure. I just don't recall.

Q. I was just going to ask you in relation to Gazprom at page 43 of your CV G(B)5/1.00/43. We can see that, in relation to Gazprom, what you refer to is in connection with the divestiture of Mr Gusinsky's interest in NTV?

A. Yes.

Q. Is that the only transaction you were involved in dealing with for Gazprom?

A. Me personally, probably, yes. That's the only one I recall and it was a major transaction and I wanted to disclose the Gusinsky connection just because of what we're dealing with. There may have been other Gazprom transactions that were done in the office that I had some connection with. It would have been at Clifford, not at Coudert.

Q. What I would suggest to you, Professor Bean, is that in terms of the Russian companies that you are -- or the Russian clients that you were dealing with of Menatep, Inkombank, Renaissance Capital, Red October Chocolate Factory and even if you want to include Gazprom in relation to the Gusinsky transaction, what I would suggest to you is that's a fairly small sample size from which you seek to draw conclusions as to what Russian

businessmen did or did not do?

- A. That's -- yes, that's -- it's certainly as small as one person can do working 16 hours a day for eight years, yes.
- Q. I think you understand the point that I'm making. I'm not suggesting you didn't work hard; what I'm suggesting to you is that by far the majority of the work that you were doing was on behalf of international companies investing into Russia, rather than dealing with Russian companies.
- A. Investing -- well now, I mean, when you add "investing into Russia", I mean, almost everything that we did for, let's see, certainly for Group Menatep was probably going the other way. But I take your point, that is to say you didn't come to Clifford Chance unless you needed high quality transactional advice that you could pay for.
- Q. Absolutely. Would you accept that even in respect of the Russian companies, and you've talked about Yukos, your contact with them was as a result of the fact that they had instructed Coudert or Clifford Chance and they wanted the expertise that international firms like that could provide?

I would suggest to you that that very fact alone probably indicates that they were wanting transactions

which were documented in a formalised western way, possibly even extending to the use of offshore jurisdictions. Would you agree with that?

A. I would agree that they certainly wanted documentation, yes, and that almost everything involved something cross-border because that's how you did business so, yes, I would agree with that.

Q. What I would suggest to you is that your perception of what was normal Russian business practice may have been affected by the type of institution you were working for, which would have attracted clients that were seeking the specialisation that your firms provided, namely western documented transactions and offshore jurisdictions?

A. Yes. I mean, clearly that's part of it but, again, there weren't that many oligarchs or, you know, these super wealthy well-connected folks so, yes, but -- and I had a unique kind of relationship with one of them.

Q. But putting it round the other way, would you accept that a party who wished to acquire an interest in a business without documenting that interest would be highly unlikely to approach Coudert Brothers or Clifford Chance for their advice on that transaction?

A. At least highly unlikely, yes.

Q. So Professor Bean, what I put to you is that, attempting

to determine what was or was not happening in Russian business circles through the prism of what you were experiencing at Coudert and Clifford Chance might leave you with a distorted and wrong perception. Would you agree with that?

A. I would not agree that my perception is distorted or wrong. My perception is based on my experience which involved the clients and conversations with other lawyers, but it's -- as I said, it certainly didn't relate to the kiosks on the street or, you know, transactions in Khabarovsk. That, we did not deal with, that's for sure.

Q. Would you accept that it may have given you a partial perception of the type of transactions and clients that were approaching?

A. It gave me a good view of the major -- the big deals. The little deals, the other deals, that's right. I would agree.

Q. What I would suggest to you is not just the little deals but the deals that were being done by people who were not seeking to do it in the Coudert Brothers or Clifford Chance way, and that was something that you would not be seeing, is that correct?

A. It is certainly true that I did not see the things that didn't come to Clifford or Coudert, yes, that's

absolutely correct.

Q. Professor Bean, I want to move on but what I want to suggest to you is that, contrary to the impression that you may have received while in Moscow working at Coudert and Clifford Chance, there is evidence that Russian businessmen did make oral agreements between themselves, particularly where there was a close and trusting relationship between them, including for the purposes of concealing beneficial ownership.

A. I mean, you have my evidence and my view based on my experience. Obviously I never saw everything, that's correct.

Q. Can I just ask you about a few of these occasions. Professor Bean, I think you indicate that one of your four Russian private companies which you had as a client and from which you draw your conclusions was Group Menatep and the controlling shareholder of Yukos, is that correct?

A. Yes, but I mean, there weren't just four. There may only be four or five on this list, but yes -- but that's correct. And those were the -- you know, that was the major oligarch-related transaction, yes.

Q. There I think you indicate that you interreacted (sic) closely with Mr Khodorkovsky's associate Platon Lebedev?

A. Yes, that's correct.

Q. Did you also have any dealings with Mr Nevzlin, who was at various times the president of Group Menatep and the vice president of Yukos?

A. Never. We were limited at Coudert to representing the Yukos shareholders, and despite my what I thought was fantastic experience in oil and gas, we never got any business from the oil operating company. That was another firm and they were religious about keeping those separate. So I never met Mr Nevzlin, no.

Q. Are you aware that Mr Nevzlin has given evidence in this action?

A. I think I did see a reference in the transcript, there was some video thing, yes, I think that's right.

Q. Could I ask that you be provided with bundle D1 at tab 4.

A. I have witness statement of Nevzlin, yes.

Q. Could you turn to paragraph 52, which is on page 71 D1/04/71.

A. Yes, page 71 or page 13. Okay, I have it.

Q. If you could read paragraph 52. (Pause)

A. Yes, I read that.

Q. Can you see there, Mr Nevzlin is saying that the relationship, and that's between Mr Berezovsky and Mr Patarkatsishvili, was very close, with each trusting the other one 100 per cent. Can you see that?

A. Yes. Yes I do.

Q. Then going on to paragraph 53, if you could read that.

(Pause)

A. Yes, I've read that.

Q. So there Mr Nevzlin is indicating that he would not be surprised if Mr Berezovsky's dealings with Mr Patarkatsishvili were not in writing.

Now, Professor Bean, I'm not wanting you to comment on the question of whether Mr Berezovsky or Mr Patarkatsishvili frequently did deals without anything in writing, that's obviously not for you. But what I would suggest to you is this: there is a significant difference between deals between different corporate groups, such as you typically would have been dealing with while at Coudert and Clifford Chance, and the types of dealings which were made between individuals with a close and trusting relationship of the nature referred to here. Would you agree with that?

A. Well, a comparable relationship existed between Mr Khodorkovsky and Mr Lebedev, whom I saw very regularly, and they had buried off in Gibraltar a very clearly documented relationship where I think Lebedev had 7 per cent of Yukos tracing down through all the corporate structures.

So nobody was closer than Lebedev and Khodorkovsky,

maybe witnessed by the fact that they both stayed in jail together and neither one has tried to get out based on the other -- on testimony against the other, but I have no basis for commenting on the relationship between these two gentlemen.

Q. But Khodorkovsky was using Clifford Chance and Coudert and, in consequence, I would suggest to you highly likely that they would end up with those formalised off-shore arrangements?

A. To be clear, Clifford or Coudert had absolutely nothing to do with establishing those arrangements. I think they were done by Stephen Curtis, or somebody like that, for certain.

So we had nothing to do with it, and indeed, as I reported somewhere in my report, when the disclosure was made in connection with the proposed public offering of Yukos to be listed on the New York Stock Exchange, which I did work on for more than a year, and I had told Lebedev that the ultimate ownership of Yukos has to be disclosed completely or the SEC won't even read the first page. There's a footnote or a reference to the Moscow Times article --

Q. We've seen that.

A. That was news to me; how they held it offshore was news to everybody. But it was there, and it was there for --

I have no idea how long it was there.

So it was there, and we didn't do it, and these two guys couldn't be closer.

Q. And they chose to do it in a particular way, through Clifford Chance and Coudert --

A. Excuse me --

Q. Or Stephen Curtis.

A. Yes, or some of those guys, yes.

Q. All I wish to ask you is that, seeing the description of the relationship that existed between Mr Patarkatsishvili and Mr Berezovsky, I don't think that your evidence is seeking to go so far as to exclude the possibility of oral agreements being made between them in the mid-1990s or even 2000?

A. I never met either of them so -- and I don't know them, and I didn't know much about them, frankly. So you're correct.

Q. Could I now just ask you to look at one point that arises on the evidence contained within the reports themselves. This is the Potanin interview which you refer to at paragraph 62.

A. My paragraph 62?

Q. Your paragraph 62, which we have at page 22

G(B)5/1.00/22.

A. Real page 22.

Ah, yes, I remember this comment from Fortescue.

Q. Yes. So here you're referring to the contents of a 2010 interview with Mr Potanin, and maybe just so that we can understand the point you're addressing, maybe we should look at the relevant quote which we have at paragraph 278 of Mr Fortescue's first report which is at G(B)1, tab 1 at page 76 G(B)1/1.01/76.

A. 278, at page --

Q. It's paragraph 278 on page 76.

A. Yes.

Q. You see there that what Potanin says is that:

"Remember the 1990s, which from today's perspective looks like a time for Rome antics. Then we did deals, buying assets worth tens of millions of dollars, serious stuff. Sometimes our partners would carry out an operation and register the documents in their name, and then give us our agreed share."

Do you see that?

A. I do.

Q. Then Mr Potanin goes on to talk about two particular deals, and we can see that's OLBI and Mikrodin, where he goes on to say that the interests in those companies were held on behalf of his two business partners under oral agreements. Do you see that?

A. I do, yes.

Q. And Professor Fortescue has expressed the view that this interview with Mr Potanin, one of the most prominent 1990s oligarchs, is evidence that there was a practice then to enter into oral agreements with partners in major business ventures; that's the thrust of --

A. That's the thrust of Fortescue yes.

Q. I think your response to this, and if we can go back to paragraph 62 of your report G(B)5/1.00/22, is to say that this doesn't tell us that it was the practice of Russian businessmen to enter into oral agreements in the mid-1990s because the deals which Mr Potanin is referring to you say were done prior to the dissolution of the USSR. Is that correct?

A. I did say that, yes.

Q. Professor Bean, what I'm going to suggest to you is that this attempt to distinguish, if I can put it in that way, what Mr Potanin is saying is not properly founded, and the first reason is just to go back to look at what Mr Potanin is actually saying, and that one can see from paragraph 278 G(B)1/1.01/1. And I suggest to you, as one can see, he's saying:

"Remember the 1990s, which from today's perspective looks like a time for romantics."

Then he goes on to continue, to say what we've already looked at.

Professor Bean, I would suggest to you that regardless of the specific deals Mr Potanin goes on to refer to, it's quite clear that Mr Potanin is talking about the 1990s generally, and that his observations about how business was being done were not limited to the period before 1991. Would you like to comment on that?

- A. Yes, I would. OLBI and Mikrodin were both created in about 1987/88 and they were fully merged into Potanin's empire by 1995. So whatever is true about, whatever it means, "the 1990s", the Soviet Union disintegrated on December 25, 1991, certainly this should not refer to the entire ten-year span. I didn't get there until just about the time that the merger into his Interros, or whatever piece of his empire they put him in, occurred.

I guess if I were rewriting this now, I might focus a little more on when Mikrodin was created, for instance, and when the merger took place. But I don't think you can conclude from this that he was saying, you know, that the end of 1999 is the same as the beginning of 1990.

- Q. But are you accepting it up to 1995?

- A. I am accepting that that's when the transaction took place. It was before -- well, almost all of that '90s was before I got there, and, you know, Mr Potanin was

saying whatever he was saying. If we really wanted to know I suppose we would ask Potanin.

Q. Well, we'll come to look at OLBI and Mikrodin, but what I would suggest to you is that it's quite clear that, contrary to what you suggest in your report, Mr Potanin is not referring to the period during the Soviet Union, he is talking about the 1990s, and making it quite clear that during that period they were doing transactions on the basis of oral agreements.

A. Well, three years of the 1990s were under the Soviet Union, and two years afterwards were under Russia and then the merger, so, I mean, you're welcome to read Mr Potanin's statement as referring to 1999. I know that OLBI and Mikrodin were created long before.

Q. I think the Soviet Union was 1991, wasn't it, the end of the Soviet Union?

A. Okay, I'm sorry, 20 per cent.

Q. But let's leave that aside.

Can we then just look at what you suggest about the transactions themselves, and in paragraph 62, subparagraph 1, as we've seen, you're saying that the transactions that are referred to predate the end of the Soviet Union, and you give a citation to support that G(B)5/1.00/22.

A. Yes.

Q. That, I think, we have at tab 27 to your report?

A. Yes.

Q. This is a citation to an article from the website  
"Kompromat RU".

A. Not one I particularly rely on.

Q. I was going to suggest, it's not a particularly  
reputable source, is it?

A. I agree completely.

Q. It doesn't mean that the information it gives is  
necessarily wrong.

The passage I was wanting to refer to in -- well,  
maybe you could just remind yourself of the article if  
you feel the need to, but the passage that I wanted to  
look at in particular was on the second page under  
"Dossier".

A. Mm-hm.

Q. The first point that I was wanting to make to you about  
the --

MRS JUSTICE GLOSTER: Could you give me a reference, please?

MR GILLIS: I'm sorry, it's G(B)5/1.27, page 211

G(B)5/1.27/211.

MRS JUSTICE GLOSTER: Thank you.

MR GILLIS: The first point that I was wanting to ask you  
about in relation to this source, this document makes no  
reference at all to the second company that Mr Potanin

refers to, OLBI, that's correct, isn't it?

A. That seems to be correct, yes.

Q. So in terms of relying upon this as a source for showing that Mr Potanin was referring to transactions in the Soviet period, it doesn't actually support that proposition, does it?

A. One way or the other, no, it doesn't, that's right.

Q. In relation to OLBI?

A. Yes.

Q. The second point I wanted to ask you about is in relation to Mikrodin, and on the first page, the third full paragraph, do you see that refers to the foundation of Mikrodin being in 1989?

A. Yes, okay.

Q. But more significantly, when we go over on to the second page, under the heading "Dossier", it refers to a series of business ventures of Mikrodin up to 1997, do you see that?

A. I see '92, I see '95, but I'll accept -- I mean, it clearly goes beyond --

Q. I think the reference to:

"... two years later the plant lost ..."

Do you see that? It's talking up to 1997.

A. Ah, yes, okay, I'm sorry. It's at the very end of that paragraph.

Q. Yes.

A. Yes, I see that.

Q. So what I would suggest to you is that there's nothing in this document which, contrary to your suggestion, dates the agreement that Mr Potanin is referring to as being in the Soviet era, would you agree with that?

A. Well, I guess my point in dredging up this document was that it clearly started in the Soviet era, that Mikrodin was operating in the Soviet era. There's nothing in here that explains that Mikrodin and Potanin were at the same time investing in ZIL, but -- I mean, yes.

Is this a great source? No. Could I have found a better one? Maybe. Not in the time I had, but yes.

Q. I'm not complaining about the quality of the source. What I am doing is just looking at your attempt to suggest that when Mr Potanin is referring to the 1990s, in actual fact he's mistaken in that, and he's referring to Soviet deals.

What I would suggest to you is that there is nothing here that indicates that the agreement that Potanin is talking about is a Soviet deal but could be a deal done any time between 1990 and 1997.

A. Actually earlier than 1990, but -- and I'm not sure about the 1997, because I know the merger occurred in I think September of '95, but, I mean, except the fact

that in 1990 we were still in Soviet time.

I agree, this does not completely support what I said, and I apologise for that if that's a problem. But I guess it doesn't say that the practice that Potanin is referring to continued throughout the '90s, and it may have. It may have. But this doesn't say it and I never saw it.

Q. Thank you. Well, we've seen what Mr Potanin said himself --

A. This is true.

Q. -- when he was describing it as being how they were doing business in the 1990s.

A. In a journalistic report, yes.

Q. Could I move on, and what I'd like very quickly to consider is some of the evidence in the action, and try to understand, in the light of that evidence, the consequence it may have on the views you've expressed.

MRS JUSTICE GLOSTER: Right, I think well do that at 2 o'clock.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: Very well.

You mustn't talk to anybody about your evidence --

THE WITNESS: I understand, my Lady.

MRS JUSTICE GLOSTER: -- or communicate with anybody about it over the break.

Very well, 2 o'clock.

(12.59 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Professor Bean, could I please ask that you be provided with bundle E4, open at tab 1. This is a witness statement served on behalf of Mr Abramovich, given by Mr Bulygin, a former senior Rusal executive and an associate of Mr Deripaska.

One of the things which Mr Bulygin gives evidence about is the making of the merger agreement in 2000 which led to the creation of Rusal. In that context, could I ask you to look at paragraph 10 which we have on page 4 E4/01/4. You will see there that he's talking about negotiations between Mr Deripaska and Mr Abramovich which he says took place in Moscow at the end of February or in early March 2000. That's at paragraph 10, do you see that?

A. Yes.

Q. Then going over to paragraph 11, page 5 E4/01/5, what Mr Bulygin says is this:

"The discussions concluded by around 4.00am or 5.00am. Mr Abramovich then proposed that we should all travel to his home in Sareevo Village to celebrate the

merger. I very much had the impression that, so far as Mr Abramovich was concerned, the deal had now been reached and there was no need to document our agreement straightaway. He seemed to think that a handshake was enough."

Do you see that?

A. Yes.

Q. So his evidence was that Mr Abramovich appeared to consider that an oral agreement was binding, although I should make clear that they did proceed to document it subsequently. All right?

A. Yes.

Q. Now, Professor Bean, what I would suggest to you is this, that unless Mr Bulygin's evidence is wrong it would tend to suggest, contrary to the impression that you may have received at Coudert and Clifford Chance, that Russian businesspeople, even in 2000, did regard oral agreements as binding. Would you agree?

A. No. I mean, yes, we have the two principals, these are the principal principals, and they are negotiating a transaction and they come to agreement on the principal terms and they have a handshake. That deal is done, and that must happen in Texas and New York and probably in England.

But then the ministerial work, which isn't going to

be done in a couple of hours but more likely a couple of weeks, the lawyers will document the transaction.

That's absolutely typical. I've been in both kinds of meetings, and it doesn't surprise me at all. I'm not sure what Bulygin was saying. For sure, the principal thought the deal was done because they had an agreement on the important terms. I don't know that -- I mean, if I had been there, I would have said, "Well, okay, that's the principal terms, now we're going to document it." But of course it doesn't say that there.

Q. What I suggest to you it's indicating is that, so far as they were concerned, once the oral agreement had been concluded the agreement was binding?

MRS JUSTICE GLOSTER: Mr Gillis, again, I think this is asking the witness to comment on a factual situation. You've put the point to him, he's answered it. At the end of the day these are all matters for me to decide.

MR GILLIS: I'll move on.

Can I then just take you to another piece of Mr Abramovich's evidence, just to see how this fits with your view.

Professor Bean, it was Mr Abramovich's oral evidence that in 2003 he made an oral agreement with Mr Deripaska regarding the terms on which he would sell the half of Rusal that he controlled, and that he considered himself

bound by that, notwithstanding the fact that it was not reflected in the contractual documentation.

A. It wasn't ever reflected, or it wasn't -- I mean, when they had the meeting, obviously, it wasn't.

Q. I'll show you what Mr Abramovich indicated. And his position seemed to be that he was bound by an oral agreement even though it was contrary to what was subsequently documented.

But, my Lady, this is --

MRS JUSTICE GLOSTER: Well, again, with the greatest of respect to Professor Bean, I'm not going to be assisted by his comments on a particular factual situation. You put to him that there may be circumstances in which people agree oral agreements, and I'm sure he'd accept that. But with the greatest of respect to him, his views on whether or not there was a deal and, if so, whether it was subject to contract, a current agreement subject to a condition subsequent that had to be completed, is not going to help me on the aspects of the matter I don't think.

MR GILLIS: I'll move on then.

One final point then, Professor Bean. In your evidence you assert, and I think maybe we can see this most clearly at paragraph 50 of your report, this is at page 19.

A. Yes, I have it G(B)5/1.00/19.

Q. There in the second sentence you say:

"Arrangements intended to be legally enforceable were not expressed only as oral agreements."

Do you see that?

A. Second sentence? Oh, yes, I'm sorry, I was on the third sentence. Yes, I see that.

Q. And you make the same point at various other places in your report where you say oral agreements were not intended to be legally binding. Do you recall that?

A. I do.

Q. Professor Bean, would you not accept that that is far too dogmatic a statement?

A. I would not accept that, no. I mean, these were exactly the people that knew the Russian court system better than I, better than you. They were the people that knew that especially early, and regrettably still today, it is possible to influence the judiciary. So if you really wanted something enforced, legally enforced, as I think that's the phrase here, you would document it.

And pursuant to what I've said before, in my experience you would document it and you would do everything you could to make sure that the dispute resolution clause was for offshore resolution, whether it was arbitration or courts.

- Q. What I had understood you to be suggesting by this statement is that oral agreements were not intended to be legally binding in the sense that there was no intention to create legal relations. Is that not the point you're seeking to make?
- A. I'm not sure I follow the question, because when two principals are there and they make a deal, they think they're bound, they think the deal has been completed, we've got the price, we've got the terms and we know the asset that's to be exchanged or whatever. Then the lawyers document it, and if they can document it, there's no problem. If there's an issue that the lawyers can't agree on, you go back to the principals. The principals have always assumed that the deal was the deal, and if the darn lawyers can't make it work then we'll think about it again. But --
- Q. Professor Bean, I'm sure that's the experience that you have from Coudert and Clifford Chance where these transactions were all heavily documented. I'm just looking at the question of if there was an oral agreement made between the parties, and you seem to be saying in paragraph 50 that the mere fact that it was an oral agreement as opposed to a documented agreement of itself indicated that it was not intended to be legally enforceable. Now, if that's not the point you're making

then I don't need to pursue the point.

A. All right, legally enforceable to me meant that you might have to go to court. That's what I'm trying to say there. If it's "I'll meet you tomorrow morning and we'll, you know, have breakfast together", that's an oral agreement and it's not intended to be legally enforceable. That's what I was trying to say here, perhaps I should have been more elaborate.

Q. Well, Professor Bean, what I would suggest to you is that the question of whether the parties to an oral agreement intended to be legally binding is going to be dependent upon the specific facts of the case, would you agree with that?

A. For sure, absolutely, yes.

Q. Might I just have a moment. (Pause)

So, as I understand it, you're not suggesting that the mere fact that the agreement is an oral agreement necessarily means that it was not intended to be legally binding?

A. Too many negatives in that.

Q. I think you're probably right.

You're not suggesting that simply because it is an oral agreement, that indicates that it is not intended to be legally binding?

A. Well, you can't have a documented legally binding

agreement before you have an oral agreement. I mean, that's just not how it works.

Q. If you could just stick with an oral agreement.

A. Okay, we have an oral agreement, "I'll see you for breakfast tomorrow".

Q. No. Take it in the context of a commercial arrangement, and an oral agreement has been made in relation to a commercial arrangement. You are not suggesting the mere fact that it is only oral, and has not been documented, necessarily means that it was not intended to be legally binding?

A. You still have three "nots" here.

MRS JUSTICE GLOSTER: Never mind, just answer the question, please.

A. I guess the answer is yes, that's correct.

MR GILLIS: Thank you.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Yes, thank you.

Ms Davies?

MS DAVIES: I have no questions for this witness, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin.

Re-examination by MR ADKIN

MR ADKIN: Just one piece of re-examination, my Lady.

Could you please go to [draft] page 84 of the transcript, you may need to be helped to get back there.

If you could be taken, please, to [draft] page 84,  
line 22.

A. Yes.

Q. If you wouldn't mind reading from there to [draft]  
page 85, line 5. (Pause)

A. Okay, I think I've read it all.

Q. Thank you. Could you please take your report and turn  
to page 22. For the transcript, that's G(B)5/1.00/22.

A. Yes, I have that.

Q. The footnote at the bottom of the page, footnote 24, is  
that the footnote that you were referring to?

A. Yes, that is the footnote that I was referring to.

MR ADKIN: Thank you very much, Professor Bean.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much indeed,  
Professor Bean, for coming to give your evidence and  
assisting the court.

(The witness withdrew)

MR GILLIS: My Lady, I think that is the evidence completed.

MRS JUSTICE GLOSTER: Thank you very much.

Housekeeping

MR GILLIS: I think we now adjourn until two weeks today for  
Mr Sumption's oral closing.

MRS JUSTICE GLOSTER: Right. So that's December 19, Monday.

MR GILLIS: I think that's correct.

MRS JUSTICE GLOSTER: At what time do you want to start then?

MS DAVIES: My Lady, I'm sure Mr Sumption would start at whatever time my Ladyship wishes. I understand he doesn't anticipate being more than two days, in fact he anticipates being less than two days, so there's no pressure on time.

MRS JUSTICE GLOSTER: Shall we start at 10.30 then?

Does that suit you?

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: You won't be able to get access to the room on Wednesday of this week, or you may not be able to get access to the room on Wednesday of this week, so if you forget anything today when your clerks clear away you will need to come and get it tomorrow. I mean, you'll be allowed back in on Thursday, but I anticipate there may be a difficulty on Wednesday --

MR GILLIS: My Lady, if we could just clarify.

MS DAVIES: Yes, my Lady, we had understood we didn't need to clear the court.

MRS JUSTICE GLOSTER: No, you don't need to clear it.

I would be grateful if you could tidy it up because this is one of the rooms into which her Majesty is actually coming to see the courtroom. So if it looks -- I would like to have everything here because it looks a bit more

real world, but I think if you could just sort of tidy it up a tiny bit.

MS DAVIES: We will certainly tidy around us.

MRS JUSTICE GLOSTER: No, the only point I was making was not a tidy away point, it's just that you might have a problem getting in here on the Wednesday.

MR GILLIS: Can we ask, do all of the desks need to be cleared?

MRS JUSTICE GLOSTER: No.

MR GILLIS: In other words, is the court being used?

MRS JUSTICE GLOSTER: No, the court is not being used. It's just because they have to have the detectives, or whatever, in here on Wednesday morning but the court -- oh, right, you mean is the court being used in the next two weeks?

MR GILLIS: Yes.

MS DAVIES: Our understanding, the enquiries we've made of the Commercial Court, is that it's not and we can leave the computers and the files. There may be a different issue --

MRS JUSTICE GLOSTER: That's certainly my understanding but I'll go and check and get my clerk to confirm the position to you one way or the other. That's certainly my understanding.

MS DAVIES: There may be an issue about the first week

of January, and we're still trying to ascertain that, because obviously it would be more convenient if at all possible to leave all the technology rather than having to clear it between 21 December and 17 January.

MRS JUSTICE GLOSTER: Yes, I can see that.

MS DAVIES: But we're seeking to ascertain that position.

MRS JUSTICE GLOSTER: Yes. Are we going to need a big court for January?

MR GILLIS: I suspect there will be quite a lot of press interest.

MRS JUSTICE GLOSTER: Yes, I expect there will be. Let me check that.

Certainly I would be very reluctant if you were required to clear away between now and --

MS DAVIES: Certainly we have been told -- we have been asked to tidy, and we understood that, but we have been told we can leave certainly the computer and the files, and we were hoping to negotiate the same position for January because --

MRS JUSTICE GLOSTER: Particularly because we're going to need to have the simultaneous translation booth, so I can't see that there's going to be any realistic prospect of us having -- but I suppose it may be possible that in January they want to -- no, because they're not going to use it the week before.

MS DAVIES: There's about four court days in between,  
because my Lady --

MRS JUSTICE GLOSTER: Yes, I'm on compensatory leave.

MS DAVIES: But literally the process of rewiring the  
courtroom and everything itself is obviously  
time-consuming, so if at all possible --

MRS JUSTICE GLOSTER: I'm sure we won't have to, but I'll  
get my clerk to email you with confirmation that you  
don't have to -- well, hopefully that you don't have to  
move.

MR GILLIS: I'm obliged.

My Lady, one would have thought that as long as the  
desks have been cleared of papers, even if the courtroom  
is being used, the screens, the computers can stay.

MRS JUSTICE GLOSTER: Well, I can't imagine they'll want to  
use it for four days because it's booked to us.

Very well, so 10.30 on Monday, the 19th.

Remind me, what is the date by which I ordered  
submissions to be filed?

MS DAVIES: My Lady, our submissions are due to be filed  
this Friday at 4.30, and my learned friends' the  
following Friday, the 16th, again at 4.30.

Is there a particular means by which my Lady would  
prefer us to file them?

MRS JUSTICE GLOSTER: No, just electronically and, if

they're going to be lengthy, which I anticipate they will be, perhaps I could have hard copies as well.

MS DAVIES: Of course.

MR GILLIS: My Lady, I think the Chancery defendants' submissions are this Friday as well.

MR MALEK: No.

MRS JUSTICE GLOSTER: No, they're the same as yours.

Very well. I'll adjourn the case then until 10.30 on Monday, the 19th.

(2.20 pm)

(The hearing adjourned until  
Monday, 19 December 2011 at 10.30 am)

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Monday, 19 December 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

I thank all counsel for the delivery of the skeleton arguments.

Closing submissions by MR SUMPTION

MR SUMPTION: My Lady, certainly so far as we're concerned, the essence of our case is contained in that document but there is of course a very large number of issues in this case and many of them only arise on the parties' alternative or further alternative cases, so I am not, on my feet, going to even attempt to deal with all of them, which is the function of the written document.

What I would like to do, if I may, is to deal with those issues, mainly of fact, which seem in practice most likely to determine the outcome, to try where I can to offer a pathway through the conflicting claims and to address the main points of principle which are taken from Mr Berezovsky's own written closing.

MRS JUSTICE GLOSTER: Yes.

Just before you start, the letter from your solicitors dated 16 December, which I saw referred to in the press today, I don't know how that's got into the press, but unless any party is going to take any point on it I wasn't proposing to say anything about it.

MR SUMPTION: No. I don't know the answer to the question of how it got into the press.

My Lady, the issue which is fundamental to the whole of the present claim, in our submission, is what were the terms on which Mr Berezovsky agreed in 1995 to make available to Mr Abramovich his political influence in the Kremlin. It is common ground that that is what Mr Berezovsky actually did, and indeed what he agreed to do. This was, in other words, a trade in political influence.

It seems equally clear that Mr Berezovsky contributed nothing else to the Sibneft project apart from his political influence in the Kremlin and possibly his initial contacts with senior members of the management of SBS Bank and Menatep Group.

Mr Berezovsky does not claim to have contributed cash. If he had any management expertise in this area of business he certainly does not claim to have contributed it to the Sibneft project, and he assumed no financial risk of his own.

The question is whether his agreed reward for what he did was to be a share of Sibneft or straight cash. If the answer to that question is that Mr Berezovsky was doing this for cash, then that is, in our submission, not only the end of his claim in respect of Sibneft, it

is also the end of his claim in respect of Rusal. The reason for that is that Mr Berezovsky's claim to have had an interest in Rusal is intimately dependent on his theory that he and Mr Patarkatsishvili had previously owned half of the aluminium assets which were contributed to the merger with Mr Deripaska. That suggestion in turn depends upon his contention that there was an agreement to give him the same interest in the pre-merger aluminium assets as he claims to have had in Sibneft. It is also, of course, a case which depends upon his contention that the aluminium assets were acquired with Sibneft assets or out of his, Mr Berezovsky's, supposed share in Sibneft profits.

So if Mr Berezovsky never had a share of Sibneft or its profits all of these arguments fall away. As a matter of fact, they fall away anyway even if he did have a share of Sibneft profits, for other reasons. I will come to the other reasons, but the point which I make at this stage is that unless Mr Berezovsky can establish at the outset that the agreement of 1995 gave him an interest of some relevant kind in Sibneft, then the whole of this elaborate confection of mutually supporting arguments, by which he claims to have acquired a large proportion of the Russian oil and aluminium industries without paying a penny for them,

simply collapses.

Now, the alleged threats in relation to ORT and then Sibneft, the Devonia agreement, the Dorchester Hotel meeting, the terms of the second tranche of the Rusal sale in 2004, all of those issues have taken up days of court time but none of them arises unless he is right on this issue. Now, if he can make good his claim about the terms of the 1995 agreement, that is in our submission only the beginning of his problems.

On the Sibneft side he would then have to show, first of all, that he was blackmailed into selling his supposed interest in Sibneft; secondly, that he sold his interest in Sibneft to Devonia by a real contract and not just a sham device designed to deceive the Clydesdale Bank; and thirdly, if the tort claim is governed by Russian law, he must also establish that the Russian limitation period falls to be extended or not applied at all on the ground of personal disability or abuse of rights under the Russian Civil Code.

On the Rusal side, if he succeeds in his case on the terms of the 1995 agreement, then he has to show principally, first, that it was at some stage agreed to share out the KrAZ and Bratsk assets on the terms of the 1995 agreement, assuming that there was a 1995 agreement in the terms alleged; secondly, he has to show either

that it was agreed at the Dorchester Hotel that Mr Berezovsky's share would be held by Mr Abramovich as trustee of an English law trust, or else that English law applies as a matter of legal implication. He has to show that because it is common ground that, if Russian law applies, then, one, the arrangements by which Mr Berezovsky claims he held his indirect interest in Rusal were legally ineffective, and, two, that any Rusal claim is time-barred in Russian law.

The third thing that he would have to show on the Rusal side is that there was some breach of duty on the part of Mr Abramovich in selling the Rusal shares to Mr Deripaska. Unless those shares were subject to a trust, that will depend on his establishing that everybody agreed at the Dorchester Hotel meeting that nobody should be entitled to sell out without the consent of the others.

Fourth, Mr Berezovsky has to show on the Rusal side that there is some reason why the mutual releases in the contractual documentation of July 2004 should not be given effect according to their terms if, as he says, he was a real principal behind those agreements.

Now, all of these questions, with the exception of the last one, are questions of fact. All of them depend critically on Mr Berezovsky's evidence about occasions

of which there is no documentary evidence.

In the face, in our submission, of a large number of anomalies about Mr Berezovsky's story, your Ladyship would have to have a very high degree of confidence in the quality of his recollection and in his objectivity and truthfulness as a witness in order to accept that case. Now, there are in fact quite serious problems about the way that Mr Berezovsky has set about devising his case and giving his evidence. Some of these apply also to the evidence of his supporting witnesses, in particular Dr Nosova and Mr Glushkov.

In our submission, Mr Berezovsky was a persistently and deliberately untruthful witness. There are so many occasions when he can be shown to have made up the facts in which he had no positive belief or which he positively knew to be false, but it is simply not possible to take his word for anything without proper corroboration independent of Mr Berezovsky himself.

Now, in the first place, there is the regular pattern by which Mr Berezovsky molds his allegations of fact to what he thinks he needs to prove. Thus, Mr Berezovsky is told that Russian law does not recognise equitable proprietary interests. Behold his case about what was agreed in 1995 changes to suit a different case, that his rights were purely

contractual. References to beneficial interests and the like are deleted from the pleading.

Mr Berezovsky thinks, in fact wrongly, that in 1995 he and Mr Patarkatsishvili, or companies controlled by them, were the legal owners of Sibneft shares. So in order to explain how they ended up with Mr Abramovich's companies, he claims that there was an express agreement in 1996 to transfer them to Mr Abramovich to be held for them. It subsequently turns out that Mr Abramovich's companies always held the shares, so Mr Berezovsky's case about the 1996 agreement suddenly changes to accommodate this new fact.

He is told that threats are not actionable if they are merely warnings about what a third party will do. At once, he claims to have understood that what was said to him at Cap d'Antibes in December 2000, and at Munich to Mr Patarkatsishvili in May 2001, was understood by him as a threat to procure the Russian State to act against his interests.

In his press statements from 2003 onwards, Mr Berezovsky claims that Mr Abramovich had made him sell out of Sibneft by telling him that the association of Mr Berezovsky with the company was exposing the company itself to attacks by the state.

That remained Mr Berezovsky's position right up to

the second edition of the particulars of claim served in September 2007 when he seems to have realised that it was unlikely to be regarded as a threat of adverse action by Mr Abramovich because he would hardly wish to damage the interests of his own company. So the threat suddenly becomes something different, namely a threat not against the company but against Mr Berezovsky's interest in it.

He realises then that it's going to be difficult to persuade an English court that English law applied to the arrangements made about aluminium in 2000, and he is told that under Russian law his claim against Rusal is bound to fail, as he now concedes as a matter of Russian law. So he suddenly says, in the face of a striking out application, that he distinctly recalls conversations in which the parties expressly chose English law.

Now, that a party's case should develop and call for amendment in the course of complex litigation is perfectly normal, and the forensic indignation that it often provokes is usually bogus. That I entirely accept. But the persistence with which Mr Berezovsky's recollection of the facts varies as a direct response to his changing understanding of what he needs to prove is too striking to be ignored.

A particularly remarkable example of his rather

special attitude to truth is provided by his conduct of the Forbes litigation in which his relations with the Kremlin were also under scrutiny. Mr Berezovsky made statements of truth denying that he had ever lobbied Boris Yeltsin or made use of Yeltsin's daughter, Tatyana Dyachenko, as a channel of influence. Both of these propositions are admitted, indeed asserted in the present litigation; the only difference, which is relevant, between the Forbes action and this one is that it suited him to say different things in each case.

In the Forbes case, Mr Berezovsky was suing a journal for libel for accusing him of being corrupt, so it suited him to say that he'd never lobbied Mr Yeltsin or used Mr Yeltsin's daughter as a channel of influence. In this litigation, he is trying to prove that his influence at the Kremlin was the key that unlocked all doors to Mr Abramovich, so it suits him to say precisely the opposite.

He has absolutely nothing to say in his own defence when taxed with this. His answers range from "It's a good question" to "I don't have an answer" or "I can't say anything". The references to that evidence are matters that your Ladyship will find at page 11, note 3 of our written opening.

Mr Berezovsky is a man for whom the truth is

whatever serves the purposes of the moment. In the course of his cross-examination, whenever he felt the need to do so to sustain his case, he would contradict his pleadings, his instructions, as recorded by the successive solicitors who have acted for him, the statements made by him in countless interviews, transactions which bear his signature, his witness statement for the trial, indeed on a large number of occasions oral evidence that he had given only minutes before.

Now, I don't want to be unfair to Mr Berezovsky. Not all of these falsehoods are necessarily dishonest. Some of them are attributable to Mr Berezovsky's truly prodigious powers of self-deception.

A large part of this problem, which colours the whole of his evidence in this case, is his vanity and his self-obsession. Mr Berezovsky has found it very difficult to accept that, for all his former importance as a power broker and for all the great wealth that he has obtained by that means, in business terms he was a relatively marginal player. He has a constant and palpable desire to portray himself as the central indispensable figure in every venture that he has touched.

In the case of the aluminium deals in early 2000,

the contrast between the pretensions and the reality is humiliating. If I may pursue the Shakespearian analogy just once more, here is Glendower in Henry IV Part I, "I can summon spirits from the vasty deep". "Yes," says Hotspur, "but will they come?"

But if that is part of the problem it's certainly not the whole of it, for a great deal of Mr Berezovsky's evidence can frankly only be described as dishonest. The Forbes lies are one example. Another, which is one of the issues that your Ladyship has to decide, is the sale of ORT and the supposed threats made at Cap d'Antibes in December 2000.

The whole of this issue is extremely odd. Having decided that he couldn't bring a claim in respect of ORT, there was in fact absolutely no reason for Mr Berezovsky to say anything about it. Instead, what he did was artificially and quite gratuitously to introduce the ORT occasion into this case, which he did by contending that because of Mr Abramovich's behaviour at Cap d'Antibes, he regarded Mr Abramovich's warnings about what the state would do to him if he didn't sell out of Sibneft as an indirect threat of adverse action by Mr Abramovich himself.

Yet the evidence that has been given at this trial shows that the Cap d'Antibes meeting is a fabrication.

What Mr Berezovsky appears to have done was to work back from the date of the ORT sale agreements of 25 December 2000, and to fabricate a meeting a few days before that at which he says that he was bullied into agreeing the sale of ORT by threats to expropriate his interest and to ensure that Mr Glushkov rotted in jail for a long time.

The facts show that the ORT transaction had been under active negotiations since October, well before Mr Glushkov's arrest, and had been approved by Mr Berezovsky at the latest at the time of the Le Bourget meeting of 6 December. Even on Mr Berezovsky's own evidence, he decided to sell ORT within minutes of hearing about Mr Glushkov's arrest from his lawyers on 7 December 2000.

He is then presented with irrefutable evidence that at the time when he says that Mr Abramovich was blackmailing him in Cap d'Antibes, Mr Abramovich was actually at Chukotka and Mr Berezovsky himself was holding press conferences in Washington and skiing in Colorado.

So we are told, a couple of weeks before the trial, that actually the meeting happened earlier in December, and then we are told in the course of Mr Berezovsky's cross-examination that he has an actual recollection, of

which he says he is almost 100 per cent confident, of Mr Abramovich turning up at Cap d'Antibes on 7 December itself followed by Mr Patarkatsishvili on whose plane he had flown down from Paris.

Now, in cases like this one, one can actually observe Mr Berezovsky making up the facts as he goes along. It would be ridiculous if the allegations which he is making were less serious, but what he is actually alleging is that my client deliberately used his supposed influence in the Kremlin to keep a sick man in jail so as to blackmail his victim's closest friend. That is a very serious allegation.

In fact, Mr Berezovsky went further, because he also suggested that Mr Abramovich had actually arranged for Mr Glushkov to be arrested after failing to get Mr Berezovsky's signature on a sale contract at the Le Bourget meeting. Now, that particular allegation required Mr Berezovsky to resile from his own evidence given in his witness statement and in his evidence in various asylum proceedings that Mr Glushkov's arrest had been a foregone conclusion for five weeks before it actually happened.

Mr Glushkov himself, who had given similar evidence beforehand about the circumstances of his arrest, sat in the back of the court while Mr Berezovsky was giving

that evidence and then came into the witness box and performed a similar volte face himself. Mr Berezovsky's written closing says nothing at all about this discreditable aspect of his and Mr Glushkov's evidence, and that discretion seems, with respect, to be appropriate.

This ORT episode, which was introduced to the case in order to give verisimilitude to the threat said to have been made afterwards in relation to Sibneft has therefore become the extreme test of Mr Berezovsky's personal credibility. What it shows is two things. First of all, it shows that some of the more serious allegations made by Mr Berezovsky in this action have been made, it seems, for show. He wants to make a point against the Russian Government, he wants to discredit a man who he believes, in fact wrongly, to have supplanted him by occupying the sort of position in the Kremlin of Mr Putin that Mr Berezovsky himself once occupied under Boris Yeltsin.

But the second thing this shows is that nothing that Mr Berezovsky says can be taken at face value simply on his own say-so. And in a case where so much does depend on Mr Berezovsky's say-so, that is a very significant problem.

I would suggest by comparison that Mr Abramovich was

a measured and thoughtful witness. He made concessions where they were due, for example about the backdating of documents. He was not looking for opportunities to embarrass or humiliate Mr Berezovsky, as your Ladyship may recall from his refusal to discuss one aspect of his conversation with Mr Berezovsky at Megeve, and from the very low-key way in which, in his evidence in cross-examination, he referred to Mr Berezovsky's attire at the Dorchester Hotel meeting, until I pressed him to expand on it in re-examination, because it is of course relevant to the question of how significant and businesslike that meeting really was.

Now, we have called every one of Mr Abramovich's staff who was concerned with these matters, as well as a number of witnesses independent of Mr Abramovich, such as Mr Deripaska and Mr Hauser. Their evidence has been broadly consistent. They have been attacked in my learned friends' written closing on the basis that they are loyal employees of Mr Abramovich, as if that somehow meant that they were likely to tell lies for his benefit. They have been attacked on the basis that they have discussed their evidence in the course of preparing their witness statements, but that of course is a practice to which no possible objection can be taken provided that the witness applies his own mind to his

evidence and distinguishes between what he can recall and what he has learned from someone else.

Dr Nosova in fact described a very similar process within the inner circle of Mr Berezovsky's advisers, the attempt to reconstruct events from documents, which is exactly what one would expect to happen. But the result is a defence to the claim which we put forward, and which I submit has been impressive in its detail, and which has sought to inform the court in as much detail as possible about what happened.

By comparison, Mr Berezovsky's evidence has been presented at an imperial level of generality and most of his supporting witnesses have been giving derivative evidence based on their conversations with him about matters of which they had little or no direct evidence of their own.

The only other general point which I would make at this stage about the evidence concerns Mr Berezovsky's surprising suggestion at paragraph 173 of his written closing, that there has been a deliberate policy on our part of destroying documents in order, it is said, to impede investigations into Mr Abramovich's dealings.

Now, that is, in our submission, an extravagant allegation which should not have been made without better support than that document actually provides.

The selective references which appear in that paragraph to Ms Goncharova's evidence leave out her detailed explanation of why she destroyed documents at a time when this action had not been begun and there was no business need to keep them. This is, of course, as your Ladyship is aware, a stale claim, and the companies involved have over the years been dissolved or sold and matters have moved on well before the action started.

The delay in disclosing the bolshoi balance, another subject of a prolonged bleat in this part of the claimant's submissions, was due, as we have explained on a number of occasions, to the need to translate the spreadsheet from Russian and to get detailed explanations, which were quite complex, of each line of it in order to establish which parts were disclosable. In the event it was disclosed in its entirety and all of this was fully explained, among other places, in annex 11 of our written opening.

Mr Abramovich has no diaries for the relevant period, mobile phone records only go back to four years. All this has been fully explained in long and tedious correspondence between the solicitors.

As for the, I would suggest, extraordinary allegation appearing at paragraphs 185 to 193 of those submissions, that Mr Abramovich has manufactured the

evidence that shows that he was in Chukotka between 10 and 26 December, since it is not disputed that he was in Chukotka in that period, I really fail to understand in what sense that evidence is supposed to have been misleading.

Now, my Lady, we are well aware that all witnesses make mistakes, they forget, they confuse different occasions, they persuade themselves of things. It is in the nature of the process and of the passage of time that this happens. But if this is the best that Mr Berezovsky's team can do to undermine the integrity of our evidence, then your Ladyship may take it that it is on the whole a fair presentation of the facts so far as they can now be ascertained many years later.

I want to start, if I may, with the issue which I have suggested is fundamental to the entire case, for Mr Berezovsky has to succeed on it to get either of his two claims off the ground. What was he getting in return for the political influence that he agreed to exercise within Boris Yeltsin's administration in 1995?

Now, I ought to say something at the outset about the whole concept of krysha. Krysha is an alternative system of obligation. It's the classic product of a society where businessmen cannot count on the protection of the law, either because the law is itself

defective or because the administrative and judicial agencies charged with applying it simply cannot be relied upon. It is common ground among the historical evidence witnesses that that was the situation in Russia at the time with which we are concerned. It is the experience of almost all societies that where there is no law, relationships are governed instead by power.

The existence of that phenomenon does not appear to be disputed. The point was in fact succinctly put by Mr Berezovsky's historical expert, Professor Fortescue, I don't propose to make a habit of citing chunks of documents or reports, but it is worth turning up this one at G(B)1/1.01/52, which is Professor Fortescue's first report.

Does your Ladyship have that on the Magnum screen?

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Paragraphs 188 to 190:

"The term first came into use in everyday usage in Russia in the early to mid-1990s when the world was taken over by racketeers and took on criminal overtones. In that context, it meant 'protection'. Protection racketeering was a very large part of the activities of criminal gangs in the 1990s although with all the violent and involuntary connotations of the word protection, a criminal krysha was likely to also provide

services beyond the immediate one of keeping other criminal groups away from your business. These included debt collection, ie contract enforcement, and conflict resolution. In the absence of an effective state, the krysha fulfilled some of the functions of the state, and collected tax for doing so.

"As I noted above, in the late 1990s the Russian state began to assert itself and to operate more effectively. This not only reduced the role of criminal groups but also led to a new application of the word krysha (which was not in general usage in the early and mid-1990s). It was now bureaucrats and politicians who provided a krysha. Like the criminal gangs, they also provided protection from a business person's enemies and competitors. They also advanced the interests of their business client within the bureaucracy and political arena and were well remunerated for doing so. Volkov says of this more recent usage of the word krysha that:

"'In current Russian business parlance [it] is used to refer to agencies that provide institutional services to economic agents irrespective of the legal status of providers and clients. Such agencies are not necessarily criminal groups but are composed of a variety of criminal, semilegal (informal), legal, and state organisations.'

"Used in this way, the term krysha does not carry the necessary implication that the services in question will be criminal or illegal."

Now, the basic concept therefore does not appear to be substantially disputed. Another briefer account of it appears in the article in the Economist, which your Ladyship may recall my referring to in the course of Mr Berezovsky's cross-examination, where it's observed that businessmen know that their best protection is not law but their krysha, a well-connected power broker.

Now, as far as the power broker is concerned, this is a system for trading inside influence within government for cash. The functions of the protector, on the strength of the evidence that your Ladyship has heard in this case, are essentially these. First of all, to procure favourable treatment for the protege's interests in the formulation of state policy or the exercise of state discretions. Secondly, to protect his client against arbitrary action by state authorities. And third, in some cases most significant of all, to provide the client with a known and visible link to influence and power whose mere existence provided that it is sufficiently public will serve to deter adverse action against him by third parties.

This is not a kind of contract for services. It

certainly isn't a standard lobbying operation, nor is it a relationship based on some kind of quantum meruit or any other kind of relationship known to the law. It's a relationship of honour that cannot be broken without serious repercussions. And it is not terminable at will but by agreement and at a price.

Mr Berezovsky, in our submission, was the classic power broker. He described himself as one of the most influential oligarchs in Russia. His influence derived, as Professor Fortescue stated and as he himself confirmed in his evidence, primarily from his connections within the Kremlin but also from his ability to operate in conjunction with other oligarchs and, critically, from the control which he was, in 1995, in the process of acquiring over the national television network in Russia, formerly owned by the state corporation Ostankino.

Everything that Mr Berezovsky did for Mr Abramovich was characteristic of a relationship of protector and client rather than investor and manager.

Mr Berezovsky's own evidence, as well as Mr Abramovich's, shows that Mr Abramovich did not have a hope of amalgamating the two Siberian oil businesses and turning them round, as he did, without political influence. And it shows that it was Mr Berezovsky who

provided that political influence.

Other major Russian businessmen built up industrial or commodity empires in the 1990s but relied on their own influence: Mr Khodorkovsky in the oil industry, Mr Potanin in the metals industry, and others like them. These were already very rich and influential men when they acquired the businesses that were included in the loans-for-shares scheme in 1995 and 1996, and in the privatisation programme. Indeed Mr Potanin was the main creator of the loans-for-shares scheme in March 1995.

Now, the process by which Mr Abramovich acquired control over Sibneft involved the alliance of a 28-year-old businessman with money but not enormous sums of money and with no political influence, an alliance between him and a powerful politician with a business background but no current interest in business at all. The natural form of their relationship was therefore that of protector and client.

The suggestion is made in my learned friends' written closing, it's at paragraphs 367 to 369 for the transcript, that we only have fleetingly relied upon and then abandoned our allegation that the relationship between Mr Abramovich and Mr Berezovsky was based on krysha. Elsewhere in this document it's suggested that we only hint at the problem of corruption by way of

innuendo.

I wish to disabuse my learned friends of that idea. I don't want to raise the temperature any more than I need to, but the true nature of Mr Berezovsky's so-called lobbying activities is relevant to quite a number of issues in this case. It's relevant to the nature of his relationship with Mr Abramovich, it's relevant to the question whether their bargain was legally certain as a matter of Russian law, it's relevant to the question whether the agreement was intended to be legally binding. And it is certainly our case that the relationship between Mr Berezovsky and Mr Abramovich was founded on krysha or political protection, and that the activities of a krysha or protector are inherently corrupt.

But what is more, as a general proposition, that was accepted by Mr Berezovsky himself at the outset of his cross-examination. Your Ladyship may recall that I put to him the hypothesis that a businessman approaches an elected official and says "I'm going to support your reelection campaign so please will you exercise your official powers in a way that favours my business interests and those of my associates", and the elected official says "Yes". And I asked Mr Berezovsky whether in his view that was corrupt, and his answer was, "Yes,

it's corrupt". Yet that is exactly what Mr Berezovsky in his witness statement claims to have done.

As became clear later in his evidence, Mr Berezovsky only declined to regard it as corrupt when it was done by him. The references I've just been referring to are at Day 4, pages 12 to 13, and then later at page 44.

Now, it's also suggested by Mr Berezovsky in his written closing that it is common ground that the provision of krysha was only relevant at the outset in 1995. It is not common ground, nor was that proposition accepted by Mr Abramovich when it was put to him.

Mr Abramovich's evidence --

MRS JUSTICE GLOSTER: Can you give me a paragraph number for where the allegation of common ground is made.

MR SUMPTION: That is made at paragraph 374, subparagraph 2 of my learned friends' written closing.

Now, Mr Abramovich's evidence is that he was concerned to maintain his connection with a known and influential political protector right through to the time when Mr Berezovsky fell out with Mr Putin in 2000, and that even then he did not regard the relationship as unilaterally terminable. What is more, although this isn't directly relevant to any issue before your Ladyship, it is Mr Abramovich's evidence -- and has always been our case -- that the physical protection

provided by Mr Patarkatsishvili was also valuable and, indeed in relation to the Rusal side in 2000, essential.

Now, direct evidence of the agreement of 1995 comes only from the two principals. I am not going to summarise their evidence on my feet since I've already done it at some length in my written closing, but your Ladyship's analysis of that evidence is obviously likely to depend heavily on your views about the quality of the witnesses and I have said enough for the moment on that subject.

What I would like to do is to say something about the circumstantial evidence, all of which very strongly suggests that Mr Abramovich's version of what was said in 1995 is likely to be correct. Now, I'm not going to go through all the background circumstances, they are actually exhaustively described with references in our written closing, but it is right to identify the main ones.

The first point to be made is that the agreement was made at a stage when it is most unlikely to have been in the terms alleged by Mr Berezovsky. I'm certainly not going to suggest that the terms were all agreed at one moment. It is actually quite likely that some of them evolved over a period of time.

But it isn't true, as Mr Berezovsky's counsel have

suggested, that it is common ground that after initial agreement in about February the final agreement was really made in August. Mr Abramovich's evidence is that the basic features of the parties' relationship was settled at the outset, in particular his evidence is that the basis on which Mr Berezovsky was going to be remunerated, which is the critical point for present purposes, was agreed at the outset.

I say that, that that must be so, because -- well, there are a number of reasons. First of all, Mr Abramovich's evidence was that the financial arrangements were agreed at the outset. Mr Berezovsky, as your Ladyship will recall, questioned Mr Abramovich about his means, by which he can only have meant at that stage the means that he derived from his existing business interests in oil trading. What Mr Berezovsky then said was that he would expect \$30 million a year.

Now, that evidence is summarised, I'm not going to ask your Ladyship to turn it up, at paragraph 20, subparagraph 4 of our closing with references.

Secondly, it must be true, in our submission, because we know that Mr Berezovsky was actively engaged in promoting the project within the Kremlin as early as February 1995. His own witness statement accepts that and so does his oral evidence. We have given

references at paragraph 25.

Thirdly, the first payment was made in February 1995 in bank notes delivered personally to Mr Berezovsky by Ms Goncharova at the Logovaz Club, followed by a number of similar deliveries in the course of February and March amounting in total to \$5 million of folding money. Now, if Mr Berezovsky was performing his part, and being paid for it in cash from the outset, then the basis of his remuneration must have been agreed, at least in general terms, from the outset. It is hardly likely that Mr Berezovsky would give Mr Abramovich the benefit of his inside track at the Kremlin, without any agreement about his remuneration.

Now, remuneration agreed at that stage cannot have involved a share in Sibneft which, at that stage, didn't exist, and whose ultimate creation and privatisation was as yet undecided. None of the terms alleged by Mr Berezovsky make a great deal of sense as applied to the sort of agreement that he says was made. The creation of Sibneft was not provided for by law until late August. The privatisation of 49 per cent was not approved until the end of September, although provision for it had been made in the decree creating Sibneft. The loans-for-shares scheme was not even proposed until the end of March 1995 and was not adopted until August.

Sibneft was not included in it until the end of November.

Now, it must be most unlikely that interests in Sibneft were being shared out between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili as early as January and February 1995. The terms which are alleged by Mr Berezovsky are terms which have been devised to suit a situation that actually came into being a considerable time after the agreement is likely to have been made.

Indeed, there is another reason why they couldn't have been agreed as early as January and February 1995, when it is quite clear that the basic terms were agreed, and that is that the partnership between Mr Berezovsky and Mr Patarkatsishvili, and it's a crucial part of Mr Berezovsky's case that this was an agreement between them as partners and Mr Abramovich, but that partnership is not alleged by Mr Berezovsky to have come into being until August 1995. That is his case in the main Chancery action. The references are at paragraph 26.3 of our document.

It must be equally unlikely I would suggest, and isn't in fact alleged by Mr Berezovsky, that the basis of Mr Berezovsky's remuneration was something that changed in the course of 1995. It is perfectly true

that there were other aspects of this relationship which were modified as time went on in the course of 1995.

I will mention two of them because they feature quite significantly in the evidence.

One change concerned the nature of the control which Mr Abramovich hoped to acquire. His evidence is that he was originally interested only in procuring the creation of Sibneft and acquiring management control over it within the state sector, his object being to increase the trading volumes of his trading companies by increasing the proportion of the Siberian companies' business which went through the trading companies. It was only gradually, with the beginning of the loans-for-shares scheme and the privatisation programme of August 1995, that Mr Abramovich's ambitions began to expand to embrace the actual acquisition of a large stake in the company. This process is traced in his witness statement, that's his third witness statement. I'll just give your Ladyship the principal paragraphs, paragraph 49 to 50, 59 to 61, and 71.

Now, another respect in which the arrangements were modified over time was the purpose for which the money paid to Mr Berezovsky was used by him. My learned friends have made a great deal of fuss about a suggested change in Mr Abramovich's case. The point is that it is

said that the understanding between Mr Abramovich and Mr Berezovsky was originally said to be that the money would be used to fund ORT, and it later came to include substantial volumes of personal expenditure.

Now, it has never been suggested that it was, so to speak, a term of the agreement that the money paid to Mr Berezovsky must be used to fund ORT. The term was that Mr Abramovich was to pay Mr Berezovsky money. Funding ORT was simply the reason why Mr Berezovsky said he particularly wanted money in 1995. But ultimately, there was nothing to stop Mr Berezovsky spending what he got from Mr Abramovich on whatever he liked. It made no difference to Mr Abramovich who had no particular interest in the financial health of ORT.

This development is traced again in Mr Abramovich's third witness statement, the main paragraphs are paragraphs 55-6 and 67-9. Initially, most of the money did in fact go on ORT although precise figures are difficult to establish. There was then a gradual increase in the proportion of personal expenditure which became particularly noticeable after Boris Yeltsin's victory in the 1996 presidential elections, an outcome to which Mr Berezovsky's broadcasting empire contributed very significantly.

By 1997 it is Mr Berezovsky's own evidence that, in

addition to ORT funding, his entire personal expenditure was in fact being funded by Mr Abramovich. So the first of the surrounding circumstances to which I draw attention as tending to suggest that Mr Abramovich's version of the 1995 agreement is right is the stage in 1995 when that agreement appears most likely to have been made.

The second surrounding circumstance is the absence of a written record. Now, we do not dispute that oral agreements may have been less uncommon in Russia in the 1990s than they would have been in New York or London, although the evidence certainly does not go so far as to suggest that they were the norm. Kinut, the practice of denying unrecorded agreements, was a well-known hazard in Russia, and both Dr Nosova and Mr Berezovsky accepted that in their evidence. But what seems clear is that oral agreements for major transactions are unlikely to be made, even in Russia in the 1990s, except between people who have a high degree of confidence and trust in each other based on experience.

One can illustrate that by reference to Mr Berezovsky's relationship with Mr Patarkatsishvili. In our opening written statement at paragraph 29 we have given your Ladyship the references to what is known about Mr Patarkatsishvili's early relationship with

Mr Berezovsky, but it looks as if they had been business colleagues for over six years before they actually became partners in 1995.

Now, Mr Berezovsky's case is that he achieved that sort of relationship with Mr Abramovich within a few weeks of having met him and before they had done any business together at all. All of his evidence, however, tends to contradict that suggestion. According to Mr Berezovsky, his attitude in 1995 was that Mr Abramovich was a small-time oil trader with no track record in business, of whose affairs he had no knowledge and no interest, and he consistently, in the early part of his evidence in cross-examination, spoke of Mr Berezovsky's (sic) talents with contempt, "He was not even smart".

Now, in a revealing aside in the course of his cross-examination, Mr Berezovsky remarked that the only reason why he was prepared to agree to Mr Abramovich managing Sibneft at all was that he was too busy; he, Mr Berezovsky, was too busy on the more important question of getting Mr Yeltsin reelected as president. He said -- the reference is at paragraph 17 and note 63 of our written opening:

"Could you believe that say, 'Mr Abramovich, young boy, fantastic boy, manage please enormous business'?"

Only because I had the other priority ..."

Of course the answer to Mr Berezovsky's forensic question is, no, Mr Berezovsky did not graciously permit Mr Abramovich to manage Sibneft, he wasn't interested in Sibneft at all. That was Mr Abramovich's affair. What Mr Berezovsky was interested in was cash.

Now, this view of the situation, and this particular explanation of why it is unlikely that the agreement would be recorded in writing and why in fact it was not, is confirmed by Mr Patarkatsishvili's remarks to Mr Berezovsky's solicitors in 2005 which tells us something about the nature of the relationship between Mr Abramovich and Mr Berezovsky in 1995. According to Mr Patarkatsishvili, Mr Berezovsky introduced Mr Abramovich to him as a nice boy who would discuss some commercial projects. Mr Lankshear's note of that interview, and the draft proof prepared immediately afterwards, also records Mr Patarkatsishvili as saying that Mr Abramovich was looking for what Mr Patarkatsishvili called refuge, ie protection, or as we have been using it in this action, krysha.

The reason for the absence of any written record of this deal was precisely that it was not an oil industry partnership. It was a political arrangement, a trade in influence for money. It was an arrangement of the kind

that no sensible person in Mr Berezovsky's position would want to see recorded in writing.

Now, that had absolutely nothing to do with fears of a Communist victory in 1996 as Mr Berezovsky sought to suggest. There were genuine fears of a Communist victory in 1996, but there is probably much to be said, at least in a figurative sense, for the view which Mr Berezovsky attributes to George Soros, that if the Communists won in 1996 Mr Berezovsky was going to be strung up from a lamp post anyway. What seems absolutely clear is that, if the Communists won, any arrangement that these parties might make about Sibneft would be reversed irrespective of whether or not it was recorded in writing. The absence of writing simply reflected the murky character of any deal based on krysha.

Now, the third circumstantial element which needs to be taken into account is the complete absence of interest shown by Mr Berezovsky in the successive auctions at which, first, the privatised 49 per cent of Sibneft and then the retained 51 per cent were sold by the Russian State. It's common ground, on the evidence, that all of these sales resulted in the acquisition of shares by companies owned and controlled by Mr Abramovich, and that Mr Berezovsky contributed zero

to the cost of their acquisition.

We know, because both sides agree, that Mr Berezovsky put a good deal of effort into the loans-for-shares auction of 28 December 1995 at which Mr Abramovich acquired management control of Sibneft. Now, Mr Berezovsky did not provide the funding for that auction, that came from Runicom and from the Siberian oil companies themselves who put up the counterdeposits with SBS that enabled SBS to participate without any financial risk to themselves. But Mr Berezovsky's efforts were nevertheless considerable. They were mainly by way of behind-the-scenes political machination, but he also, as we accept, made valuable use of his contacts with groups like Menatep and SBS. Yet Mr Berezovsky did absolutely nothing about the sales at which Sibneft shares were actually acquired.

This indifference is very much what one would expect if Mr Berezovsky was providing political patronage for cash. Mr Berezovsky had used his political influence to create the opportunity and that is why these auctions were occurring at all. So it was now up to Mr Abramovich to make use of that opportunity by buying.

On the other hand, Mr Berezovsky's complete indifference to the actual sales of Sibneft shares is very surprising if the real object of the deal that he

had made with Mr Abramovich was to acquire shares in Sibneft in partnership as he is suggesting. On the face of it these sales of Sibneft shares, of the 49 per cent and then the 51 per cent, were the prime means by which the acquisition of Sibneft shares would come about. Yet Mr Berezovsky, on his own evidence, did not lift a finger. He did nothing to participate in them directly and he did nothing to participate in them indirectly through Mr Abramovich either.

The contrast between Mr Berezovsky's active concern with the loans-for-shares auction and his indifference to the sales at which Sibneft shares actually changed hands is, I would suggest, particularly striking in the case of the very first sale of shares which occurred on 4 January 1996 at which 15 per cent of Sibneft was on offer as part of the privatisation programme and just over 12 per cent was acquired by Mr Abramovich's companies.

Now, that sale, the 4 January sale, occurred just one week after the loans-for-shares auction. The process that led to the sale opened on 1 November 1995. Your Ladyship will find the dates incidentally at paragraph 43, sub 4 of our document.

So the loans-for-shares auction and the first cash sale of Sibneft shares were proceeding, for practical

purposes, simultaneously in the final weeks of 1995. Now, the successful bidder in the loans-for-shares auction, as we know, was NFK, a consortium company owned 50 per cent by an Abramovich vehicle and 50 per cent by Consolidated Bank which was, in effect, the in-house bank of the Logovaz Group. However, the successful bidder in the cash sale of 4 January, the first occasion on which Sibneft shares were actually acquired, was Mr Abramovich's principal trading company Runicom SA, a company in which Mr Berezovsky had no interest at all.

It's possible to understand why Mr Berezovsky was interested in the loans-for-shares auction on Mr Abramovich's version of what was agreed. It is impossible to understand why, if the 1995 agreement was really concerned with the acquisition of shares of Sibneft in partnership, that difference between these two virtually simultaneous sales was allowed to exist. If that was the agreement, then why was a consortium company not used in the 4 January sale as well?

It is worth adding that at this stage, in late 1995 and early 1996, not even Mr Berezovsky claims that there were arrangements in place for his interest to be held for him indirectly by Mr Abramovich or his companies. The terms which Mr Berezovsky says were agreed in 1995 included no arrangements for holding any interest of

Mr Berezovsky or Mr Patarkatsishvili indirectly for them. He accepts that in his fourth witness statement, the reference is paragraph 166 D2/17/232. He accepts there that nothing was said about that in 1995. His case is that that was only agreed in terms in late, or later in 1996, around May or June.

That being so, it's very hard to understand what Mr Berezovsky thought that he was doing if he and Mr Patarkatsishvili were supposed to be half owners of Sibneft shares and had made no arrangements for Mr Abramovich to hold Sibneft shares for them. In that case, why weren't they out there participating in the purchase of Sibneft shares?

All of this, of course, is readily explicable if the agreement was in terms alleged by Mr Abramovich, and what they were getting was money. That view of the matter is consistent with the fact that even Mr Berezovsky does not say that there were any terms agreed in 1995 about how Sibneft shares were going to be acquired if they were sold, who was going to pay for them, how the auction was going to be managed and so on.

On Mr Berezovsky's case, there never was any obligation on him or on Mr Patarkatsishvili to pay, for example, a single cent towards the acquisition of shares which they claim were going to be half theirs.

Mr Berezovsky certainly doesn't plead any such terms. He says nothing about terms of that nature in his witness statement. His evidence on the point is limited to an absurd suggestion in the course of his cross-examination that he expected Mr Abramovich to sort all that out in his capacity as the manager of Sibneft's business.

Mr Berezovsky does not suggest that that was actually agreed, he only suggests that it was, in his view, implicit in the agreement that Mr Abramovich was going to be the manager of Sibneft's business. It is of course no part of the function of the manager of a company's business to buy shares in the company on behalf of potential investors unless perhaps he has actually agreed to do that.

What is more, Mr Berezovsky's evidence on this point doesn't explain how shares acquired by Mr Abramovich for him and Mr Patarkatsishvili, in his capacity as manager, were actually going to be paid for. Judging by his evidence in cross-examination, Mr Berezovsky's position is that Mr Abramovich should have set the cost off against his and Mr Patarkatsishvili's 50 per cent share of Sibneft's at that stage nonexistent profits, or else that he should have come and asked them for money which, on this hypothesis, they had absolutely no obligation to

pay to him.

Now, the net result is said to be that although Mr Abramovich's companies paid for these shares themselves, Mr Berezovsky and Mr Patarkatsishvili are said to own half of them. Mr Berezovsky is in effect claiming to have invented a kind of financial perpetual motion machine under which he can acquire ever more valuable assets for nothing. We shall see exactly the same conceit at work in 2000 when we come to the way in which the aluminium interests were acquired.

Now, the fourth circumstantial matter pointing to Mr Abramovich's version of the agreement is, in our submission, by far the most significant, and that is the absence of any correlation between the payments made to Mr Berezovsky and the profits of Sibneft. Now, for this purpose, it's the profits of Sibneft and only the profits of Sibneft which are relevant. It is not the profits of the trading companies, it's not the total income of Mr Abramovich, it is not some nebulous concept of similar profits. If your Ladyship has my learned friends' written closing at hand and would turn to paragraph 401 at subparagraph 3, one will see what is now for the first time being suggested by way of submission, it's at page 265 of the document. "The suggestion", they say, and this is referring to the

sources of profit-sharing other than Sibneft profits:

"The suggestion that there is any contradiction or lack of clarity because this was not spelt out in Mr Berezovsky's pleaded case is clearly not right. It would almost certainly be implied as a term in any contract among partners under which they agreed to share profits of an enterprise that if one or more of those partners had the power to cause profits of that enterprise to be earned through another corporate vehicle, those profits would also be shared. This would certainly fall to be implied into a Russian law simple partnership agreement because the partners under such an agreement owe each other fiduciary duties: see Rozenberg..."

MRS JUSTICE GLOSTER: I have actually got that on page 263, just for the transcript. It doesn't matter.

MR SUMPTION: I'm reading from the printed version --

MRS JUSTICE GLOSTER: Yes, so am I.

MR SUMPTION: I see. Well, I hope there aren't two pages missing which I haven't --

MRS JUSTICE GLOSTER: It doesn't matter, it's just for my purposes later on.

MR SUMPTION: Yes, thank you.

Now, the problem about this, one of the many problems about this, is that this is an arrangement

which, although categorised as a matter of law by Mr Berezovsky's advisers as a partnership agreement, is said to depend on express agreement. Mr Berezovsky says there was an express agreement about what profits he was going to earn, it's not a matter of implication. His pleaded case is that this was something whose goal was to be the acquisition and management of Sibneft.

There is no pleaded allegation that any other profits than Sibneft's were to be shared. There are no implied terms alleged in the pleading expanding the scope of this profit entitlement, nor is it supported by Mr Berezovsky's witness statement. His principal witness statement number four at paragraph 98 is the only place where he says what he claimed to be entitled to. It's part of his evidence where he deals with the 1996 agreement, and he explains that that agreement was to the effect that the previous arrangements were to continue and those agreements entitled him, according to Mr Berezovsky's evidence, to "dividends and other payments made by Sibneft to its owners".

That is the right that Mr Berezovsky claims was expressly accorded to him, and we propose to hold him to that part of his case. We cannot reasonably be expected after the evidence has closed to start chasing Mr Berezovsky through the twists and turns of whatever

case he feels he needs to make in order to meet the difficulties of the evidence.

Now, the undisputed evidence is that neither Mr Berezovsky nor Mr Patarkatsishvili ever tried to ascertain at the time what these profits actually were, of which they claim to be half owners. The procedure was that at about the beginning of each year, Mr Abramovich would have a discussion with Mr Patarkatsishvili about how much Mr Berezovsky would be expecting to receive in that year. There would then be a continuous process of ad hoc negotiation in which Mr Berezovsky or Mr Patarkatsishvili would demand that Mr Abramovich arrange for some particular payments to be made either to them or to third parties at their direction.

Now, I say that that evidence is undisputed because it is the system described by Dr Nosova and by Mr Jenni in their witness statements. We've given the references at paragraphs 56 and 57 of our document. Indeed it's the system which Mr Berezovsky himself described in his oral evidence to your Ladyship.

If I could ask your Ladyship, in one of the rare forays into the transcript, again I promise not to make a habit of this, to turn up Day 6, page 86, what Mr Berezovsky had to say about the method of arriving at

these sums was this. It's page 86 of Day 6 starting at line 17:

"No, again, I describe you the method which company use to obtain the profit directly or indirectly and the way was absolutely the same for all the company.

I never calculate numbers and my relations was absolutely simple: I made request directly to Abramovich or Shvidler or indirectly through Badri. If Abramovich was able to pay, calculating what is [in] our interest, Badri and me together, he paid that. If he was not able to do [it], he said, 'Boris, we don't have money now to spend because we invest it to buy something or because company didn't generate this money'.

"I never demand Abramovich to do that, never, because it was responsibility of Abramovich, 100 per cent, to manage the company and I'm not crazy to destroy my company just thinking to buy another house, yes? I understood priority. If we don't have money, we don't have money. If we have money, I want to spend this money how I like to..."

So the system as described here is:

"If [Mr] Abramovich was able to pay, calculating what is [in] our interest ..."

Now, that isn't a profit share, it's rather closer to the classic kind of protection, "Nice place you've

got here".

Now, Mr Berezovsky on the opposite page, at page [92], line 10, is taken up on that point by your Ladyship. The question is:

"... I know you say that. We're just now looking at the amounts you get paid and how -- the money doesn't [seem to] come to you automatically; you generate some sort of request for payment, presumably?

"Yes ... mainly the way was as I described before. I told Badri, 'Badri, we need that and that', for reason of ORT or for reason of charity or for personal reason to buy jewellery [for] Elena, yes? And Badri calculate with Roman what is opportunity to pay or not. That's it."

Now, whatever else one might say, in our submission, that is not a profit share. The most that one can say about it is that Mr Berezovsky's requirements became more exorbitant as Sibneft prospered and Mr Abramovich's ability to pay increased. This was essentially a demand-led system limited by Mr Abramovich's capacity to pay, and that is very different from what is described in Mr Berezovsky's witness statement.

Now, this is, in our submission, crucial because Mr Berezovsky has got to say that the huge payments made to him between 1995 and 2000 were his shares of those

profits.

My Lady, could your Ladyship give me an indication of when you wish to take the break?

MRS JUSTICE GLOSTER: Yes. Well, have we got to the end of this section yet?

MR SUMPTION: No, shall I get to the end of that?

MRS JUSTICE GLOSTER: Get to the end of the section, please.

MR SUMPTION: Now, the global figures are set out in the table which appears at paragraph 47 of our closing document.

MRS JUSTICE GLOSTER: Yes, I have that.

MR SUMPTION: Which compares Mr Berezovsky's receipts, or Mr Berezovsky's and Mr Patarkatsishvili's receipts, with the figures for Sibneft profits over the relevant period. Now, the source of those figures is this: the figures for the payments made to Mr Berezovsky and Mr Patarkatsishvili are estimates derived from the evidence of Mr Abramovich and Ms Goncharova up to the end of 1999, and they are based on the actual figures for the year 2000, the one year for which we have actual figures derived from the bolshoi balance.

Mr Rabinowitz says that his client puts forward no positive case about what he received, but Mr Berezovsky's own evidence is that, by 1997, it covered not only part of the funding gap at ORT but the

entire cost of his somewhat exuberant lifestyle.

However, since these figures, the figures for his receipts, were put forward by Mr Berezovsky to the investigating magistrate earlier this year as representing the amount of his receipts from Sibneft, we must take it that Mr Berezovsky was satisfied that they were at least broadly correct, or at any rate that he was not in a position to quarrel with them.

The figures in the table for Sibneft's profits are derived from its audited financial statements. Now, I've already made the point that the payments began before any control over Sibneft was acquired, about 30 million in 1995. Now, those payments are denied by Mr Berezovsky, they are denied precisely because they are fatal to his case that what was received was a profit share since Sibneft didn't exist in 1995 and certainly wasn't under the control of Mr Abramovich.

Mr Berezovsky's preference for leaving other people to deal with the financial side of his affairs, and his professed lack of any detailed recollection, means that his evidence on this point is not going to assist your Ladyship very much. But the payments of February and March have, in our submission, been amply proved in particular by the evidence of Ms Goncharova. Your Ladyship may recall her graphic account of dragging

a heavy hold-all full of bank notes up the steep staircase at the entrance to the Logovaz Club and trying to deliver it personally to Mr Berezovsky as he barked angrily down the phone and threw the telephone at his assistant. She simply could not have made that up.

Nor could she have got the date wrong. The date was fixed in her mind by the extraordinary circumstances of these deliveries and the fact that it immediately followed the move of Mr Abramovich's premises to a new address in Moscow. The details of that are given with references at paragraph 51.

Now, in my learned friends' written closing, and the reference for the record is paragraph 108 sub 4(c), there is a suggestion that Ms Goncharova's evidence cannot be true because she referred to Mr Berezovsky's assistant as Ivan, and what is said is that this refers to Ivan Surov who, they say, began working for Mr Berezovsky in December 1996, nearly two years later, and, in support of that, they have produced an annual contract of employment beginning 4 December 1996 and subsequently renewed at annual intervals.

Now, that document was disclosed by my learned friends on 22 November, six days after Ms Goncharova had given her evidence. It was not put to her in cross-examination and no application was made to recall

her so that it could be and so that she could address it. If it had been, we would certainly have made the necessary arrangements.

Ms Goncharova does not identify Ivan by his surname but I can tell your Ladyship that we accept that the reference was to Ivan Surov. We do not accept that Mr Surov only started working for Mr Berezovsky on 4 December 1996, although it may well be that that was when his employment with the particular entity identified in the contract of employment did begin, but he was working for Mr Berezovsky for some time before that contract of employment with that particular entity was made.

Now, in Mr Berezovsky's written closing --

MRS JUSTICE GLOSTER: The Logovaz Club was a kind of club that operated in the daytime? It was a club in the sense of, I don't know, White's or ...

MR SUMPTION: I think not exactly in the sense of White's. It was basically the headquarters of the Logovaz Group, which was a place set up by Mr Berezovsky where essentially food and wine could be had in more or less unlimited quantities without payment, and it was therefore a popular resort with anyone who wished to see Mr Berezovsky and, I dare say it, to some people who didn't wish to see him.

MRS JUSTICE GLOSTER: But it was a members club, was it?

MR SUMPTION: No, it's a sort of proprietary -- it was basically where Mr Berezovsky held court. I don't think it had a formal membership. It was called a club, it was actually a palatial headquarters building installed in an early 19th century classical house where you could do business over a rather more enjoyable setting than most modern architecture allows.

At any rate, the description we've had of it is that this was where all sorts of agents, factors and courtiers would go if they had business of any kind with Mr Berezovsky, and it's where he had his office.

Now, in my learned friends' written closing the evidence of the 1995 payments is attacked as late reconstruction occurring after disclosure, and as the product of collusion, it is said, between Mr Abramovich and Ms Goncharova. Now, neither of these criticisms has any weight frankly. Well before disclosure Mr Mitchard, in his witness statement for the summary judgment proceedings, gave evidence that he had been told by both Mr Abramovich and Ms Goncharova that the payments had started in 1995. This is not therefore late invention. Of course, Mr Abramovich did consult Ms Goncharova, among other sources, as he perfectly freely admitted in cross-examination. It was the obvious thing to do since

Ms Goncharova was in charge of handling these payments.

Now, turning to the figures for 1996 to 2000, there were no profits in 1996, a year in which Mr Berezovsky received, on Ms Goncharova's estimates, between 80 and \$85 million. Payments to Mr Berezovsky exceeded the entire profits of Sibneft in both of the next two years. The first year in which payment could have been covered from audited profits was 1999 and 2000, and in neither of those years were the payments 50 per cent of those profits or anything like 50 per cent.

At no point, in other words, between 1995 and 2000, could payments to Mr Berezovsky have been covered by distribution to shareholders. That is because all profits were reinvested until the year 2000 when Sibneft declared its first dividend in the sum of just \$50 million. That was declared in November of 2000. Now, there have been a number of more or less ingenious attempts to square this particular circle, much of which turned in the course of the evidence on arguments about transfer pricing, although one cannot help noticing that transfer pricing plays a very limited part in my learned friends' written closing, and their points about it are unsupported by any evidence that they have been able to point to.

The point is really this, however: on the terms

alleged by Mr Berezovsky, Mr Abramovich had no actual obligation to pay him a share of profits emanating from any other company than Sibneft. No obligation to engage in manipulative transfer pricing for Mr Berezovsky's benefit. No obligation to pay him and Mr Patarkatsishvili a cent more than half of the profit attributable to the shareholding that they claim to have had in Sibneft. That is Mr Berezovsky's claim. "We were shareholders, we were entitled to half the amount which was distributed by Sibneft to its owners."

Now, Mr Abramovich could, therefore, under the agreement alleged by Mr Berezovsky, have declined to pay Mr Berezovsky or Mr Patarkatsishvili a single cent until Sibneft started paying dividends in 2000. He could then have paid them no more than their due proportion of \$50 million, and if they had claimed more than that, legally they wouldn't have had a leg to stand on. And remember, Mr Berezovsky says this is a legal agreement.

If Mr Abramovich actually paid them more than half the profits attributable to the shares they claimed to own, then there is only one possible explanation. That explanation is that Mr Berezovsky had some hold on Mr Abramovich extending beyond any entitlement that Mr Berezovsky might have had as shareholder, beyond any legal entitlement in fact of any kind. What could that

hold, extending beyond their position as shareholders and beyond legal entitlement, have been if it was not krysha, the hold that Mr Berezovsky derived for his status as Mr Abramovich's political godfather?

For that reason, it would not actually matter whether the arguments about transfer pricing were soundly based on fact, but actually these allegations about transfer pricing have no factual basis at all. The audited accounts of Sibneft specifically deal with related party transactions, as they are required to do by the general principles of accounting in accordance with which they were drawn up. The course of trading between Sibneft and the trading companies is described in detail in the Eurobond circular of 1997, a document which was cleared after due diligence by Salomon Brothers and Cleary Gottlieb, and presumably by Mr Patarkatsishvili as well since he was a director of Sibneft at the relevant time. We've given the references to all of that at paragraph 48 sub 4.

What it shows is that there was no transfer pricing between Sibneft and Mr Abramovich's trading companies, and no evidence has been produced to persuade your Ladyship that that is wrong.

Turning to the ZATOs, they seem to have disappeared as an issue judging by my learned friends' written

closing. There is a full description of how they operated in Mr Gorodilov's witness statement, and some further observations on the subject in the witness statement of Mr Shvidler. In short, they were companies interposed in the chain of contracts which were entitled to tax relief on their profits under Russian legislation which remained in force until 2000. These companies transferred back to Sibneft sums which ensured that Sibneft was no worse off than it would have been if they had not been interposed.

Mr Abramovich was asked about this in cross-examination but did not know the details. Neither Mr Shvidler nor Mr Gorodilov, who did know the details and indeed were responsible for that part of Sibneft's affairs, was cross-examined about it at all. So that would appear to be the end of that particular issue.

The only attempt which Mr Berezovsky's counsel have made to correlate the profits of Sibneft with the receipts of their client is at paragraph 445 of their written closing where the suggestion is made that Mr Abramovich made payments that were related to profits in 1995 and 2000.

Now, it is slightly odd to see Mr Berezovsky relying in this part of his argument on the payments made in 1995 as being a due proportion of Sibneft's profits

since his case is that no payments were ever made in 1995. But two things are, I would suggest, clear about the 1995 payments. One is that the \$30 million cannot have been calculated as a proportion of Sibneft's profits since Mr Abramovich did not control Sibneft until 1996. The other is that the \$30 million figure did not come from Mr Abramovich at all. On the evidence, it was the sum which Mr Berezovsky demanded at the outset of their relationship in return for his services.

Now, in relation to the year 2000, the only other year for which it's suggested that there was any correlation, the suggestion is based on the proposition that Sibneft made \$900 million in profits in 2000, which is substantially more than its actual profits as disclosed by the audited accounts, and that the amounts paid, according to the bolshoi balance, were about half of that, which in fact they were not.

This is a particular issue in relation to 2000 which is dealt with in our written closing at paragraph 55, and in our submission there is no substance in it at all.

My Lady, that is a convenient point to break if that's convenient to your Ladyship.

MRS JUSTICE GLOSTER: That's the end of the section, is it,

on that?

MR SUMPTION: Yes. There's one other circumstantial matter I need to deal with but it's better dealt with after the break.

MR ADKIN: Before your Ladyship rises, my Lady asked about the Logovaz Club. Mr Berezovsky himself gives a brief description of the Logovaz Club at paragraph 34 of his witness statement, which is D2/17/203. I don't understand that description to be controversial.

MRS JUSTICE GLOSTER: It's not in dispute. Thank you.

MR SUMPTION: I think your Ladyship will also find a description of it in Dr Nosova's evidence.

MRS JUSTICE GLOSTER: Yes, very well. Thank you. I'll take ten minutes.

(11.45 am)

(A short break)

(12.01 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: My Lady, the next circumstantial point that I wanted to draw attention to, pointing towards Mr Abramovich's version of what was agreed, is that a partnership agreement of the kind alleged by Mr Berezovsky would not in fact have served what Mr Berezovsky accepts was the purpose for which he was entering into this arrangement in the first place.

Mr Berezovsky's own evidence, and we summarise this at paragraph 31 to 34 of our document, is that the logic of entering into this arrangement with this young untried businessman was to generate a source of funds for ORT. Now, at a later stage, Mr Berezovsky's appetite for money may have been driven very much more by his personal expenditure, but at this stage there seems to be no doubt that ORT was the principal financial requirement, and it was an urgent requirement because ORT had to be funded in time to mount a major publicity campaign in support of Boris Yeltsin's re-election campaign in elections that were due to be held in June 1996.

The evidence, mainly from Mr Berezovsky himself and to some extent from Dr Nosova, was that the other private investors in ORT were not willing to pay up. Mr Berezovsky's main business, the Logovaz Group, was unable to do so. Mr Dubov came to Mr Berezovsky and said, if he demanded the money from Logovaz Group, it would be the last payment they ever made before folding. And attempts to borrow from commercial banks, according to Dr Nosova, had also failed.

Now, Mr Berezovsky needed money to fund ORT much faster than he could ever have got it out of Sibneft dividends. His only answer to this point is that it

would have been perfectly simple to integrate the component businesses of the two Siberian companies into one with their old-style Soviet management and their billion dollars of accumulated debt, as Mr Abramovich described, and then to start extracting large sums of money from the combined business almost at once.

Now, that evidence, in our submission, was absurd. Mr Berezovsky cannot possibly have believed it and, indeed, his own admitted ignorance of the oil trade makes it difficult to attach any weight to it. The evidence is that from the very outset of their relationship, at the end of 1994 and the beginning of 1995, Mr Berezovsky questioned Mr Abramovich about how much he could pay and said he would require 30 million a year. At that stage, as I pointed out, this must have been an enquiry about what Mr Abramovich could pay from the proceeds of his existing oil trading businesses.

Now, the payments to Mr Berezovsky had to be made out of funds generated by the trading companies at that stage and, in fact, they continued to be made out of funds generated by the trading companies up to 2000. Mr Berezovsky cannot say at this stage, in 1995, he was expecting to receive money from so-called transfer pricing by Sibneft because his evidence is that he knew nothing about transfer pricing until the Khodorkovsky

trial in 2003. We give the references to that evidence at paragraph 33, sub 1.

Now, in their written closing, my learned friends, this is at paragraph 374 of their written closing, ask forensically why they say should Mr Berezovsky have wanted to enter into a krysha relationship with Mr Abramovich in 1995? What possible reason could there be for Mr Berezovsky not to enter into a partnership with Mr Abramovich for the acquisition and sharing of Sibneft? The answer to that question is perfectly simple: the only way that Mr Berezovsky was going to get cash at the time that he needed it was by selling his influence in the Kremlin.

That's why he was interested, when he first discussed the arrangements with Mr Abramovich, in the amount that Mr Abramovich's trading companies could generate, and not in the amount that might in future be generated by Sibneft which was as yet a distant project. It's also, incidentally, the reason why Mr Abramovich and Ms Goncharova must be right in saying that the \$30 million which Mr Berezovsky said he would require was paid to him in 1995 before Sibneft was ever acquired. That is when he needed it.

Now, in hindsight, it is reasonably clear that Mr Berezovsky in 1995 seriously underestimated

Mr Abramovich's business talents. Mr Abramovich took over a pair of bankrupt and inefficient state-run businesses, with accumulated historic debts of enormous proportions, and transformed them into a highly successful integrated enterprise. But it took him five years to do that, five years before any dividend was declared and three years before any significant profits were made. And that was simply not the timeframe on which Mr Berezovsky was operating in 1995 and he knew it.

Now, the high point of Mr Berezovsky's case appears to be the transcript of the Le Bourget tape. I'm not going to subject your Ladyship to yet another detailed exegesis of this rambling, obscure and possibly incomplete transcript, which appears to be the only tape recording which was worth selling to Mr Berezovsky out of the many which we are told that Mr Patarkatsishvili was in the habit of making of meetings that he attended. A detailed exegesis of the tape transcript is supplied in Mr Abramovich's commentary at bundle E6 E6/01/1, and by way of summary on this issue in our closing at paragraphs 58 and 59.

What I will do, if I may, is make a number of brief points about it. The first is that the exchanges at Le Bourget are incomprehensible without knowing about

their context in the previous discussions, all of which had been between Mr Abramovich and Mr Patarkatsishvili with the exception of some that had concerned Mr Fomichev. Mr Berezovsky himself was unfamiliar with that context, as he acknowledged in his cross-examination. He was unfamiliar with the context of the discussions which he was present at because he hadn't been party to the previous discussions, and it was his practice to leave the management of his financial affairs to Mr Patarkatsishvili and Mr Fomichev. His own commentary on the transcript is really therefore argument rather than evidence.

The second point that has to be made about this is that the context which is chiefly important in understanding the Le Bourget tapes is the dominant role which western anti-money laundering regulations had by now come to assume in the conduct of Mr Berezovsky's and Mr Patarkatsishvili's affairs. And "dominant" is not, I would suggest, an exaggeration.

By the time of the Le Bourget meeting, Mr Berezovsky was an exiled fugitive living in France and Mr Patarkatsishvili expected very shortly to become a fugitive in his turn. In fact he did when he removed himself from Russia to Georgia in April 2001. The vast income that was required to fund the lifestyles of these

two gentlemen came entirely from Russia. Now, previously, Mr Berezovsky and Mr Patarkatsishvili had received an income stream from two non-Russian sources. Andava produced an income stream which was derived from Aeroflot's treasury operations in Switzerland, and the references to that matter your Ladyship will find in our closing at paragraph 64, in particular note 394. The other income stream outside Russia was the Runicom companies which had been used in 1997 to pay most of the sums which Mr Berezovsky received from Mr Abramovich, in particular the sums he received for buying and doing up his palace on the Cote d'Azur.

Now, the Andava stream had dried up by 2000. Indeed it was the allegation of the Russian public prosecutors that the Andava monies had been stolen by Mr Berezovsky from Aeroflot, which had led to Mr Berezovsky's flight from Russia at the end of October.

The Runicom stream was about to dry up, as Mr Abramovich explained at the Le Bourget meeting, because of changes to the Russian tax system which had led to the decision to consolidate the operations of the trading companies into Sibneft itself. The evidence on this point is summarised at paragraph 59, sub 3.

So the prospect that Mr Berezovsky and Mr Patarkatsishvili were facing in December 2000 at the

time of the Le Bourget meeting was that every dollar that they spent would now have to be got out of Russia. That would involve, to use the delicate phrase which they constantly employed in this context, legalising the money, by which they meant providing a documented explanation of its origins to whatever western bank or asset manager they wanted the money paid to.

That was a particularly acute problem in 2000 and in the following years for reasons that were described in an interesting and unscripted part of the evidence of Mr Ivlev. Your Ladyship may recall that he told you that at the time of the ORT transaction, western financial institutions were particularly, ie more than usually, sensitive to large money funds(?) coming out of Russia because of the scale on which wealthy Russians had been seeking to export their assets, and that these suspicions were at their highest when associated with Mr Berezovsky. This was Mr Ivlev's evidence, who was of course a fugitive from Russian justice. That had resulted in Mr Ivlev's phrase of what he called an "extreme level of control from banks", and the reference to that is at paragraph 267 and note 1077 of our written document.

Now, both Mr Berezovsky and Mr Patarkatsishvili were uncomfortably aware of this, as Mr Berezovsky accepted

in his evidence. They had been grappling with this problem of money-laundering enquiries ever since the beginning of 2000 when they first conceived the idea of putting their resources into offshore structures outside Russia. Now, that idea, when originally conceived of, had been a luxury, but by the end of 2000, once they had left Russia or were about to, it had become a necessity. Almost all of these people's income was derived from Mr Abramovich on a basis which was wholly undocumented and quite incapable of satisfying the money-laundering enquiries that they knew they were bound to face every time they received it.

So from this time on, the great majority of the financial documents disclosed by Mr Berezovsky were in fact generated by attempts to resolve this particular problem, and indeed it never was completely resolved, and it is some indication of the continuing significance of the money-laundering issue that, for example, after Clydesdale Bank required Mr Berezovsky and Mr Patarkatsishvili to close their account in August 2001, it took them 18 months to find a new home for it, more than 27 banks having refused to touch the money. The references to that will be found in our written opening at paragraph 184.

Another indication is the scale of judicial

investigation. There have been official or judicial enquiries into allegations of money-laundering by Mr Berezovsky and/or Mr Patarkatsishvili in no less than four western countries in addition to Russia over the past decade: Switzerland, The Netherlands, Brazil and most recently France. Most of the relevant parts of the Le Bourget transcript are concerned with methods of generating documents for the purpose of legalising Mr Berezovsky's and Mr Patarkatsishvili's receipts from Mr Abramovich.

There are essentially three respects in which the Le Bourget transcripts are said to support Mr Berezovsky's claim to have an interest in Sibneft. The first is that the transcript has a number of references to the possibility of Mr Berezovsky and Mr Patarkatsishvili being registered as shareholders in Sibneft and receiving dividends. These arise from a proposal previously made by Mr Fomichev for legalising their receipts from Mr Abramovich by transferring shares to Mr Berezovsky and Mr Patarkatsishvili, or else to a bank acting as their nominee, so that they could have a documented right to receive dividends by way of cover for the payments that Mr Abramovich was making to them.

Now, that was unacceptable to Mr Abramovich because it would have made them the owners in perpetuity of

a significant proportion of his company(?), as well as, as he pointed out, discrediting Sibneft by its association with a fugitive from Russian justice.

Now, the second aspect of the transcript that is relied upon is that there are three references in it by Mr Abramovich to him holding 44 per cent of the company with the rest being, and I quote, "in trust with the management". These references will be found listed for your Ladyship at paragraph 59, sub 6.

Mr Berezovsky's suggestion is that the 44 per cent said to be held in trust with the management of Sibneft must be the half that he says was being held for him and Mr Patarkatsishvili. It is in fact, as became apparent in the course of the evidence of Mr Abramovich and Mr Shvidler, a standard formula that both of them used in order to disguise, for security purposes, the fact that Mr Abramovich was effectively the sole substantial shareholder in Sibneft. And there are press interviews, which were referred to in their cross-examinations and re-examination, in which they used that formula. So there doesn't appear to be any room for argument about that.

It would also, I suggest, be very odd for Mr Abramovich to be referring to 44 per cent as being held in trust with management if he meant that they were

being held in trust by him for the very people that he was talking to in the meeting room at Le Bourget Airport.

The third respect in which these transcripts are relied upon is that there are references in the early parts of the tape to the payment of \$305 million to Mr Berezovsky and Mr Patarkatsishvili, of which 30 million is said to be coming from aluminium and the rest from oil. Now, there is no doubt from the transcript that the payment of this sum had been agreed at some stage before the meeting between Mr Abramovich and Mr Patarkatsishvili. The transcript itself makes that clear, and Mr Abramovich's evidence about that is that it had in fact been agreed in about October when it was increasingly likely that Mr Berezovsky would have to flee from Russia and when he was becoming anxious about the funds that would be available when he did. That is in fact confirmed by the bolshoi balance, because the bolshoi balance shows a very significant increase in the payments to Mr Berezovsky and Mr Patarkatsishvili from October onwards, which is exactly the time when, on Mr Abramovich's evidence, the agreement with Mr Patarkatsishvili had been made.

According to Mr Abramovich's evidence, Mr Patarkatsishvili, when they made that agreement, had

wanted to satisfy himself that the money, 305 million(?), would be paid and he had asked where it was coming from. An understandable question since these sums were far larger than any that had previously been paid over a comparable period of time by Mr Abramovich, to either Mr Berezovsky or Mr Patarkatsishvili.

So he said "Where is it coming from?" And he was told that 30 million would be coming from the aluminium side and the rest from oil. Now, it is fair to say that several parts of the Le Bourget transcript, and in particular some of the statements of Mr Patarkatsishvili, suggest a sense of entitlement on his part. They also suggest a feeling that the more money Mr Abramovich was making, the more he could be required to pay up to him, Mr Patarkatsishvili, and Mr Berezovsky. But whether that entitlement that Mr Patarkatsishvili seems to have felt was an entitlement based on a shareholding, or some equivalent contractual right, or on krysha, is something that the transcript itself does not disclose even incidentally. For that you have to go back to the evidence of the 1995 agreement itself and the evidence of the way in which it was performed, in particular the timing and the amounts of the payments to Mr Berezovsky and Mr Patarkatsishvili.

Now, the irony is that although the Le Bourget meeting was in December 2000, Mr Berezovsky never publicly claims to have any substantial holding in Sibneft until June of 2001, and did so then in the most extraordinary circumstances, which I will come to. Between 1996 and his flight from Russia at the end of October 2000, Mr Berezovsky did not claim to have an interest in Sibneft. At least in the early part of it, it is fair to say that he allowed it to be supposed that he did, and Mr Abramovich's evidence was that he had no problem with that because he was anxious that he should be publicly associated with a protector as influential as Mr Berezovsky.

Now, holdings in Russian companies are very often deliberately made opaque by interposing complex networks of holding companies whose exact ownership is often very difficult to penetrate. There was certainly some press speculation that Mr Berezovsky did own part of Sibneft, and neither he nor Mr Abramovich denied it for the reason that I have just indicated.

In 1997, however, it was necessary now to deal formally with the question of Mr Berezovsky's relationship with Sibneft because the Eurobond issue of that year was traded on the New York Stock Exchange and marketed in the west. It therefore had to satisfy

western standards of due diligence. And while an association with Mr Berezovsky was undoubtedly a salutary and valuable thing within the disordered framework of Russian society, it was not something which would be received with unalloyed enthusiasm by the average western investor. So the prospectus had to clarify the position to the standards of due diligence required in western securities markets.

Now, the prospectus for the Eurobond issue was, as I've told your Ladyship, done as a result of due diligence by Salomon Brothers and Cleary Gottlieb, and that said that while Mr Berezovsky maintained close relations with the senior management on the board of Sibneft, he does not own or control or have any other interest in the shares of Sibneft.

Now, it is perfectly clear that this statement was cleared with Mr Berezovsky before it was published. Mr Berezovsky has predictably denied that in his evidence, but it is in my submission clear. I say that for this reason. First of all, Mr Berezovsky told Ms Duncan at the interview with Mr Patarkatsishvili in November 2007 that he had been consulted about the circular and had approved this passage because he said Mr Abramovich had asked him to. And his response, when this was put to him in cross-examination, was simply to

suggest that Ms Duncan has got it wrong, although it is impossible frankly to understand how she could have recorded this in her note if Mr Berezovsky didn't say it.

Your Ladyship will find the references to this particular episode at paragraph 63, sub 3(c) of our written document.

Secondly, according to Dr Nosova's witness statement, Mr Berezovsky had told her that Mr Abramovich had consulted him about the statement before it was published. Mr Berezovsky's response when that was put to him was that Dr Nosova was wrong. When Dr Nosova, who had of course been present in court to hear him give that evidence, was in turn asked about it, she claimed that she had in fact been referring to an earlier draft of the statement which referred to his having only no legal interests and was not in such all-embracing terms.

Now, quite apart from the fact that the document she was talking about was actually identified by its Magnum reference in the document, there in fact was no earlier draft in different terms, and Dr Nosova's statement makes it perfectly clear, her witness statement makes it perfectly clear that it was to that very document that she was referring and not to a draft of it. This is, in our submission, a good example of the forensic

dishonesty to which both Mr Berezovsky and Dr Nosova were happy to resort when they were cornered on some particular issue of fact.

What seems quite clear is that for four years after the publication of that circular in 1997 Mr Berezovsky freely admitted to having no interest in Sibneft. He relied, in his action against Forbes, on an affidavit in which it was said by Mr Shvidler that he had no shareholding. He himself made similar statements in the press. His own evidence is that these statements were technically true because he had no registered shareholding. But if he is right in what he says were the terms of the 1995 and 1996 agreements, these statements were, as he must have appreciated, wholly misleading.

Now, there was in fact no public claim to have been a shareholder in Sibneft until 27 June 2001 when Mr Berezovsky made a statement to this effect in the press. References will be found at paragraph 65 of our document. Now, that was a statement that occasioned considerable surprise as the newspapers which reported it observed. It occasioned surprise because of the formal denial of such an interest in 1997 and on a number of occasions since.

The circumstances in which, in late June 2001,

Mr Berezovsky made a press statement to the effect that he owned a large part of Sibneft are not at all creditable to him. By that time Mr Berezovsky, according to his own account, had actually parted with whatever interest in Sibneft he had ever had by selling it to Devonian just three weeks before. When asked about this, he said rather engagingly that it wasn't exactly a lie, just "disinformation", was his phrase.

There is in fact strong circumstantial evidence that the reason why Mr Berezovsky made that statement at that stage was in order to generate newspaper copy that Mr Curtis could supply to Clydesdale Bank in support of his claim that the Devonian monies came from the sale of shares in Sibneft. What had happened, as we saw in the course of cross-examination, was that in his letter of 1 June 2001 to Mr Fomichev, Mr Curtis had asked Mr Fomichev to find some suitable copy to show to the bank, and the bank's files show that Mr Curtis duly supplied him with cuttings of this particular press statement.

The inference, in our submission, is overwhelming that the reason why Mr Berezovsky made a press statement that he owned a large part of Sibneft, three weeks after he claimed to have disposed of it in favour of Devonian, was in fact that he wanted to generate deceptive press

copy which could be used to satisfy Clydesdale Bank.

Now, this press statement was one of many made over the following years which arose directly out of Mr Berezovsky's and Mr Patarkatsishvili's need to launder their funds, and these statements are on a par with the very similar untruths for which Mr Berezovsky and Mr Patarkatsishvili were responsible in the case of Aeroflot. The claim to own a large part of Aeroflot was made by Mr Berezovsky or his staff to Valmet in September 2000, it was made by Mr Curtis to Clydesdale Bank in early 2001, presumably on the basis of what Mr Berezovsky or Mr Patarkatsishvili or their staff had told him. It was recorded in the so-called explanatory memorandum which appears to have been prepared by Mr Joseph Kay but which for some inexplicable reason is attributed by my learned friends to Mr Streshinsky. It was made again to PricewaterhouseCoopers when they were preparing their report for the purposes of the Inland Revenue investigation of Mr Berezovsky's tax affairs from a source which can only have been either Mr Berezovsky himself or one of his immediate staff. The references to all of this will be found in paragraph 64 of our document, in particular at notes 393 and 394.

Now, that statement in relation to Aeroflot was

completely untrue. It's acknowledged that Mr Berezovsky did not own a significant part of Aeroflot. What Mr Berezovsky and Mr Patarkatsishvili appear to have had was not a shareholding in Aeroflot but an income stream derived from the treasury operations carried out for Aeroflot by Andava. In other words, these were lies told in order to launder an undocumented and arguably illicit income stream by presenting it as the income(?) generated from a capital asset, exactly what they repeatedly did in the case of the income stream derived from Sibneft.

Now, in my learned friends' written closing, it's paragraph 221, it is said that we have conceded the honesty of Mr Berezovsky's recollection that he owned a share of Sibneft and the most elaborate argument is founded on this supposed concession between paragraphs 390 and 396 of their written closing. I must make it clear that we have not and do not concede any such thing.

What we have said, and it's at paragraphs 61 and 62 of our document, is that it is possible, possible, that Mr Berezovsky may have persuaded himself that in some sense Sibneft was his company. We then go on to say in what sense he may possibly have persuaded himself of that. When one looks at the evidence of Mr Berezovsky's

frame of mind, available in the transcripts of his evidence to this court, it becomes, I would suggest, quite obvious that Mr Berezovsky considered that he owned not so much Sibneft as Mr Abramovich.

Mr Berezovsky, presumably, at some stage came to think rather better of Mr Abramovich's business talents than he had done in 1995, but Mr Abramovich's evidence is that Mr Berezovsky never treated him as an equal, even though his lavish personal expenditure was entirely funded by him.

Now, in a revealing passage of his evidence, and we give the reference to this at paragraph 61, sub 2, it's at note 365 but the actual transcript reference is Day 5, page 15. Mr Berezovsky observed that it was easy, he said, to make money out of Sibneft; all you needed to do was to put the two component businesses together, take management control of it and immediately a great stream of cash would appear. Now, Mr Berezovsky really seems to have believed that his political contribution in procuring the original creation of Sibneft and its inclusion in the loans-for-shares scheme was not just a pre-condition of Mr Abramovich's ability to make money out of it but was actually the only thing that mattered.

As Mr Berezovsky saw it, he had personally created Mr Abramovich out of nothing and put him in a position

where he had only to sit there for vast sums of money to flow into his lap. On that footing, Mr Abramovich was simply Mr Berezovsky's manager whom he generously allowed to keep half of Sibneft to incentivise him but effectively as a matter of largesse.

There is, I would submit, a valuable clue to Mr Berezovsky's way of thinking about these matters, and it's dealt with in this part of our written closing, in his attitude to NFK which, of course, was the jointly owned vehicle company that successfully bid for the loans-for-shares contract. NFK never acquired any shares in Sibneft. It only ever acquired a security interest in the state's retained 51 per cent holding and a right of management for three years. NFK, as we know, was 50 per cent owned by Consolidated Bank which was a company in the Logovaz Group over which Mr Berezovsky had effective management control but of which he only owned 14 per cent. The calculation -- I don't think this is disputed -- the calculation of Mr Berezovsky's stake, indirect stake in Consolidated Bank is set out at paragraph 43, at sub 2, of our written document which also refers to a fuller account of this in the opening document.

Now, it seems clear that Mr Berezovsky regarded this state of affairs, by which NFK was 50 per cent owned by

a company he controlled, namely Consolidated Bank, as equivalent to him and Mr Patarkatsishvili owning 50 per cent of Sibneft, even though they never bought or paid for any shares in Sibneft. The clearest statement to this effect was, I would suggest, made as recently as June of this year in Mr Berezovsky's evidence to the French investigating magistrate. One of the main issues under investigation by the magistrate in Marseilles was whether Mr Berezovsky was a part owner of Sibneft. That was crucial because Mr Berezovsky was claiming that the money that he used to buy up and do up his property in France in 1997 had been derived from dividends attributable to his possession of those shares. When asked for his evidence about this, and the reference is H(C)8/182 but we give it in paragraph 61, sub 2(a) of our document, when asked for evidence of this he said this:

"I represented my interest with [Badri] by ... Consolidated Bank. It is clear evidence [he said] that I was formally shareholder of Sibneft."

That seems to have been the view that Mr Berezovsky took: "Because I owned Consolidated Bank and Consolidated Bank owned half of NFK, and NFK had won the loans-for-shares contract, I owned 50 per cent of Sibneft". In his witness statement, he appears to be

making the same suggestion because what he says, and it's at paragraph 179 of his fourth witness statement, is that his interest in Sibneft arose from a transfer of NFK's rights in respect of Sibneft to FNK, FNK being the company that acquired the state's retained 51 per cent holding when it was eventually sold in 1997.

Now, references to his lengthy cross-examination on this question will be found at paragraph 61, sub 2(b) of our document. But what it all amounts to is a claim that his control over Consolidated Bank's 50 per cent of NFK conferred on him and Mr Patarkatsishvili an interest in FNK. Interestingly enough, Mr Jenni said that that was his understanding too. He thought NFK was the vehicle through which Mr Berezovsky owned part of Sibneft. That was an understanding which, on the face of it, he could only have derived from Mr Berezovsky or Mr Patarkatsishvili.

Now, some indication to the same effect, although the figures are somewhat different, can be found in Mr Berezovsky's statement to the press in 2000 -- we refer to this in our document at paragraph 61, sub 2(c) -- his statement to the press that he owned 7 per cent of Sibneft through what he called some Logovaz structures. Now, 7 per cent was of course 50 per cent of Mr Berezovsky's 14 per cent holding in

Consolidated Bank, so he was again viewing his supposed shareholding in Sibneft as arising from Consolidated Bank's role in the loans-for-shares auction.

Now, of course, all of this is a legal muddle and nonsense. FNK, which won the 51 per cent auction in 1997, was a separate company owned by Mr Abramovich. There was no transfer of rights from NFK to FNK. However, it does look as if Mr Berezovsky thought that because a company 50 per cent owned by Consolidated Bank had won the loans-for-shares auction and thereby given Mr Abramovich his opportunity, he, Mr Berezovsky, owned part of Sibneft without the tiresome need to buy any shares.

Now, Mr Patarkatsishvili may very well, for all we know, have thought the same. His interview notes certainly suggest, although it's not entirely clear, that he did think in this way because he seems to suggest in those notes that Mr Berezovsky's interest in Sibneft had been acquired by way of their indirect participation in the loans-for-shares auction. That seems to be why Mr Berezovsky and Mr Patarkatsishvili felt that sense of entitlement that is manifest in parts of the Le Bourget transcript and in many of Mr Berezovsky's statements in the course of giving evidence.

The problem is that an inchoate sense of entitlement based on the fact that Mr Abramovich only owned Sibneft because of what Mr Berezovsky had done to bring about the loans-for-shares auction, that is not the same thing as a legal interest in Mr Abramovich's shares and not the same thing as a contractual right equivalent to a legal interest. What Mr Berezovsky has tried to do in this case is to dress up as a legal interest something that was nothing of the sort by asserting all sorts of oral agreements and we do not accept that this was an honest process. This is not based on his honest recollection; it is Mr Berezovsky saying what he now realises he has got to say if his claim is to stand up in a court of law.

Now, Mr Berezovsky, of course, didn't need to worry too much about that before 2000. He was Mr Abramovich's political godfather and before 2000 that was quite enough to ensure the continuing flow of cash. But the difference between an inchoate sense of entitlement and a legal right became extremely important for the first time in 2000 as a result of two parallel developments. First, he started trying to shift his income abroad and found himself having to grapple with money-laundering enquiries which required that he did have legal ownership and, secondly, he fled from Russia and lost

his political influence. Suddenly therefore, around 2000, it did become rather important to present what had previously been a reliable source of income from an undocumented source as a legal interest in the company and that, of course, is when he started saying that.

Now, there are two aspects of this particular issue, the existence or nonexistence of an interest in Sibneft, which I should deal with, however briefly. One is the so-called 1996 agreement and the other is the impact of Russian law. I can deal with the 1996 agreement very briefly indeed because, in my submission, it is an irrelevance. It was devised at a time when Mr Berezovsky had persuaded himself that he had originally owned a share in Sibneft through his own companies, and that is what he pleaded right up to the summary judgment application.

On that footing, the 1996 agreement was necessary in order to explain, in a manner that was consistent with his current claims, how these shares subsequently came to be registered in the name of Mr Abramovich's companies. Now, once Mr Berezovsky discovered that actually his companies had never owned any shares in Sibneft, and Mr Abramovich's companies had always owned them, the 1996 agreement was redundant. What he had done previously was to invent an agreement under which

he could claim to have an interest in them, notwithstanding that they were transferred back to Mr Abramovich, and that actually never happened.

This issue, the 1996 agreement, on which my learned friends are commendably brief(?) in their written closing, only survives as part of this case in order to salve Mr Berezovsky's credibility as a witness. But it is a fiction. No distinct agreement was made in 1996, and whatever the nature of the arrangements made between Mr Abramovich and Mr Berezovsky in 1995, they did not change in 1996.

It is common ground, if I may turn for a moment to Russian law, that whatever agreement was made in 1995 was governed by Russian law. However, no issues of Russian law arise unless the 1995 agreement was in substantially the terms alleged by Mr Berezovsky. On that footing, the question which arises is whether an agreement in those terms would be effective in Russian law.

Our submissions on this are set out in detail in section A2 by reference to the reports and oral evidence of the experts.

There are perhaps three points that it is worth making on my feet and which may assist your Ladyship in cutting through the thicket. The first is that much of

the expert evidence on this question was concerned with the question of legal certainty on which the basic principle is not seriously disputed. The dispute related to the application of the principle to the facts of this case rather than to the principle itself, and the application of the principle is of course a matter for your Ladyship. The experts identify the principles of foreign law, your Ladyship then applies them.

The principle is that obligations of the parties must be sufficiently defined to be capable of enforcement by a court. For that purpose, the primary mode of enforcement is specific performance, and a Russian court would require the terms to be capable of specific performance. Professor Maggs was in fact the only expert who made that point in terms but his evidence was neither contradicted by the other experts nor challenged in cross-examination. My learned friend said in advance he didn't wish to cross-examine Professor Maggs. I indicated that he should nevertheless appear because I wished to ask him what the basis of this particular part of his report was. He explained in detail what the basis of it was, and my learned friend did not challenge that evidence.

Nobody suggests that the lobbying obligation in the 1995 agreement, which was a critical part that

Mr Berezovsky was to play, nobody suggests that that was sufficiently defined to be specifically enforceable. Even Mr Rachkov disowned any suggestion of that kind. His evidence on this point, and perhaps I could invite your Ladyship if you have a hard copy of our document at paragraph 75, to just note in the margin "Day 34, page 31", which is where that point is acknowledged by Dr Rachkov.

Now, the second point to be made about the Russian law issues concerns the principle of public policy which is embodied in the Makayev case. Now, this is directly related to the facts that we have been discussing in the course of this morning. It's also a point on which there is a measure of common ground between the experts although it is very far from total. It is first of all common ground that the contribution of partners to an alleged simple partnership agreement must be lawful. The problem about the agreement alleged by Mr Berezovsky is that if he is right, then his reward for using his political clout in the Kremlin was going to be a share of the spoils in the event that his efforts were crowned with success and a favourable decision was obtained on the creation and privatisation of Sibneft. Only in that event would Mr Berezovsky, according to his own version of the agreement, get half of Sibneft and half of its

profits.

Now, the law in Russia is that parties may not make an agreement under which payment is contingent on the favourable decision of a judge or official. There is no evidence that the parties -- the parties, that's to say Mr Berezovsky and Mr Abramovich -- agreed the exact methods which Mr Berezovsky was going to employ in order to persuade Mr Yeltsin and his entourage to do what he asked. The crude jobbery described in Mr Berezovsky's witness statement, by which Sibneft was created and included in the loans-for-shares scheme as a means for enabling Mr Berezovsky to fund a television campaign in Mr Yeltsin's favour, out of funds provided by Mr Abramovich, was not, so far as the evidence shows, something that Mr Berezovsky and Mr Abramovich discussed or specifically agreed would happen. The agreement was more general than that, lobbying.

But the point about the Russian rule of public policy is that it is not the reality of corruption which engages the principle of public policy, but the potential for contingency rewards to lead to corruption that constitutes the vice. It doesn't seem to have been suggested in the case about lawyers' contingency fees that the lawyer in question had actually bribed the judge. The suggestion was, however, that arrangements

of that kind had the potential to encourage people to do that and were therefore contrary to public policy.

Now, both experts were in fact agreed on what appear to be the essential points in this area. First of all, they were agreed that the decision of the Constitutional Court in Makayev states a principle which expressly applies to all governmental authorities and not just to officials. Dr Rachkov points to the dissenting judgment of Judge Kononov, the only dissident in the court. It was not of course a decision of the court, but its significance is this. Judge Kononov at least acknowledged in terms that what the court had decided extended to rewards contingent on the decision not just of judges but of officials, and that was one of the points on which he criticised the reasoning of his colleagues. But it is the reasoning of his colleagues, who assented to the outcome, which makes the law. Other side opinions by concurring judges emphasise, I would suggest, the general application of the rule of public policy, particularly perhaps the concurring judgment of Judge Gadziev. Now, that is one point on which there appears to be agreement, that Makayev applies not just to court proceedings but to decisions of public officials.

Secondly, both experts agree that the object of the

rule of public policy is to make unenforceable a type of agreement with a significant potential for corruption which is, of course, a very serious social and economic issue in Russia. In this country we once banned contingency fee arrangements for a completely different reason, namely its possible effect on the forensic honesty of counsel. It had never occurred to the authors of the common law rule against Champerty that it might be necessary in order to avoid problems associated with the corruption of judges. But one should not close one's eyes to the fact that judicial and administrative corruption is a very real problem in Russia, or at any rate was in the 1990s.

Thirdly, both experts agree that the decisions of the Constitutional Court are binding on other courts. It is fair to point out that the Constitutional Court is charged with interpreting the constitution, and nobody was suggesting in Makayev that the constitution itself prohibited rewards contingent on the decisions of public officials. But that, in our submission, is beside the point because what they were dealing with was a rule of public policy that had constitutional effect. It had constitutional effect because the result of that decision was that legal restrictions on lawyers' contingency fees were constitutional, notwithstanding

the constitutional freedom of contract which the lawyer in that case was trying to invoke.

Now, of course, my learned friend says it was about lawyers' contingency fees, and that's quite true. But Russian courts, like English ones, apply legal principles to particular facts. Both the principle and the mischief at which the principle is aimed extend beyond fees payable for legal representation before a judge to arrangements which are contingent on the outcome of an official decision.

Now, the third point that I ought to make about Russian law in the context that I am presently concerned with, namely the 1995 agreement, concerns the requirement that a contract of this kind should be in writing, and the closely related question whether this contract was intended by its parties to be binding at all. Ultimately, the experts were agreed on the principle underlying Articles 161 and 162 -- it's pointed out to me that at [draft] line 8 I said the contingency fees were constitutional, I meant the ban on contingency fees was constitutional, notwithstanding the freedom of contract enshrined in the constitution.

Returning to my point, ultimately the experts were agreed on the principle which underlies the two relevant articles of the Russian Civil Code: Articles 161 and

162. The real differences, once again, concerned the application of the principle to the facts. Now, the principle established by the evidence of both Dr Rachkov and Mr Rozenberg is this. One, in a Russian court, a party would not be able to prove by oral evidence either the fact that an agreement had been made or what its terms were; both experts were ultimately agreed upon that. Secondly, a litigant would however be permitted to prove by oral evidence what the parties had done by way of subsequent performance, and in some cases that might be sufficient to establish either the original agreement or a variation of it by conduct. Three, the exclusion of oral evidence does not prevent the parties from putting forward explanations which are essentially unsworn statements that may be taken into account by the court but these have got to be verified. The result is that in a case where the only evidence about the fact or the terms of an agreement is the oral evidence of witnesses, the agreement cannot be proved. We have given the references to that at paragraph 112 of our document. I would invite your Ladyship to add opposite note 522 a reference to Day 34, pages 95 to 97, where Dr Rachkov acknowledged that, if the only evidence about the fact or terms of the agreement was the oral evidence of witnesses, the agreement could not be established.

Now, in these circumstances, it seems clear that the present claim could not be proved by oral evidence unless subsequent performance established its existence. The difficulty about that suggestion is that what is relied upon as subsequent performance is equivocal. It is at least as consistent with payment for the services of a krysha as with payment under a contract in the terms alleged by Mr Berezovsky. Indeed the timing and amount of the payments show that it's a good deal more consistent with payment for the services of a krysha.

The real issue, I would suggest, in the absence of writing, is a question which both sides agree is one for English law, namely whether this is a rule of substance or a rule of procedure. Our submissions about that are at paragraphs 113 to 116 of our document but, broadly speaking, the rule of English private international law is that the court takes a nontechnical approach to these questions with a view to giving effect to the foreign law rather than undermining it.

MRS JUSTICE GLOSTER: That was the question I think I asked in the course of evidence.

MR SUMPTION: Indeed. Now, if your Ladyship -- I'm not going to take up much time referring to authority but I wonder if we can hand up --

MRS JUSTICE GLOSTER: There's quite a lot there in the

footnotes, do you want me to go off and read these?

MR SUMPTION: Can I take your Ladyship to the quite short passages from Dicey, Morris and Collins, because I think that is probably the quickest way of dealing with this.

(Handed)

If your Ladyship would take page 177 in the clip that I've just handed up. The general principle is described at paragraph 7-003:

"While procedure is governed by the *lex fori*, matters of substance are governed by the law to which the court is directed by its choice of law rule. Dicey wrote that English lawyers gave the widest possible extension to the meaning of the term 'procedure'. As a matter of history this is true, and a court may even today be tempted to extend the meaning of 'procedure' in order to invade an unsatisfactory choice of law rule. But in general the attitude expressed by Dicey has fallen into disfavour precisely because it tends to frustrate the purpose of choice of law rules. In *John Pfeiffer v Rogerson*, the High Court of Australia stated:

"Matters that affect the existence, extent or enforceability of the rights or duties of the parties to an action are matters that, on their face, appear to be concerned with issues of substance. Thus some questions which were at one time thought of wholly in terms of

procedure are now considered to be procedural in some of their aspects only. The development of the law as to damages illustrates this process.'

"The difficulty in applying this rule lies in discriminating between rules of procedure and rules of substance. The distinction is by no means clear cut. In drawing it, regard should be had in each case to the purpose for which the distinction is being used and the consequence of the decision in the instant context. The rule under examination is to be considered as a whole without giving undue weight to verbal formulae as suggested by previous judges or by the draftsman of a statute to introduce the rule. So the words 'where proceedings are taken in any court' have been held to introduce a rule of substance.

"The mechanistic approach sometimes found in English cases of relying on the classification of the introductory verbal formula, as used in a quite different statute, or of accepting a classification as procedural or substantive made for some purpose quite unrelated to the conflict of laws is also now discredited. The distinction may have to be drawn in one place for the purposes of this rule but in another place for the purpose of the rule that statutes affecting procedure are, while statutes affecting

substance are not presumed to have retrospective effect. This is not to say that the distinction may not be drawn in the same place for many purposes, it is merely to deny that it must necessarily be drawn in the same place for all purposes."

MRS JUSTICE GLOSTER: So it's up to me to get on with it, basically.

MR SUMPTION: My Lady, yes.

The other passage I wanted to read, which your Ladyship may wish to look at over the break, is at pages 183 to 184, paragraphs 7-015 to 7-016, but primarily 7-015. If your Ladyship has time to read that, that would assist.

MRS JUSTICE GLOSTER: Yes certainly, I'll read that over the break.

Very well. Two o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MR SUMPTION: I see your Ladyship clutching Dicey and Morris.

MRS JUSTICE GLOSTER: I've read it.

MR SUMPTION: Obviously the critical point that I'm taking from this is in 7-015, that it's not everything that appears in the treatise on the law of evidence that's to

be classified internationally as adjectival law. The flexible approach that is described there is representing the modern alternative to the rather narrower approach taken by Dicey 100 years ago.

Now, in deciding the question of English law, as I think both parties are agreed, the court obviously takes account of the characteristics of the foreign law rule established by the foreign law experts. The way that the foreign law would itself classify its own rule is not decisive but it may of course assist the court in establishing what the relevant characteristics of the foreign law really are and what its purpose is.

Now, the decisive points in this context I would suggest are these. First of all, Article 161 is now agreed to be substantive as a matter of Russian law. That appeared at one stage to be a matter of dispute between the experts, but the reference as given at paragraph 115, and in particular note 535 of our document, established that it is no longer in issue.

At common law this provision, 161, would be regarded as substantive because it has a normative purpose, ie a purpose outside the regulation of the procedure of the court, namely the protection of parties from being held to oral agreements without unequivocal evidence connecting them with it and establishing their consent.

This is not, in other words, a rule which exists for the better regulation of the court's proceedings but for the protection of parties alleged to have entered into contracts.

The real issue --

MRS JUSTICE GLOSTER: I think I should just get up 161 and 162.

MR SUMPTION: Yes, of course. Your Ladyship will find the relevant parts actually quoted verbatim at paragraph 110 of our closing which may be the quickest way --

MRS JUSTICE GLOSTER: Yes, that's fine.

MR SUMPTION: -- to arrive at it. 161 is the rule, and 162 is the consequences of breach of the rule. The real issue concerns the impact of 162 on the way that an English court should treat these articles. Now, essentially, Article 162 lays down the mode of giving credit(?) to a substantive rule of law to be found in 161.

The object of Article 162 is not to determine how court proceedings are to be conducted, it is in reality to determine in what circumstances a particular obligation is to be recognised. For that reason, in our submission, it cannot be regarded as part of the law of evidence at all. Having regard to its purpose, it can really only be regarded as part of the law of

obligations, something which is by its nature substantive.

Now, it follows, I would suggest, that unless the English court applies a corresponding restriction on the mode of proof, it will in fact not be giving any effect to the substantive law of the Russian Federation as laid down in 161, or to the underlying purpose of Article 161. This is, I would suggest, for that reason a classic instance of the class of case referred to in the extract from Dicey, Morris and Collins where the proper law determines, to use the expression in 7-015, what evidence need or may be given to prove a particular kind of obligation, in this case an obligation exceeding the value threshold in 161.

Now, this provision, 161 and 162, taking them together, is simply the Russian equivalent of the restrictions on proof of oral agreements above a threshold value, which are in fact quite common to civil law systems, and this one seems fairly clearly to be derived from Article 1341 of the French Civil Code, which your Ladyship may recall being referred to in the textbook by Luntz on Russian law, and which we produced in the course of Dr Rachkov's evidence.

Now, that is why this particular rule, 161 and 162 taken together, is classified in Professor Luntz's

treatise on the Russian conflict of laws as substantive, and we give the reference to that at paragraph 115 of our document, and in fact exactly the same rule is taken by the principal textbook relied upon by my learned friends, which is the textbook of Professor Zhuikov. The reference is given in 116 sub 2, in particular at note 538.

Now, it's right to say that there is English authority that section 4 of the Statute of Frauds, which provides that "no action shall be brought" on an oral guarantee, should be classified as procedural. The case --

MRS JUSTICE GLOSTER: I was going to ask you about the Statute of Frauds, or the LPA. I can't remember what the relevant section -- section 40 or something?

MR SUMPTION: The LPA is introduced in exactly the same way, and the same case, so far as it's still good law, would apply to it. The leading case so far as the Statute of Frauds is concerned is *Leroux v Brown*, a decision of 1852, in which the Statute of Frauds was applied on this ground to a French law contract, on the grounds that although the Statute of Frauds was no part of the proper law of the contract, which was in fact valid and enforceable in France, it was procedural and therefore the English court was bound as part of its own

procedural law to apply it.

Now, that is a decision which was expressly made on the construction of the Statute of Frauds, and in particular on the opening formula, which is also to be found in the Law of Property Act, no action shall be brought. It has no bearing on the classification, therefore, of the Russian law rule. It's essentially based on the construction of the English statute and on the question whether those introductory words have the effect, because they regulate the circumstances in which one can bring an action, as part of the procedural law.

Now, in fact, even in the reverse situation, the application of a foreign law rule about forms of contract in England, *Leroux* is a very much criticised decision. I do not doubt that it is good law this side of the Supreme Court, but it has in fact been much criticised academically and it has almost certainly been overruled by the enactment into English law of the Rome Convention.

This point is made, if your Ladyship would take back the clip of extracts from Dicey, Morris and Collins, at page 185 of the extract. There's a heading at the bottom of the page, "Requirement of Written Evidence":

"Section 4 of the Statute of Frauds 1677 provided that no action shall be brought on a number of contracts

unless the agreement, or a note or memorandum thereof, was in writing. Section 4 now applies only to contracts of guarantee. It was held in *Leroux v Brown* that section 4 contained a rule of procedure and therefore prevented the enforcement in England of an oral contract governed by French law which could have been sued on in France. This decision has been severely criticised by writers on the ground that no serious procedural inconvenience would be caused by admitting oral evidence of a contract within section 4. Indeed the court is bound to admit such evidence if the contract is not set up for the purposes of enforcement but as a defence. To characterise the section as procedural merely because it says no action shall be brought is to regard the form of the section as more important than its substance. To characterise it as --"

MRS JUSTICE GLOSTER: Okay, I've read that. I've read down to 7-21.

MR SUMPTION: That is the relevant part, my Lady, and there's a reference to the significance having been reduced by Article 14.2 of the Rome Convention.

If your Ladyship will turn on in the clip to page 1607, there is also --

MRS JUSTICE GLOSTER: That seems to have trumped it, doesn't it?

MR SUMPTION: -- an observation about 14.2, which is --

MRS JUSTICE GLOSTER: Is that right, that Article 14.2 has made it irrelevant?

MR SUMPTION: In our submission, that is so. Article 14.2 has trumped it, but Article 14.2 is of course a provision which my learned friends rely on in itself and I will show your Ladyship that. But paragraph 32.179 deals with the application of Article 14.2 as reversing the effect of *Leroux v Brown*.

MRS JUSTICE GLOSTER: Mm.

MR SUMPTION: My Lady, since my learned friends refer to 14.2 as itself supporting their position, perhaps I might invite your Ladyship to turn that up. If we can hand these up, these are all either already on Magnum or will be uploaded to it, but it seems convenient simply to pass one up for the moment. (Handed)

Your Ladyship will find Article 14.2 --

MRS JUSTICE GLOSTER: I've got it.

MR SUMPTION: In order to see the background to 14.2 you need to start at 9.1 which deals with formal validity:

"A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this convention or the law of the country where it is concluded."

14.2, which is rather misleadingly headed "Burden of Proof Et cetera", the sting being in the "Et cetera", says:

"A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum, or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum."

Now, 14.2, in our submission, has nothing to do with the question now before your Ladyship. It's concerned with formal validity, and its effect is that if the formal validity of a contract is governed by a foreign law under Article 9 then in England it may be proved either by a method recognised by the law of England or by a method recognised by one of the Article 9 laws.

The result therefore is, as Dicey, Morris and Collins say, to reverse the decision in Leroux by providing that a contract valid under the law governing its formal validity is not to be treated as invalid simply because a similar contract would not be formally valid in England.

MRS JUSTICE GLOSTER: Why does that have nothing to do with the question which I've got to decide?

MR SUMPTION: Well, Article 14.2 is concerned with formal

validity because it operates by reference to Article 9 which unquestionably is concerned with formal validity. It is dealing with a situation in which an agreement is not enforceable because it isn't regarded as formally valid in England or -- sorry, 14.2 is dealing with a situation in which the law of the forum in England, ie the procedural law, would not recognise a particular agreement as enforceable, and essentially provides that if it would be formally valid under a relevant foreign law then it may be proved under that law.

Now, what this means is that if a contract of guarantee, for example, made between persons in France were unenforceable in England because of section 4 of the Statute of Frauds --

MRS JUSTICE GLOSTER: It can be proved orally.

MR SUMPTION: -- it could be proved orally.

Suppose, therefore, to take an invented example but not an implausible one, that under French law you can imagine the thing being the other way around. Suppose that under French law, a contract was enforceable in France provided that it was made in the presence of a huissier, or in front of at least two witnesses, you would be entitled to prove it in England by calling a huissier and two witnesses.

Article 14.2, therefore, is a provision which saves

contracts valid under the relevant foreign law from being treated as invalid under the procedural law of England, but it only deals with a case where a contract is formally valid according to the law governing its formal validity. It doesn't authorise the English court, in other words, to recognise a contract which is formally invalid under the relevant foreign law, and it's not concerned at all with the case where what is at issue is not formal validity but a restriction on the circumstances in which a court can recognise informal contracts.

Now I observed, in introducing this point, that it was closely related to the question whether there was any intention to create legal relations, and I made that statement for this reason. The distinction between substantive and procedural law of course only arises for consideration because a Russian law dispute is being heard in an English court. Both kinds of rule would be applied as a matter of course in a Russian court without any need to distinguish between them.

Now, a Russian court is of course the only court which the parties can possibly have envisaged, at 1995, would be deciding disputes. And Russian law, on the evidence of both experts, recognises the concept of agreements which either expressly or by virtue of the

surrounding circumstances are intended to be binding in honour only and not in law.

Now, it's agreed between the experts that the test for an agreement intended to be binding in honour and not in law only is objective, like any other aspect of the application or interpretation of agreements. So the fact that an agreement is not in writing in a jurisdiction whose case law requires high value agreements to be in writing is, in our submission, a very powerful indication, objectively speaking, that it wasn't intended to be binding in law.

Articles 161 and 162 arise not only as defences in themselves but as a strong evidential indication that, looking at the matter objectively, the parties cannot have intended that this should be binding in law because in circumstances where they would have thought as a matter of course that if it was binding any contract of this sort was going to come before a Russian court, they must be taken to know that it would not be enforceable there by oral evidence.

Now, that is in our submission an indication which is borne out by the vagueness of the alleged agreement and by its subject matter. In our submission, it is hardly conceivable that these parties could have intended, on either version of what was agreed, that

obligations of this kind involving, as far as Mr Berezovsky was concerned, the use of his political connections and political influence behind the scenes at the highest levels of the Russian State, could ever have been intended by the parties to come before the court.

And that is, as I have submitted, in another jurisdiction, because they were dealing with an arrangement made under an alternative system of obligation. This was not intended to be legally binding. Its subject matter, its informality and its vagueness all point to that conclusion.

My Lady, may I turn to the next of the issues --

MRS JUSTICE GLOSTER: I don't need to be worried then about what on earth is constituted by the explanations of the parties?

MR SUMPTION: In our submission, no, because we don't dispute that explanations are matters which a party precluded from giving oral evidence is entitled to put before the court. It doesn't have the status of sworn evidence. But the problem is, as both expert witnesses have agreed, the problem is that an explanation is only entitled to wait so far as it is verified by evidence. And that was why Dr Rachkov, in the passage whose reference I invited you to write in the margin, accepted that if there's no other evidence of the existence of

the agreement, and if future performance cannot establish the existence or terms of the agreement, then the agreement is a non-starter and that's an end of it.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Now, my Lady, may I turn to the next of the major issues which I identified as critical when I stood up this morning, which is the question of the threats that are said to have induced Mr Berezovsky to sell his interest in Sibneft, if indeed he had an interest in Sibneft.

Now, it's one of the oddities of this part of the case that most of the attention at the trial has been devoted to the Cap d'Antibes meeting and to the alleged threats relating to ORT even though, as I've pointed out, no relief is actually claimed in respect of these matters. I've already made some general observations on this subject. There is a very full summary of the evidence about the alleged ORT threat at paragraphs 161 to 205 of our closing.

MRS JUSTICE GLOSTER: I've read that.

MR SUMPTION: All I propose to do by way of addition to this well-worn subject is to deal with what appear to be the main points made in Mr Berezovsky's written closing about the alleged ORT threats before moving on to what really appears to matter, which is the alleged Sibneft

threats.

Now, the first point that they make is that there must have been intimidation because otherwise why would Mr Berezovsky have agreed to sell when he would obviously have preferred to hang on to ORT, and why would he have agreed, they ask forensically, to sell for \$150 million when they had been offered \$300 million by the Russian Government through Mr Lesin shortly after the interviews which they refer to with Mr Voloshin and President Putin? Why indeed, they ask, would Mr Abramovich have wanted to have ORT unless he was acquiring it as a tool of the Russian Government?

Now, the answer to these questions, in our submission, are largely to be found in Mr Patarkatsishvili's interview notes. They establish that the Lesin offer was in fact pursued at a time, but shortly afterwards was reduced to \$150 million, whereupon the negotiations with Mr Lesin were broken off.

The references to all this will be found in our closing at paragraphs 173, 174 and 196.

Now, what happened was that after Mr Lesin had halved his offer, Mr Patarkatsishvili, who was handling this matter, then approached Mr Abramovich because, as he described in his notes, he saw Mr Abramovich as

a more trustworthy negotiating partner. "We needed a trustworthy man", he said. And ultimately, a price was agreed with Mr Abramovich corresponding to the reduced price offered by Mr Lesin.

At about this time Mr Berezovsky of course fled from Russia with very little money, and at the same time badly needed to raise funds. Now, what Mr Patarkatsishvili's interview notes record is that Mr Abramovich was willing to buy in order to help them, and in his oral evidence he said that the row between Mr Berezovsky and Mr Putin was now beginning to hurt his interests because of his public association with Mr Berezovsky, and he saw the purchase of ORT as a way of reducing the temperature.

So there is actually no particular mystery about why a price of 150 million should have been acceptable and why the deal was done with Mr Abramovich.

Mr Berezovsky's whole case depends upon the proposition that he had never intended to sell his stake in ORT until 7 December, because that appears now to be his case, or possibly the 8th -- or we're told by my learned friends in their written closing the 9th -- until he was threatened on the terrace of his house at Cap d'Antibes. The evidence, in our submission, clearly establishes that the deal was agreed in principle

beforehand and that the meeting at Cap d'Antibes did not occur.

Now, those conclusions are supported by a considerable volume of corroborative evidence including, rather strikingly, the evidence of Mr Goldfarb whose evidence in cross-examination was that he must have been at Mr Berezovsky's property during 7 and 8 December, but did not, while he was there, either see or hear of any visit by Mr Abramovich.

The two points which seem critical, that the deal was agreed in principle before the arrest of Mr Glushkov and that the meeting in December never happened, are both supported by that evidence, both of them are challenged, but the challenge can fairly be described as thin.

In relation to the negotiations before the arrest of Mr Glushkov my learned friends suggest that the SBS notification document, which was served in accordance with the pre-emption rights for a private company, was prepared in December or January, although the metadata in fact show that it was prepared on 16 November. They assert that the Logovaz board minute was backdated and that that was actually prepared in December or January, although absolutely no reason is given why Logovaz should have wanted to backdate its own board minutes,

and there is in fact no evidence that they did, other than Mr Dubov's evidence that they must have done because otherwise it would be inconsistent with his own evidence that nothing was done within Logovaz until the end of December.

Now, nothing is said by my learned friends about the fact that Mr Abramovich actually began to meet ORT's costs from October 2000 onwards. That is a fact to which Mr Abramovich spoke in the course of his cross-examination, and it is confirmed by the terms of the bolshoi balance which reflected the fact, of which Mr Abramovich also spoke, that agreement in principle had in fact been reached by the end of October.

At paragraph 180 your Ladyship will find the relevant references to that.

Now, Mr Abramovich --

MRS JUSTICE GLOSTER: Hang on, just let me check that. 180?

MR SUMPTION: 180, yes.

Paragraph 178 Ms Davies tells me, I apologise for that.

MRS JUSTICE GLOSTER: 178. Yes, I see. The reference is there to the bolshoi balance so I can get it from that. Yes, very well.

MR SUMPTION: Absolutely nothing, of course, is said about the fact that Mr Abramovich began to put quite

substantial sums of money into a company which he considered that he had, although the deal hadn't been signed off, agreed in principle he was buying with Mr Patarkatsishvili back in October.

Now, there appears to be a suggestion in my learned friends' closing that Mr Patarkatsishvili was dealing with Mr Abramovich without Mr Berezovsky's authority, but there is absolutely no evidence to support that and it doesn't seem very likely, not least because one thing which the Le Bourget transcript plainly establishes, and the relevant extracts are summarised at paragraphs 171 to 182 of our document, but the Le Bourget transcript plainly establishes that the deal had been done in principle by 6 December.

Particularly important in this context are the private conversation between Mr Berezovsky and Mr Patarkatsishvili recorded at boxes 408-11, referred to in those paragraphs, which occurred while Mr Abramovich was speaking on the phone, and are simply left out of the discussion of this question in my learned friends' written closing. Their significance is that of the many passages which indicate that Mr Berezovsky was perfectly happy with what Mr Patarkatsishvili had negotiated, that was one which can't be presented as a funny game that they were

playing together on Mr Abramovich because, at the time, Mr Abramovich was not dealing with them at all, he was on the phone to somebody else and this was something that they were saying among themselves.

MRS JUSTICE GLOSTER: Was he out of the room?

MR SUMPTION: No, he wasn't out of the room, and technically, therefore, he could have had one ear to Mr Gorodilov on the phone and another ear to what was being muttered between Mr Berezovsky and Mr Patarkatsishvili in the same room, and it was a small room.

At the same time, it does seem bizarre that these parties, clearly addressing each other, they couldn't actually have been addressing Mr Abramovich, should have exchanged words which indicated that they were happy to go ahead if in fact Mr Berezovsky was adamant that Mr Patarkatsishvili was not authorised to deal with this.

Now, the record of Mr Abramovich's movements between 6 December and the beginning of January is the other aspect of this matter that counts. Paragraph 849 of my learned friends' written closing is all that they have to say on that subject, and I have to say it's clutching at straws.

There is a misrepresentation of Mr Abramovich's

evidence about the time required to have an aircraft made ready, to obtain flight clearance, and to fly to France and then back to Moscow, which effectively assumes that Mr Abramovich could have done it, but that would assume that he had an aircraft on stand-by when no such suggestion was in fact ever made.

The correct position on this we have summarised at paragraph 193 sub 3 of our own document.

There is in this part of my learned friends' closing --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

MR SUMPTION: Sorry. (Pause)

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: In this, there is no attempt to explain by my learned friends the automatic record of passport swipes at entry and exit which match the stamps in Mr Abramovich's passport and show that he didn't leave Russia in the whole of the relevant period. They say, well, occasionally you can leave Russia and for some reason that's not explained, no stamp appears.

It would be necessary, of course, for this to be a correct hypothesis, that four passport stamps should fail to appear on the passport, namely the Russian and French stamps on entry into France, and the French and Russian stamps on departure. All four of them would

have, by some oversight or administrative lapse, not to have appeared. Moreover, this is a theory that does not explain the evidence which is given by the Russian border service that whether or not a stamp appears in the passport, a passport is invariably swiped through a machine and an automatic computerised record generated which shows that in fact Mr Abramovich did not leave Russia, after arriving there on night of 6 December, until the beginning of January.

There is then a series of pot shots taken by my learned friends at the evidence of Mr Abramovich's doings in Moscow between 7 and 10 December, suggesting ever more remarkable theories about how all of this evidence, not just a bit of it but all of it, which points to Mr Abramovich being in Russia at the time is wrong and is, as I understand it, suggesting that your Ladyship should prefer to that evidence a theory about Mr Abramovich's movements which is supported by no evidence at all.

Now, the most charitable thing that one can say about Dr Nosova's evidence on this point is that she learnt of the threats -- her evidence, as your Ladyship will recall, was that she learnt of the threats from Mr Patarkatsishvili in the middle of December over breakfast at the George V Hotel in Paris. Perhaps the

most charitable thing one can say about that is that she is mistaken. A more realistic view of her evidence is that, having said nothing at all about this, at a time when Mr Berezovsky was claiming that the meeting happened after the middle of December, shortly before Christmas at Cap d'Antibes, she made up that part of her evidence when Mr Berezovsky's choice switched to 7 December in order to support it. Dr Nosova's enormous financial interest in the outcome of this trial and her absence of candour in disclosing that interest must inevitably, I would suggest, reduce even further the confidence that one can have in her evidence, especially when it is produced in her final witness statement the night before she actually gave evidence.

I regret to say that the same point can fairly be made of Ms Gorbunova's evidence. She claimed for the first time in cross-examination to have actually overheard part of the conversation on the terrace of the Chateau de la Garoupe when, in her witness statement, she had said nothing about this except that she had learnt of the threats later from Mr Berezovsky.

It's unfortunately impossible, however charitable one is going to be about Ms Gorbunova's evidence or Dr Nosova's evidence, to be particularly charitable about Mr Berezovsky's evidence. He, in our submission,

has made up the whole of this incident in order to lend verisimilitude to what he says about the subsequent Sibneft threats, and to those threats, which are the substance of the matter which your Ladyship has to decide, I now turn.

The material going to the Sibneft threats is within a rather narrower compass than the ORT threats, in part because Mr Berezovsky has no direct evidence to give about these threats at all; they were made, according to him, to Mr Patarkatsishvili. We have dealt with the evidence on these points between paragraphs 205 and 207 of our document.

Again, I don't intend on my feet to duplicate material which is much more conveniently summarised in writing. What I may --

MRS JUSTICE GLOSTER: I've read your skeleton argument.

MR SUMPTION: If I may simply identify what appear to be the salient points in the light of what my learned friends say in their document. There are really three salient points. The first is that neither the alleged threat that Sibneft would be expropriated, nor the alleged threat that Mr Glushkov would be kept in jail, are, on their face, threats of adverse action by Mr Abramovich. They are both threats of adverse action by the Russian State. So on the face, therefore, of these allegations

they are not actionable threats at all.

Mr Berezovsky says that it is implicit, although not actually stated, that Mr Abramovich was threatening that he himself would bring those consequences about, and he says that Mr Berezovsky understood -- Mr Berezovsky says that he himself understood it in that way.

Now, that of course is based entirely on the suggestion that this is the inference which Mr Berezovsky reasonably drew from Mr Abramovich's conduct at Cap d'Antibes. So that if that meeting did not occur, the basis on which Mr Abramovich is saying one thing is interpreted as meaning another appears to vanish. In fact I would suggest there is actually nothing, even on the footing that the Cap d'Antibes meeting occurred, which could possibly justify the inference anyway, but the point falls away if the meeting never happened.

The second salient point is that the Sibneft expropriation threat, which is alleged by Mr Berezovsky, is quite different from the one that he had consistently made between 2003 and the beginning of these proceedings four years later in 2007. Before he began these proceedings the allegation was that Mr Abramovich told Mr Berezovsky that Sibneft, as a company, would be attacked by agencies of the state -- sorry, that

Mr Abramovich told Mr Patarkatsishvili that Sibneft would be attacked by agencies of the Russian State if Mr Berezovsky continued to be associated with it.

The evidence for that is set out in our document at paragraphs 208 to 209.

The allegation was put in that way in successive press interviews. It was put in that way in Mr Berezovsky's witness statement in support of Mr Chernoi's application for permission to serve the writ in his own action out of the jurisdiction of Mr Deripaska. And in fact it was put in that way in the letter before action written to my clients by Carter Ruck.

Now, that is a statement that Sibneft would be attacked by the agencies of the state which really can't be viewed as a threat of adverse action by Mr Abramovich since Mr Abramovich could not conceivably threaten to bring his own company down, even on the footing that Mr Berezovsky and Mr Patarkatsishvili owned half of it. The allegation was in fact only restated as a threat by Mr Abramovich himself in the second edition of the particulars of claim which was served in September 2007. It is obvious that what happened in the autumn of 2007 is that somebody looked at what Mr Berezovsky would have to say in order to make out a claim in tort, and

Mr Berezovsky simply said that.

The third salient point is that Mr Berezovsky's allegation that he was threatened is in fact inconsistent with what Mr Patarkatsishvili, who was there -- indeed the only person who was there apart from Mr Fomichev who has not been called, and Ms Panchenko and Mr Abramovich -- with what Mr Patarkatsishvili told Mr Berezovsky's solicitors.

His evidence, as recorded by those solicitors, was given on the basis, as we accept, that he was assuming that he and Mr Berezovsky did have an interest in Sibneft which they sold out, and that much is of course consistent with Mr Berezovsky's case in this action. But what Mr Patarkatsishvili had to say is not at all consistent with the alleged threats.

He said, one, that Mr Patarkatsishvili and Mr Berezovsky wanted, as he put it, to sell out of Sibneft because they needed the money and it was therefore they who initiated the negotiations. Secondly, he said that Mr Abramovich had said that he personally was under pressure from the Kremlin to bring an end to his relations with Mr Berezovsky and Mr Patarkatsishvili, which is not equivalent to a threat to expropriate their interests.

Thirdly, Mr Patarkatsishvili said that he thought

that the company, rather than their interest in it, would become a target if that didn't happen. Fourth, Mr Patarkatsishvili said that Mr Glushkov wasn't mentioned at the Munich meeting, the only meeting that was referred to in the interviews. And at the 2007 interviews which occurred rather later, in Mr Berezovsky's presence, that statement is embellished with the suggestion that Mr Glushkov was actually indirectly mentioned when Mr Patarkatsishvili asked Mr Abramovich at these meetings whether he was aware of "our main issue", and Mr Abramovich said that he was. Well, whether or not that exchange actually occurred, it certainly doesn't amount to any kind of threat to Mr Glushkov's position.

Fifth, Mr Patarkatsishvili said that Mr Glushkov was not a person who Mr Abramovich had the influence to assist anyway. And sixth, he says that he, Mr Patarkatsishvili, thought that the terms relating to Sibneft were in fact fair.

Now, if Mr Berezovsky was blackmailed by Mr Abramovich in and before May 2001, if that is what happened, then Mr Patarkatsishvili was being blackmailed as well, indeed far more directly blackmailed because he was, on this view of the matter, the conduit to Mr Berezovsky. It's therefore extremely unlikely that

Mr Patarkatsishvili would have forgotten or overlooked that fact when he was being interviewed by Mr Berezovsky's solicitors, and equally unlikely that Mr Abramovich would actually have said such a thing.

MRS JUSTICE GLOSTER: Was Mr Patarkatsishvili a friend of Mr Glushkov?

MR SUMPTION: My understanding is that he was.

MRS JUSTICE GLOSTER: I can't remember what the evidence was about that.

MR SUMPTION: The evidence was that they were both friends of Mr Glushkov. I think it's fair to say that Mr Berezovsky's connection with Mr Glushkov was older and, so to speak, more intimate, but Mr Patarkatsishvili was also extremely concerned with Mr Glushkov's position, and your Ladyship may recall that it was Mr Patarkatsishvili who engaged in the prolonged negotiations in 2001 with various rather shadowy emissaries of the Russian Government in relation to the possible release.

What Mr Glushkov himself says at paragraph 23 of his witness statement is:

"Badri and my family also became close. We spent a fantastic summer on the Black Sea together. Badri's daughters were quite often guests of mine along with their parents."

So there is a connection with him also.

Mr Glushkov also says at paragraph 22 that  
Mr Berezovsky introduced him to Badri in about 1992:

"... although I knew of him before then."

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: They became great friends.

The fourth salient point is that the whole notion of a threat is, in our submission, inherently bizarre in the circumstances in which these people found themselves.

How do you expropriate something that isn't a proprietary interest at all but merely a personal contractual right against Mr Abramovich, which is the case that is now being made? Is it seriously being suggested that Mr Abramovich threatened that, unless Mr Berezovsky and Mr Patarkatsishvili abandoned their contractual rights, he would use his influence to ensure that those contractual rights against him were transferred to the state? This is a particularly strange suggestion, but it is what it would have to amount to if this allegation were even to be coherent.

Now, what my learned friends in their closing say about this is, well, there were all sorts of unpleasant things the state could have done: tax raids, investigations, Maski raids and all the rest of it, but

all of that consists of unpleasant things that could have been done to the company and not expropriatory acts against Mr Berezovsky's and Mr Patarkatsishvili's interests. That could only have happened by the Russian State substituting itself for Mr Berezovsky and Mr Patarkatsishvili as Mr Abramovich's so-called partners, and that is hardly something that Mr Abramovich is likely to have been threatening.

The next salient point, and the last one to which attention should be drawn, is this: how do you explain the absence of any paper if this was really a sale or release of Mr Abramovich's contractual obligations to Mr Berezovsky and Mr Patarkatsishvili? Mr Berezovsky is saying, he says this in his witness statement, that by May 2001 he was well aware that it was vitally important to document the transaction, and he gives in his witness statement various reasons why he and Mr Patarkatsishvili were satisfied that it would have to be documented. It would have to be documented so that it could be enforced against Mr Abramovich, it would have to be documented so that they would have, or Mr Berezovsky would have, evidence that he could use in the proceedings that he claims he intended to bring in due course against Mr Abramovich, and it would have to be documented in order to satisfy the western banks to

which the proceeds were going to be transferred.

Mr Berezovsky went to great lengths with Mr Curtis and Mr Fomichev and Mr Patarkatsishvili to produce a bogus document trail for this purpose. Yet the evidence suggests that he never so much as asked Mr Abramovich to supply a document. Mr Abramovich was asked whether -- well, he gave evidence in his witness statement and said:

"I was never asked for a document recording the terms on which I was paying over 1.3 billion."

Now, if that 1.3 billion was being handed over pursuant to a sale agreement and a release of Mr Abramovich's contractual obligations, one would certainly have expected that they would want that fact documented, and one would have expected that Mr Abramovich would have wanted it documented, because, according to Mr Berezovsky, Mr Abramovich made him sell out by threatening him. If Mr Abramovich had really done that, then surely he would have wanted to ensure that he got a contractual release. Mr Curtis in fact drafted a contractual release for Mr Berezovsky and Mr Patarkatsishvili to get from Mr Abramovich. But, so far as the evidence shows, they never even proposed that to him.

In our submission, this story simply doesn't stack

up, quite apart from the fact that there is no evidence to support it other than the uncorroborated hearsay evidence of a particularly unreliable witness, namely Mr Berezovsky himself.

My Lady, may I turn at this point to the Devonian agreement which is the sole basis, apart from a mystifying estoppel claim, on which Mr Berezovsky claims to have suffered by the supposed intimidation which Mr Patarkatsishvili experienced in May 2001.

MRS JUSTICE GLOSTER: Before you do that, Mr Sumption, may I ask this question: what, if anything, is the relevance of the allegation of sale at an undervalue? I know that valuation issues aren't being decided at this stage for various reasons, but is it relevant to liability that, as Mr Berezovsky alleges, the interest was sold at an undervalue? And if so, is it right that the decision on the issue of intimidation should be decided absent that evidence?

MR SUMPTION: Well, I understood it to be agreed between the parties that it was in fact perfectly possible for your Ladyship to decide it in the absence of the valuation evidence because the valuation evidence is concerned with producing, on a basis which is admittedly disputed, but it's concerned with producing a discounted cashflow valuation of the company. Nobody is suggesting that

Mr Berezovsky and Mr Patarkatsishvili, or anyone else for that matter, actually carried out any kind of valuation, even a back of the envelope calculation. It was simply their general impression, to which Mr Berezovsky gives evidence as far as he is concerned, that Sibneft was worth a lot more than 1.3 billion.

MRS JUSTICE GLOSTER: The point I'm making is it could be said that in certain circumstances, one of the aspects of a sale as a result of intimidation was that the asset was sold for much less than it was objectively worth.

MR SUMPTION: I can see that entirely.

MRS JUSTICE GLOSTER: And as I understand it, apart from the subjective evidence about what Mr Glushkov and Mr Berezovsky thought, there is no other evidence -- or sorry, Mr Patarkatsishvili thought, there is no other evidence about the relevance of the 1.3 billion to the actual value, whatever it might have been, of Sibneft.

MR SUMPTION: Apart from what they -- there is first of all Mr Berezovsky's subjective evidence, there is also the evidence given by Mr Shvidler.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR SUMPTION: And Mr Tenenbaum.

MRS JUSTICE GLOSTER: About the market cap.

MR SUMPTION: About the market cap. My learned friend rubbishes that on the ground that the market cap of an

illiquid 12 per cent that was floating in the market is of no relevance.

Of course, the difference between a 12 per cent in the market and a 44 per cent interest in value terms is likely to depend on whether the 44 per cent stake had a strategic value. The problem is that if you acquired the 44 per cent stake, you would be acquiring a stake that would make you not -- the strategic value of it would be much diminished by the fact that the other 44 per cent was owned by a man who had dominated the company since 1995.

MRS JUSTICE GLOSTER: No, I think my question is much simpler. Are you asking me to come to any conclusion about the objective value of Sibneft at the time?

MR SUMPTION: No.

MRS JUSTICE GLOSTER: In relation to the issue on intimidation?

MR SUMPTION: No, I'm not, and indeed if I were asking your Ladyship to do that, I could not properly have supported the suggestion that the valuation evidence should be deferred to see whether it arises after judgment.

I understood that it was on the basis that your Ladyship did not need to arrive at an objective value that both parties were content with that course.

Of course, it's fair to say that if one is trying to

explain why Mr Berezovsky sold out of an interest in Sibneft, if indeed he had one, what would matter was not the objective evidence, assuming that Mr Berezovsky didn't have any objective evidence at the time, but what he thought. Suppose that objectively Sibneft was worth 1 billion, but Mr Berezovsky mistakenly believed that it was worth 3 billion, on that hypothesis his view of the value would be just as relevant in determining whether he was intimidated into selling out of it.

MRS JUSTICE GLOSTER: Yes, I can see all those sort of sophisticated hypotheses, I was just putting the simple point that if in fact it was obviously at an undervalue that might feed into the question as to whether or not there had been an intimidation.

MR SUMPTION: Well, it might. In our submission, it would be impossible to contend that the undervalue was obvious, even if there was an undervalue, which we deny. But of course, before you can get to the question whether it was at an undervalue, you have to satisfy yourself that it is a sale that is happening in May 2001. And that, of course, is where the real hurdle lies.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Now, we have submitted in section A4 of our written closing that the Devonia agreement does not

actually purport to transfer the only right which Mr Berezovsky now claims to have acquired under the 1995 agreement, namely a contractual right under a simple partnership agreement. Even the most liberal interpretation of *Chartbrook v Persimmon* would not justify the view that what is purported to be a proprietary equitable interest, and a contract purporting to transfer a proprietary equitable interest in a company, can in fact be effective to -- can transfer something which was not proprietary at all but simply a contractual right against Mr Abramovich.

One is bound to ask oneself, what would the sheikh have thought if he had been told: actually, although this contract says you're getting an equitable interest, of which Mr Abramovich is the trustee, what you're actually getting is an unsecured contractual right which you will have to enforce by suing him in Russia or wherever he may be found. Now, one can imagine a somewhat bad tempered response to that enquiry, which is perhaps a good way of illustrating the extreme difference between the two things.

Now, what this agreement therefore purports to transfer is not something that Mr Berezovsky now claims to have had but, in our submission, none of this actually matters because the evidence is frankly

overwhelming that this was simply a sham designed to deceive banks. If your Ladyship in due course, not now, goes through the narrative of the transaction, starting at paragraph 275 of our closing, as well as the information about the Spectrum transaction on which it was modelled, that in our submission will become obvious.

The essential point is quite simple. The transaction, as described to the court, and indeed to the Clydesdale Bank at the time, involved a sale to the sheikh's company of an undocumented equitable interest in \$1.3 billion worth of shares in a Russian company, said to be held by a trustee who declined to acknowledge their interest. That was the version of the facts that Mr Curtis gave to Clydesdale Bank in his letters of 1 June. It's absolutely astonishing that Clydesdale Bank should ever have accepted such a cock and bull story, and they certainly don't appear to have accepted it when the papers hit their head office in Australia sometime in about August.

But as it was, it's clear that they only did that because of assurances by Mr Curtis that the sheikh would be selling on to Mr Abramovich, on terms that Mr Abramovich would be paying the money upfront by way of security and, therefore, that pending the on-sale the

sheikh would be paying Mr Berezovsky and Mr Patarkatsishvili out of his own funds.

Now, Mr Jacobson told your Ladyship that the most likely source of that information was Mr Berezovsky's financial factotum, Mr Fomichev. But whatever the source, it's manifestly untrue. There wasn't an on-sale to Mr Abramovich, there wasn't an advance deposit. It wasn't even put to Mr Abramovich in cross-examination that there was an on-sale. So the only things that made the transaction credible to Clydesdale Bank are revealed to be bogus.

Now, in my learned friends' closing document they have sought to resurrect the argument that Mr Abramovich was in fact involved in the Devonia transaction, and they have even sought to assert that there was in fact an on-sale. Now, I respectfully submit --

MRS JUSTICE GLOSTER: Can you give me the paragraph, please?

MR SUMPTION: Yes. It is at paragraphs 957 onwards. 962 is where it is said that there was an on-sale.

Now, in our submission, they simply cannot be permitted to do that, not having put those matters to Mr Abramovich in cross-examination. I don't wish to suggest that every smallest point necessarily has to be put to a witness, but a point which is of this significance and which represents the sole basis on

which loss is being claimed, and which would, if true, be within the knowledge of that witness, must be put to him, and this one was not.

There is also an assertion, which is to be found earlier in their closing document at paragraphs 905-6, that it was Mr Abramovich or one of his staff who rejected the plan originally proposed by Mr Curtis for a direct contract with him, with the result that the transaction had to proceed as a sale to Devonia rather than Mr Abramovich.

Your Ladyship will recall Mr Curtis originally drew up direct documentation and it was then scrapped towards the end of May.

That assertion is made in that part of the closing document, but there is absolutely no evidence for it, there is no documentary support for it, and their witness evidence on the point was given to support that, except that given by Mr Abramovich who denied it. In addition, it's right to point out that Mr Jacobson said he did not know why the change of plan occurred. So, in our submission, your Ladyship cannot possibly accept the proffered invitation to conclude that the change of plan was brought about by a decision by Mr Abramovich.

What the evidence actually shows is that there was no contact between anyone on Mr Berezovsky's side, and

Mr Abramovich or his team, with the exception of the relatively low level involvement of Ms Khudyk in setting up the paperwork associated with the opening of the account at Latvian Trade Bank.

Now, your Ladyship will recall the evidence on this point, it's actually summarised in our closing at paragraphs 277 and 279, but Ms Khudyk was only involved because Mr Abramovich's companies, who were going to be paying the 1.3 billion, had an existing relationship with the Latvian Trade Bank. It was therefore suggested that whatever vehicle Mr Fomichev designated to receive the money should open an account for that purpose at the Latvian Trade Bank. That would make the payment process easier. But all that Ms Khudyk knew about the Devonia transaction was that she had been required to pay the funds to a company called Devonia, which had been nominated as the payee by Mr Fomichev, and she had assisted in the opening of an account for that company at the Latvian bank.

No other evidence was put forward for the suggestion that Mr Abramovich was involved, apart from the bare assertion by the sheikh, in short formal letters written some years later, which we have analysed in paragraph 302 of our closing. And of course nobody was called to address this point by my learned friends, on

whom it is incumbent to prove it. Dr Jumean was not called, the sheikh was not called, not even hearsay statements were put in from them, apart from those short formal letters.

Absolutely no documentation has been forthcoming from the sheikh's administration or disclosed by any party, and Mr Jacobson confirms that the Curtis files disclosed no evidence of the involvement of anyone on my client's side apart from the low level involvement of Ms Khudyk, and we summarise the evidence for that at paragraph 283, and in particular note 1142.

Now, the 1.3 billion was paid into the Devonia account at Latvian Trade Bank in the stages agreed between Mr Abramovich and Mr Patarkatsishvili in Cologne on 29 May 2001. Those stages bore no relation to the timetable envisaged in the Devonia agreement and it is difficult, if not impossible therefore, to relate the payments that were actually made into that account to anything contained in the Devonia agreement. This was simply a money-laundering scheme and that was no doubt why some \$200 million in commissions was paid to the sheikh on top of 18.3 million to Mr Curtis personally, and smaller sums which were shared out between the in-house financial managers of the three principals involved, namely Mr Fomichev, Mr Kay and Dr Jumean.

This is a most unattractive transaction.

Now, not only was there no sale to Devonian, but the attempts to pretend that there was one is, in our submission, yet another item of circumstantial evidence against Mr Berezovsky's claim to have had an interest in Sibneft at all.

The Devonian agreement or the Devonian scheme worked by generating documents which suggested that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft which they had sold to Devonian. The only reason why it was necessary to engage in all these shenanigans at a cost of about 15 per cent in commissions was that Mr Berezovsky and Mr Patarkatsishvili knew perfectly well that genuine documents would not be obtainable. They would not be obtainable because Mr Berezovsky and Mr Patarkatsishvili had no interest in Sibneft and had made no agreement to sell anything with Mr Abramovich.

Now, your Ladyship has seen all the documents, particularly in Mr Curtis's letters, assertions that Mr Abramovich was refusing to execute such documents because he had always in the past denied the existence of such an interest. But the truth is that no attempt has been made in this trial to prove that the question of documenting a sale, if there was a sale, was ever broached with Mr Abramovich, as it surely would have

been if a sale had been discussed with him. These letters were written by Mr Curtis precisely because Mr Berezovsky and Mr Patarkatsishvili in fact knew perfectly well, without having to ask Mr Abramovich, that they weren't going to get a contract because that wasn't the deal that Mr Patarkatsishvili had made with Mr Abramovich. So they invented a contract with someone else.

MRS JUSTICE GLOSTER: Is there any evidence about the reason why Curtis got a fee or commission of 18.5 million?

MR SUMPTION: The evidence consists of the minutes of the meetings of the relevant trusts which consented to the payment, and the documents by which Mr Curtis sought Mr Berezovsky's consent to it. There are also documents, these were gone through in cross-examination --

MRS JUSTICE GLOSTER: I remember, but did they suggest any rationale for the commission payment?

MR SUMPTION: They did. What they suggested was that these were commission payments, I think "introductory fee" is the description given at one stage, but what they were plainly not is a reward for Mr Curtis's professional services. We know that because the earliest of the documents in which he sets out his demands from the sheikh records that the commission payment was in

addition --

MRS JUSTICE GLOSTER: To professional fees.

MR SUMPTION: -- to the 400,000-odd of professional fees.

So the only inference one can draw is that this was in fact a payment made to Mr Curtis for his services in doing something that was distinctly underhand, indeed, as far as Mr Curtis was concerned, both unprofessional for a solicitor and unlawful.

MRS JUSTICE GLOSTER: It couldn't be characterised therefore as a commission for introducing an intermediate purchaser?

MR SUMPTION: No. I mean, the sheikh of course was already a client of Mr Curtis's, and your Ladyship may recall that in May 2001, Mr Curtis went to counsel in order to get advice on aspects of the ORT transaction. But the instructions also seemed to have covered, at least the advice covered, aspects of this transaction, and counsel noticed the commissions that were being paid to Mr Curtis personally and pointed out that this was a very unsatisfactory aspect of the transaction, not least because it might well be suggested that this was in fact a money-laundering transaction and that there's no other reason why Mr Curtis should be receiving money personally upfront on top of his professional fees. That was a point which, in our submission, was extremely

pertinent.

Your Ladyship will find that all the relevant documents are referred to in paragraph 296 of our written document, in particular at subparagraph 7 and in the footnotes to that subparagraph.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: Now, the last of the critical issues on the Sibneft side -- my Lady, would your Ladyship want to take the break at this stage because I'm turning to limitation.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(3.14 pm)

(A short break)

(3.30 pm)

MR SUMPTION: Could I give your Ladyship two other references to our closing which respond to points raised by your Ladyship before we took the break. At paragraph 256 we deal, under the heading "No Need to Posit Intimidation", with a number of factors of which the first is the question of undervalue, which is substantially what I said to your Ladyship orally, but the others consist of other reasons why, in any event, this is not something one needs to posit in order to explain what happened.

The other reference is to paragraph 273. That, in

addition to the reference I gave your Ladyship earlier, is where your Ladyship will find the information and references about the instructions given to counsel on the propriety of the commission, or the advice given by counsel; I don't think he was asked to expressly but he did.

MRS JUSTICE GLOSTER: Yes, I was just trying to remember what the rationale was.

MR SUMPTION: This was actually, rather oddly, because the transaction had already gone through, an enquiry about the application of the money-laundering regulations to the Spectrum money, which of course also enjoys a 15 per cent commission, and it was in that context that counsel advised that he thought that that was an unattractive aspect of the transaction on money-laundering grounds, and that some care should be taken to ascertain that it was consistent with the Law Society's rules.

May I turn to the question of limitation, which was the last of the critical issues on the Sibneft side of the claim. It's common ground that under the Foreign Limitation Periods Act, the limitation period to be applied is that of the substantive law governing the alleged tort.

In his pleading, Mr Berezovsky has put as his

primary case that the tort was governed by English law, alternatively he says French law, but in any event not on Russian law, please.

Now, at English law, the intimidation claim is plainly time-barred unless Mr Berezovsky can sustain the Devonia agreement as a genuine agreement. The claim form was issued on 1 June 2007, time runs from the incurring of the loss. Mr Berezovsky says that the loss was incurred when he submitted to Mr Abramovich's threats by agreeing to the sale of his alleged interest in Sibneft. Now, if there was an interest in Sibneft, he says that he agreed to sell it when he entered into the Devonia transaction which was fully executed on 11 June, the approximate date when the Devonia agreement appears to have been executed by the sheikh. The document had already been executed by Mr Patarkatsishvili and Mr Berezovsky a week earlier on 5 June but, at any rate, in June.

Now, on the footing that the Devonia agreement was a genuine transaction, that is his case. But of course on the footing that the Devonia transaction was a sham, the relevant date would be not the date of execution of that contract but the date on which final agreement was made between Mr Abramovich and Mr Patarkatsishvili, ie the meeting at Cologne on 29 May 2001 when the mode of

payment was finally agreed and the transaction went forward. The first instalment of the monies agreed to be paid on 29 May was in fact paid into Devonia's account on 31 May. It follows therefore that if the Devonia agreement was not a genuine transaction of sale, the intimidation claim was statute-barred in English law even on Mr Berezovsky's analysis of the law.

Now, there seems to be a certain lack of confidence on the part of my learned friends about their ability to sustain the proposition that the Devonia transaction was a genuine transaction, because in their written closings, as your Ladyship will have seen, French law has overtaken English law as their preferred option. Now, it is accepted by us that the claim would not be time-barred at French law. Indeed it's the only law under which it wouldn't be time-barred.

The choice of law issue is therefore somewhat critical to this question, and that issue is dealt with in section A5 of our written closing. The basic principles are not disputed, and it may assist your Ladyship to have open paragraph 310 of our written closing which sets out the statutory provisions. Under section 11, the primary rule is that the tort is governed by the law of the country where all of the events constituting the tort happened or, if they

happened in more than one country, then the law of the country where the most significant of them happened. I think that's probably an uncontroversial precis of section 11. So the primary rule depends on the geographical location of the facts constituting the cause of action.

The secondary rule in section 12, which is sometimes called the rule of displacement, allows for the law chosen in accordance with section 11 to be displaced in favour of another law if the application of the latter would be substantially more appropriate. In other words, appropriate by virtue of some more substantial connection with a particular law or jurisdiction than the mere geographical location of the facts.

If Mr Berezovsky's pleaded case is taken at face value, then the general rule in section 11 points to Russia. That is because the factual elements of the tort are, one, a threat, two, submission, and three, loss. The alleged threat is said to have been made by Mr Abramovich to Mr Patarkatsishvili in Moscow, so far as concerns the expropriation threat. The Glushkov threat is said to have been made to Mr Patarkatsishvili in Germany at Munich, that is what is said in the pleading, although my learned friend floated the possibility that it might have been Cologne. Nobody is

contending for German law.

Now, none of the threats are alleged to have been made in France, neither in relation to Mr Glushkov or in relation to the expropriation of their interest. The only thing that is said to have happened in France, as far as the elements of the tort are concerned, is that Mr Berezovsky received a report of the threats that were allegedly uttered by Mr Abramovich to him in Germany on the telephone at his house in France and is said to have decided there and then to accept the \$1.3 billion.

So the position therefore is that the threats were not in France, the submission is alleged to have been in France in the sense that that is when Mr Berezovsky decided that he would submit, although the submission would actually have been communicated to Mr Abramovich at Cologne on the 29th when Mr Patarkatsishvili said, "Yes, go ahead".

Mr Berezovsky's supposed loss, to take the third element of the tort, was incurred not in the place where he submitted to the threat but in the place where the assets that he says he was forced to relinquish were located. That, surely, is the place where, if he lost those assets, he must have lost them, and that is plainly Russia, Sibneft being a Russian company.

Where the factual elements of the tort occur in

different countries, your Ladyship is enjoined by the statute --

MRS JUSTICE GLOSTER: Wouldn't it depend on the situs of the claim he has against Mr Abramovich in relation to the Sibneft agreement?

MR SUMPTION: No -- well, my question is where the situs of that claim would be. As it turns out, he's brought it in England, but that wouldn't determine the situs of the claim. But my Lady, what matters surely is the situs of the asset he claims to have lost. He says "I lost my shareholding in Sibneft and I got back much less than it was worth".

As regards his contractual claim, what he says that he lost is an entitlement contractually as against Mr Abramovich to be registered as a shareholder in Sibneft. The value of that, he said, was equivalent to the value of the shares, and he lost it.

MRS JUSTICE GLOSTER: And what was the -- if there is a situs for that chose, what does he claim the situs is?

MR SUMPTION: That's plainly Russia, because Sibneft --

MRS JUSTICE GLOSTER: What does Mr Berezovsky say about that?

MR SUMPTION: I don't think Mr Berezovsky can...

My Lady, if your Ladyship looks at page 279 of our written closing, there's a reference at note 1257 to the

decision in *Kwok Chi Leung v Commissioner of Estate Duty*, which suggests that rights in respect of a company incorporated in jurisdiction A are rights situated in that jurisdiction.

MRS JUSTICE GLOSTER: I can see that if you've got a claim against the company, I don't know, against the company to be issued with shares. What I'm raising is where is the situs of the contractual rights as against Mr Abramovich?

MR SUMPTION: Russia. My Lady, it is Russia for a number of reasons. First of all, the right to be registered, which is the contractual right that Mr Berezovsky claims to have, is a right which arises on his case under an agreement which, by common consent, is governed by Russian law, the agreement of 1995. Secondly, the situs is Russia because the substance of that right was a right to be registered as a shareholder of a Russian company, a right which is only capable of being exercised in Russia. It must stand to reason that a court outside Russia could not possibly enforce a registration right in another country. Thirdly, the situs is Russia because Sibneft is a Russian company. And if you ask yourself: where has a loss been incurred which consists in an interest, whether contractual or proprietary, in a Russian company? The answer must be

Russia.

The case which I referred your Ladyship to --

MRS JUSTICE GLOSTER: Yes, Kwok.

MR SUMPTION: Kwok. The relevant part of it, which is at page 1040, deals with --

MRS JUSTICE GLOSTER: Is it in your authorities?

MR SUMPTION: It's at P(A)1/10 on the Magnum system P(A)1/10/314. If your Ladyship would look at page 1040 of the report P(A)1/10/319:

"The matter falls, in their Lordships' opinion, to be determined by reference to first principles. In the first place the notion that a debt or other chose in action [and shares of course are the chose in action], because incorporeal, can have no situs was laid to rest by the House of Lords in English, Scottish and Australian Bank Ltd v Inland Revenue Commissioners. It is clearly established that a simple contract debt is locally situated where the debtor resides -- the reason being that that is, prima facie, the place where he can be sued ... A debt which is payable in futuro is no less a debt and there is no logical reason why it should, as regard its locality, be subject to any different rule. It is simply a chose in action and like any chose in action is subject to the general rule which is conveniently stated ... in Dicey and Morris on the

Conflict of Laws ..."

MRS JUSTICE GLOSTER: Well, this is a promissory note, isn't it, so it's slightly different.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: Okay, I don't think that takes this particular point --

MR SUMPTION: My Lady, it does, with respect. Because what Mr Berezovsky claims to have lost is shares, which are a chose in action against the company, or contractual rights to be registered as the owner of shares, which are a chose in action against Mr Abramovich. Now, that is a right which is only enforceable in Russia because the value of a share consists in the rights that it confers against a Russian company, and a right of registration is something that is only exercisable or enforceable in Russia.

Now, in those circumstances, in our submission, the situs of a chose in action, whether you classify it as property in the shares or a contractual right of registration, has got to be Russian --

MRS JUSTICE GLOSTER: Well, it's not a contractual right of registration as against the company.

MR SUMPTION: No.

MRS JUSTICE GLOSTER: What we're looking at is a contractual right, on this hypothesis, as against Mr Abramovich.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: And you say because the debtor, or the alleged debtor, resides in Russia, therefore the situs of the chose is in Russia.

MR SUMPTION: I say that, but that's not all I say. First of all I say that because Mr Abramovich resided in Russia, the situs of that claim is Russia. But I also say --

MRS JUSTICE GLOSTER: It relates to a Russian company.

MR SUMPTION: -- that the particular nature of it -- suppose that he were to begin proceedings, managed to serve them in the Hermes shop in Sloane Street in the traditional fashion against Mr Abramovich, asking for an order that he, Mr Berezovsky, be registered as the owner of these shares, the court would surely say that this was not justiciable in England in accordance --

MRS JUSTICE GLOSTER: Yes, with Lufkin or something.

MR SUMPTION: Yes. My Lady, whichever way you classify it --

MRS JUSTICE GLOSTER: Anyway, I get the point, I get your submission.

MR SUMPTION: My Lady, when the factual elements of the tort occur in different countries, the court is required by the statute to apply the law of the country where the most significant elements occurred. Now, the only

element which is said to have occurred in France is Mr Berezovsky's decision to submit, because that's where he was sitting when he was telephoned by Mr Patarkatsishvili with news of the alleged threat. Now, the location of Mr Berezovsky at the time that he took the call from Mr Patarkatsishvili is, in our submission, a matter of no significance at all for two reasons. First of all, the actual submission to the threat occurred, in our submission, when the deal was done by Mr Berezovsky's agent, Mr Patarkatsishvili, at Cologne, and not where Mr Berezovsky happened to be when he learnt about the threat and made the decision to submit.

The second reason why it's a matter of no significance is that it's purely adventitious. Mr Berezovsky might have taken the call in London or in New York or on his skiing holiday in Switzerland, or in any of the other places where he was wont to travel. The fact that he happened to be in his sitting room, or wherever, at Cap d'Antibes is of no significance at all.

One can, I suggest, test this by asking oneself hypothetically: what would happen if Mr Berezovsky and Mr Patarkatsishvili were co-plaintiffs, as Mr Berezovsky plainly at one stage hoped that they would be? Now, would one be positing that the tort was governed by

French law in the case of Mr Berezovsky, and by German law in the case of Mr Patarkatsishvili, simply because when the news of the threat came through, and they agreed to submit to it, one of them happened to be in Germany at one end of a telephone line and the other in France at the other?

MRS JUSTICE GLOSTER: You say this all goes back to Russia because that's where the substantial connection is.

MR SUMPTION: Indeed, it's the only substantial connection.

In our submission the rule of displacement in section 12 would apply even in the event that it were to be held that under section 11 the choice of law was French, or for that matter English. Section 12 admits a wider range of factors because it's not confined to the geographical distribution of the facts constituting the cause of action. But in addition to the geographical distribution of the relevant facts, for the purposes of section 12, first both the alleged perpetrator of the tort and the alleged victims were either domiciled or resident, or both, in Russia.

Mr Abramovich was both domiciled and resident there; Mr Patarkatsishvili was at the time resident in Russia although probably domiciled in Georgia; Mr Berezovsky was currently resident in France but domiciled in Russia. We know that because his tax returns, the

references are given at paragraph 335, sub 2 of our closing, assert that he desires to return to Russia and has many connections with it. He therefore has, on his own admission, the animus revertendi, which is the legal hallmark of domicile, a particularly significant factor in relation to tax. But it's the same test for all aspects of domicile.

The principal business interests of all three men at this stage were located in Russia, including those in connection with which the tort actually arose. Now, that's therefore the first factor which would be relevant for section 12.

The second is that the substance of both of the alleged threats was to do unpleasant things in Russia. Those things are said to be illegal or illegitimate and, in our submission, if you threaten to do something in a foreign country, the question whether they are illegal or illegitimate has to be determined by the standards of the place where you are threatening to do them.

Now, there is an ingenious argument in my learned friends' submission which says suppose that in Ruritania the dictator passed a law through a compliant parliament which said that he was allowed to kill people at his whim, and in England you threatened somebody that, unless he complied with your demands, you would

perfectly lawfully persuade the dictator in question to kill the victim's relative in Ruritania.

This extreme case is hardly a useful guide to the law of the area. The question of repugnant laws is a very familiar area of the law of confidence. There is a well-established doctrine, from which the principal authority is *Oppenheimer v Cattermole*, under which a repugnant law -- contrary to the public policy of, in the relevant respect, the United Kingdom, or contrary to the practice of nations, and *Oppenheimer v Cattermole* was about the German law, perfectly lawful, a deprivation of Mr Oppenheimer's citizenship by the Nazis in the 1930s -- is simply ignored as a proposition of law, it is treated as non-law. That would be the answer to the sort of extreme cases that my learned friends envisage.

Now, the second relevant factor therefore for the purpose of section 12, in our submission, is that Russian standards would apply to the legitimacy or lawfulness of what it was that, according to Mr Berezovsky, Mr Abramovich was threatening to do or to procure.

The third relevant factor for section 12 purposes, in addition to the geographical location of the elements of the tort, is the whole background to this issue is

Russian. The explanation of how the problem arose is Russian.

Did Mr Rabinowitz not submit to your Ladyship that you would need, in order to understand the inherent probabilities, to hear experts on conditions in Russia from authorities on modern Russian history, because the experience of an English judge would not be enough. In our submission, it is ridiculous to suggest that this issue can be determined otherwise than in the context of Russian politics and Russian ways.

Now, the arguments which are now advanced in support of French law, in our submission, can fairly be described as disingenuous, and I would invite your Ladyship for this purpose to open paragraph 969 of my learned friends' written closing where there are conveniently listed --

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: We can briefly go through them. The word "France" is underlined wherever it appears. Item 1 is 31 October --

MRS JUSTICE GLOSTER: Yes, I've read this.

MR SUMPTION: Well, Mr Berezovsky did not remember that meeting with Mr Abramovich having occurred at all. The evidence on that point is Day 7, page 1.

Mr Abramovich's evidence was that he was not in France

at all at the time, and his travel documents demonstrate that he in fact left France a few days before 31 October.

If your Ladyship in due course turns to paragraph 131 of our written opening, the references to that are listed. This meeting was a matter on which evidence was given by Ms Gorbunova but it cannot, with respect, have happened. In any event, what Ms Gorbunova says occurred at the meeting doesn't amount to a threat and the meeting is not pleaded as one of the occasions when any threat was uttered. So that is irrelevant.

We then have the Le Bourget meeting. That is specifically pleaded on the basis that nothing said at Le Bourget is to be treated as itself constituting a threat, nor was it in fact, as the transcript of the occasion shows.

Number 3 is the Cap d'Antibes meeting which, if it happened, was a threat in relation to ORT but not a threat in relation to Sibneft but that hardly matters since it did not happen.

Item 4 is the alleged expropriation threats. Now, this is very disingenuous, because what is said here is that there is no evidence of where they happened, and that is not an acceptable submission for my learned friends to make because their pleading is that it

happened in Moscow. In answer to a request for further information on this very point, they pleaded that the threats in question were uttered between August and October 2000 at the offices of Logovaz or Sibneft in Moscow.

The references to that, we hadn't anticipated this point so we haven't got them in our closing --

MRS JUSTICE GLOSTER: Just give me the reference.

MR SUMPTION: The references are paragraph C41, and the request for information, request 17, the references to the bundle numbering are A1/02/16 and A2/10A/28.

Now, the timescale given there, which is August to October 2000, was subsequently extended in their pleadings to May 2001 but the location remained Moscow, A2/11/64.

MR RABINOWITZ: Your Ladyship has these references in our submission at paragraph 982, subparagraph 4, if that's any help.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: My Lady, that, in our submission, is the end of that suggestion that your Ladyship can somehow assume that those things may not have happened in Moscow.

Item 5 refers to the decision to open negotiations with Mr Abramovich, a decision that Mr Berezovsky says was made between him and Mr Patarkatsishvili at

Cap d'Antibes. But that is not an element of the tort, nor is it a connection for section 12 purposes of the slightest significance. It is purely fortuitous where Mr Berezovsky and Mr Patarkatsishvili discussed that matter.

Item 6 concerns the possible meeting in Paris on 15 May. Now, this meeting has something of a question mark over it. The documents show that Mr Abramovich and Ms Panchenko flew to Paris on 15 May, and Mr Patarkatsishvili's credit card receipts suggest that he was also in Paris at that time. Neither Mr Abramovich nor Ms Panchenko can in fact remember a meeting in Paris with Mr Patarkatsishvili but they acknowledge that there may well have been one, and that appears from paragraph 284 of Mr Abramovich's principal statement and paragraph 91 of Ms Panchenko's second witness statement.

Now, it is possible, as my learned friends suggest, that if the meeting occurred, the final figure of 1.3 billion was agreed at it, and that would be consistent with the stages at which one first sees the figure of 1.3 billion appearing in the documentation relating to the opening of the account with Latvian Trade Bank. But the fact that this meeting in Paris happened, if indeed it did happen, is no more

significant than the fact that the previous meeting happened in Munich or the next one in Cologne. On the face of it, both German meetings were more significant for the tort because the threats are alleged to have been uttered at Munich and the deal was finalised in Cologne.

All of this, in our submission, this six-part catalogue of things that happened in France, is so much special pleading. What matters for the general rule is the place where the threat, the submission and the loss happened, which was respectively Russia and Germany, Germany and Russia, the three elements of the tort.

What matters for the rule of displacement is the national connections of the parties, the nature of the threat, the location of the thing threatened and the surrounding circumstances. Very little that is relevant to the threat happened in France, and what did happen in France could in fact have happened anywhere. A great deal that is relevant happened in Russia, but whereas what happened in France could have happened anywhere, what happened in Russia could not have happened anywhere but Russia. This tort is, in our submission, quite plainly governed by Russian law.

English law is now an alternative case, but the sole basis on which it is said to apply, according to

Mr Berezovsky's pleading, is that the Devonia agreement was negotiated there and provided for payment in England and for English law. Those points are pleaded in the particulars of claim at paragraph C54(a). Now, in our submission, this must be a hopeless argument if the Devonia agreement was not actually a genuine transaction, but it's right to point out that it's a weak argument even if it was a genuine transaction.

The choice of English law to govern the Devonia agreement can't possibly be relevant in view of the fact that Mr Abramovich was not party to that agreement. It was in fact suggested to Mr Abramovich in cross-examination, as your Ladyship may recall, that he would have expected there to be some agreement, and that he would have expected it to be governed by English law.

Mr Abramovich did not accept those propositions and no basis was put forward to support them. In fact, the Devonia agreement seems to have been devised between Mr Fomichev and Mr Patarkatsishvili and Mr Berezovsky and Mr Curtis, partly in France and partly in England.

MRS JUSTICE GLOSTER: And partly at Baden Baden.

MR SUMPTION: Well, that is where it was executed. It was in fact executed by Mr Berezovsky at Nobu restaurant in Park Lane.

MRS JUSTICE GLOSTER: I'm looking at paragraph 323(3) of

your closing.

MR SUMPTION: Yes. And Baden Baden was where

Mr Patarkatsishvili executed it. The sheikh's place of execution seems to be uncertain but appears to be Abu Dhabi. That at any rate was the assumption made by Mr Jacobson.

Now, my Lady, on the basis that Russian law applies, the only issue is whether the three-year limitation period in Russian law can be extended under Article 205 of the Civil Code or ignored under Article 10.

Now, your Ladyship has only recently been treated to an analysis of these provisions of the Civil Code, and I don't therefore propose to go through it laboriously. As with so much Russian law evidence in this case, the experts did not differ so much on the principle as on its application which is ultimately a matter for your Ladyship.

There is, however, one difference between this and other Russian law issues. The relevant legal principle in England is that your Ladyship applies the principles governing the issue under the foreign law, subject to the fact that in a case where the foreign law vests a discretion in the foreign court, your Ladyship is required to exercise it in the way that, on the evidence, the foreign court would exercise it. That's

the effect of section 1.4 of the act, quoted in paragraph 377.

This means that the scope for expert evidence on what happens in practice is rather wider in this area than in others that we have looked at. In other words, so far as the principles of Russian law allow for a range of possible decisions, your Ladyship should decide where within that range a Russian court would in practice be likely to decide a comparable case to this one.

Now, the relevant legal principles for this purpose can be quite shortly stated and are not significantly disputed. As far as Article 10 is concerned, that's the general principle about abuse of rights which is common to almost all civil law systems.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: It's common ground between the experts, one, that the mere taking of a limitation point is not an abuse of rights; two, that in exceptional cases a party may be prevented by Article 10 from relying on an otherwise applicable limitation period, and "exceptional cases" is Dr Rachkov's phrase; three, that one of these exceptional cases, the only one alleged to be relevant here, is the case where the wrong complained of has itself prevented the claimant from bringing his claim

within the limitation period. In other words, it's a variant of what in English law one would say was the principle that a party may not take advantage of his own wrong.

Now, the only difference between the experts, as we understand it, is that Mr Rozenberg considers that reliance on Article 10 requires proof of intention to cause the claimant to miss the limitation period, although he also points out that that requirement will be satisfied if, on an objective test, the intention existed even if it was not subjectively present. But that is not a difference that appears to make much difference on the facts of this case.

Turning to the principles of Article 205, the essential difference between the two provisions, ie 205 and 10, is that Article 10 is focusing upon the conduct and state of mind of the defendant invoking limitation and asking whether his behaviour is such that invoking limitation constitutes an abuse of rights. By comparison Article 205 is focusing on the behaviour of the claimant who has missed the limitation period and asking why he has done so.

Now, Article 205, which is what we're on now, provides for the extension of the limitation period in exceptional cases relating to a personal characteristic

of the claimant. That is the principle that is expressly laid down in the article itself and it's the principle which your Ladyship is applying.

There is an issue between the experts about whether the Russian courts take a permissive or a restrictive view in practice, although it's actually very difficult for your Ladyship to take a view about that, except by reference to specific examples which have some relevant analogy with the facts of the present case. I doubt whether your Ladyship is going to be assisted by evidence about the degree of generosity which the Russian courts show in dealing with cases about the illness of one's wife or impoverished miners in the Ukraine. Rather different would be cases which seem to bear some resemblance to the present one.

What seems to be clear is, first of all, that the exceptional nature of the extension available under Article 205 is a requirement of the article itself, and therefore one which your Ladyship can hardly ignore.

Secondly, that the necessity of proving that the delay arises from a personal characteristic of the claimant is also written into Article 205, and that is applied strictly. In particular, matters affecting some third party can only be invoked by the claimant if their effect is to incapacitate the claimant, which is why the

cases involving illnesses of a family member require evidence that it incapacitated the claimant, usually by requiring him to give full-time care to the family member in question, or possibly by psychologically paralysing him.

Thirdly, the experts differ, as we read the evidence, on the question whether a claimant can obtain an extension of the limitation period if he is perfectly capable of bringing the proceedings but is afraid of the consequences of doing that.

Now, the only remotely comparable case from which your Ladyship can derive any assistance as to the practice of the Russian courts in such a case is Guseletov, the case which is referred to by both parties, in our submission, at paragraph 380.

MRS JUSTICE GLOSTER: Yes, I recall that.

MR SUMPTION: This is the threat to murder case which was held to be not good enough in the absence of medical evidence that his fear had actually incapacitated him.

MRS JUSTICE GLOSTER: Just remind me, when did Mr Glushkov leave prison?

MR SUMPTION: July 2006 is when he left Russia.

MRS JUSTICE GLOSTER: When did he leave prison?

MR SUMPTION: He left prison in March 2004, because in March 2004 he was convicted but the sentence was such

that the time he had spent in prison to date warranted his release. There was then a retrial -- your Ladyship will find the relevant dates are all set out at paragraph 375 of our document.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: He hopped it from Russia before the outcome of the retrial was enforced.

MRS JUSTICE GLOSTER: Yes, yes, thank you.

MR SUMPTION: Now, Guseletov, of course, is the only remotely comparable case, otherwise there's no case which either expert has identified in which fear for the safety of somebody else, or even the claimant himself, has been treated as justifying an extension. And although Dr Rachkov maintained his position on this point, even he accepted that a fear in order to be relevant has got to be both genuine, ie subjectively felt by the claimant, and objectively well-founded. We've given the reference to that evidence in paragraph 365, in particular note 1358.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Now, fourthly, both experts agree that where there is a ground for extending the limitation period, the claimant must bring his action promptly after the disabling circumstance has ceased to operate.

Essentially the same facts are relied upon for both

articles, namely the position of Mr Glushkov, but they are, in our submission, a very long way from satisfying even the loosest tests for applying these principles.

We have dealt with the facts at paragraph 369 and following of our document. They all depend on Mr Berezovsky's claim that he was prevented from bringing his action earlier by his concern for the position of Mr Glushkov, and that is, in our submission, a suggestion that is absurd. The fear on which Mr Berezovsky relies was, in our submission, not genuine, he never entertained such a fear, and it was certainly not well-founded, there was no reason for him to entertain it.

Now, in the first place, the only ground put forward for Mr Berezovsky's fears is the threat which he says Mr Abramovich uttered in May 2001 that, unless Mr Berezovsky sold out of Sibneft, he, Mr Abramovich, would use his influence to keep Mr Glushkov in jail. Mr Berezovsky claims that he submitted to that threat, which is the whole hypothesis on which this question arises.

Mr Berezovsky has never suggested, even in his most expansive moments, that Mr Abramovich ever threatened to keep Mr Glushkov in jail even if Mr Berezovsky and Mr Patarkatsishvili did sell out of Sibneft.

So on the hypothesis on which the limitation question arises, it is frankly very difficult to see that anything in Mr Abramovich's conduct could have led Mr Berezovsky to think that he was going to do anything unpleasant to Mr Glushkov.

Secondly, Mr Berezovsky's conduct wasn't actually affected by his fear for Mr Glushkov's safety, even on the assumption, contrary to our submission, that he entertained such a fear. We've dealt with this at paragraphs 371 to 373. Mr Berezovsky has maintained a persistent, venomous and highly public campaign against the Russian Government ever since he arrived in this country at the end of 2001. This campaign has included making public allegations that from 2003 onwards he was forced out of Sibneft by the Russian State acting through Mr Abramovich.

In July 2005, Mr Berezovsky announced his intention of bringing these proceedings in what one can only describe as a carefully planned programme of press conferences and press statements to agencies and media organisations, both inside and outside Russia. That campaign was deliberately calculated to achieve the maximum impact in Russia, and in these statements what he said was that he was actively preparing these proceedings.

Now, in his fourth witness statement, the reference is to paragraph 402, Mr Berezovsky says that he tried to avoid blaming Mr Abramovich publicly for what had happened until after Mr Glushkov left Russia. It is, however, a matter of public record that that statement is clearly untrue. Mr Berezovsky's behaviour in the four years before the commencement of this action is completely inconsistent with the suggestion that any fears for Mr Glushkov's position affected his conduct in the slightest. Indeed, in his statement of support of Mr Glushkov's asylum application, a statement served in September 2008, Mr Berezovsky dealt in detail with the reasons why he had not previously mentioned his allegations against Mr Abramovich. And his explanation of that delay is concerned entirely with the position of Mr Patarkatsishvili, it doesn't mention the supposed fear for Mr Glushkov's safety.

Thirdly, Mr Glushkov actually left Russia in July 2006 but Mr Berezovsky didn't bring this action until June 2007. Now, in no possible sense of the word can that be described as prompt. Dr Rachkov, although without any authority or law in support of what he says, suggests that the delay might be longer if the case was complex. But Mr Berezovsky's particulars of claim are not particularly complex. Indeed, an unkind spirit

might possibly describe them as rather on the thin side.

According to Dr Nosova's evidence, he had nevertheless been preparing material for this litigation since 2004. We know that Carter Ruck's interviews with Mr Patarkatsishvili were conducted in 2005, and it is quite obvious from their letter before action, and from the original points of claim, that large parts of that were based on notes and proofs prepared two years earlier in 2005.

Now, the explanation given by Mr Berezovsky for his delay after Mr Glushkov's departure from Russia is not that the case was particularly complex. His explanation is that he had a continuing fear that Mr Abramovich would procure the Russian Government to interfere with Mr Glushkov's application. He has, however, made no attempt to suggest that this fear was well-founded. What he suggests is that the Russians did interfere with his own asylum application by simultaneously bringing extradition proceedings, which effectively were the other side of the same coin. They were decided on the same basis.

What seems clear is that no such fear in fact affected Mr Berezovsky for the simple reason that Mr Berezovsky did bring this action while Mr Glushkov's asylum application was still pending. Mr Glushkov's

asylum application was not decided until I think 2010. This action was brought in 2007.

Now, what Mr Berezovsky says about that is that he was advised that, if he didn't bring the action in 2007, he would be time-barred. Well, all we can say about that is that if his desire to avoid being time-barred prevailed over his concern for Mr Glushkov's safety in 2007, there is no earthly reason why it should not have prevailed over his concern for Mr Glushkov's safety in 2006, 2005 or indeed 2001.

My Lady, it's 4.20 and the next subject is Rusal.

MRS JUSTICE GLOSTER: Well, I think that might be a time to stop.

How are we doing for time?

MR SUMPTION: We're doing not badly. I would expect to require about two to two and a half hours tomorrow. If your Ladyship were to sit tomorrow at the same time as today I would pretty well guarantee to finish before the short adjournment.

MRS JUSTICE GLOSTER: Well, you've certainly got all of tomorrow, and you've got such time on Wednesday as you need.

MR SUMPTION: I won't need to go into Wednesday, that I promise.

MRS JUSTICE GLOSTER: Mr Rabinowitz, you're not going to be

starting this week?

MR RABINOWITZ: No, my Lady. I wasn't proposing to.

MRS JUSTICE GLOSTER: You haven't changed your views on that one?

MR RABINOWITZ: Not since we served our 930-page submission.

MR SUMPTION: I shall expect my learned friend to speak from memory to that at once.

MR RABINOWITZ: If my learned friend is prepared to sit here and listen, I will.

MRS JUSTICE GLOSTER: Very well. Then I'll start at 10.15 tomorrow. Thank you all very much.

(4.20 pm)

(The hearing adjourned until  
Tuesday, 20 December 2011 at 10.15 am)

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Closing submissions by MR SUMPTION .....1

Tuesday, 20 December 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

Closing submissions by MR SUMPTION (continued)

MR SUMPTION: The starting point for the Rusal claim is the question whether Mr Berezovsky ever had an interest in Rusal, or in any assets associated with Rusal, because manifestly, unless he had, no other question on this part of the case arises.

In our submission, this allegation effectively collapsed in the course of Mr Berezovsky's oral evidence. He is the only witness to the various oral exchanges on which the Rusal claim depends, and I submit that he was unable to make any of his contentions good. Indeed one of the weaknesses of my learned friends' written closing on this area is that it makes very little attempt to address the problems for his case raised by his own evidence.

The first thing that Mr Berezovsky has to establish is that he had an interest in the pre-merger aluminium assets, the so-called KrAZ and Bratsk assets. These assets were subsequently contributed to the merger with Mr Deripaska's businesses. So it follows that, unless Mr Berezovsky had an interest in the KrAZ and Bratsk assets, it's difficult to see how he could have had an

interest in the merged business.

There are, as we understand it, three bases on which it is suggested that Mr Berezovsky might have had an interest in the Bratsk and KrAZ assets. One is that he was entitled to such an interest by virtue of the term alleged to have been agreed in 1995 about future business, namely that the three alleged parties to the 1995 agreement would share in all future business ventures of any of them in the same proportions as they shared, it was said, in Sibneft.

Now, that is an allegation that has been modified in Mr Berezovsky's fourth witness statement. The agreement in 1995 is now said to have been that each of them would have a right of first refusal in relation to the others' future business ventures.

The second basis on which a claim is made to the Bratsk and KrAZ assets is that there was an express agreement in 1999, towards the end of that year, to apply the 1995 agreement to those assets. Thirdly, it is said that the KrAZ and Bratsk assets were paid for from Mr Berezovsky's and Mr Patarkatsishvili's share of Sibneft profits. So all three of those bases of course assume that Mr Berezovsky succeeds in establishing what he says was agreed in 1995.

Now, the first basis, founded on the future business

agreement in 1995, is a non-starter. Even on the footing that there was an agreement about future business in 1995, both Dr Rachkov and Mr Rozenberg are agreed that it lacks the degree of definition required to be effective in Russian law. In fact, I suppose it is possible, in theory, that the parties might have acted on an agreement they supposed to have been effective even though it actually wasn't.

But the parties cannot even have believed that the future business agreement in 1995 had been made. The evidence about that agreement we have summarised at paragraphs 39 to 41 of our document. In short, this agreement would have meant that Mr Berezovsky was agreeing in 1995 that Mr Abramovich, whom at the time he hardly knew and whose track record in business he despised, was going to have 50 per cent of any future venture of Mr Berezovsky's, even if that venture was entirely conceived and managed by someone else, say Mr Patarkatsishvili.

Now, that seems a preposterous suggestion in the circumstances of 1995, and it appears to have been alleged solely for the purpose of giving Mr Berezovsky some legal basis on which to claim an interest in the Bratsk and KrAZ assets, some five years later.

The second argument is that there was a specific

agreement in late 1999 to apply the 1995 agreement to the aluminium assets, and that is an allegation that was added to the pleadings by amendments at the outset of this trial. We owe the argument, as we understand it, to the ingenuity of Dr Rachkov who believed it to be implicit in paragraphs 250 to 263 of Mr Berezovsky's fourth witness statement, which he sets out verbatim in his report.

There is in fact nothing in those paragraphs that supports that allegation. What Mr Berezovsky says in those paragraphs is that Mr Bosov came to him with a proposal that Mr Berezovsky's group should buy the KrAZ and Bratsk assets, and he and Mr Patarkatsishvili then passed that proposal on to Mr Abramovich. The witness statement of Mr Berezovsky says that he considered himself bound to pass the Bosov proposal to Mr Abramovich as a result of the future business agreement of 1995, but it doesn't suggest that anything was actually said about the 1995 agreement to Mr Abramovich, or that any agreement was in fact made by reference to what was supposed to have been agreed in 1995.

Ultimately, Mr Berezovsky failed to support the Rachkov analysis in his oral evidence. What he said in his oral evidence, as your Ladyship may recall, was that

Mr Bosov proposed to him that he should acquire assets in the aluminium sector, which Mr Bosov did not actually identify at the time but which later turned out to be the KrAZ and Bratsk assets. Mr Berezovsky says that he then suggested to Mr Abramovich that he should follow this up. Mr Abramovich, according to this version, said he would think about it and later did follow it up, but that's all.

Now, Mr Abramovich denied, in his own evidence, that he had ever agreed anything with Mr Berezovsky in advance of the acquisition of the KrAZ and Bratsk assets, and his evidence on the point was not in fact challenged in the course of his cross-examination by my learned friend, Mr Rabinowitz. It is, we suggest, clear that Mr Abramovich's involvement in the acquisition of these assets originated with a proposal which came not from Mr Berezovsky but from Mr Patarkatsishvili, and that Mr Berezovsky himself had no involvement at all.

That leaves the third basis put forward for Mr Berezovsky's supposed interest in the pre-merger aluminium assets, namely that it was paid for from his and Mr Patarkatsishvili's share of Sibneft profits.

The short answer to this is that it wasn't. The cost of paying the initial instalments of the price of the KrAZ and Bratsk assets was borrowed from MDM Bank,

and the later instalments were then satisfied from the equalisation payments made by Mr Deripaska.

Your Ladyship may find it useful to add in the margin of paragraph 412 of our closing document --

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: -- a reference to Panchenko's second witness statement at paragraph 51, and Mr Shvidler's sixth witness statement at paragraphs 10 to 11, where the financing arrangements for the initial payments of the Bratsk and KrAZ asset purchase agreements is described. We understand that to be accepted by Mr Berezovsky, see his closing document at paragraph 1152.

Now, as it happens, this is the one year, 2000, for which we have a detailed breakdown of payments made to Mr Berezovsky and Mr Patarkatsishvili. The bolshoi balance does not include any contribution to the cost of acquiring the KrAZ and Bratsk assets. Now, what Mr Berezovsky says, and the reference is to paragraph 260 of his fourth and principal witness statement, what he says is that he agreed with Mr Abramovich, it seems some time early in 2000, that the cost of acquiring the KrAZ and Bratsk assets would come out of this share in Sibneft profits. So the argument seems to be, based on this, that although Mr Berezovsky didn't actually pay out of his profits

anything, he relies on an agreement that he would pay in that way.

With respect, his evidence about this agreement cannot be true. That became apparent in his cross-examination when it was obvious that he had only the haziest idea of what the cost of acquiring the KrAZ and the Bratsk assets was, and no idea at all of what share of Sibneft profits he would come into.

If Mr Berezovsky and Mr Patarkatsishvili had a 50 per cent interest in the KrAZ and Bratsk assets upon their acquisition, their share of the total purchase price would have been \$287.5 million. Of that sum, \$87.5 million would have been due from them almost immediately. That was nearly half the profits, the total amount was nearly half the profits which Sibneft ultimately earned over the entire year 2000, and nearly six times the total distribution of the company to shareholders in that year. That would have come, on this view of the matter, on top of the \$490 million recorded in the bolshoi balance as having been paid to these two gentlemen over the year without reference to any contribution to the KrAZ and Bratsk assets.

So what Mr Berezovsky's case really amounts to is a suggestion that he and Mr Patarkatsishvili got 50 per cent of these assets, not even for a deferred

payment, but as it turns out for nothing at all.

Now, it's perfectly fair to point out that in the event, Mr Abramovich recouped the whole of what he paid for the KrAZ and Bratsk assets from the equalisation payment received from Mr Deripaska as a result of the merger. That happened in two stages, because the equalisation payment was originally agreed at \$400 million at a time when the Bratsk assets weren't included in the deal. The Bratsk assets were subsequently included in the deal in April and May 2000, and the agreement was restated on 15 May to incorporate them. At that point, the price, the equalisation payment was increased to 575 million which exactly matched what Mr Abramovich had paid for them.

So that is how matters turned out and it clearly was a golden deal from Mr Abramovich's point of view.

But, of course, that was not something that could have been foreseen at the time when the KrAZ and Bratsk assets were acquired. And the question that we are currently concerned with is whether it was agreed at that time that Mr Berezovsky and Mr Patarkatsishvili were going to have their share of these expensive assets paid out of the supposed Sibneft profits.

My learned friends in their closing have pointed, as they have done repeatedly in the course of the trial, to

the provisions of the master contract dated 10 February which described Mr Patarkatsishvili as one of the persons constituting party 1. That, in our submission, is not actually going to help much. The master agreement was a homemade statement of intent. The inclusion of Mr Patarkatsishvili as part of party 1 may well give rise to an argument that Mr Patarkatsishvili was one of the buyers along, I suppose, with Mr Shvidler who was also named as one of party 1. But neither of them contributed a single cent to the acquisition of those assets. Mr Shvidler was certainly not a partner in the venture, he was simply its chief negotiator.

The evidence is that Mr Patarkatsishvili was added to party 1 on the same basis as Mr Shvidler. They were both critical figures in the process of negotiating the deal. And that evidence is the only evidence, the only view of the matter that is consistent with Mr Shvidler's participation unless your Ladyship accepts that he too was a buyer and the evidence does not support that at all.

Now, in fact, Mr Patarkatsishvili's role in the acquisition of the KrAZ and Bratsk assets was clearly that of an intermediary and facilitator. That is the role attributed to him in the four protocols which were prepared for him in February. The evidence about these

protocols is summarised in our document at paragraph 406, sub 3. These documents were backdated and they spoke prospectively about a transaction which had in fact just happened at the time when they were drafted. That has always been accepted to be the case.

But Mr Patarkatsishvili must have regarded them as correctly recording his (inaudible) and entitlement because otherwise it is impossible to understand how or why he would have had them notarised before a Moscow notary for the record on 16 March 2000.

Now, there was an attempt made in cross-examination, which is taken up in my learned friends' closing document, that these four protocols were designed to cover the cost of the aircraft which it had been agreed at the Dorchester Hotel was going to be acquired for Mr Patarkatsishvili. Mr Abramovich was asked about this and ridiculed the idea, suggesting that you could buy four planes with the \$115 million of commission due to Mr Patarkatsishvili according to the protocols.

The only evidence which my learned friends cite in support of this evidence, your Ladyship will find it in their closing, I don't think you need to turn it up, at paragraph 62, sub 8, paragraph 1225, sub 5, and note 653. This is concerned with the circumstances in which the commission agreements were located and where they

were found.

What is said is that the commission agreements were found in Mr Kay's office in a box which had previously been stamped "Kathrein & Co". Kathrein & Co was the name of the Austrian bank where Mr Patarkatsishvili opened an account to pay for the aircraft. The stamped name of Kathrein & Co on the box had been struck out, so it looks as if Mr Kay, in whose office this was found, was simply using an old box to store old documents. I'm not sure that one can infer anything from that.

In our written closing, what we have sought to do is to lay to rest the suggestion about these protocols being related to the purchase of an aircraft by an exhaustive analysis of the documentation relating to Mr Patarkatsishvili's aircraft. The reference in our closing is paragraph 406, sub 3, and in particular the long analytical note at note 1461, which will give your Ladyship the references to all the relevant documents.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: It's a matter of speculation, of course, why Mr Patarkatsishvili did have the protocols notarised, but I would suggest that by far the most likely reason is that this was related to the agreement which Mr Abramovich in his evidence said that he made with Mr Patarkatsishvili about the deferral of his commission

payments. Mr Abramovich's evidence was that the commission would be reassessed as the aluminium venture developed and that payment would be deferred in the meantime. So the 115 million was not paid.

Now, the likelihood must be that Mr Patarkatsishvili wanted an unimpeachable record of what had been agreed so far so as to ensure that when he came back to Mr Abramovich later, under no circumstances would he get less than \$115 million. Mr Patarkatsishvili obviously hoped that the venture would turn out well and that the results would justify much more than \$115 million, and in that hope he turned out to be entirely justified.

MRS JUSTICE GLOSTER: And nothing surprising about taking the credit risk in the deferral, you say?

MR SUMPTION: Not at all because --

MRS JUSTICE GLOSTER: Because?

MR SUMPTION: Because the credit risk -- Mr Abramovich, his assets were very considerable. The 115 million, by the standards of the amounts of money thrown about in this case for far less significant assistance than that which Mr Patarkatsishvili gave, was a relatively small sum.

By this time in 2000, Mr Abramovich was sitting on, on either party's view of the case, very, very considerable wealth. Now, of course, all of these points are about Mr Patarkatsishvili's entitlement,

whereas the question that we are concerned with is Mr Berezovsky's entitlement. Even if Mr Patarkatsishvili was a buyer, properly so-called under the terms of the master contract, which we deny, that doesn't mean that Mr Berezovsky was. Indeed it makes the omission of his name even more significant.

If Mr Patarkatsishvili was a buyer, it is, I suppose, theoretically possible that his private arrangements with Mr Berezovsky were such as to entitle Mr Berezovsky to a share of whatever Mr Patarkatsishvili had. But Mr Berezovsky does not have permission in this action to base his claim on his alleged partnership with Mr Patarkatsishvili alone, but if Mr Patarkatsishvili was a buyer, and Mr Berezovsky had an interest, it could only be by virtue of those arrangements between themselves.

Now, Mr Berezovsky's claim to have been, as he put it, the key person who made this deal happen was, in our submission, cruelly exposed in his oral evidence for the self-important nonsense that it was. Mr Berezovsky declared that he had attended many meetings with Lev Chernoi, Mr Reuben and Mr Anisimov to discuss key aspects of the transaction. All completely untrue. Mr Berezovsky couldn't remember a single thing that had been discussed at these meetings at which he was

supposedly the key person. He accepted that he never even saw the master contract or the ten asset sale agreements which marked their conclusion, which he surely would have done if he had been party to them, or if he had been the key person, or involved in any way in their negotiation.

Mr Berezovsky had only the vaguest idea of the terms of those agreements, and the occurrence of these alleged meetings with Mr Berezovsky was in fact denied by every other witness supposed to have participated in them. Mr Abramovich, Mr Shvidler, Mr Anisimov and Mr Buzuk all denied it. Mr Reuben, who was of course called by my learned friends, remembered only a meeting with Mr Patarkatsishvili at which Mr Abramovich had been identified as the person whose consent was required for the deal. Mr Reuben said nothing about meeting Mr Berezovsky, and indeed his evidence was that Mr Berezovsky's name hadn't been mentioned.

We've collected the references to this at paragraph 409, sub 1 --

MRS JUSTICE GLOSTER: Yes, I have it.

MR SUMPTION: -- and note 1474.

Now, the evidence of all these witnesses in fact more or less accorded with statements on the subject in Mr Berezovsky's own earlier statements. Because, as

your Ladyship will recall, in his witness statement Mr Berezovsky said that it was Mr Patarkatsishvili, not him, who conducted the negotiations. In his pleadings in the Metalloinvest action, Mr Berezovsky said he had attended no meetings at all. In an interview with Vedomosti, which we have quoted at paragraph 409, sub 3 of our closing, Mr Berezovsky said that he was out of the country at the time and was simply telephoned after the event by Mr Patarkatsishvili and told, as he put it, that a certain deal had taken place. "Will it make money?" says Mr Berezovsky. "Yes", says Mr Patarkatsishvili. "Then I'm content", says Mr Berezovsky. That's the statement that he made to a newspaper later in March.

Presented with these inconsistencies Mr Berezovsky suggested that, well, he'd been using "meetings" in a rather special sense, as meaning just occasions with a formal agenda and written minutes. I doubt whether Mr Berezovsky has ever attended a meeting with a formal agenda and written minutes, certainly none have been disclosed in either category in these proceedings.

In our submission, Mr Berezovsky's performance on this issue was frankly embarrassing. In fact, he did nothing at all to further the deal. In Mr Berezovsky's written closing, the most that is said is that he had

established valuable contacts in the industry, and that suggestion appears to depend upon a single visit to Krasnoyarsk at the end of 1998 or early 1999, which was well before the acquisition of the KrAZ and Bratsk assets was first proposed.

At this meeting, Mr Berezovsky said that he had some involvement in mediating a dispute between the KrAZ plant's owners and the provincial governor, General Lebed. Apart from that, all the prior contacts in the aluminium industry were not Mr Berezovsky's but Mr Patarkatsishvili's, and Mr Berezovsky's supposed connection with General Lebed appears to have been completely irrelevant to the deal that was subsequently made. The evidence is that General Lebed had absolutely nothing to do with it. We've summarised the references to General Lebed at 4094 of our document.

Now, what's said by Mr Berezovsky's counsel is that he would have been, or Lebed could have been a nuisance if he had not been on side, but there's actually no evidence before your Ladyship about whether General Lebed was on side or off side, and if he was on side, there is no evidence that it was Mr Berezovsky who had anything to do with putting him there.

This, in our submission, remarkably thin case is not reinforced by the suggestion made in my learned friends'

closing that the sellers all thought that they were selling to Mr Berezovsky. This is simply wrong. First of all, Mr Bosov is prayed in aid. Mr Bosov's witness statement was served in order to deal with a disclosure issue, with which your Ladyship has not in the event been troubled, about a video recording which Mr Abramovich was at one point said to have obtained of some discussions at Mr Patarkatsishvili's offices in Moscow and shown to Mr Bosov earlier this year. That's what that witness statement is mainly about.

Mr Bosov's statement is relied upon because in an introductory paragraph of his witness statement, it's paragraph 8, he says that he told Mr Abramovich that he was planning to sue Mr Berezovsky for a debt and, according to the statement, he said that he'd made an agreement with Mr Patarkatsishvili, not in fact Mr Berezovsky, under which commission was due to him because of his role in the sale of the Bratsk and KrAZ assets. Now, Mr Bosov seems to have been planning to sue Mr Berezovsky about that on the footing that he thought Mr Berezovsky would be liable for his agreements with Mr Patarkatsishvili, presumably on the basis that he understood them to be partners.

Now, these facts, even if they were proved, would not establish that Mr Berezovsky was a buyer of the

Bratsk and KrAZ assets. In fact, they are recorded in Mr Bosov's witness statement as simply allegations. We know absolutely nothing about the basis of Mr Bosov's proposed claim, nothing at all about the underlying facts. That evidence does not therefore appear to take your Ladyship any further.

Mr Reuben is relied upon on the basis that he is said to have given evidence that Mr Patarkatsishvili told him that Mr Berezovsky was involved. Well, Mr Reuben gave evidence that must have been a certain disappointment to those who had subpoenaed him without a witness statement. It turned out he had very little to do with the negotiations. What he in fact said about them was that he assumed that the buyers were Sibneft shareholders, and he assumed that Mr Berezovsky was a Sibneft shareholder because, he said, that was common knowledge. Mr Reuben's evidence, however, was that Mr Patarkatsishvili never mentioned Mr Berezovsky's name and that he himself never came across Mr Berezovsky in connection with the transaction at the time.

Mr Michael Chernoi was wheeled out as saying that his brother Lev thought that he was selling to Mr Berezovsky. Since Mr Chernoi's statement is double hearsay, and since Mr Chernoi refused to give evidence, even though arrangements had been made for him to do so

by video-link, giving no plausible reason at all for his refusal -- I think he said that because Mr Deripaska would probably not be giving evidence he didn't see why he should -- Mr Chernoi's untested witness statement is entitled, in our submission, to absolutely no weight at all.

Mr Patarkatsishvili's interview notes undoubtedly do, as I acknowledge, suggest that by 2005, at any rate, Mr Patarkatsishvili believed himself and Mr Berezovsky to have had an interest in the KrAZ and Bratsk assets corresponding to their shares in Sibneft. However, the only indication of how such an interest might have been acquired is that the money to acquire these assets has been acquired with Sibneft assets. That was not in fact correct, as my learned friends I think now recognise.

Now, there is a suggestion, it appears in my learned friends' written closing at paragraph 1155, sub 4, that Mr Berezovsky authorised Mr Patarkatsishvili to participate in the negotiations for the acquisition of those assets in advance, and that that is something that Mr Patarkatsishvili said in these interviews. In fact that is something that comes from a passage which, although attributed by my learned friends to Mr Patarkatsishvili, is attributed by Ms Duncan to Mr Berezovsky. Your Ladyship will find that, I don't

ask you to turn it up now, in due course at bundle  
R(D)2/30/127.

MRS JUSTICE GLOSTER: What is the paragraph number where the  
claimants, you say, wrongly attribute --

MR SUMPTION: Sorry, what he said was that he authorised  
Mr Patarkatsishvili to take part -- sorry, Mr Abramovich  
to take part.

MRS JUSTICE GLOSTER: Hang on, let me just get this clear.

MR SUMPTION: It's 1155, sub 4, where the allegation is that  
Mr Patarkatsishvili and Mr Berezovsky told the  
solicitors in proofing sessions various things. To take  
one example, Ms Duncan records, and then there is  
a quotation:

"[Abramovich] then came & said is [a] problem...

"We said ok -- he came [and] said [Mr Deripaska  
wanted] 50%..."

So the suggestion is that all of these discussions  
were authorised in advance by Mr Berezovsky.

Now, that is an extract from the notes, which in  
fact relates to something that Ms Duncan has attributed  
to Mr Berezovsky rather than to Mr Patarkatsishvili.

MRS JUSTICE GLOSTER: So what you say is wrong, and I'm  
looking at subparagraph 4 of paragraph 1155, what you  
say is wrong is the statement, "in the course of  
proofing session with Mr Patarkatsishvili", in the sense

that that's meant to come -- although it was a proofing session with Mr Patarkatsishvili, in fact --

MR SUMPTION: In fact it appears, both from the context and in this case from Ms Duncan's attribution, to have been Mr Berezovsky saying that.

MR RABINOWITZ: That's precisely what we say, my Lady.

MR SUMPTION: I also say that, whoever it came from, that statement is wrong, it's inconsistent with all the other evidence for reasons that I've already advanced.

MRS JUSTICE GLOSTER: I'm not following you, Mr Sumption. At subparagraph 4 in the claimant's closing, which is what I'm looking at --

MR SUMPTION: What is suggested here is that both Mr Patarkatsishvili and Mr Berezovsky told the solicitors that they had discussed the proposed merger with Mr Abramovich in advance and that they had, so to speak, authorised him to proceed with it.

MRS JUSTICE GLOSTER: Yes, and the first sentence is that the statement is consistent -- the claimant says -- with what both Badri and Berezovsky told solicitors in the course of proofing sessions dating back to 2005.

MR SUMPTION: This particular record appears to have been something that Mr Berezovsky, and not Mr Patarkatsishvili, said.

MRS JUSTICE GLOSTER: The 2007 quote?

MR SUMPTION: That's right, but it's referring back to what was said earlier, before the 2000 merger agreements.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: And all I'm saying at this stage is that that is not something that Mr Patarkatsishvili can have attributed to him. Obviously somebody said that at the proofing session, I don't dispute the accuracy of the notes at all, but it does not appear to have been Mr Patarkatsishvili, it appears to have been Mr Berezovsky, and to have been a forerunner of what Mr Berezovsky says in his witness statement in this action which is something that, for reasons that I've already given, simply cannot be true.

MRS JUSTICE GLOSTER: And Mr Berezovsky was at the proofing session in November 2007?

MR SUMPTION: Yes, he was. He was indeed, at both days. The only proofing sessions with Mr Patarkatsishvili at which Mr Berezovsky was not present were the ones that happened in 2005. Dr Nosova was present at those but Mr Berezovsky was not.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Now, if Mr Berezovsky didn't have an interest in the KRAZ and Bratsk assets, then it is hardly realistic for him to be suggesting that he had a share in the merged business into which those assets were

later incorporated. That he had no such interest is, ironically, something that is confirmed by the evidence that your Ladyship has heard about the Dorchester Hotel meeting on 13 March and the events leading up to it.

Now, it is I think undisputed that the principals of the merger with Mr Deripaska's business were agreed in the course of negotiations occurring at the very start of March 2000 at a hotel in Moscow, and then, on the following day, at Mr Abramovich's house at Sareevo outside the city.

MRS JUSTICE GLOSTER: That's the Baltschug Kempinski?

MR SUMPTION: That's the Baltschug Kempinski Hotel.

There is a minor difference between Mr Deripaska's recollection and that of the other witnesses as to how much of it was agreed at Sareevo and how much of it was agreed at the Baltschug Kempinski Hotel, but I'm not sure anything turns on that.

The participants in these negotiations were Mr Abramovich, Mr Deripaska, Mr Shvidler and Mr Bulygin, and the outcome was recorded in the preliminary agreement which was another homemade agreement drawn up in something of a hurry by Mr Bulygin.

Now, that agreement provided for Mr Abramovich's companies to contribute all the aluminium assets that they had just acquired, other than the Bratsk assets,

and the omission of the Bratsk assets is significant, for reasons that I will come to, to the merged business, in return for an equalisation payment of \$400 million.

The agreement provided for a definitive agreement to be drawn up and executed between the principles by 20 March which would contain all the terms agreed in the preliminary agreement but, obviously, in more elaborate and legally verified terms.

It's also quite important to note that the preliminary agreement provided by clause 8 that the integration of the businesses was to start at once, with effect from 1 March. The evidence is that it did.

Now, the detailed terms, the ones that were subsequently included in the sale and purchase agreement of 15 March, were then negotiated by a working group which comprised representatives of Mr Deripaska's side and Mr Abramovich's, and the fullest account of their work was in fact given by Mr Hauser in the course of his cross-examination and examination-in-chief.

The working group met several times in London and in Moscow. The final meeting was in Moscow on the evening of 14 March and extended into the early hours of the 15th. At that final meeting, the members of the group resolved all the outstanding points referring each one to Mr Deripaska and Mr Abramovich, who were elsewhere,

for a final decision.

MRS JUSTICE GLOSTER: I think it was Mr Shvidler.

MR SUMPTION: Mr Shvidler, forgive me, yes, and Mr Deripaska for decision.

The result of the labours of the working group was the purchase and sale agreement between Runicom Limited and Mr Deripaska's company, GSA (Cyprus), and that confirmed in binding form and in more elaborate legal language all the terms agreed in the preliminary agreement, including the equalisation payment.

MRS JUSTICE GLOSTER: And you set that out in your statement?

MR SUMPTION: Yes. Now, the agreement was then, as we pointed out, amended and restated on 15 May to reflect the subsequent addition of the Bratsk assets. The Dorchester Hotel meeting was the only occasion even vaguely connected with the merger at which Mr Berezovsky participated. He has therefore sought to suggest that it was the meeting at which everything was agreed under his own masterly direction. What he said about this was:

"Everybody understood I am key person, not anybody more."

Now, the reality is a sad contrast to that claim. Your Ladyship will recall the evidence about how and why

the meeting was set up, which has been given primarily by Mr Abramovich but also by Mr Deripaska and Mr Shvidler. It was a meeting summoned by Mr Berezovsky because he had just learnt about the merger from Mr Patarkatsishvili who had himself just learnt about it from Mr Abramovich. Mr Berezovsky had not been involved and therefore wanted to know more about it.

The Russian presidential election, this is an important matter of background, had of course occurred on 7 March, a few days earlier, and Mr Berezovsky, who believed himself to be an ally and patron of Putin, and had contributed substantially to his election campaign, was apparently at the zenith of his political influence and certainly nobody had in mind the disasters that ensued later in the year.

It has never in fact been entirely clear what Mr Berezovsky expected to get out of this meeting but he was certainly a man with a rich sense of his own importance, and a taste for grandstanding may well be a sufficient explanation of why he wanted to have it. But there is absolutely no mystery about Mr Abramovich's reason for going. His evidence was that Mr Berezovsky was his political protector and that when Mr Berezovsky wanted to see him, he went, and if he possibly could he went without delay. Mr Deripaska came, partly in order

to be able to discuss the operational integration of a merged business with Mr Abramovich and Mr Shvidler, which was already in progress as a result of the terms of clause 8 of the preliminary agreement, and partly in order to dun Mr Berezovsky for a debt.

The meeting was, on any view of the matter, a bizarre occasion. Mr Deripaska personally strongly disliked Mr Patarkatsishvili because, as Mr Abramovich told your Ladyship, Mr Patarkatsishvili had at one point assisted one of Mr Deripaska's rivals in the aluminium wars. Mr Deripaska had not been warned that Mr Patarkatsishvili was going to be there and was not at all pleased to find that he was. His main interest in meeting Mr Berezovsky was to be able to dun him for the debt.

The meeting occurred in the living room of Mr Patarkatsishvili's suite in the Dorchester Hotel and all the witnesses present, including Mr Berezovsky, agree that for the first hour or so Mr Berezovsky himself was not present. All of those present, apart from Mr Berezovsky, agree that he eventually appeared from another room in the suite, unusually attired.

Now, thereafter, the meeting appears to have been awkward and brief. What seems, I would suggest, absolutely clear is that it simply cannot have been

a meeting at which negotiations occurred about the terms of the merger. There are a number of reasons for saying that, reasons which, in our submission, are conclusive. In the first place, all the key points of the merger had already been agreed in the preliminary agreement and did not require or receive renegotiation. Indeed the integration of the merged business was already in progress. As far as the parties to the preliminary agreement were concerned, therefore, the merger was a done deal.

Now, neither Mr Berezovsky nor Mr Patarkatsishvili had had any involvement in the negotiations of the merger to date, and neither of them can have known anything about the merger except that it had happened. Mr Berezovsky did not dispute this in cross-examination. He did suggest that he had had some discussions with Mr Abramovich before the Dorchester Hotel meeting on the subject, but Mr Abramovich denied this, and it's a point on which he was not challenged in cross-examination.

Now, neither Mr Berezovsky nor Mr Patarkatsishvili had been involved or were ever involved in the work of the working group that was in the process of preparing the final terms of the agreement. Indeed Mr Berezovsky's evidence shows that he was not even aware of the existence of the working group. He

acknowledges that at the time of the Dorchester Hotel meeting he had not even seen the preliminary agreement, his evidence was that he knew nothing about its terms, and it is really impossible to understand how Mr Berezovsky could have participated meaningfully in a negotiation for the merger if he did not know what was in the preliminary agreement that the parties he was talking to had undertaken to embody in the final agreement just ten days before.

There is no evidence at all before your Ladyship that Mr Patarkatsishvili knew any more about the previous course of negotiations than Mr Berezovsky did. On the contrary, the evidence is that he was told after the event, very shortly before the Dorchester meeting occurred.

The second point to make is that when Mr Berezovsky was asked about what were the key terms --

MRS JUSTICE GLOSTER: Can you just remind me, what roughly is the date of the preliminary agreement?

MR SUMPTION: The agreement itself is undated, and the witnesses --

MRS JUSTICE GLOSTER: Yes, but it's early March --

MR SUMPTION: The witnesses said the beginning of March 2000. They were not more precise than that.

The best clue one has to it is in fact clause 8.

Mr Shvidler believes that the meetings started at 11.00pm on 4 March, and a reference to that is given at page 340, note 1504 of our document.

It must have been very shortly after 1 March because that's the date at which they were agreed that the integration of the businesses should become effective.

MRS JUSTICE GLOSTER: So we're looking at about 5 March?

MR SUMPTION: About 4 or 5 March, yes.

MRS JUSTICE GLOSTER: If the meeting started at around 11.00pm on the 4th --

MR SUMPTION: That is right, depending on whether your Ladyship prefers Mr Deripaska's evidence that the whole of it was agreed at the hotel, or that it carried over to Sareevo.

MRS JUSTICE GLOSTER: So it's the 4th or 5th.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: On your case anyway.

MR SUMPTION: Yes. I don't believe that the date of the preliminary agreement has been a matter in issue.

MRS JUSTICE GLOSTER: It's certainly not in issue that it was concluded and signed prior to the Dorchester Hotel meeting.

MR SUMPTION: It is not, no.

The second point to be made is that when Mr Berezovsky was asked, "Well, you say that the key

terms were negotiated and resolved at the Dorchester meeting, what were the key terms?", after some hesitation he said that they were these: the proportions as between the Deripaska side and the Abramovich side; the management role of Mr Abramovich in the merged business; the choice of English law to govern the final agreement; the price, ie the equalisation payment; and a term that none of the parties, including Mr Deripaska, would be entitled to sell out of the merged entity without the consent of all the others.

Now, in fact, with the exception of that last term about not selling out, which I'll deal with separately, every one of these matters had been resolved in the preliminary agreement. That was an agreement about which Mr Berezovsky had no knowledge but which all the other parties present had already bound themselves to put into effect and which they had been personally involved in negotiating.

There is a most peculiar passage, if your Ladyship has Mr Berezovsky's principal witness statement to hand, at paragraph 280, which illustrates --

MRS JUSTICE GLOSTER: Can you give me the reference?

MR SUMPTION: It's paragraph 280 at D2/17/256.

MRS JUSTICE GLOSTER: Can you give me the page?

MR SUMPTION: I've got the page, I suspect, wrong.

MRS JUSTICE GLOSTER: Or the paragraph number.

MR SUMPTION: It's paragraph 280, which is at D2/17,  
page 256.

Now, what is said here is that at this meeting:

"Badri explained to us all that the merger  
agreements were to be governed by English law."

Now, in our submission, this is perfectly absurd.  
Here was Mr Patarkatsishvili, according to  
Mr Berezovsky, who had had no part in the negotiations  
to date, solemnly explaining to Mr Abramovich,  
Mr Shvidler and Mr Deripaska what they had themselves  
agreed in a document which they had been personally  
involved in negotiating. It is a simply ridiculous  
suggestion.

Now, all of these points were put to Mr Berezovsky  
in cross-examination and he didn't have an answer. He  
simply flailed and fumbled about. The one thing, oddly  
enough, which Mr Berezovsky claims to remember about how  
the negotiations of these supposed key elements actually  
went turned out to be something which could not be  
right, and that concerned the equalisation payment.

Your Ladyship will recall that Mr Berezovsky in his  
witness statement claimed to recall that the  
equalisation payment had been agreed, this is at  
paragraph 278 of his witness statement. What he said

was that it had been agreed at 575 million. He said he wasn't very happy with that aspect of the agreement but reluctantly agreed to it.

Now, actually, nothing like that happened because the correct figure was 400 million, not 575. 400 million had been stated in both the preliminary agreement ten days or a week before the Dorchester Hotel meeting, and subsequently in the share sale and purchase agreement executed two days after the meeting.

575 million, the figure referred to at paragraph 278, was the increased equalisation payment which was agreed in the restated agreement of 15 May. What had happened was that the equalisation payment had been increased on 15 May as a result of the addition to the merger of the Bratsk assets. Mr Berezovsky had obviously picked up the 575 million figure either from the restated agreement during the preparation of his witness statement or, more probably, from somebody else who had studied the restated agreement, since one doesn't get the impression that Mr Berezovsky was in the habit of reading long legal documents, and Mr Berezovsky wrongly attributed that 575 million figure to the original agreement.

In my learned friends' written closing, paragraph 1181, they say that the Bratsk assets were in fact, they

suggest, agreed to be included at the Dorchester Hotel meeting, which was why Mr Berezovsky remembered the figure of 575 million. And they suggest that it must have been omitted from the 15 March sale and purchase agreement for lack of time.

Now, your Ladyship need not spend much time on this suggestion. Mr Berezovsky did not, in the course of his evidence, suggest that the Bratsk assets had been added to the merger at the Dorchester Hotel meeting, and this was a point that was not suggested to a single witness of ours. On the contrary, Mr Berezovsky admitted that he was unaware of the increase of the equalisation payment attributable to the addition of the Bratsk assets, and that evidence he gave at Day 9, page 82. Your Ladyship may find it helpful to add in the margin at paragraph 415, sub 6 of our closing, a reference to that evidence at Day 9, page 82.

Now, in addition to Mr Berezovsky's own evidence, Mr Abramovich and Mr Hauser --

MRS JUSTICE GLOSTER: I think it's 419, not 415.

MR SUMPTION: I'm sorry, my Lady?

MRS JUSTICE GLOSTER: It's paragraph 419.

MR SUMPTION: I'm sorry if I've got that wrong. Yes, 419, forgive me.

Mr Abramovich and Mr Hauser both gave unchallenged

evidence on this point that the Bratsk assets were in fact added later, after the merger, and were what gave rise to the 15 May revision. Again, in the same place, 419, sub 6, it may assist if I gave your Ladyship the reference as to that evidence. It's Abramovich, Day 24, pages 42 to 43, and Hauser, Day 31, pages 49 to 51.

Now, this suggestion of course is also, as is obvious, inconsistent with the terms of the 15 March sale and purchase agreement, which doesn't include the Bratsk assets, whereas the 15 May agreement does. The suggestion that there was no time to deal with it between the Dorchester Hotel meeting and the 15 March agreement is, in our submission, ridiculous.

Under the preliminary agreement, the parties to that agreement had until 20 March to execute the definitive sale and purchase agreement, and Mr Hauser's evidence was that all the outstanding points were referred up to the principals at a long late night meeting, which I've already referred to, on the night of 14 to 15 March. The agreement was executed the next morning. So there is simply no scope for the purely imagined lack of time which resulted in its being omitted from that agreement.

Now, the only key term identified by Mr Berezovsky which was not included in the preliminary agreement was the no selling without consent provision, which

Mr Berezovsky says was agreed but which, in our submission, was not agreed. In our submission, it cannot have been agreed because not only is it not in the preliminary agreement but it isn't in the sale and purchase agreement of 15 March either.

Moreover, this no selling without consent agreement is a commercial nonsense which is most unlikely to have been agreed at any time, and the denials of Mr Abramovich, Mr Shvidler and Mr Deripaska that they had agreed any such thing seem wholly convincing. This is a no selling out without the consent of the others agreement, which would also, according to Mr Berezovsky, have been binding on Mr Deripaska. And its supposed justification was that each party needed to be protected against being left with a minority stake and thereby (inaudible) a controlling majority shareholder which would have reduced the value of this party's stake.

Now, that would have been a problem only if one of the four parties to the alleged agreement, about not selling out, wanted to sell to another party to that agreement. The problem is that the alleged term would have prevented any of the three of them from selling out -- or the four of them, I suppose -- from selling out even to a third party, although that would actually have made no difference to the balance of power among

the original shareholders. In fact, the suggested term would have prevented Mr Deripaska from breaking up his stake and selling it piecemeal to third parties which, on the face of it, would actually have increased the value of the remaining 50 per cent, turning it into a strategic stake when it would previously not have been.

MRS JUSTICE GLOSTER: Is there any reference to such a term or the discussion of such a term in any of the documents relating to the --

MR SUMPTION: Not one.

MRS JUSTICE GLOSTER: -- later agreement?

MR SUMPTION: This is a proposition that is to be found in one place and one place only, namely Mr Berezovsky's oral evidence.

I don't think there's a reference to it in Mr Patarkatsishvili's notes.

MR RABINOWITZ: I think there is.

MR SUMPTION: But I ought to check that.

What Mr Patarkatsishvili said in the note that I can recall, and I will have this checked, is that it was a matter of Russian business practice, but --

MR RABINOWITZ: With respect, that's not right.

MR SUMPTION: There is a reference, is there, to him having agreed it?

MRS JUSTICE GLOSTER: Mr Rabinowitz, I was asking actually about later agreements, but --

MR SUMPTION: The later agreements --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption.

You say there's a reference in Mr Patarkatsishvili's notes, is there?

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Can you give that to me in due course?

MR RABINOWITZ: We will dig it up and get it to you, but there is a reference.

MRS JUSTICE GLOSTER: Yes, but do you agree there's no reference in any of the documents relating to the subsequent agreement?

MR RABINOWITZ: Yes, my Lady, I accept that.

MR SUMPTION: Apart from Mr Patarkatsishvili's notes, which we will check.

MR RABINOWITZ: Your Ladyship sees it's set out in Mr Patarkatsishvili's note. The relevant part is set out at paragraph 1215 of our closing, page 703.

MRS JUSTICE GLOSTER: Right, just a second, I just want to make a reference to paragraph 1215 of your closing.

MR RABINOWITZ: Page 703, it's the last line of that page.

MRS JUSTICE GLOSTER: Yes. Very well, thank you.

MR SUMPTION: Apart from possibly Mr Patarkatsishvili's note, this is something that is referred to by

Mr Berezovsky in his witness evidence. There is no contemporaneous documentation for it at all although, of course, this part of the transaction is unusual by the standards of this case in being extremely fully documented.

It's the final part in the quotation at paragraph 1215, I think, that is Mr Rabinowitz's best point to extract from the Patarkatsishvili notes. We have dealt with this at subparagraph 7 of paragraph 536 where the same references I think will be found.

Now, this supposed term would of course have enabled any shareholder to force another shareholder who wanted to leave to sell to him on his own terms by refusing consent to a sale to anyone else.

Mr Deripaska's denial that he ever entered into such an agreement, in those circumstances, seems wholly convincing.

MRS JUSTICE GLOSTER: Mr Rabinowitz, where is the reference to the nondisposition by any of the shareholders?

MR RABINOWITZ: If your Ladyship has paragraph 1215, it runs on for a few pages, your numbering may be different to mine, there is a very long extract under subparagraph 2 of 1215. It's the last quotation mark.

MRS JUSTICE GLOSTER: Right, it's in there, is it?

MR SUMPTION: It's the last paragraph on page 703 of the

quotation that I understand that Mr Rabinowitz principally relies on.

MRS JUSTICE GLOSTER: We've all got different page numbers.

MR RABINOWITZ: It's just before 1216 begins, my Lady.

MR SUMPTION: Now, that is a reference to the --

MR RABINOWITZ: Your Ladyship may also wish to look at footnote -- sorry, I apologise to my learned friend.

MRS JUSTICE GLOSTER: Go on, Mr Rabinowitz.

MR RABINOWITZ: Footnote 63, I'm told, is another reference. Your Ladyship will find that on page 58. It's a reference to the June 2005 meeting.

MRS JUSTICE GLOSTER: Right, thank you.

MR SUMPTION: My Lady, that is a reference to the 2007 notes where there is obviously a problem about Mr Berezovsky's participation in the meetings as well. Your Ladyship has gone through that with the witnesses who were there. But for your Ladyship's note, or the transcript, paragraphs 535 and 536 of our document go through in detail all of Mr Patarkatsishvili's observations on the subject, both the proofs and the successive notes, and deal with this point very fully. They contain the references that my learned friend relies on as well as the ones that we rely on.

In our submission, there is no substance in the suggestion that Mr Patarkatsishvili's notes give any

reliable support to this and, in a very heavily documented part of the agreement, its absence both from the preliminary agreement and the sale and purchase agreement is absolutely inexplicable if it was actually agreed at the Dorchester Hotel meeting.

Now, none of the people, it is worth noting, who were in the process of finalising the terms of the sale and purchase agreement was present at the Dorchester Hotel, and none of them, according to their evidence, was aware of the Dorchester Hotel meeting. None of them was given to understand that they should wait for instructions that might depend on the outcome of the Dorchester Hotel meeting, and that further underlines the high degree of improbability that anything of substance relating to the merger was agreed at that meeting.

It is right, I would suggest, to point out in addition that it is common ground -- I say that because of what is said by my learned friends at I think paragraph 1212, sub 2 of their closing -- that Mr Deripaska did not get on with either Mr Berezovsky or Mr Patarkatsishvili, and had a particular dislike of Mr Patarkatsishvili. Now, Mr Abramovich explained the reasons for that in the recent history of the aluminium wars. It must, I would suggest, be most unlikely that

Mr Deripaska would have agreed to enter into a close business relationship, indeed, if the no selling out clause was agreed, an unbreakable business relationship, with people whom he didn't like.

Finally it is the case, and I don't think the contrary has been suggested by any witness, that neither Mr Berezovsky nor Mr Patarkatsishvili had any involvement in the negotiation of the restated agreement of 15 May. Mr Hauser's evidence was that neither of them was even mentioned in the course of the negotiations for that agreement. Nor, it has to be said, were they involved in the creation of Rusal which did not actually come into being until the end of 2000. The references to that are at paragraph 419 of our document.

It seems most surprising, if Mr Berezovsky and Mr Patarkatsishvili were in reality parties to the deal and part owners of the enterprise, that they had no participation or involvement in either the addition of the Bratsk assets culminating in the agreement of 15 May, or the creation of Rusal later in the year.

Now, as in the case of the master contract of February, Mr Berezovsky claims to have been an undisclosed party to the preliminary agreement by virtue of the reference in the pre-amble to "partners of

party 1", and to have been an undisclosed party to the share sale and purchase agreement because of the reference to "other selling shareholders" in that agreement.

The problem about this argument is that neither Mr Berezovsky nor Mr Patarkatsishvili had anything to do with either of those instruments. Mr Berezovsky says he didn't even see them until they were disclosed in this litigation. There's actually no reason to suppose that Mr Patarkatsishvili had seen them either. So it's hard to see why, in those circumstances, these phrases should be taken as references to them. Now, dealing with the two agreements in turn, first of all, the preliminary agreement, evidence on this point was given by Mr Abramovich, Mr Shvidler, Mr Deripaska and, by witness statement, Mr Bulygin, and is summarised at paragraphs 423 to 426 of our document.

The evidence given was that there were two basic concerns which underlay the reference to partners in the preliminary agreement. One was that if there were any undisclosed interests standing behind one of the nominal parties to the preliminary agreement, there was a concern that those undisclosed parties should be bound. Nobody had Mr Berezovsky or Mr Patarkatsishvili in mind. The background to this is an industry which

was riven by rivalries and mutual distrust, as many witnesses explained to your Ladyship. Mr Bulygin, who drafted this agreement, actually assumed that Mr Shvidler was a partner of Mr Abramovich. He was wrong about that, but it certainly was not his understanding that it was Mr Berezovsky.

The other concern that appears from the evidence is that both sides were concerned that the other might be a front for other parties with whom they would not wish to be in business. The main concern on both sides appears to have been the possibility that the Trans-World Group, having apparently sold out of the aluminium industry in February, might be coming back in through nominal holders. That was why --

MRS JUSTICE GLOSTER: That's the Reuben brothers, is it? Or it was partly --

MR SUMPTION: It's the Reuben brothers among others. That seems to have been why clause 4.1 warranted that the principals and their partners did not include the Trans-World Group. That was clause 4.1 of the preliminary agreement.

Turning to the "other selling shareholders" referred to, so the corresponding phrase in the share sale and purchase agreement of 15 March, that point I would suggest was comprehensibly dealt with by Mr Hauser. He

was a witness who was not beholden to either side, and his evidence is summarised with relevant references at paragraph 427 of our document.

His evidence, in summary, was that the term was used for precautionary reasons in case it should turn out that there were other interests involved. It was not used because anybody thought that there necessarily were other interests involved, and nobody had any particular other interests in mind. Mr Hauser's assumption, though it was only an assumption, was the same as Mr Bulygin's, namely that if Mr Abramovich did have a partner or a co-vendor then it was likely to be Mr Shvidler.

Mr Berezovsky's written closing on the Rusal aspect of this case is based almost entirely on what is at best circumstantial evidence, most of it dating from much later, and also on documents suggesting that persons who, in most cases, had no particular means of knowing the truth were assuming that Mr Berezovsky did have an interest in Rusal.

Now, in our submission, the evidence about the way in which the acquisition of the KrAZ and Bratsk assets happened, and the merger agreement was negotiated, simply doesn't admit of the possibility that Mr Berezovsky and Mr Patarkatsishvili were undisclosed parties to those agreements, or that they had any

interest resulting from those agreements. There is no basis on which such an interest could have been acquired by them under the supposed 1995 agreement, even on the footing that its terms were as alleged by Mr Berezovsky.

There is no point in the negotiations which one can identify at which it could have been agreed to confer such an interest on them if they didn't get it by virtue of the 1995 terms. None of the occasions on which it is said by Mr Berezovsky to have been agreed can actually be reconciled with the evidence, including his own evidence, and there is nothing that Mr Berezovsky had done which would have warranted giving him a buckshee interest in these assets. He did not contribute to the cost, he did not contribute contacts, he didn't contribute business ideas, he didn't contribute management expertise. He remained of course Mr Abramovich's political protector, but he was being very handsomely paid for that without any need to give him a gift of a large interest in the aluminium industry.

Now, Mr Patarkatsishvili of course did contribute a great deal to the acquisition of the pre-merger aluminium assets and therefore indirectly to the merger. He was the source of the original proposal, he was an important facilitator. He also made, as is clear,

a significant contribution to ending the gang warfare that had destroyed the profitability of these businesses under their previous owners. But Mr Berezovsky contributed zilch to that, and nothing to the merger agreement either.

My Lady, does your Ladyship have a particular time in mind?

MRS JUSTICE GLOSTER: Yes, I'll take the break now. Very well.

(11.27 am)

(A short break)

(11.39 am)

MR SUMPTION: My Lady, just two grace notes to what I've already said to your Ladyship. First of all, the 15 May agreement. I should I think have pointed out that the 15 May agreement wasn't just an agreement which added the Bratsk assets to the merger, it also added assets on Mr Deripaska's side, in particular the Sayansky plant. And the 175 which was added to the equalisation payment reflected the difference in value between the Bratsk plant, which was one of the largest aluminium smelters in the world, and what Mr Deripaska was contributing.

The second point that I should perhaps briefly mention, I don't want to make a great song and dance about this, but I don't want it to be suggested

subsequently that I have by silence conceded the points that are made by my learned friend in his written closing about what one can loosely call the dressing gown incident. They say that this was a result of collusion between our witnesses. There is not a trace of any suggestion to that effect in the evidence, and indeed, while it was put to them that they made that up, the suggestion that they did so in collusion was certainly not put to them and, in my submission, that aspect of their case, although it occupies quite a number of pages of their document, can safely be ignored.

Returning to where I had reached when your Ladyship rose, the absence of any evidence that makes it possible to identify any occasion on which this interest might have been agreed is, I would suggest, an unpromising starting point for Mr Berezovsky's argument that common reputation or subsequent events and documents show him to have had an interest. In our submission, it cannot be good enough, in a case like this, to say, "Well, we actually haven't a clue how he acquired his interest, but at some stage later he behaved as if he had one and a number of other people assumed that he did, therefore never mind the terms of the agreement on which this interest is said to be based." Because your Ladyship

does, with respect, have to have a clue about how he acquired it if you are to be satisfied that he actually did.

Now, the subsequent events on which Mr Berezovsky relies for these purposes are, listing them, the Le Bourget transcript again, the internal planning documents, the Curtis notes of August 2003, the alleged distribution to Mr Berezovsky and Mr Patarkatsishvili of Rusal profits, the terms of the July 2004 documents for the sale of the second tranche and the Patarkatsishvili interview notes. Now, I don't wish to take up too much time on these matters since I have already dealt with them very fully in the written closing, but if I may summarise the position with an eye to the points made by the other side.

The argument based on the Le Bourget transcript depends on an extraordinarily narrow point. The argument is that the use by Mr Abramovich of the plural "we", when referring to his holding in the merged aluminium business, is an admission that he held it together with Mr Berezovsky and Mr Patarkatsishvili. Whereas Mr Abramovich says that he was simply referring to his side as opposed to the Deripaska side of the merger.

The references to this matter are at paragraphs 429

to 432.

MRS JUSTICE GLOSTER: Yes, I have those.

MR SUMPTION: The internal planning documents are dealt with in the next three paragraphs. They are documents generated after 2000, some of which assume an interest of Mr Berezovsky and Mr Patarkatsishvili in the merged aluminium business. These are all documents wholly internal to Mr Berezovsky and Mr Patarkatsishvili and their staff and professional advisers. None of them are self-explanatory and none of them have been explained by any of Mr Berezovsky's witnesses, but all of them must presumably have been based on information supplied by Mr Berezovsky or Mr Patarkatsishvili, or possibly Mr Fomichev. Some of them appear to have been design documents for a variety of money-laundering schemes.

There are only two on which some comment is perhaps called for although I think they are the two on which my learned friends rely most heavily. The explanatory note and the Curtis notes.

The explanatory note is an undated anonymous note prepared for an uncertain purpose which was found in the office of Mr Patarkatsishvili's financial manager, Mr Joseph Kay. Some seven paragraphs of my learned friends' written closing, at paragraphs 1247 to 1254, eight paragraphs, forgive me, are devoted to trying to

prove that Mr Streshinsky was the author of the explanatory note, but nothing in the eight paragraphs in question actually does support that suggestion which Mr Streshinsky himself vigorously denied when it was put to him.

The note in fact contains quite a large number of errors, in particular it assumes that the four BVI holding companies which acquired the KrAZ and Bratsk assets belonged to Mr Berezovsky, something which not even he has suggested, and it also asserts or assumes that Mr Berezovsky and Mr Patarkatsishvili owned Aeroflot, or a large part of it, which is acknowledged in this litigation to be untrue.

Now, this note appears to have been drawn up with a view to pretending that Mr Berezovsky and Mr Patarkatsishvili were the owners of assets in cases where their ownership might explain some of their income streams. That is obviously the case in the case of Aeroflot. It looks very much like a money-laundering exercise but it is hard to be sure about that on the very paltry information we have about this rather incoherent document.

Now, the Curtis notes require a bit more attention but not much more --

MRS JUSTICE GLOSTER: Just before you go there, the

reference to the Kay note is your footnote reference 1579, is it?

MR SUMPTION: Let me just check that. 1578 I think.

MRS JUSTICE GLOSTER: Well, that doesn't seem to have a document reference in it.

MR SUMPTION: The document reference is 1579, yes.

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: I think it's common ground where it was actually found. The most plausible inference is that if it was found there, it was Mr Kay's document, and he was certainly a person intimately concerned in drawing up plans for what to do about Mr Patarkatsishvili's and Mr Berezovsky's assets. But really, apart from speculating on these possibilities, we don't have much to go on.

Now, the Curtis notes are dealt with in the next five paragraphs or six paragraphs of our document. These notes were prepared after or at about the time of an informal social lunch at Mr Patarkatsishvili's house in Georgia. The people present were Mr Patarkatsishvili, Mr Fomichev, Mr Tenenbaum and Mr Curtis, and a large number of other people including several children and a gentleman called Igor who has not been further identified.

Mr Tenenbaum had gone to this lunch at

Mr Abramovich's request to talk to Mr Patarkatsishvili about his plans to invest in a football club as Mr Abramovich himself had recently done by buying Chelsea Football Club. Mr Tenenbaum had in fact been closely involved in the acquisition of Chelsea which is why he was sent off for that purpose.

MRS JUSTICE GLOSTER: This was the Brazilian one, was it?

MR SUMPTION: Well, ultimately it turned out to be the Brazilian one, and there are passages in my learned friends' written closing when they cite a money-laundering enquiry document from Brazil, which is not actually an investigation into Mr Patarkatsishvili's affairs at all, but it refers to a meeting which they, for some reason, suggest must have been the only meeting or the first meeting that Mr Patarkatsishvili attended to acquire this Brazilian club, and suggest that, therefore, he can't in 2003 have been discussing such a plan with Mr Tenenbaum.

I'm perfectly content to leave your Ladyship to read that part of my learned friends' closing in due course. It doesn't appear to carry matters any further.

Mr Curtis, for his part, appears to have gone to this meeting in order to get evidence which could be used to prove that Mr Patarkatsishvili, for whom he was at this stage acting, had an interest in Rusal. Now,

the reason why Mr Curtis wanted that evidence is, in fact, explained by the evidence given about events over the previous six months before this meeting. That evidence is that at the beginning of 2003 Mr Abramovich was considering ending his joint venture with Mr Deripaska and he therefore had to deal with the question that should be left over of Mr Patarkatsishvili's commission.

So he met Mr Patarkatsishvili in February 2003 and told him that he was thinking of pulling out of the joint venture with Mr Deripaska and initiated discussions on this subject. We give the references to that at paragraph 450 of our document. Now, it must be obvious that that would have immediately raised in Mr Patarkatsishvili's mind the problem of legalising his receipts in the face of western money-laundering enquiries.

Your Ladyship will recall that, according to Mr Abramovich, Mr Fomichev had suggested previously, in late 2000, that future payments by Mr Abramovich to Mr Berezovsky and Mr Patarkatsishvili should be covered for money-laundering purposes by transferring shares in Sibneft to them so that they could receive payment of dividends. That's a matter discussed at the Le Bourget meeting.

Now, a variant of this scheme was obviously being considered by Mr Patarkatsishvili shortly after his meeting in February 2003 with Mr Abramovich. That must be so because, at some stage shortly after that meeting, he instructed Mr Curtis to draw up an agreement for the transfer of 25 per cent of Rusal to himself and its registration in his own name. The draft agreement that Mr Curtis drew up for that purpose is in the bundle -- I won't ask your Ladyship to turn it up, but it's at H(A)56/215, and it's dated April 2003, about two months after his meeting with Mr Abramovich.

Mr Berezovsky said about this in his oral evidence, that this document, the draft agreement, was related to a proposal in about April 2003 that Mr Patarkatsishvili should sell his and Mr Berezovsky's shares in Rusal. It may well be that this particular draft document is associated with a plan by Mr Patarkatsishvili to have Rusal shares transferred to him so that he could sell them, but that was nothing to do with any interests of Mr Berezovsky. The draft that we have identifies Mr Patarkatsishvili and Mr Patarkatsishvili alone as the transferee. Nothing to do with Mr Berezovsky.

The problem of course that Mr Curtis faced, as Mr Patarkatsishvili's legal adviser, was the absence of any evidence that Mr Patarkatsishvili had ever had an

interest in Rusal. That was a matter which had caused him concern in relation to Sibneft back in 2000 and that concern resurfaced in 2003 in relation to Rusal. That appears to be why Mr Curtis refers, in the note itself, to, as he puts it, the importance of creating proof of ownership and it may also be why he labelled the note as vitally important in his post-it instruction to Ms Flynn.

We give the references to that at paragraph 440, sub 6 of our document, in particular notes 1624 and 5.

What seems clear is that this note cannot be a contemporaneous record or a direct record of anything heard by Mr Curtis at this lunch. Mr Tenenbaum was adamant that nobody was taking notes at what was, on the face of it, a social lunch, and says, plausibly I would suggest, that he would certainly have asked for a copy if they had been taking notes. The conversation was in Russian, which was the language that Mr Tenenbaum spoke to Mr Patarkatsishvili, and the language of everybody else present except for Mr Curtis himself who did not understand Russian.

It follows that the note must necessarily have been derived from something that somebody else said to Mr Curtis presumably afterwards. Now, I am not going to invite your Ladyship to attach too much weight to the

double hearsay statement of Mr Tenenbaum in his evidence, that Mr Fomichev subsequently told Mr Shvidler that he had dictated the note to Mr Curtis after the meeting was over, but it is clear that something of that sort, whoever was involved in it, must have happened.

We know that neither Mr Curtis nor Mr Fomichev were overscrupulous in the matter of generating documents. That is apparent from the Spectrum transaction and the Devonia transaction in which both of them had been intimately concerned. We know that the language problem, and the language that was being used at this meeting, was such that Mr Curtis cannot have heard these remarks himself.

Mr Tenenbaum is adamant that, having gone to Georgia to talk about the acquisition of football clubs, he would not have discussed Mr Abramovich's personal financial affairs with a large number of relative strangers. The only response to that point is that my learned friends have suggested in their written closing that he would have been quite likely to discuss these matters because Mr Curtis was well-known to Mr Abramovich and Mr Shvidler. He was not well-known to either of them. They had met him about ten years before when he had briefly tried to interest them in a proposal about arms selling in which they were not interested.

Mr Tenenbaum, so far as the evidence showed, had never come across Mr Curtis at all.

Now, there is in addition an argument, again ventilated in my learned friends' written closing, that some of the information attributed to Mr Tenenbaum would only have been known to him. That also is incorrect. We have dealt with that suggestion at paragraph 440, sub 5 of our closing. There is no substance in the point because it can in fact be shown, for the reasons we give there, that as a result of his involvement in the various financial transactions that had occurred since 2000, the information in question would actually have been very well-known to Mr Fomichev, indeed better known to Mr Fomichev than is likely to have been known to Mr Tenenbaum.

Now, in this particular context, I should mention two related side issues raised in Mr Berezovsky's written closing. One is that it is said that Mr Tenenbaum's reference to the Dr Evil text message sent by Mr Berezovsky to Mr Fomichev must have been an invention, and that the mention of it by Mr Tenenbaum discredits him as a witness. I have not relied on that part of Mr Tenenbaum's evidence and I don't intend to do so for reasons I'll come to in a moment, but I reject entirely the suggestion that it was untrue, a suggestion

that is not supported by any evidence other than the assertion of Addleshaws in correspondence.

MRS JUSTICE GLOSTER: Well, isn't the point that it would be there for somebody to look at?

MR SUMPTION: Well, it wouldn't necessarily be there. It depends on what your practice is about keeping text messages, old text messages on your mobile.

My Lady, the whole issue is bound up with the second side issue raised in Mr Berezovsky's written closing which concerns the position of Mr Fomichev. Both sides have had some contact in the course of this litigation with Mr Fomichev in relation to these proceedings. That is established from the evidence in the summary judgment proceedings, and I'll just give your Ladyship the references. Marino 2, paragraph 97 on my learned friends' side, and Mitchard 3, paragraph 45, deal with some of the matters that they have ascertained from Mr Fomichev. In addition, some of Mr Abramovich's witnesses have referred to contact with him on our side, including Mr Tenenbaum.

My learned friends in their written closing on behalf of Mr Berezovsky have said that I should, in those circumstances, have called Mr Fomichev on behalf of Mr Abramovich. Now, I was not and am not prepared to call Mr Fomichev for a perfectly straightforward, indeed

obvious reason. Mr Fomichev was, throughout the relevant periods, the agent of Mr Berezovsky. It is part of my case that in that capacity Mr Fomichev was directly engaged in the preparation of sham documents evidencing bogus transactions for the purpose of laundering Mr Berezovsky's money. It would have been perfectly absurd for me to call Mr Fomichev bearing that in mind. Indeed, on some of the more important issues, I would suggest that any competent legal adviser would have advised Mr Fomichev to rely on the privilege against self-incrimination in answering questions on that part of the case. I therefore find it hard to take seriously my learned friends' suggestion that I should reasonably be expected to call Mr Fomichev.

Now, having taken that course, ie the course of not calling Mr Fomichev, it followed that I could not properly deploy hearsay evidence derived from Mr Fomichev since I would not have been willing to call him in response to a counter-notice. I therefore reject the suggestion that any adverse inferences should be drawn from that.

In particular I reject the main inference which my learned friends have sought to draw from it, which is that Mr Fomichev would have confirmed that there was an onsale by Devonia to Mr Abramovich. Mr Mitchard's

evidence in the summary judgment proceedings was in fact that Mr Fomichev had confirmed that there was no onsale. Now, I haven't and I don't rely on Mr Mitchard's evidence in the summary judgment proceedings to show that there was no onsale, there is plenty of other evidence to show that there was no onsale, but I do rely on it to rebut the suggestion that's now being made that a concern about Mr Fomichev's answers on that subject is the reason why he has not been called. It isn't.

Now, if I may return to the real issues, the issue of the alleged distribution of dividends in Rusal is the next matter on which Mr Berezovsky relies. This relates to \$175 million, which is described as constituting Rusal dividends paid to Mr Berezovsky and Mr Patarkatsishvili between 2003 and 2005.

The underlying facts are extremely complex and are covered with very full references between paragraphs 442 and 448 of our document.

MRS JUSTICE GLOSTER: Yes, I've read those.

MR SUMPTION: Now, it's not something about which Mr Berezovsky has been able to give evidence; as he acknowledged, he wasn't concerned in that. This was a point that originated with Mr Marino who asserted in his witness statement in the summary judgment application that that 175 million represented a share of

Rusal profits.

Now, he was actually mistaken about this, and I'll explain how the mistake arose. The 175 million was part of a larger sum of 377.5 million which was paid to companies designated by Mr Berezovsky and Mr Patarkatsishvili under an agreement made between Mr Abramovich and Mr Patarkatsishvili in June 2002. The evidence that has been given by Mr Abramovich is that he agreed to pay a further 377.5 million on top of the 1.3 billion which had already been paid from May 2001 in order to compensate them for, first of all, the interest loss attributable to the fact that the 1.3 billion had been paid in instalments, and, secondly, the fact that commissions had been paid to the sheikh to legalise the payments. That was actually the first time that Mr Abramovich had learnt of the involvement of the sheikh in the transmission of the 1.3 billion.

Subsequent evidence has established that although Mr Berezovsky initially, and maybe still, denies that any more than 175 million was received out of the 377.5 million, the appearance later in the trial of the Latvian Trade Bank statements establishes that the full amount was in fact received. Indeed, there is an element of common ground about this because Mr Berezovsky confirms in his witness statement that

Mr Patarkatsishvili had in fact asked for this payment. His evidence is that he and Mr Patarkatsishvili discussed asking Mr Abramovich to make a payment in compensation for these matters, and what Mr Berezovsky says is that Mr Patarkatsishvili went off and asked Mr Abramovich but he said no. Whereas Mr Abramovich's evidence is that there was indeed such a request and he agreed to it.

The fact that 377.5 million was actually paid tends very strongly to support Mr Abramovich in his recollection of that particular occasion.

The reason, and the only reason, why Mr Marino believed that that sum was a Rusal dividend was that the money came from Rual Trade Limited, which was a trading company jointly owned by Mr Abramovich and Mr Deripaska, which marketed the output of Rusal and its various subsidiaries. Now, that of course doesn't mean that it's a Rusal dividend. It only means that it was the source from which Mr Abramovich obtained the money which he paid to Mr Patarkatsishvili and Mr Berezovsky. As it happens, and it's a good illustration of this point, the 1.3 billion which was agreed to be paid in May 2001 was also paid from Rual, but nobody has suggested that that was a Rusal dividend, and it hardly could have been. It is important to distinguish between the place where

Mr Abramovich gets the money and the basis on which it is being paid.

Finally, there are the terms of the July 2004 sale of the second tranche of Rusal shares, which have given rise to a lively debate in the last few days of the evidence, plus the negotiation of those terms, which are together said to show that Mr Berezovsky and Mr Patarkatsishvili had an interest in Rusal.

The background to these rather complex arrangements is summarised in our document, I'm afraid at some length, between paragraphs 449 and 455. In summary, and I'll deal with it very shortly, Mr Abramovich had decided in early 2003 to sell out of all his joint ventures with Mr Deripaska. Both Mr Abramovich and Mr Deripaska gave evidence that in 2003 they had agreed on a total price of 2.3 billion but Mr Deripaska had been unable to raise more than 1.9 billion of that.

Now, the deal that they reached was therefore that Mr Abramovich would sell to Mr Deripaska the first tranche of 25 per cent in Rusal, plus his interests in all their other jointly-owned businesses in the automotive industry et cetera, for 1.9 billion, and the second tranche of Rusal would be sold for 450 million when Mr Deripaska could raise the money to buy it. Of course, since most of the purchase price was being

loaded on to the first instalment, the parties knew that it would be very much in the interest of Mr Deripaska to complete the second one as well.

At the time when Mr Abramovich resolved to pull out of the joint venture with Mr Deripaska, he broached with Mr Patarkatsishvili, initially in February 2003, the question of his commission, and the deal that was finally agreed between them in October 2003 was that he would be paid a commission of 585 million. That reflected the fact that the aluminium holdings had been prodigiously profitable, and Mr Patarkatsishvili had made that possible, first, by bringing about the original acquisition, and, secondly, by helping to bring an end to the aluminium wars.

After agreeing the amount of the commission, Mr Abramovich and Mr Patarkatsishvili discussed how that amount was going to be paid in a way which would satisfy the compliance departments of western banks. Now, it was therefore agreed that as and when Mr Deripaska was in a position to buy the second tranche of Rusal, Mr Abramovich would transfer it to Mr Patarkatsishvili so that he could sell it on to Mr Deripaska at the agreed price of \$450 million, leaving 135 million to be settled in some other way.

The second tranche sale documents, all dated

20 July 2004 were designed not just to transfer the shares to Mr Deripaska but to settle the debt of 585 million owed to Mr Patarkatsishvili in a way which would generate documentation to satisfy western banks.

Now, the sale was accomplished by a number of different contracts. We've summarised them at paragraphs --

MRS JUSTICE GLOSTER: Can you just help me on this. The transfer to Mr Patarkatsishvili by Mr Abramovich of the second 25 per cent tranche, was that done for no consideration -- well, no, as it were, stated consideration on the document --

MR SUMPTION: It was simply a transfer.

MRS JUSTICE GLOSTER: Simply a transfer?

MR SUMPTION: Simply a transfer, yes.

MRS JUSTICE GLOSTER: And the documents support that, do they?

MR SUMPTION: Yes, they do. The relevant document is at 456, sub 2, in our document.

Essentially, the deal therefore was that Mr Abramovich's aluminium holding company, Madison, would transfer the second 25 per cent of Rusal to a company nominated by Mr Patarkatsishvili.

MRS JUSTICE GLOSTER: Yes, I see.

MR SUMPTION: Cliren, which he had acquired from Coalco

a week before. Cliren then sold it straight on, on the same day, to Mr Deripaska for 450 million. Now, at the same time, there was an agreement called the deed of accounting and release with Cliren which was an agreement under which it was agreed to pay the 135 million bringing the total sum paid to Cliren to the 585 that had previously been agreed.

MRS JUSTICE GLOSTER: Yes, I remember this now.

MR SUMPTION: In that document, the deed of accounting and release, the sum purported to be a dividend payable in respect of Rusal shares.

Mr Patarkatsishvili then entered into something called the beneficial owner deed of release, under which he represented and warranted that he was, and had since 15 March 2000 been -- I'll say a bit more about that -- the sole beneficial owner of the second 25 per cent tranche. There was then a deed of acknowledgement under which, in effect, Mr Abramovich represented to Mr Deripaska that he had dealt only with Mr Patarkatsishvili about this and that whoever Mr Patarkatsishvili said was the beneficial owner of the second tranche was the beneficial owner to the best of Mr Abramovich's knowledge and belief.

Now, what Mr Berezovsky does not of course say is that the terms of the second tranche sale documents

themselves support his claim to have had an interest in Rusal. The most that one could deduce from those documents, on one view of them, is that Mr Patarkatsishvili had such an interest and no one else. Mr Berezovsky's case is based essentially on the antecedent negotiations. What he says is that, in the course of the negotiations and drafting of these contracts, the various professional advisers to Mr Abramovich, Mr Deripaska and Mr Patarkatsishvili recognised among themselves that Mr Berezovsky did have an interest in Rusal and then, to use my learned friend's phrase, airbrushed him out of the contractual documents by the time they were actually executed on 20 July 2004.

Now, this suggestion is simply not justified by the facts and, in our submission, it was largely demolished by the evidence of Mr Hauser. As I pointed out already, Mr Hauser was not a witness beholden to anybody. He was called by us under subpoena, having declined to give us a witness statement, and he certainly had no emotional or financial interest in the outcome of this issue or any other. Mr Hauser's evidence was supported by that of Mr Anisimov and Mr Streshinsky who acted for Mr Patarkatsishvili.

Now, the position was complicated by the number of

professional advisers involved and by the fact that they were at cross-purposes for a large part of the time when they were dealing with this documentation. But the essential problem, as your Ladyship will recall, is that in early June 2004, shortly after the negotiations had begun, Mr Berezovsky, having apparently heard that negotiations were in progress, announced in the press that he had an interest in the assets being sold and would, if necessary, resort to the courts to block the sale. That caused, as one can understand, an enormous flap among the various legal advisers who were, of course, concerned that their principals could find themselves liable at some later stage to Mr Berezovsky for infringing the rights that Mr Berezovsky was claiming in the public prints to have possessed.

MRS JUSTICE GLOSTER: You've set that all out in great detail, what your submissions are.

MR SUMPTION: We have, yes.

Of course, ultimately, both Mr Abramovich and Mr Patarkatsishvili, according to Mr Hauser, denied that Mr Berezovsky had any interest and, therefore, this aspect of it faded away. But the form of the contractual documents was not the result of the lawyers airbrushing Mr Berezovsky out of the picture; it was the result of their having received instructions that he had

never been in the picture in the first place.

Now, neither the negotiations nor the contracts as executed therefore support this suggestion. On their face -- the one exception is, of course, that on its face the beneficial owner deed of release does support the suggestion that Mr Patarkatsishvili had an interest in the Rusal shares being sold that extended beyond the interest that was specifically created for him on 20 July itself, and it does that because the beneficial owner deed of release contains a warranty of historic title, ie not just that he was the beneficial owner at the date of sale but that he had been continuously from 15 March.

Now, that provision did not actually reflect the facts and the reason why it was included was the subject of some extensive evidence given in cross-examination and to some extent in chief by Mr Hauser on behalf -- who was acting on behalf of Mr Deripaska. His evidence was that he required this because he believed, rightly or wrongly, that without a historic warranty, Mr Deripaska would be exposed to a claim from Mr Berezovsky if it should one day turn out that there had been some intermediate stage at which he did have an interest, and if there was some uncertainty about the circumstances in which he had parted with it.

Mr Hauser's evidence makes it perfectly clear that this was not because he believed that Mr Berezovsky had such an interest, it was because he didn't know and wanted watertight contractual provisions for his client.

Your Ladyship may find it useful to add to paragraph 461, sub 23, a reference to Hauser, Day 31, pages 90 to 92, where he deals specifically with the concerns that led him to include and insist on the inclusion of the historic warranty.

Of course, none of these considerations assist Mr Berezovsky. Mr Patarkatsishvili made a great deal of money out of the Rusal transaction, and it may be that his private arrangements with Mr Berezovsky were such that Mr Berezovsky was entitled to a share of that. Now if, contrary to the submissions that we have been making, the money that Mr Patarkatsishvili made out of the Rusal transaction was in reality the price of a proprietary interest of his in the business, then it may be that the private arrangements he had with Mr Berezovsky were such that Mr Berezovsky shared in that interest.

But if so, those are rights that would be purely and simply rights as between Mr Patarkatsishvili and Mr Berezovsky. Mr Berezovsky is not, of course, entitled in this action to bring a claim against my

client on the basis of a right derived simply from his agreement with Mr Patarkatsishvili. The exact nature of that arrangement is something that will in due course have to be exhaustively investigated in the Chancery proceedings. We don't have the material to resolve it here, and that was essentially why your Ladyship declined to grant permission to add it by amendment at the case management conference in the summer.

Now, those are our submissions on the essential question whether there was ever an agreement to confer on Mr Berezovsky an interest in the aluminium assets or the merged assets.

Turning briefly to the English law trust that is alleged, which, in our submission, there never was an agreement to confer the interest, and one therefore doesn't get to the question whether that interest was held in trust for Mr Berezovsky or under what law. But if Mr Berezovsky did have an interest by agreement, or in any other way, in the aluminium assets, the question what law governed it then becomes a critical question because it's common ground that by Russian law any claim in respect of that interest would be time-barred.

It's probably a general rule in mitigation that the more remote an alternative case is, the more elaborate the arguments and sub-arguments which it generates and

the more disproportionate the time devoted to it. I will try to buck that trend if I may by dealing relatively briefly with matters that are more fully dealt with in our written closing at sections B3 and B4, paragraphs 467 and following.

MRS JUSTICE GLOSTER: I've read those.

MR SUMPTION: I'm not going to repeat those, but obviously Mr Berezovsky's primary case is that he and Mr Patarkatsishvili and Mr Abramovich agreed that the interests were to be held in an English law trust. What he says is that Mr Anisimov had advised him to do that, and that at some unspecified time there were discussions in which it was agreed that the merger negotiations, if they succeeded, would give rise to a new company which would be created in a proper British law way, and that their interests would be held under a trust by Mr Abramovich.

An agreement to that effect is actually said then finally to have been reached at the Dorchester Hotel meeting itself. Indeed, in his witness statement at paragraph 280, Mr Berezovsky goes further and says that at that meeting Mr Deripaska declared, in response to the others agreeing that their arrangements would be governed by English law, that, yes, he too would be holding part of his 50 per cent on trust for his

partners, whoever they might be. Now, that's Mr Berezovsky's version. All of these assertions, in our submission, are entirely untrue.

Mr Berezovsky claims that the proper law was a matter of great importance to him at the time, and he claims to have a distinct recollection of the discussions in question, both the previous discussions in Moscow and those which occurred at the Dorchester Hotel. Yet we know that in spite of that distinct recollection, the allegation was not made at any stage before the summary judgment application.

We have set out the history of the way in which this was taken at paragraph 484 of our document.

The reality is that Mr Berezovsky and his advisers have always been aware of the potential problem about this. We drew attention to it in our application for summary judgment, but since then we have learnt, as a result of disclosure by the family defendants, that the problem of the proper law was actually noted and understood by Mr Berezovsky and his advisers well before that because it's recorded at the meeting at Mr Patarkatsishvili's home in England in April 2007, where the note says:

"Rusal three-year limitation, Russian law."

We refer to that at 482, sub 1, 484, sub 1, and 486.

So this was an issue that was on the table at all times as far as Mr Berezovsky was concerned.

That makes it highly significant that until the summary judgment application the only point made about proper law had been that by implication it was to be any law other than Russian law, and preferably BVI law, by virtue of the intention of the parties to hold their interests in offshore structures.

I've already in opening taken your Ladyship to the material related to Ms Dohmann's application in Mr Berezovsky's presence, and I'm not going to go through that again. But it was in direct response to the reply served in October 2008, expressly founding his contention that English law, or BVI law, governed the arrangements by implication, that we made our application for summary judgment. So Mr Berezovsky's addition of this particular allegation about an express choice of law was a direct response to that application, and, of course, to Dr Rachkov's evidence on the summary judgment application, that the points that we were taking in relation to the proper law, namely that Russian law did not recognise the alleged trust and that it was time-barred, were actually correct.

So what happened was that Mr Berezovsky effectively pulled a rabbit out of a hat at a stage when otherwise

his claim in relation to Rusal would have been struck out. It was, in our submission, another Forbes moment when Mr Berezovsky asserted something because he needed to rather than because he thought it true.

Now, we know that Mr Berezovsky and Mr Patarkatsishvili attended at least five interviews with Mr Berezovsky's solicitors in 2007 alone. At at least two of which Rusal was discussed, and at at least one of which, the one in April, the problems arising out of the Russian limitation period were discussed. Therefore, the significance of the lateness and opportunistic character of the appearance of this issue is very great.

It's right to point out that, in addition, the allegation is in fact wholly inconsistent with the evidence that your Ladyship has heard. Mr Anisimov did not advise Mr Berezovsky to make his arrangements under proper British law. It's actually very difficult to see how the proper law of the arrangements for holding the interest can have been discussed, as Mr Berezovsky alleges, before the Dorchester Hotel meeting in Moscow. As your Ladyship knows, the merger proposal arose for the first time in the very beginning of March, and the negotiations were conducted in a hurry and in great secrecy.

Again, if I can invite your Ladyship to add a reference on this point in the light of the way the matter is put by my learned friends. If your Ladyship were to add to paragraph 417, sub 1, a reference to Mr Abramovich's evidence at Day 19, page 117, Ms Panchenko's evidence in her second witness statement at paragraph 54, and Mr Bulygin's witness statement at paragraph 18. Those passages emphasise the secrecy with which the merger agreement was negotiated because all the parties were concerned about the potential problem of a squeeze by the suppliers of raw materials if it became known prematurely.

So you have merger negotiations conducted in great secrecy, neither Mr Berezovsky nor Mr Patarkatsishvili are involved in them, and Mr Patarkatsishvili is told first about the merger by Mr Abramovich on the phone, very shortly before the Dorchester Hotel meeting. And Mr Berezovsky is told shortly afterwards by Mr Patarkatsishvili.

In the same place, your Ladyship might find it valuable to note the manner in which Mr Patarkatsishvili was told about the done deal, which is dealt with by Mr Abramovich at Day 19, pages 109 to 115.

Indeed, it's always nice to get some help from Mr Berezovsky on points like this. In his interview

with Vedomosti, which we have quoted at paragraph 409, sub 3, of our document, Mr Berezovsky told the press and thereby the world that he wasn't in Russia at the time, and was told about the merger after it had been agreed by Mr Patarkatsishvili on the telephone. So that his statement that he had discussed the choice of English law at meetings preliminary to the merger agreement, and preliminary to the Dorchester Hotel, with Mr Abramovich among others simply can't be true.

The discussion of the proper law is then said to have occurred at the Dorchester Hotel, but the evidence has been that the Dorchester Hotel meeting was not a meeting at which the terms of the merger were being discussed. There was a discussion of the fact that the merger had occurred, but there was no discussion of its terms and certainly no negotiation.

Now, as I've pointed out, the account in Mr Berezovsky's witness statement of Mr Patarkatsishvili, who had not been involved in these negotiations, suddenly explaining to those who had been that they had agreed that it was going to be governed by English law, which indeed they had in the preliminary agreement, is one of the more ridiculous parts of his evidence.

Every other witness present denies this story of

there being an agreement about the legal basis of arrangements between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich at the Dorchester meeting.

Mr Patarkatsishvili said nothing about English law in his interviews, although, according to Mr Berezovsky, it was actually Mr Patarkatsishvili who had initiated this idea having received this advice from Mr Anisimov.

There is an alternative case that a choice of law is to be implied from the circumstances or imputed to the parties, and I should deal briefly with that. An implication is said in the pleadings to arise from the use of English law in other agreements, but the problem about this is that since Mr Berezovsky was not party to any of the other agreements, or indeed even aware of them at the time, it's rather hard to see how that could be a relevant consideration pointing to the choice of law in relation to this alleged agreement.

Mr Berezovsky claims that Mr Patarkatsishvili told him in advance that the merger would be governed by English law, but since Mr Patarkatsishvili was not party to the negotiations, and first heard of the deal after it had been done from Mr Abramovich, he could frankly not have known that or disclosed it to Mr Berezovsky.

I would perhaps also suggest that the reliance that Mr Berezovsky places on these other contracts is

something of a non sequitur. The fact that contracts are made under English law to acquire interests in the aluminium businesses does not give rise to an implication that the same law is to govern a distinct arrangement by which one of the parties is to hold his interest for another.

I would suggest that must especially be true if Mr Berezovsky establishes that, on whatever basis, the 1995 agreement was made in the terms that he alleges and was applied to aluminium. Because on that footing there was an existing relationship between the parties, unquestionably governed by Russian law, which Mr Berezovsky says was now being applied by agreement to aluminium. And it seems most bizarre to have a relationship between parties, an existing relationship governed by Russian law, but in which you single out one particular asset, namely the aluminium assets, as being held under an English law trust.

Now, on the footing that English law applies, there are a number of other issues which are a long way down the line and which I don't propose to deal with on my feet. Is the alleged trust good even in English law? If there was no express trust, was there nevertheless an agreement to pool assets of a kind that could give rise to a resulting or constructive trust? Was there

a breach of trust or contract on Mr Abramovich's part in selling the Rusal shares? Was any breach released by the terms of those agreements?

On those points I don't think there's anything that I can helpfully add to what I've put in my written submissions should those issues arise.

The only other matter which I want to deal with very briefly is to say something about my learned friends' written closing in general. If I were in a position to say to your Ladyship that I was satisfied with this document, Mr Rabinowitz and his team would not have been doing their job. One point, however, that I would make about it is that its authors have a regrettable habit of referring to points as being conceded or common ground when they are not, and I would invite your Ladyship not to take at face value, without reference to the alleged concession, any suggestion of that kind.

More generally we have the concerns that, inevitably in a hard-fought action like this, one does have about the accuracy and context of very many of the references that they give to the evidence. What I suggest is that the most efficient way of dealing with that is for us to serve a schedule of errors and omissions by paragraph of their document. It will not contain detailed further submissions but simply correct errors and omissions, and

we would be in a position to serve that by 12 January which is five days before we are due to resume to hear my learned friend Mr Rabinowitz's submissions.

We hope that's acceptable both to your Ladyship and to my learned friend.

MRS JUSTICE GLOSTER: Well, it's certainly acceptable to me. I'll hear from Mr Rabinowitz in a moment.

If you are disputing some of the asserted concessions, I would also direct you, Mr Sumption, or your team at any rate, to provide me with a similar schedule identifying --

MR SUMPTION: It will be included --

MRS JUSTICE GLOSTER: -- those asserted common ground propositions, and those which are common ground and those which are not.

MR SUMPTION: I will certainly do that, it will be included in the same schedule. I have dealt with what seemed to be the most significant on my feet, but we will give your Ladyship chapter and verse about those, certainly.

My Lady, those are my submissions.

MRS JUSTICE GLOSTER: Thank you very much, Mr Sumption.

Mr Rabinowitz, I propose to adjourn this case now until 10.15 on Tuesday, 17 January. I can't sit on the Monday.

I anticipate that on 17 January, you, Mr Sumption,

will not be appearing before me?

MR SUMPTION: I will not.

MRS JUSTICE GLOSTER: I'm sure that the Bar would want to join with me in wishing you all the very best in your new career in another place.

MR SUMPTION: My Lady, I'm extremely grateful.

MR RABINOWITZ: My Lady, before your Ladyship rises, can I just say this. My learned friend has proposed giving us his document of what he calls errors and omissions by the 12th. Can I ask, my Lady, that that be given by the 10th, that's to say to give us a week to deal with it rather than just five days.

MR SUMPTION: We will do our best to get it to him by the 10th.

MRS JUSTICE GLOSTER: That seems reasonable enough.

MR SUMPTION: The problems are obvious, it's a very pernicky job if it's to be done properly, but we will try our very best to get it by the 10th.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: My Lady, the only other thing I was going to say before your Ladyship rises is, if it would help, these are 935 pages available in A5 rather than A4. I appreciate having them in A4 is quite a lot to carry around. If your Ladyship would like --

MRS JUSTICE GLOSTER: Yes, I would very much welcome them in

A5 if those could be provided to my clerk.

MR RABINOWITZ: We will arrange it.

MR SUMPTION: Would your Ladyship like our version in that  
format also?

MRS JUSTICE GLOSTER: No, because I've now marked the ones  
in A4, but if you provide me with them in A5, I will  
then mark those in A5.

Thank you very much.

(12.33 pm)

(The hearing adjourned until  
Tuesday, 17 January 2012 at 10.15 am)

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Closing submissions by MR SUMPTION .....1

(continued)

Tuesday, 17 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Closing submissions by MR RABINOWITZ

MR RABINOWITZ: My Lady, when I opened this case in October, I submitted that there were four points in particular which your Ladyship would wish to bear in mind when considering the inherent probabilities of each side's case. These four points have not changed and they bear repeating.

First, your Ladyship will wish to consider whether Mr Abramovich's case relating to the events of late 2000 and 2001 can be squared with the sudden and dramatic end of his friendship with Mr Berezovsky at this time. In particular, Mr Abramovich claims that he was being generous in agreeing to pay \$150 million to Mr Berezovsky and Mr Patarkatsishvili for a 49 per cent stake in ORT at the end of 2000, and generous in agreeing to pay Mr Berezovsky and Mr Patarkatsishvili \$1.3 billion in May 2001. If that were true, one would expect Mr Berezovsky to have been eternally grateful to Mr Abramovich.

But what in fact happened was quite the opposite, with Mr Berezovsky's friendship with Mr Abramovich coming to a conclusive end at exactly this time.

Mr Berezovsky's case of course makes sense of this, but Mr Abramovich's case makes no sense of it at all.

Our second point was that if Mr Abramovich has been shown, as we say he has been, to have put forward an entirely false case as regards the ownership interests in Sibneft and Rusal, then this begs this question: if Mr Abramovich had nothing to hide in terms of the allegations made, then why would he, Mr Abramovich, have chosen to put forward a dishonest case? The question remains, and remains unanswered, in our submission.

The only explanation for Mr Abramovich's continued denial is because once ownership interests in each of Sibneft and Rusal are established, Mr Abramovich has no coherent defence to the claims made.

Our third point referred to the inherent probabilities. Mr Abramovich's case is difficult to square with the sale of Sibneft at what our experts will say was a massive undervalue. Now, given that expert valuation evidence has been postponed, we cannot and do not ask the court at this time to make any findings about the true value of Sibneft. But we do rely, my Lady, on the unchallenged evidence of Mr Berezovsky, supported incidentally by contemporaneous interviews and the like, that he believed 50 per cent of Sibneft to be worth very far in excess of \$1.3 billion.

For my Lady's note, we have given the references to Mr Berezovsky's belief in this regard at paragraph 867, subparagraph 3(b) of our written closing, which is behind tab 1 in volume 2 at page 522.

As to our fourth point, this related to Mr Abramovich's claim that the Cap d'Antibes meeting did not take place, or at least that it took place prior to the arrest of Mr Glushkov. The difficulties for Mr Abramovich, however, include -- and I shall be returning to these later -- first, that he originally admitted that the meeting took place after Mr Glushkov's arrest; second, that the meeting was recalled by both Mr Berezovsky and Mr Patarkatsishvili; third, that the meeting was witnessed by others, Ms Gorbunova and Mr Giroud, an undeniably independent witness -- I'm sure I've mispronounced his name, I hope he will forgive me; and fourth, that Mr Abramovich's attempt to prove that the meeting could not have taken place have foundered, relying on hearsay evidence of witnesses not called by Mr Abramovich, and Mr Abramovich's own changing and frankly dishonest reconstruction of events.

My Lady, what has changed most significantly since October of course when the trial began is that the court has seen and heard from the witnesses in this case. Whilst of course your Ladyship will have formed

your own view of the witnesses, in our submission, the dishonesty of Mr Abramovich and his key witnesses, their cynical manipulation of evidence and indeed of the trial process, is the fifth and perhaps the most important of the general points which my Lady will wish to have in mind when weighing up the evidence and making findings of fact in this case.

We have devoted a good deal of our written closing to this point and I shall be spending a little more time on it today. After that, I shall return to the Sibneft claim and then to the Rusal claim.

But my Lady, while it is undoubtedly convenient to consider the two claims separately, I would respectfully suggest that there is one overarching question that the court will want to ask itself, and it is this. As Mr Abramovich on his case provided a plausible explanation for the enormous and indeed admitted payments made to Mr Berezovsky and Mr Patarkatsishvili, my Lady might think that this case is perhaps marked out by the very few facts that are not in dispute, but, as your Ladyship will be aware, the payments made are one of the matters that are largely not disputed. This being the case, your Ladyship may well consider that those payments provide an important anchor point in the analysis of the other issues that arise for

determination.

Of course, if, as Mr Berezovsky says is the case, Mr Berezovsky and Mr Patarkatsishvili had ownership interests in Sibneft and Rusal then there is a ready explanation for the size of the huge payments made. On Mr Abramovich's case, of course, they had no such ownership interests, and I would respectfully suggest that the court will want to test that contention that they had no ownership interests by considering taking Sibneft and Rusal in turn, but again emphasising that the matter has to be considered together: whether Mr Abramovich's version of the alleged agreement with Mr Berezovsky regarding Sibneft could ever have accounted for the huge payment of \$1.3 billion he says he agreed to make to terminate that agreement when, on his case, he had absolutely no obligation whatsoever to make any payment at all, and whether Mr Abramovich's version of the alleged agreement with Mr Patarkatsishvili regarding Rusal could ever have accounted for the equally eye-watering payment of \$575 million he says he agreed to pay to Mr Patarkatsishvili in relation to Rusal in 2004 when again, on his case, he had no obligation whatsoever to make a payment of that size.

My Lady, we suggest that the total disconnect

between the agreements alleged by Mr Abramovich and the size of the payments he says he made in connection with them provides the strongest possible evidence that the agreements were not as alleged by Mr Abramovich.

Mr Abramovich was not, as he would have to be on his version of events, making these huge payments out of generosity and appreciation. He made them because they related to ownership interests in Sibneft and Rusal, and that, we say, is what explains their size.

My Lady, having introduced that point, it is one I shall need to return to later.

Before I turn to make comments on the credibility of Mr Abramovich and his witnesses, which is the topic to which I propose to turn first, there is one final introductory point that I should make and it is this. We have put together, on this side of the court, what is in the context of this case a relatively short document which flags up the more egregious of the many factual inaccuracies and inaccurate citations in my learned friends' written closing, to the extent that we have not already dealt with them in our written closing.

I am not going to go through that on my feet but I would respectfully invite my Lady to pay it close regard, particularly when considering criticisms made of the witness evidence of Mr Berezovsky and his witnesses

because, as my Lady will see, a very great number of the criticisms of Mr Berezovsky and his witnesses are simply incorrect. My learned friends have unfortunately, and I'm sure this was inadvertent, seen inconsistencies where there are none, misstated the facts and ignored evidence inconsistent with their case, even when it comes from their own witnesses.

My Lady, can I just then hand up that document.

I've put it in a nice 1 Essex Court file.

MRS JUSTICE GLOSTER: Yes. (Handed)

I think I've seen this.

MR RABINOWITZ: I don't think so, my Lady, it was completed last night. What your Ladyship will have seen, I think, is the next document that I need to say something about, the monster document, as we have been calling it on this side.

Your Ladyship will recall --

MRS JUSTICE GLOSTER: What, the defendant's schedule?

MR RABINOWITZ: That's the one, the 175 pages.

MRS JUSTICE GLOSTER: I've certainly seen that -- okay, no, I haven't seen this.

MR RABINOWITZ: Your Ladyship sees it adopts an approach of identifying particular paragraphs in the closing, my learned friends' closing. It sets out what is there said and then identifies what is wrong with it.

MRS JUSTICE GLOSTER: Yes, I see.

Just a second. (Pause)

MR RABINOWITZ: The references to paragraphs are obviously to Mr Abramovich's closing. And I can tell your Ladyship that it will go on Magnum, if that's where your Ladyship would rather have it.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: I do also want to say something about that document which your Ladyship has seen, called the defendant's schedule, which my learned friends served I think on Wednesday afternoon of last week.

I don't know whether my Lady has had a look at this document or not --

MRS JUSTICE GLOSTER: Yes, I've had what I might call a superficial read through, but obviously I ...

MR RABINOWITZ: Your Ladyship will recall that although it was billed in advance as a document that would identify inaccuracies in our written closing, what it is rather is simply a reply closing submission presented in boxes.

Now, that is not what it was supposed to be but, be that as it may, your Ladyship has it. It runs to 175 pages, pages which are making points which largely repeat my learned friends' written and oral closing, and indeed then goes on to repeat itself.

Be that as it may, my Lady, with a view to assisting

the court we have been going through this document, box by painful box and page by painful page, in order that we may be able to provide your Ladyship with an annotated version of this schedule with our commentary on their comments to our closing, and we hope to have that document available for your Ladyship before the end of the week.

MRS JUSTICE GLOSTER: So it will have box 1215 --

MR RABINOWITZ: It will simply go across. It will be a schedule, because again, with respect, it is a rather --

MRS JUSTICE GLOSTER: Otherwise it's indigestible.

MR RABINOWITZ: It's indigestible, and your Ladyship needs to see why we say what they say is either wrong or unhelpful. So that your Ladyship will get.

Can I then move more substantively on to the first of the topics that I would wish to address in my oral closing, and that relates to our submissions on the testimony of Mr Abramovich and his witnesses.

My Lady, this is of course a topic we've dealt with in section B of our written closing which begins at page 62 and, as your Ladyship will be aware from what we have said, we say that Mr Abramovich, whilst undoubtedly a smooth and well-prepared witness, proved himself to be a thoroughly dishonest and cynical witness as well,

willing to perpetuate a false case, not only by giving evidence which he knew to be untrue, but also by calling as witnesses his associates who again, as Mr Abramovich well knew, gave, as they were intended to do, thoroughly untrue evidence designed only to mislead the court.

As your Ladyship will know, we have in our written submissions identified a number of matters that were, we submitted, relevant to the issue of the credibility of Mr Abramovich and his witnesses.

I'm not proposing to go through all of those now, but I do just want to say something further on some aspects of the matters we have there dealt with. The first matter I would like to say something further about is the question of collusion between witnesses. Your Ladyship will find that we have dealt with that at paragraph 98 and following of our written closing.

MRS JUSTICE GLOSTER: Yes, I'm there.

MR RABINOWITZ: The point that we address there relates to the fact that, as the evidence has established, Mr Abramovich and his witnesses discussed their recollections and Mr Abramovich's case amongst themselves at length before preparing their witness statements.

In response to this evidence, and indeed our submission about this, your Ladyship may recall that in

his closing speech Mr Sumption suggested to your Ladyship that this discussion of recollections by witnesses before putting their evidence in a witness statement was, in his words:

"... a practice to which no possible objection can be taken provided that the witness applies his own mind to his evidence and distinguishes between what he can recall and what he has learnt from someone else."

That, for my Lady's note, was Day 39, page 15, line 23 to page 16, line 2.

My Lady, while it may well be the case, as Mr Sumption said, that one does often find witnesses, prior to making a witness statement, discussing the matter and indeed the issues arising with other witnesses, the point about the present case is that this is not at all what happened here. Because what is clear from the evidence is that there was here not simply a discussion of the evidence but in fact a coordinated effort to ensure that everyone's evidence was the same on particular points. In other words, there was here precisely the failure of the witnesses to apply their own minds to the issue and give their own evidence, rather than taking it from someone else, that even Mr Sumption accepts was indeed unacceptable.

And perhaps I can just give my Lady an example of

this. We have, at paragraphs 105 to 109 of our written closing, on page 71 and onwards, set out extensive references to the evidence of Mr Abramovich's witnesses at the strike-out application, and again at trial, which makes this point. And as my Lady will recall, the focus of these paragraphs relates to the way in which the evidence of Mr Abramovich's witnesses changed between the strike-out application where the allegation made by Mr Abramovich was that the payments were all ORT related, and indeed that the agreement was to fund ORT, to the situation at trial where there was a transformation in this and we were now talking about krysha.

This was a change that one saw not just in the evidence of one witness but rather in the evidence of each of Mr Abramovich, Mr Shvidler, Mr Tenenbaum, Ms Goncharova and Ms Panchenko.

Now, your Ladyship may recall that in his closing speech Mr Sumption again sought to brush aside this issue by suggesting that this change in the evidence of all of the witnesses was, he said, no more than a great deal of fuss. Day 39, page 30. He appeared to try to dismiss this on the basis, so he asserted, that it had never been suggested by Mr Abramovich that the fact that the money was to be paid to ORT was, on Mr Abramovich's

case, a term of the agreement made between Mr Abramovich and Mr Berezovsky; and that is what he said at Day 39, page 31.

In other words, the point he seemed to be making was we were making a great deal of fuss about this and, indeed, upgrading the significance of this because he claimed, or he said in his closing submissions, the money being paid to ORT was not a term of the agreement.

One can see why Mr Sumption needed to say that, my Lady, because if on Mr Abramovich's case this funding of ORT was indeed a key term of the agreement, if it was what the agreement was all about from Mr Berezovsky's side, then any shift from this to some different type of agreement would be very damaging both to Mr Abramovich's credibility and to his case overall.

Unfortunately for Mr Abramovich, and indeed for Mr Sumption, however, it is plain that contrary to what Mr Sumption told your Ladyship, the funding of ORT was, on Mr Abramovich's case, very much a term of the agreement that he had originally claimed to have made with Mr Berezovsky, and indeed it was what the agreement was all about on Mr Abramovich's original case.

So we have, for example, in Mr Mitchard's third witness statement, that was the main witness statement made on behalf of Mr Abramovich for the purposes of the

strike-out, this is at paragraph 15 of that statement --

MRS JUSTICE GLOSTER: Yes, I have it in front of me.

MR RABINOWITZ: Your Ladyship sees, it says in terms:

"Mr Abramovich says that his agreement with Mr Berezovsky was that, in exchange for the assistance Mr Berezovsky provided in the formation of Sibneft, Mr Abramovich would fund certain cash requirements of ORT."

Your Ladyship has that, I don't need to give your Ladyship the reference to that, J2/2.11. J2/2.11/182

In other words, my Lady, the suggestion that the payments to be made were with a view to funding ORT was, indeed, claimed to have been a term of the agreement, indeed what the agreement was all about.

If there were any doubt about what Mr Abramovich's original case was at that stage, I can remind your Ladyship -- this is a point we note at I think footnote 87, page 71 of our closing -- that Mr Abramovich's counsel at the strike-out application actually went so far as to refer to the 1995 agreement as the ORT funding agreement. Indeed, your Ladyship will recall that the justification that Mr Abramovich was originally giving for the payment of the 1.3 billion in 2001, in the context of the strike-out application, was that this was being paid in part because Mr Berezovsky, having got rid

of his interest in ORT, there was no longer a need to fund it. So it was all about the ORT and the funding of ORT. That was supported by all of Mr Abramovich's witnesses at that stage.

But then of course, once it became clear that that was a hopeless argument, because, as Mr Abramovich and his witnesses all knew, and as was becoming clear from the disclosure which was being made, the payments which were being made were not to fund ORT, or not simply to fund ORT, there were a great many other payments which had nothing to do with ORT; as it became clear that that argument was simply hopeless what one then had was, for the purposes of this trial, a collective shift in the recollection of all of Mr Abramovich's witnesses who, to a man and indeed woman, suddenly changed their evidence on this point. So that no longer was this, on Mr Abramovich's case, an ORT funding agreement but now, so they said in unison, it was a krysha agreement instead.

It is, we would submit, very difficult to see how this could occur without collusion in the unacceptable sense that Mr Sumption identified of the witnesses failing to apply their own minds to this and instead putting forward evidence that they had been asked or agreed to put forward. That is why we submit, my Lady,

that in the present case the fact that there has been collusion between Mr Abramovich's witnesses about what evidence to give, including in relation to the central point about what the agreement in 1995 was about, is a matter of some significance.

Can I turn next, my Lady, to what we have generically referred to as the smears and innuendo issue. Again, your Ladyship sees that in our written closing, beginning at paragraph 120, page 88 and following.

Your Ladyship will recall that the first smear which we identify is the Chechen elements smear, the wholly unwarranted and untrue allegation that Mr Berezovsky had links to organised crime. That's at paragraph 123. Without going back into the detail of the sorry story, my Lady, your Ladyship may recall that only one individual was identified by either Mr Shvidler or Mr Abramovich in their statements as being a Chechen whose connection with Mr Berezovsky or Mr Patarkatsishvili carried, in Mr Shvidler's words, "connotations of gangsterism", was the way he put it. That was a person called Mr Maghamet Ismailov.

Your Ladyship will recall that this allegation really just collapsed after Ms Gorbunova was able to dig up from her photo collection a photograph of

Mr Shvidler's wife and children, and young child, at a birthday party hosted by Mr Ismailov. Indeed, my Lady may recall Mr Abramovich told the court in terms, "Mr Ismailov is not a gangster". That was at Day 7, page 76. Your Ladyship may also recall that, perhaps unsurprisingly, my learned friends made no reference whatever to Chechnya, Chechens or gangsterism in either their written or oral closing submissions.

Sorry, that should have been Day 17, I'm told, not Day 7, page 76.

My Lady, while my learned friends might be keen to sweep this allegation and this issue under the carpet, we would suggest that the matter, that is to say the willingness of Mr Abramovich and Mr Shvidler in particular, to try to smear Mr Berezovsky in this way is something that retains relevance to the credibility of Mr Abramovich and his witnesses generally. Because it is a clear example, and there are others, it's a clear example of their willingness cynically to give false and damaging evidence, if they think they can get away with it, where they think it will suit their ends.

But of course, no sooner did one attempt to smear Mr Berezovsky die a death than another one reared its ugly and cynical head. I have in mind of course what we referred to as the dressing gown allegation. And again,

your Ladyship knows we've dealt with this in some detail at paragraph 126, page 92 and following. We've set out there the genesis and development of that allegation and I don't propose to rehearse that.

My Lady, I would suggest that, as with the Chechen smear, so too with the dressing gown smear, once again it has become clear that the evidence that Mr Abramovich and Mr Shvidler, and indeed Mr Deripaska, were willing to give on this issue has been shown to be utterly false. We've set out at paragraphs 131 to 134 of our written closing the relevant timings of 13 March 2000, timings which we submit establish very clearly that the story made up by Mr Abramovich and his witnesses simply cannot be true.

The evidence on this, as we explain there, is that Mr Abramovich, Mr Shvidler and Mr Deripaska arrived at the Dorchester on 13 March at about 1.00 pm on that day, and Mr Berezovsky, by contrast, arrived at about 2.00 pm having had an unplanned lunchtime visit to the Horseguards Hotel with his legal team having been in the House of Lords that morning. There was evidence before the court on this, which indeed was --

MRS JUSTICE GLOSTER: I remember that, it came in after.

MR RABINOWITZ: It came in afterwards, and Mr Sumption just waved it in.

Mr Berezovsky therefore did indeed, as Mr Abramovich and Mr Shvidler had both said in their witness statements, arrive at the Dorchester suite one hour after they did, and that had been their evidence in their witness statements. It follows that Mr Berezovsky did not get to Mr Patarkatsishvili's suite before these men and busy himself in some different room while they, apparently, on their evidence, for over an hour waited for him to emerge from this room which he eventually did in a dressing gown. That was, I submit, pure invention of the most cynical and unpleasant kind.

Perhaps unsurprisingly, Mr Sumption, as my Lady may recall, in his oral closing made no real attempt to deal with the evidence on this point. What he did say, however, in closing, and this was at Day 40, page 47, was that he didn't want it to be suggested that he had, by silence, conceded the point. He then commented that there was not a trace of any evidence to suggest that there had been any collusion about this dressing gown evidence, and he suggested to your Ladyship, and these were his words, that this was a matter that could, to use his expression, be safely ignored. That's the way he put it.

My Lady, we would respectfully disagree about that and we would submit that the dressing gown allegation

cannot and should not be ignored. As with the Dr Evil text message allegation, to which I shall turn shortly, it is not open to Mr Abramovich's counsel to take the position that allegations made against Mr Berezovsky, which are subsequently shown to be untrue, when made cynically in this way can simply be ignored.

Furthermore if, as I suggest appears from the evidence, Mr Berezovsky arrived at Mr Patarkatsishvili's Dorchester suite meeting from the House of Lords after Mr Abramovich and Mr Shvidler were already there, it must follow from this finding that the evidence of Mr Abramovich, Mr Shvidler and Mr Deripaska, as well as being false and knowingly false evidence, must necessarily have been produced as a result of collusion between them. I say this because it is inconceivable that Mr Abramovich, Mr Shvidler and Mr Deripaska could, independently, have made up that story.

My Lady, can I turn next to the third example of evidence that one might include in the category of smear and that has, in the event, proved utterly false, and that is of course the Dr Evil text message evidence that Mr Tenenbaum gave. Again, for the first time, just as with the dressing gown allegation, in re-examination -- this was a constant thing which kept happening, it emerged in re-examination and again, as your Ladyship

knows, we have set out the genesis and development of this allegation at paragraph 136 and following of our closing, and I'm not proposing therefore to go over this in enormous detail. But in brief, as my Lady will recall, Mr Sumption in re-examination asked Mr Tenenbaum the question as to how he, Mr Tenenbaum, could be certain that no note was taken at the meeting in Georgia at which the Curtis notes were written. This solicited, as it was plainly designed to do, a suggestion never made previously in five witness statements from Mr Tenenbaum and six witness statements from Mr Shvidler that this was something that Mr Fomichev had told Mr Shvidler.

Your Ladyship may recall that I then cross-examined Mr Tenenbaum as to why the suggestion had not been made in any one of the 11 witness statements previously produced by himself and Mr Shvidler, and Mr Tenenbaum, who plainly understood that I was suggesting that his story was a total fabrication, then came up with the story of the text message. Your Ladyship will recall that Mr Tenenbaum then told the court that Mr Shvidler had the supposed text message on his phone and that he had shown it to Mr Tenenbaum.

We of course then asked to see the text message only to be met with what I would suggest was the wholly

incredible suggestion that Mr Shvidler, and indeed Mr Fomichev as well, had deleted the message, and it appears that no one had bothered to ensure that a copy of this was kept in existence.

We then asked for the mobile number to which it was alleged that the text message had supposedly been sent, and we then checked on Mr Berezovsky's phone bill to see whether any message had been sent by him to that number and, surprise surprise, we were able to establish that none had been sent.

In other words, my Lady --

MRS JUSTICE GLOSTER: Well, I haven't had any of this evidence before me, it's just in correspondence, isn't it?

MR RABINOWITZ: It is in a letter which confirms the position from Addleshaws which I shall give your Ladyship the reference to know.

In other words, my Lady, the investigations reveal that there was nothing whatever to support the suggestion that any such text had been sent.

Against that background, my Lady will recall that in his closing speech Mr Sumption told the court that the allegation that this Dr Evil story was an invention, which of course is exactly the allegation we make, was, he said, a suggestion that he at least rejected

entirely. What he said in this regard was that the only evidence in support of this being an invention on the part of his client's witnesses was, as he put it, the assertion of Addleshaws in correspondence.

My Lady, we submit that that was, with respect, a wholly inadequate answer. The letter from Addleshaws confirming that Mr Berezovsky had sent no text message was a letter dated 15 December 2011 which, for your Ladyship's note is at L(2011) --

MRS JUSTICE GLOSTER: I've got the reference, paragraph 145.

MR RABINOWITZ: I think it may be set out there what it says. It actually confirms:

"There is no record of any text being sent by Mr Berezovsky to Mr Fomichev."

That was --

MRS JUSTICE GLOSTER: Mr Rabinowitz, where are we going with all this? I mean, it could have come from another phone. I haven't heard any evidence about it.

MR RABINOWITZ: Well, it's not just that your Ladyship hasn't heard any evidence about it --

MRS JUSTICE GLOSTER: A text message can come from anywhere.

MR RABINOWITZ: Well, it can come from -- and if it does come from any phone then it might have been that they would have said, "This is the number that it came from." But they didn't; they gave us a number and we checked.

But that wasn't all, as your Ladyship knows. If that was all then it may be that someone could suggest that someone else's phone was used, or Mr Berezovsky picked up the phone of one of his associates and sent it from that. That wasn't what was said.

But there was another point that arose from this, and it was the point that my Lady made to Mr Sumption. Your Ladyship will recall that when Mr Sumption said, "Well, that's the only point that there is," your Ladyship said, "Well, there is also the fact that if such a text message had been sent, it would exist and be there for anyone to look at."

That was the point that your Ladyship made to Mr Sumption at Day 40, page 59.

The point that -- with respect, my Lady, the point that you put to Mr Sumption is exactly the point, the point that you made at Day 40, page 59, line 2, because if there was such a text it would be there for someone to look at and it plainly isn't.

The only response that Mr Sumption could give to your Ladyship was to suggest that this would depend, he said, on what your practice is about keeping text messages on your mobile. With respect to my learned friends, that really doesn't meet the point at all. Your Ladyship will recall that Mr Tenenbaum claimed that

the text message was produced just a few months before the trial began. We were told in correspondence it was around the time of the witness statements, May 2011.

If there had been such a text received at that time, that is to say when the parties were gearing up for trial, when witness statements were being served and the like, it would have been plain and obvious to Mr Shvidler, who was very much involved in assisting with the conduct of this litigation, that this was potentially an important document. The claim that this would have been deleted is, I suggest, little short of ludicrous, whatever might have been Mr Shvidler's normal practice in relation to texts.

This is especially so, my Lady, if as Mr Tenenbaum suggested in his evidence Mr Shvidler actually considered the text sufficiently relevant to show it to him and, indeed, to discuss the whole issue with his solicitors. It is simply ludicrous that it would have been deleted by him as well as by Mr Fomichev.

All of this, as your Ladyship will recall, was supposed to support a suggestion by Mr Tenenbaum that so scared was Mr Fomichev of Mr Berezovsky that it was felt by Mr Abramovich and his team that no evidence from Mr Fomichev adverse to Mr Berezovsky, not even a reference to what he allegedly told Mr Shvidler about

the Curtis notes, and your Ladyship will appreciate that the authenticity of the Curtis notes is really one of the absolutely key issues in this litigation, not even a reference to what he allegedly told Mr Shvidler about the Curtis notes could be included in any of the witness statements which were being produced for the trial.

I would respectfully submit that the suggestion that this is the reason why no reference was made is simply nonsense. After all, as your Ladyship knows, Mr Fomichev has been busy with his own litigation against Mr Berezovsky and has not been scared to oppose Mr Berezovsky or to say his evidence is untrue, judgment having been given against Mr Fomichev --

MRS JUSTICE GLOSTER: Has Mr Fomichev paid up?

MR RABINOWITZ: He hasn't.

MRS JUSTICE GLOSTER: I think that's what I was told previously.

MR RABINOWITZ: He is doing his best to evade judgment.

Mr Fomichev is not scared of Mr Berezovsky. The very idea that out of the concern for Mr Fomichev's nerves, or something, Mr Tenenbaum or Mr Shvidler didn't want to put a reference to this in their witness statement is just, in my respectful submission, ridiculous. So once again, my Lady -- and indeed desperate, because this was seen as just one of the ways

in which they could deal with the authenticity of the Curtis notes when all else was failing.

So, my Lady, once again we have Mr Abramovich's trusted associates and witnesses, and I include in this both Mr Tenenbaum and Mr Shvidler, who has been happy to support this allegation, dishonestly and cynically concocting a story knowing, as they obviously did, that it was utterly untrue.

Just on Mr Fomichev, I've been handed a note saying there was a hearing last week seeking to enforce against property in Mr Fomichev's wife's name. So that continues.

The point about this giving of cynical and dishonest evidence is this, my Lady: we would respectfully submit that the fact that the cynical willingness to produce false and dishonest evidence has yet again been exposed is a matter that your Ladyship should take into account when evaluating any of the evidence that Mr Abramovich and his witnesses have given.

Can I turn next to say something very briefly, again relating to the credibility of Mr Abramovich and his witnesses, concerning the failings to give proper disclosure. There is just one particular example of this that I would like to say something about, and that is the holding back of the bolshoi balance by

Mr Abramovich's team for a period of some six months before they decided to disclose it.

The only reason I'm raising this again, it's a point I think we make in our written closing, I don't have the reference --

MRS JUSTICE GLOSTER: Yes, I'm just trying to find out.

MR RABINOWITZ: 175 and following. Paragraph 175.

The reason I mention this now, my Lady, is because this was something that came up in Mr Sumption's closing where, yet again, he sought to explain it away in really rather dismissive language.

The first point to make about this issue of the disclosure of the bolshoi balance, it was not disclosed when general disclosure was made, it was only disclosed when witness statements were exchanged, and there doesn't appear to be a dispute that it was sat on in the sense of not disclosed for a period of six months after it was identified as something which was relevant to the trial. This is Ms Panchenko's evidence; at paragraph 178 we've set all that out.

Now, your Ladyship may recall that when dealing with the bolshoi balance, Mr Sumption told the court that the six month delay was due, and these were his words:

"... to the need to translate the spreadsheet from Russian ..."

This is at Day 39, page 17, lines 12 and following:

"... to the need to translate the spreadsheet from Russian and to get detailed explanations, which were quite complex, of each line of it in order to establish which parts were disclosable."

Now, I have to say, my Lady, that that explanation by Mr Sumption for this delay is, with respect, simply hopeless. If my Lady looks at the bolshoi balance, and I'm not inviting --

MRS JUSTICE GLOSTER: I've got it up on the screen.

MR RABINOWITZ: Okay. You will see that it is a ten-page document largely made up of numbers.

MRS JUSTICE GLOSTER: It was originally in Russian though, wasn't it?

MR RABINOWITZ: It was originally in Russian, and I'm not disputing that it needed to be translated but the numbers didn't need to be translated. And, as your Ladyship sees, the vast majority of the document is in numbers, and other than the numbers what your Ladyship sees the balance sheet contains, contains in the main, are column headings, which are simply all the months of the year, and row headings, which are generally names like Runicom, Sibneft and the like, or commonplace phrases such as "cash in" or "payments out".

It is, with respect, difficult to believe that

translating that document could be the work of any more than two or three afternoons, at most.

As for the suggestion that the bolshoi balance required detailed explanations which were quite complex, with respect, this also utterly fails to justify the failure to disclose. Disclosure could and should have been given immediately. If it were felt useful to put explanations for the document before the court, that could be done later. In any event, insofar as it is said we needed to understand the document in order to decide what to disclose, your Ladyship should know that Mr Shvidler has summarised the content of the bolshoi balance in two pages in his witness statement, that's at paragraphs 133 to 145 in his third witness statement E3/10/39. That again hardly supports the suggestion of a complexity of a sort that would justify suppressing this document for six months.

My Lady, it is, I would suggest, difficult to explain the delay in disclosing the bolshoi balance, other than on the basis that Mr Abramovich and his loyal team were using the time to decide whether or not they wanted to disclose it. But at least this was a document that they did eventually decide to disclose.

There are of course other documents where we say there is an absence of an adequate explanation for their

nondisclosure, including, of course, missing mobile phone bills, bank statements, credit card statements and, in particular, diaries. That, as your Ladyship will have seen, we deal with at paragraphs 180 to 183 of our written closing and I don't propose to get into the detail of that now.

Can I then move on, again to say something very shortly, about the drawing of adverse inferences from Mr Abramovich's failure to call certain witnesses to support his case. Again, for your Ladyship's note, this is dealt with in our written closing at paragraphs 194 and following, page 142.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will see there that the three witnesses in respect of whom we say adverse inferences should be drawn are Mr Smolensky, Mr Fomichev and Mr Bosov. There is nothing I propose to add on my feet about Mr Smolensky or, for that matter, Mr Bosov, although there are some points relating to the position of those two witnesses that we will pick up in responding to my learned friend's latest 175-page effort.

MRS JUSTICE GLOSTER: Sorry, just before you go any further, the schedule you've produced, what are we going to call the document that you handed up today?

MR RABINOWITZ: We could call it schedule --

MRS JUSTICE GLOSTER: Shall we call it schedule 1?

MR RABINOWITZ: Claimant's --

MRS JUSTICE GLOSTER: I'm anticipating I'm going to be getting quite a lot of documents and I want to be clear what you're calling it.

Shall we call it claimant's schedule 1?

MR RABINOWITZ: Claimant's schedule 1.

MRS JUSTICE GLOSTER: I mean presumably there are some schedules --

MR RABINOWITZ: Claimant's schedule of errata.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: I'm told its Magnum reference will be in B2 but your Ladyship will still want to have a title for that.

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: That is not the document which will respond to the position of Mr Bosov and Mr Smolensky, that will be a document which responds to the 175-page document. We're not going to -- the document which we produce will simply take their schedule that they have produced and add another box at the end.

MRS JUSTICE GLOSTER: Yes, fine. So I'm calling the thing you've handed up today claimant's schedule 1.

MR RABINOWITZ: My Lady, having identified Mr Smolensky,

Fomichev and Bosov, as I've made clear, I'm not going to say anything further on my feet about Smolensky and Bosov. We are going to say something about what the defendants have said about them in their 175-page document in our response to that. I do however want to say something about the position of Mr Fomichev.

As we have identified in our written closing, Mr Abramovich and his team have plainly been in reasonably regular contact with Mr Fomichev for some years in the lead-up to these proceedings, and indeed have on occasion claimed to have relied before this court on information that it is alleged he has given to them. We identify some of those examples at paragraph 197 of our written closing.

My Lady, in the face of the obvious access that Mr Abramovich has had to Mr Fomichev, and indeed Mr Fomichev's apparent willingness to assist, if he could, Mr Abramovich and his cause, Mr Sumption was able to give just one reason, in his oral closing, for not calling Mr Fomichev. That was at Day 40, page 59.

What he said was that he was not prepared to call Mr Fomichev because, so he said, and these were his words:

"Mr Fomichev was directly engaged in the preparation of sham documents evidencing bogus transactions for the

purpose of laundering Mr Berezovsky's money [so that] it would [so he said] have been perfectly absurd for me to call Mr Fomichev bearing that in mind."

My Lady, can I make two observations about this as an attempt to justify Mr Abramovich's decision not to call Mr Fomichev. The first observation is this. It is of course Mr Abramovich's own case that both the Devonia agreement and indeed the Rusal second sale documentation, or at least some of it, were sham documents produced to assist in getting money into the western banking system. This being the case, it is difficult to see why it would have been absurd for Mr Abramovich to call Mr Fomichev; indeed by calling Mr Fomichev, Mr Abramovich would simply have been further proving his own case. I suggest therefore that this is obviously not a reason for not calling Mr Fomichev.

The second difficulty that there is with Mr Sumption's reason for not calling Mr Fomichev is that Mr Sumption had no difficulty in calling Mr Gorodilov, Ms Panchenko and Ms Khudyk, and indeed Mr Abramovich himself, all of whom had been engaged in one way or the other "in the preparation of sham documents evidencing bogus transactions", to use Mr Sumption's expression, for the purpose of misleading banks and others.

Indeed, the fact that documents were produced which were sham documents is in a sense Mr Abramovich's main defence in seeking to deal with some of the documentation produced in relation to Rusal and the second Rusal sale, and Ms Khudyk and Ms Panchenko have expressly acknowledged doing this, both in relation to certain of the Devonia transaction documents but also in relation to the commission agreements.

Mr Gorodilov, Mr Abramovich's trusted friend, was of course the architect behind the sham documents produced in relation to the ORT sale, suggesting that there had been a sale for 10 million with the remaining \$140 million consideration being paid by way of an option, your Ladyship will remember that. That was Mr Gorodilov who was the architect behind all this.

So all of these witnesses Mr Sumption did call were involved in producing sham documents, or had some involvement in sham documents, and they were called. That also suggests that the fact that a witness might have been involved, on Mr Sumption's case, with sham documents really was not the reason not to call that witness. That suggests that there is a different reason for not calling Mr Fomichev.

A third point to make about the non-calling of Mr Fomichev is that it appears to be inconsistent with

what Mr Tenenbaum was saying. Mr Tenenbaum seemed to be suggesting that they couldn't call Mr Fomichev or even ask him to give a witness statement because of his fear of Mr Berezovsky which, as I've already suggested, is utter nonsense.

Now, I don't need to remind your Ladyship that there can be no doubt that Mr Fomichev as a witness could have given evidence on a number of matters of central importance to the issues in this case. Your Ladyship will recall that Mr Fomichev was involved with Mr Berezovsky and Mr Patarkatsishvili almost throughout the time relevant to the issues in this case up to and including 2001. So he would have been able to give evidence about, among other things, the real nature of the relationship between Mr Berezovsky and Mr Abramovich in relation to their dealings in Sibneft and Rusal, as well as in relation to the intimidation issue, because he was at some of those meetings. Mr Fomichev could obviously also have given evidence about what was said by Mr Abramovich to have been a number of proposals allegedly made by him directly to Mr Abramovich or his team, and of course he was present at the meeting in Georgia when the Curtis notes were made.

MRS JUSTICE GLOSTER: Mr Rabinowitz, at paragraph 194 of your closing you refer to a case where the principles

relevant to the drawing of an adverse inference are set out. Are there any cases that lay down the principles as to whose obligation, if any, it is to call a witness? Or is that so fact-dependent that it's impossible to lay down principles?

MR RABINOWITZ: I don't know the answer as to whether there's any case which deals with the question of whether it's an obligation or not, but in my respectful submission, my Lady, it's unlikely that there will be a case because it is going to be fact-dependent.

MRS JUSTICE GLOSTER: But I mean in circumstances such as the present, is there any assistance that I can get from authority as to whom, if anybody, had the job of calling Mr Fomichev?

MR RABINOWITZ: We will look it up, my Lady.

MRS JUSTICE GLOSTER: I would be quite interested to know if there was any guidance.

MR RABINOWITZ: Indeed. In my respectful submission, it's very likely to be entirely fact-dependent. Of course, in the present case, this person may have had some connection with Mr Berezovsky but they're in the middle of litigation against each other.

MRS JUSTICE GLOSTER: Of course.

MR RABINOWITZ: That's what we'd say anyway.

Now, as I say, those are the matters in relation to

which Mr Fomichev could have given evidence. He was plainly, in a sense, around at a lot of the key incidents in this case. As I've already mentioned, as your Ladyship recalls, there has of course been a substantial and very bitter falling out between Mr Berezovsky and Mr Fomichev, so much so that there is the litigation that your Ladyship has referred to earlier.

Plainly Mr Abramovich or his team, who appear to be on perfectly good terms with Mr Fomichev, could have called him, and indeed it is clear from what Mr Sumption said that they made a decision not to call him. And the question for your Ladyship is whether a good reason has been put forward for them not calling Mr Fomichev.

In our respectful submission, no good reason has been put forward for not calling Mr Fomichev. The reason suggested by Mr Sumption in closing is plainly not a good reason. Mr Tenenbaum's reason about Mr Fomichev being scared is plainly a hopeless reason. In those circumstances, my Lady, we respectfully submit that your Ladyship can and should draw the following inferences from Mr Abramovich's failure to call Mr Fomichev, and they are these.

First, that if called he would have been unable truthfully to support Mr Abramovich's case that there

was no partnership between Mr Abramovich on the one hand and Mr Berezovsky and Mr Patarkatsishvili on the other.

Secondly, that if called he would have been unable truthfully to support Mr Tenenbaum's evidence that the Georgia meeting with Mr Curtis, as recorded in the Curtis notes, did not occur.

And, thirdly, that if called he would have been unable truthfully to support Mr Abramovich's evidence as to the proposal supposedly made by him in advance of the Le Bourget meeting.

Since we have set all this out in writing I wasn't proposing, subject to your Ladyship, to say anything further about it.

MRS JUSTICE GLOSTER: Yes. You've formulated it slightly differently from ...

MR RABINOWITZ: We have, my Lady. I thought I needed to do something differently or your Ladyship might get bored.

MRS JUSTICE GLOSTER: No no.

So what you've just said doesn't include 1 and 2, does it?

MR RABINOWITZ: It does include 1 because I mentioned the proposals.

MRS JUSTICE GLOSTER: Oh, right.

MR RABINOWITZ: 2 is the corollary of -- well, to some extent it's the corollary of 55.1. It's encapsulated --

MRS JUSTICE GLOSTER: Anyway, I've got a note of what you now say are the inferences to be drawn.

MR RABINOWITZ: Can I just enquire whether your Ladyship proposes to take a morning break?

MRS JUSTICE GLOSTER: Yes, I will. I'll take a break now. Ten minutes.

(11.28 am)

(A short break)

(11.45 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I turn now to the Sibneft claim.

By way of a road map, I can tell your Ladyship that I propose to deal first with the 1995 and 1996 agreements, then with the ORT and Sibneft intimidation, and finally with the choice of law issues. Since these again are all topics that we've covered in detail in our written closing I can take most of these fairly shortly, I hope.

So, my Lady, the 1995 agreement, you will have seen from section E of our written closing, that begins at around page 172, that we say that a number of disputes concerning the 1995 agreement, for example those relating to whether there was indeed an agreement, and as to what Mr Berezovsky did by way of contribution to the creation and acquisition of Sibneft, were largely

resolved over the course of the trial. And what is left in issue can be described in different ways but essentially it comes down to this question: did Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili in 1995 agree a partnership in respect of the creation and acquisition of Sibneft, with all the usual incidents of such an agreement, or did Mr Berezovsky and Mr Abramovich alone enter into some other relationship, a non-binding relationship, where Mr Berezovsky provided protection for a fee. That of course is Mr Abramovich's case.

Can I begin by reminding your Ladyship of what we would respectfully submit is the key evidence that will assist your Ladyship in relation to determining the nature and content of the 1995 agreement. There are seven aspects of the evidence that, in our respectful submission, are particularly important in this regard.

First and foremost we have the Le Bourget transcript. We set that out in section E2 of our written closing, paragraphs 259 and following, where we deal with the significance of the Le Bourget recording. We deal there, of course, also with the fact that for some five months after receiving the Le Bourget transcript Mr Abramovich initially refused to accept the authenticity of that document, no doubt hoping to find

a way to avoid the transcript becoming evidence at trial.

Ultimately, of course, Mr Abramovich had no choice but to accept the authenticity of the document. And when the attempt to challenge the authenticity of the document disappeared, what one had instead, as your Ladyship will recall, was a persistent attempt by Mr Sumption throughout the trial to seek to diminish the importance of the Le Bourget transcript, and one well understands why it was in Mr Abramovich's interests that he should do so. "Rambling, obscure and possibly incomplete", was how Mr Sumption described it in closing, having described it earlier as "rather turgid". That was at Day 7, page 44.

But my Lady, whether or not Mr Sumption regarded the transcript as a gripping read, the fact is that it is, we would submit, plainly a key if not the key piece of evidence before the court in relation to a number of issues. That is because it is one of the few pieces of evidence available to the court that provides a contemporaneous and indisputably genuine window into the nature of the relationship that existed and the arrangements that had been made between Mr Abramovich and Mr Berezovsky and Mr Patarkatsishvili at that time.

Of course, we submit that the exchanges between the

parties at Le Bourget, including of course the references to Mr Patarkatsishvili and Mr Berezovsky's entitlement to dividend payments in respect of Sibneft, and with the repeated reference by Mr Abramovich and Mr Patarkatsishvili to the Sibneft interests as being "our interests", and with the discussion of Mr Patarkatsishvili and Mr Berezovsky about their wishing to have their interests in Sibneft formally and legally recognised, provides very strong support for Mr Berezovsky's case and is very difficult indeed to square with Mr Abramovich's case unless, as Mr Abramovich continually sought to do, one ignores or distorts the words the parties used.

Now, your Ladyship has our submissions on Le Bourget set out from page 177. Put shortly, my Lady, we would submit that Mr Abramovich was simply unable to provide any satisfactory explanation for the exchanges at Le Bourget which suggest that, contrary to his case, Mr Berezovsky and Mr Patarkatsishvili were indeed his partners in Sibneft.

But, of course, it's not just the Le Bourget transcript that we would submit presents an insurmountable obstacle to Mr Abramovich's case. Can I then turn to the second key piece of evidence supporting Mr Berezovsky's case on the 1995 agreement, and that is

of course the Curtis notes, because they are not only relevant to Rusal but they're also relevant to Sibneft. Those, as your Ladyship will recall, were produced at a meeting in Georgia attended by, among others, Mr Patarkatsishvili, Mr Curtis, Mr Fomichev and Mr Tenenbaum.

I say that this is another key piece of evidence because, as your Ladyship will recall -- and I think we've set this out at paragraphs 1309 and following, it's actually in volume 2, my Lady, at page 749 -- the Curtis notes expressly refer to Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich as all being shareholders of Sibneft. And there is also the express statement in the notes that "we", referring to Mr Patarkatsishvili and Mr Berezovsky, sold Sibneft.

Now, if that is right and those notes are genuine, Mr Tenenbaum is not recorded as having suggested in any way any disagreement with that, again that provides a major problem for Mr Abramovich's contention that he and he alone was the owner of Sibneft. That is why, of course, as your Ladyship will recall, a strenuous effort was made, especially by Mr Tenenbaum, to seek to challenge the authenticity of the Curtis notes, including, as I've already been submitting, the attempts by Mr Shvidler and Mr Tenenbaum to claim some knowledge

of their falsity from Mr Fomichev, an attempt that I would respectfully submit was discreditable.

Now, as your Ladyship knows, still on the Curtis notes, it is not disputed -- this is a point we make at paragraph 1309 and following -- it is not disputed that those notes are in Mr Curtis's handwriting. It is also not disputed that Mr Curtis handed those notes to his secretary at some time after the meeting in Georgia prior to his death on 3 March 2004. And it's also not disputed that there was a meeting of the sort described in the Curtis notes, attended by Mr Patarkatsishvili, Mr Tenenbaum and Mr Fomichev, and that it took place in Georgia on 25 August 2003.

Now, your Ladyship will recall that Mr Tenenbaum says that whilst he was in Georgia at that time, the discussions that he was a party to were not as recorded but, he says, instead related to a prospective Brazilian football investment. My Lady, that being the case, that being Mr Tenenbaum's evidence, it follows that there is no possibility that the Curtis notes are simply a misinterpretation of the meeting which Mr Tenenbaum says took place. Either they are accurate, as we submit they are, or they are a deliberate forgery created by an English solicitor, Mr Curtis, and created for some reason which has never been adequately explained by

Mr Abramovich. Those are the choices.

Now there are, as we set out in the written closing, three particular features which point to the authenticity of the Curtis notes, point to them being authentic.

The first feature in terms of significance is how uncannily accurate the Curtis notes are. In particular, your Ladyship will recall the Curtis notes recalled --

MRS JUSTICE GLOSTER: I'm just going to get them up actually. I've got the reference.

MR RABINOWITZ: H(A)59/110.001.

MRS JUSTICE GLOSTER: Perhaps they could come up on the screen.

MR RABINOWITZ: They perhaps want to take it from the typed version of that which your Ladyship will have at H(A)59/110.005.

Does your Ladyship have them?

MRS JUSTICE GLOSTER: I'm just getting it.

Okay, what's the reference to the typed page?

MR RABINOWITZ: H(A)59/110.005 is where they start.

MRS JUSTICE GLOSTER: Thank you. Yes, I have them now.

MR RABINOWITZ: I was making points addressed to the three particular features which point to the Curtis notes being authentic, and the first point in terms of significance is how uncannily accurate the Curtis notes

are. In particular, as your Ladyship sees, the Curtis notes record that Rusal was at that time owned by six BVI companies, each of which were bearer share companies owned 50/50 by Mr Abramovich and Mr Deripaska.

Your Ladyship, I think, has that on page 006, H(A)59/110.006, card two, side three.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: This information we submit -- well, there's no doubt that this information was information which Mr Tenenbaum had, but it's also information which Mr Curtis would not have had. My Lady, no credible explanation has been advanced by Mr Abramovich for how else Mr Curtis might have acquired this knowledge, if not from Mr Tenenbaum at this meeting.

Some attempt has been made to suggest that Mr Fomichev might have provided this information to Mr Curtis, as your Ladyship may recall, but there are three points which might be made about this and they are these. First, that there is no proper explanation for how Mr Fomichev would himself have acquired this information. Secondly, that there is no document or other corroborative evidence which gives any reason to believe that this is what occurred. Third, Mr Abramovich chose not to call Mr Fomichev, and so the court may infer that this is not the evidence which

Mr Fomichev could truthfully have given.

Now, I should also refer to card two, side four as well as card two, side three. Your Ladyship sees the first line of card two, side four:

"T -- Problem -- shareholders of R.A -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 NOT RA."

Your Ladyship may also have picked up the suggestion, this is at paragraph 440, sub-paragraph 5 of Mr Abramovich's written closing, that Mr Fomichev or Mr Curtis might have learnt about the structure of the holdings in Rusal in two particular ways, either because it was said the \$1.3 billion payment to Devonian had been structured through dividend payments from Mr Abramovich's aluminium interests, or because of a letter dated 8 August 2003 which confirmed the source of funds for payments from Espat, and your Ladyship may recall those letters.

My Lady, when your Ladyship comes to consider this issue I would invite your Ladyship to follow up the references given by my learned friends in support of that submission because I would submit that it is perfectly clear that neither Mr Fomichev nor Mr Curtis could possibly have learnt of the information in that way.

The first reference that is given by my learned friends is to the evidence of Ms Panchenko, at paragraphs 84 to 92 and 97 of her witness statement. But when your Ladyship looks at that, your Ladyship will see that those paragraphs refer to the \$1.3 billion payment coming from Rual Trade Limited, which Ms Panchenko describes as the trading company of the Rusal group, and in these paragraphs Ms Panchenko explains that Mr Abramovich held his interests in Rusal through Madison, and that Pax was designated to become a shareholder in Madison in order to receive dividends.

In other words, my Lady, there is no information provided here that would have enabled Mr Fomichev to know about the use of various shares, nor as to the fact that the holding companies were held on a 50/50 basis between Mr Abramovich and Mr Deripaska, which are the two features of the Curtis notes which we've identified as containing information not otherwise available to Mr Curtis.

The second bit of evidence referred to here by my learned friends is the letter from Mr De Cort and Mr Curtis dated 8 August 2003 which, for my Lady's note, is to be found at H(A)62/26.

Your Ladyship may recall that that letter --

MRS JUSTICE GLOSTER: Just a second, I'm just trying to find

that in your closing.

MR RABINOWITZ: I think it's dealt with in the Rusal section, my Lady, so presumably under section --

MRS JUSTICE GLOSTER: Is this at 1326, round there, 1327?

MR RABINOWITZ: My Lady, this won't be dealt with in this way in our closing because, although it appears in the written closing, I'm not sure we had time to deal with it in detail.

MRS JUSTICE GLOSTER: Right, just a second.

Okay, thank you.

MR RABINOWITZ: So, my Lady, the second bit of evidence referred to here by my learned friends, as I say, is the letter from Mr De Cort to Curtis & Co dated 8 August 2003 which, for your note, is at H(A)62, page 26 H(A)62/26.

What your Ladyship will see from that letter is that it states that Bluewater holds 50,000 shares of Espot Ventures Limited. It says that Espot has a 100 per cent subsidiary, Madison Equities Corporation. And it says that Madison has a 50 per cent shareholding in Rual Trade Limited, but that is all. And again, there is no information provided in that letter as to the use of bearer shares, nor as to the fact that the holding companies were held on a 50/50 basis between Mr Abramovich and Mr Deripaska. So the suggestions by

my learned friends really go nowhere.

But of course, as your Ladyship may recall, it's not just the way in which the Rusal shares were held that would have been known to Mr Tenenbaum and not the other people at this meeting. Just looking at the Curtis notes, if your Ladyship still has it, your Ladyship will see, at the bottom of page 006 going on to 007, if your Ladyship has that --

MRS JUSTICE GLOSTER: I have that.

MR RABINOWITZ: Your Ladyship sees there the statements by Mr Tenenbaum recorded in the Curtis notes that Mr Abramovich's team had made disclosures in the market, and if your Ladyship goes over the page you'll see that it's to banks and insurance companies about the way in which interests were held in Rusal. What is striking about that, my Lady, is that your Ladyship will recall that an almost identical statement was made by Ms Panchenko to Mr Streshinsky in June 2004 after Mr Curtis's death.

If your Ladyship has H(A)76, page 51T H(A)76/51T, and your Ladyship will recall cross-examination about this:

"As we discussed on the telephone, in order to abide by the assurances to the banks that you made previously..."

So again, one has this point about things that have been said to banks which prevent dealing with Rusal in a particular way.

Now, again, Mr Tenenbaum plainly would have known about what had been said to banks about Rusal, but no one else at that meeting would have known about that. Certainly it's difficult to see how Mr Curtis could have known about that or even Mr Fomichev. And that, in our respectful submission, again reinforces the authenticity of the Curtis notes because there is no way Mr Curtis could have known about this point, about what had been disclosed to banks.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, the next feature of the Curtis notes in terms of significance, or in terms of, we submit, showing that they are authentic, is what we would submit is the obvious falsity of Mr Tenenbaum's alternative explanation for what was discussed at the Georgia meeting.

As your Ladyship will recall, Mr Tenenbaum's evidence was that the meeting in Georgia was actually to discuss the possibility of investing in a Brazilian football club.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But again, as your Ladyship may recall from

the cross-examination, the difficulty with that is that this meeting predated Mr Patarkatsishvili's interest in Brazilian football by almost a year which makes Mr Tenenbaum's suggestion simply impossible.

Now, Mr Sumption in his closing speech, and this was at Day 40, page 53, sought to cast doubt on the suggestion that Mr Patarkatsishvili's first connection with Brazilian football was nearly a year later. But with respect to him, there really was no evidential basis at all for the submission that he was making. And the fact -- and I say that because the fact that Mr Patarkatsishvili's first contact with Brazilian football was only a year later is something that is recorded in an official document produced in Brazil, commencing proceedings there, page 5 of that note.

I think we've dealt with this in our written closing, my Lady, at paragraph 1329.

That document, the official Brazilian document, at H(G)28, page 218 H(G)28/218, records that the introduction of Kia Joorabchian to representatives of Corinthians Football Club was in a meeting in Sao Paulo in mid-2004. And on page 6 of that document H(G)28/6 it is explained that thereafter in August 2004, Joorabchian and the Corinthians men travelled to London in what was described as the first of their trips to

England. And it was there that they met Mr Berezovsky, that's to say in August 2004, and then after that they travelled with him to Georgia where they were introduced to Mr Patarkatsishvili.

So there is, in my respectful submission, no real doubt as to the timing of Mr Patarkatsishvili's involvement in Brazilian football.

In addition, my Lady, and this is a point that we note at paragraph 1329, subparagraph 3 of our written closing, there's not a single document which anyone has been able to produce, including the family defendants who would have had to make disclosure of this, which shows any earlier contact by Mr Patarkatsishvili with Brazilian football. This further cements the conclusion that at the time Mr Tenenbaum went to Georgia, Mr Patarkatsishvili was still nearly a year off anything to do with Brazilian football.

Now added to that, as your Ladyship will recall, Mr Tenenbaum in his cross-examination, in what I would respectfully submit was a rare example of him being honest about the position, in fact accepted that in 2003, Brazilian football was still a twinkle in Mr Patarkatsishvili's eye. That was at Day 28, page 118, line 5.

So as I say, my Lady, there really is no basis for

the suggestion by Mr Sumption of some earlier contact in 2003 by Mr Patarkatsishvili with Brazilian football, which again suggests, as I've submitted, that Mr Tenenbaum's story is untrue.

Finally, as regards the Curtis notes and the authenticity issue, we also rely on the weak attempt by Mr Tenenbaum in his written evidence to seek to put forward a variety of reasons why the meeting could not have taken place as recorded by Mr Curtis; an attempt which I submit was further weakened by the obvious untruths in Mr Tenenbaum's witness statement on the strike-out application where, as your Ladyship may recall, he had claimed to have not performed any direct role in relation to the acquisition or establishment of either Rusal or Sibneft. Your Ladyship will recall that.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: You also I think have there, paragraph 1333 and following of our written closing --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: -- where we identify in how many respects we submit Mr Tenenbaum's evidence in his strike-out application evidence was obviously untrue.

At trial Mr Tenenbaum in fact had to accept that, contrary to the impression he had tried to convey in his

evidence to the court in the context of the strike-out application, he was involved in the original aluminium acquisitions, he was involved in drafting and indeed initialling every page of both the 15 March 2000 share purchase sale agreement, and the 15 May 2000 version, and he was involved in the shareholders agreement between Mr Abramovich and Mr Deripaska, and indeed he was involved in the proposals from May 2003 onwards to restructure Rusal.

My Lady may also recall from the evidence Mr Tenenbaum's pious assertion that he would not discuss Mr Abramovich's matters in front of people he did not know, a point I would submit that was also shown to be of no significance given that he was at the meeting in the place of Mr Abramovich who had been invited but could not attend, and that he had in fact met both Mr Patarkatsishvili and Mr Fomichev previously, and that Mr Curtis was there as Mr Patarkatsishvili's lawyer and was in any event a person well known to both Mr Abramovich and Mr Shvidler, each of whom had had previous dealings with Mr Curtis.

Finally, of course, there was the bogus suggestion of a language barrier, which was really the primary suggestion when the trial started, some language barrier which it was suggested meant that one couldn't -- that

the Curtis notes couldn't be authentic. My Lady, that was a suggestion that rather collapsed once it became clear that everyone who spoke at the meeting in fact spoke English.

We therefore submit that there is no basis for the contention that the Curtis notes are anything other than genuine. That being the case, my Lady, we submit that they really do provide another very substantial hurdle to the attempt by Mr Abramovich to deny that the effect of the 1995 agreement was to make Mr Patarkatsishvili and Mr Berezovsky and himself partners in Sibneft.

Now, I wasn't going to say anything else about the Curtis notes in relation to Sibneft. I'm going to come back to them in relation to Rusal.

MRS JUSTICE GLOSTER: Yes, fine.

MR RABINOWITZ: That was the second area of evidence that I would wish to emphasise.

The third matter that I would wish to emphasise in the context of your Ladyship's consideration of what was agreed in 1995 is the nature of the relationship between Mr Abramovich and Mr Berezovsky. Again, for your Ladyship's note, this is something we deal with I think beginning at page 247 of our written closing, paragraph 376 and onwards, 247 of volume 1.

My Lady, the fact that Mr Abramovich and

Mr Berezovsky were indeed friends was something that was well evidenced at trial and, indeed not seriously disputed by Mr Abramovich's counsel in closing. You will recall the extensive evidence of Mr Berezovsky and Mr Abramovich holidaying together and the close friendship of their families, not to mention Mr Abramovich's admission in paragraph D4 of his defence that he and Mr Berezovsky were indeed friends.

In our submission, such evidence is very much more -- such evidence which points to the friendship between these men is very much more consistent with there having been a partnership relationship between them than it is with the sort of relationship between them that Mr Abramovich suggests, which is a relationship of protector and protectee.

My Lady, I would submit that this, the fact that they were friends was damaging to Mr Abramovich's case, was a point well understood by Mr Abramovich which is why, in his witness statement, he made a tentative attempt to claim that he and Mr Berezovsky had never really been friends. Your Ladyship will recall him being cross-examined on this.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But by the end of his evidence that suggestion again had really rather disappeared and, in

my submission, the suggestion was always a rather hopeless one.

My Lady, the fourth aspect of the evidence that we would submit is strongly supportive of Mr Berezovsky's case, and contrary to that of Mr Abramovich, is the fact that, as again became clear from the evidence, the work of Mr Berezovsky and Mr Patarkatsishvili in 1995 went well beyond the provision of mere political lobbying or protection which is, of course, what Mr Abramovich claims the agreement was about. He says that was the only contribution that Mr Berezovsky was to make for which he'd be provided with a fee.

Again, my Lady, just so that the point is clear, what Mr Abramovich says was agreed is that Mr Berezovsky would lobby and provide krysha. Now, if the facts show that what Mr Berezovsky did went well beyond just lobbying; if, as I submit, the facts show that Mr Berezovsky was involved in funding or in seeking to fund the bid, and indeed in seeking to ensure that the bid succeeded, that, in our respectful submission, is again entirely consistent with what Mr Berezovsky says had been agreed but it is not consistent with what Mr Abramovich says had been agreed. In our respectful submission, the evidence does show that Mr Berezovsky's contribution went well beyond just lobbying.

Your Ladyship may recall, for example, the evidence relating to the role Mr Berezovsky played in securing funding for the Sibneft bid. The evidence went to that point in three different ways. Your Ladyship will recall first the evidence showed that Mr Berezovsky was actually vital in securing the support of the management of the Noyabrskneftegas and Omsk Oil Refinery, which was key for funding, and your Ladyship sees the evidence on this set out at paragraphs 313 and 314 of our written closing, that's at pages 208 onto 212 of volume 1.

Indeed, we also set out at paragraphs 321 and following the evidence of Mr Abramovich which explained how the 1995 auction was financed on the strength of long-term guaranteed oil supply contracts granted by the companies(?). The point being this: without -- Mr Abramovich acknowledged that without Mr Berezovsky, he would not have got the cooperation of the management of Noyabrskneftegas and Omsk Oil Refinery which was absolutely critical for the purposes of financing the acquisition.

The second way in which Mr Berezovsky was involved in funding was, as your Ladyship will recall from the evidence, he introduced Mr Abramovich to SBS Bank, and indeed gave Mr Smolensky a personal assurance, something that was, as Mr Smolensky told the Russian

investigators, a necessary part of Mr Smolensky and thus SBS's willingness to become involved in the deal. Your Ladyship has that evidence set out at paragraphs 201 to 208 of our written closing, that's at pages 146 to 149. It is also dealt with at paragraphs 325 to 327 of the written closing. The earlier paragraphs deal with the evidence of Mr Smolensky to the Russian investigators and the later paragraphs deal with the evidence of Mr Abramovich and Mr Grigoriev relating to SBS's involvement in the Sibneft auction.

My Lady, the third particular way in which Mr Berezovsky was important in raising funding for the Sibneft auction was in his persuasion of Mr Khodorkovsky of Bank Menatep that he should risk Bank Menatep's own funds. This is at paragraph 328 of our closing, page 221. He was the one who persuaded Mr Khodorkovsky of Bank Menatep that he should risk Bank Menatep's own funds in two ways. First, by providing a necessary back-to-back guarantee for SBS's bank guarantee of the NFK bid and, second, by lodging its own bid with its own deposit and its own guarantee in the Sibneft auction which would ensure that the 1995 auction was formally valid.

My Lady, there is another example of Mr Berezovsky being involved in funding which undermines

Mr Abramovich's case, and it is this, because it wasn't just those three ways which were in fact successful attempts by Mr Berezovsky to assist with the funding, there was also Mr Berezovsky and Mr Patarkatsishvili's involvement in seeking funding which was not successful. But the mere fact that they were involved in that again is a point against Mr Abramovich, because why would they be involved in this on Mr Abramovich's case? They wouldn't be involved in this at all.

The evidence I have in mind, my Lady, is for example Mr Berezovsky's unsuccessful attempt to raise funds from Mr Soros, for which Runicom prepared a package of documents. For your Ladyship's note, the package of documents prepared, so that Mr Berezovsky could see if he could go and get funds from Mr Soros, is at H(A)02, page 194 H(A)02/194.

But it isn't only just in relation to funding where Mr Berezovsky was involved in a way which is inconsistent with Mr Abramovich's case. There was other work that Mr Berezovsky and his team did with regard to the bid which suggests that his role plainly did go beyond lobbying, and your Ladyship -- and indeed beyond even Mr Abramovich's elastic description of krysha. Your Ladyship will recall, for example, the evidence that Dr Nosova was involved in going through the bid

documents, and he was the one, I think the evidence did show, who discovered the flaw in Inkombank's bid for the 1995 auction. We set that out in I think paragraph 339 of our written closing, page 225.

So there is Dr Nosova becoming involved in reviewing the documentation and indeed being instrumental certainly in the elimination of Inkombank, and also there is Mr Patarkatsishvili flying to Sameko to persuade them not to lodge their own rival bid. Both, I would submit, activities not consistent with Mr Abramovich's case about krysha but entirely consistent with what Mr Berezovsky says was agreed, namely that there was to be a partnership and they would both work towards this.

My Lady, that was the fourth aspect of the evidence in relation to the 1995 agreement to which I would draw your attention. The fifth aspect of the evidence that I would emphasise as strongly supportive of Mr Berezovsky's case is the large number of people who believed, based on their contemporaneous involvement with the parties, that Mr Berezovsky and Mr Patarkatsishvili did indeed have an interest in Sibneft. Now, of course, it may be said that they were wrong, but the fact that they did believe this, in our respectful submission, is a strong pointer towards this,

namely that Mr Berezovsky and Mr Patarkatsishvili did have an interest, being true.

Just going through the list of people who did so understand, first and foremost of course is Mr Berezovsky himself.

MRS JUSTICE GLOSTER: Where do I find this? Have you set this out somewhere or not? It doesn't matter if you haven't but, if you have, I'll just make a note.

MR RABINOWITZ: I think this is largely responsive, my Lady. This is very likely spread around the --

MRS JUSTICE GLOSTER: Okay, don't worry. I'll just make a different --

MR RABINOWITZ: Insofar as I can give your Ladyship I will. I tend to have the references --

MRS JUSTICE GLOSTER: It's no problem. It's just if you have dealt with it somewhere, I'll go there.

MR RABINOWITZ: No, I will give your Ladyship it if I get to one.

So first and foremost among the people who believe Mr Berezovsky and indeed Mr Patarkashivili had an interest in Sibneft is Mr Berezovsky himself.

Now, your Ladyship will recall that, at paragraph 61 of Mr Abramovich's written closing, there is, we say, in fact a concession that Mr Berezovsky may have believed that Sibneft was his company. Your Ladyship will also

recall that Mr Sumption, in his closing speech -- this is at Day 39, page 76 -- sought to suggest that this was not a concession. In our respectful submission, it's difficult to see what else it could be. It does actually say, "Mr Berezovsky may have believed that Sibneft was his company".

In any event, my Lady, the fact that Mr Berezovsky plainly did and indeed does believe that he acquired a stake in Sibneft in 1995 was, in any event, clear from the evidence, which is of course why Mr Sumption, at paragraph 61, was led to acknowledge that Mr Berezovsky may have believed this.

It wasn't just Mr Berezovsky who believed he had an interest in Sibneft as a result of the 1995 agreement, Mr Abramovich in his written closing also accepts that Mr Patarkatsishvili was also, and the word he uses was "likely" to have believed that he and Mr Berezovsky did have an interest which they sold in 2001. That, for my Lady's note, is at paragraph 61.3 of my learned friends' written closing. So it's not just a concession relating to Mr Berezovsky maybe believing this but saying that Mr Patarkatsishvili is likely to have believed this. Again, I would submit that the concession was rightly made, given that the Patarkatsishvili -- the Badri proofing sessions and in particular his evidence given

to Ms Duncan and Mr McKim reflects this, as does their overall impression of his evidence.

Now, of course consistently with this, your Ladyship will recall that Mr Patarkatsishvili's widow and family have, in other proceedings, given evidence that Mr Patarkatsishvili had owned stakes in Sibneft and in Rusal, as indeed in other proceedings did Mr Fomichev, the individual who of course managed the finances for both men. For that, your Ladyship does have a reference in the written opening rather than the closing. In our written opening, that is set out at paragraphs 246 to 256, page 131 and following; there's a cross-reference to this, my Lady, at paragraph 386.4 of our written closing at page 253. We give the reference to the evidence given in those proceedings by Mr Patarkatsishvili's widow and family and indeed to Mr Fomichev's evidence.

We also give the reference in our written opening -- this is at paragraph 270 to 272 -- to the affidavits of Mr Fomichev and Mr Kay confirming their belief that Mr Berezovsky and Mr Patarkatsishvili owned a very substantial percentage of Sibneft. That's at page 145 of our written opening.

In addition to Mr Berezovsky and Mr Patarkatsishvili so believing, and indeed to Mr Patarkatsishvili's family

so believing and Mr Fomichev and Mr Kay as well, there are also, as your Ladyship may recall, the various Russian businessmen with whom Mr Berezovsky and Mr Patarkatsishvili had dealings in relation to Sibneft who seem uniformly to have taken the view that Mr Berezovsky was at least a part-owner in Sibneft. There was, for example, Mr Smolensky who thought that Mr Abramovich was, to use his words, playing a supporting role compared to Mr Berezovsky. That, as your Ladyship will recall, is what he told the Russian investigators.

There was also Mr Viktor Gorodilov who, again, in evidence he gave to the Russian investigators, told them that he considered Abramovich and Berezovsky to be the actual owners of Sibneft. Again, that was, your Ladyship will recall, the documents which we obtained from the French proceedings which related to interviews conducted with the Russian authorities. Again, we've given a reference to Mr Gorodilov's evidence at paragraph 386.4 of our written closing, that's at page 254. If your Ladyship is there, your Ladyship may want to note that it is set out and dealt with more fully in our written opening at paragraphs 258 and 259, page 139.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then there was Mr Nevzlin who told the court that he had had many discussions with Mr Abramovich and Mr Shvidler in which they both said not only that Mr Berezovsky had an interest in Sibneft but that he had the last word when it came to taking decisions for the company. That was paragraph 23 of his statement which, for my Lady's note, is at D1, tab 4, page 64. If your Ladyship also notes paragraph 20 of his statement, Mr Nevzlin explains what he meant by "interest" when he said that Mr Khodorkovsky had told him that Mr Berezovsky and Mr Patarkatsishvili had a 50 per cent stake in Sibneft. So that's Mr Nevzlin who believed it.

There is also, of course, Mr Reuben who, when he sold aluminium assets, explained to my Lady that he thought he was selling to Sibneft shareholders, by which he meant, as he explained, Mr Patarkatsishvili, Mr Berezovsky and Mr Abramovich. That is covered, for my Lady's note, in our closing submission at paragraphs 1120 to 1122, volume 2, page 643.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then there was Mr Anisimov. We say, as my Lady knows, that Mr Anisimov regarded Mr Berezovsky and Mr Patarkatsishvili as owners of Sibneft. As your Ladyship may recall, we say this is clear in particular from Mr Moss's attendance note of 5 June 2001. Your

Ladyship may recall that, it's at H(A)35, page 161 H(A)35/161. It's Mr Moss's attendance note where he went to, I think it was Baden Baden, and went through the Devonia agreement with Mr Anisimov sitting there, the Devonia agreement of course recording that Mr Patarkatsishvili and Mr Berezovsky had an interest in Sibneft. We've dealt with that at paragraphs 952 to 956 of our written closing. I don't know whether your Ladyship wants to turn the document up but it is, I think -- what we say about it is set out in our written closing.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Of course, it's right to acknowledge, as your Ladyship may recall, that Mr Anisimov pleads a combination of ignorance and amnesia in relation to his interaction with Mr Moss and the Devonia agreement but, in our submission, it's difficult to see how one can give much weight to his evidence, and no one suggests that Mr Moss made up his attendance note. This is then a further example of a Russian businessman in fact believing that Mr Patarkatsishvili and Mr Berezovsky did have a stake in Sibneft in 2001.

So, my Lady, that is the point about everyone they come into contact with thinking they have an interest in Sibneft and that was the fifth aspect of the evidence

that I wanted to stress.

The sixth aspect of the evidence that I would wish to stress is this, and that is again the question of the payments made by Mr Abramovich to Mr Berezovsky and Mr Patarkatsishvili because, in our submission, these payments clearly support Mr Berezovsky's partnership case rather than Mr Abramovich's krysha case. The points on this your Ladyship is aware of and they can therefore be shortly stated, and I repeat them only because of their significance.

The first point to make about the payments is that the payments made by Mr Abramovich to Mr Berezovsky were clearly not correlated with any activity of Mr Berezovsky.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will recall that the payments increased over time, a fact which is utterly inconsistent with the krysha allegation. The reason I say it's inconsistent with the krysha allegation is because Mr Abramovich could not name a single act of krysha provided by Mr Berezovsky after 1995. Notwithstanding that, we have an increase in the level of payments. By contrast, of course, the payments were correlated with profits made by Mr Abramovich from his control of Sibneft, as would be expected from

a partnership arrangement. That is the first point.

Secondly, and this is obviously a closely connected issue, there is again the \$1.3 billion payment and that is the overarching point I referred to when I began my closing submissions. As my Lady is aware, you are faced with two alternative explanations for that \$1.3 billion payment. On the one hand, Mr Berezovsky says that he and Mr Patarkatsishvili sold their shares in Sibneft for \$1.3 billion in 2001; I would submit that that is an obviously plausible story. On the other hand, by contrast, Mr Abramovich has come up with a range of explanations for why, when in a position of great power and influence in Russia, he should pay \$1.3 billion to a political exile and enemy of the Russian president in order to terminate a nonbinding agreement.

Your Ladyship has this dealt with and analysed at paragraphs 914, that's page 545 of volume 2, so it's 914 and following. We set out a summary and an analysis of the various explanations which Mr Abramovich came up with from time to time. I would submit that those explanations range from the utterly bizarre, such as the fear that Mr Berezovsky might bounce back because he previously had recovered from Hepatitis C, as providing a reason for a payment at that level, to the wholly implausible, such as that Mr Abramovich paid

\$1.3 billion to Mr Berezovsky out of loyalty and respect. My Lady, \$1.3 billion is, in anyone's language, a huge sum and that is so even before any account is taken of the 25 per cent further top-up payment which Mr Abramovich says he agreed to make when he paid a further \$375 million in June 2002.

Leaving aside that by June 2001 Mr Berezovsky had been in exile for many months and leaving aside the fact that he had provided no services in relation to Mr Abramovich in respect of Sibneft for many years, it is, we submit, quite inconceivable that Mr Abramovich would have thought that he had to agree to pay \$1.3 billion to terminate an arrangement that he had with Mr Berezovsky. In fact, we would submit that the suggestion is, with respect, absurd.

Your Ladyship will have in mind that this was something like double the total amount that, on anyone's case, Mr Abramovich had ever previously paid to Mr Berezovsky. Indeed, according to evidence that Mr Shvidler was happy to give in one of his witness statements, this was an amount which Mr Shvidler in his evidence was claiming was equal to the whole value of Sibneft at that time. I would submit that that evidence was utter nonsense, but this is what Mr Shvidler was happy to say. That was at paragraph 203 of his third

witness statement, E3, tab 10, page 58 E3/10/58.

Even assuming that Mr Abramovich is a generous man, and he may well be, but even assuming that he is a generous man this would have been the most remarkable act of largesse on his part, under which the sum bore no relation to the amount initially contemplated as payable, or the services then being provided, which of course were zero, or even the amount paid to Mr Berezovsky when his powers were at their zenith, all of which was being paid to a man who, according to Mr Abramovich, was not someone he was even close to and for whom, according to Mr Abramovich in another part of his evidence, he had lost respect given the manner in which Mr Berezovsky had dealt with the Kursk incident in the summer of 2000, that is just a few months earlier.

My Lady, the truth is this was not an act of largesse on Mr Abramovich's part at all because the payment was not made in relation to the agreement falsely asserted by Mr Abramovich. The payment made was made to acquire Mr Berezovsky's and Mr Patarkatsishvili's ownership interests in Sibneft, and that of course explains the otherwise inexplicable size of the payment.

I will return in due course to why Mr Abramovich's case on Rusal, which also requires him to assert

unbelievable largesse on his part in agreeing to pay Mr Patarkatsishvili \$575 million, should also be rejected.

In our respectful submission, if your Ladyship is with us in relation to whose explanation for the \$1.3 billion is more likely, that I would suggest goes a long way towards assisting your Ladyship with the resolution of this issue.

My Lady, the seventh matter to which I would refer, in the context of seeking to determine whether it is Mr Berezovsky or Mr Abramovich's version of the 1995 agreement that is to be preferred, is in fact the krysha allegation itself. Now again we've dealt with this, for your Ladyship's note, at page 236, volume 1. Page 236 at paragraph 367 and following.

There are just two further observations I would wish to make about the krysha allegation. The first observation is this: as your Ladyship is aware, the case that is put forward by Mr Abramovich in effect involves the suggestion of there being an either/or choice between there being a krysha relationship between Mr Berezovsky and Mr Abramovich on the one hand, whatever that means, and there being, on the other hand, a partnership between them in relation to Sibneft. What is perhaps somewhat unclear, my Lady, is whether this

notion of there having to be a dichotomy between these two choices -- sorry, is where this notion of there having to be a dichotomy between these two choices comes from.

In other words even assuming, contrary to what I would suggest is all the evidence, that Mr Abramovich and Mr Berezovsky were not friends and that, rather, the nature of the relationship had its roots in Mr Berezovsky providing political cover for Mr Abramovich, in other words even assuming that the nature of his contribution, and the relationship, was to do with him providing political cover and lobbying, why, your Ladyship may ask, does it follow from this that the parties could not have agreed that in return for Mr Berezovsky's assistance in this regard they were to be partners, that is to say that Mr Berezovsky would have a share in Sibneft?

What is it that suggests that even if Mr Abramovich's evidence is right about what it was that Mr Berezovsky was to provide, why does it follow from that that the only agreement that could have been made was one which involved Mr Abramovich paying Mr Berezovsky cash?

The answer to this, my Lady, is that there is little or no evidence for this at all. The point about this is

that even if your Ladyship does accept what we would submit is this untrue case about krysha, that really is nothing more than a red herring because it begs the real question, which is as to what the parties agreed, in August 1995, Mr Berezovsky would be entitled to for working with Mr Abramovich in relation to the creation and acquisition of Sibneft.

The second point about the krysha concept that I would wish to make a comment on is this, and it arises in the context of Mr Sumption in his oral closing seeking to offer your Ladyship some sort of better explanation for why Mr Abramovich would have been willing to pay Mr Berezovsky and Mr Patarkatsishvili \$1.3 billion in mid-2001 at a time when Mr Berezovsky was in exile and without any influence. What your Ladyship may recall is that Mr Sumption suggested in the course of his closing that a krysha relationship, he said, is a relationship of honour which he said:

"... cannot be broken without serious repercussions. And it is not terminable at will but by agreement and at a price."

That is the assertion he made at Day 39, page 22.

But as your Ladyship will appreciate, other than the suggestion that this was the case made by Mr Abramovich himself, who as we have observed sought to make krysha

mean whatever at any particular point in time he needed it to mean for the purposes of his case, there is again simply no evidence whatever to support this suggestion.

We would submit that it is in fact a fanciful -- I'm so sorry. We would submit that it is a fairly unreal suggestion, and I say that first because it suggests that there are somewhere some rules about termination, just as one would have of a legal obligation, that are said to govern this relationship which we are told is a relationship of honour.

Secondly, because it suggests that these rules require an agreement and a price, both of course legal concepts, or concepts generally associated with legal agreements, and not generally associated with a relationship of honour, which is how Mr Sumption described it, in order to terminate a nonlegal relationship.

The third reason we submit that this is a faintly unreal suggestion is because it appears to presuppose, as Mr Abramovich must make it do if it is to make sense to his argument, that the obligation to make payments and the need to terminate the arrangement by making a huge termination payment can carry on even at a time when nothing at all has been done in relation to that arrangement for many years to warrant any payment at all

having been made. In other words, it involves the suggestion that even though the krysha relationship, which is Mr Abramovich's case, was set up for the purposes of creating Sibneft, and even though Mr Berezovsky had done nothing for many years before this, he had to make a payment of 1.3 billion to terminate an arrangement which was in effect, in a sense, frustrated because Mr Berezovsky plainly was not in any position to do anything at all.

My Lady, we submit that it is very unlikely to be the case that there were any such rules of the sort that Mr Abramovich needs to assert in order to make sense of his case.

So for these reasons, as well as for the other reasons we develop in our written closing, we respectfully submit that your Ladyship should conclude that it is Mr Berezovsky's case about the 1995 agreement that is to be accepted.

My Lady, before I leave this topic, I do, I think, need to deal with four observations that Mr Sumption made in his closing speech in an attempt to meet the case advanced by Mr Berezovsky about the nature and content of the 1995 agreement. The four observations Mr Sumption made were, first, related to the question of the timing of the 1995 agreement; secondly, the question

of Mr Berezovsky's involvement in the 1996 auctions; third, the question of the correlation between payments and profits; and fourth, the question of the purposes of the 1995 agreement.

My Lady, so far as concerns Mr Sumption's point on timing, Mr Sumption told your Ladyship, this is at Day 39, page 26, that, so he said:

"... the agreement was made at a stage when it is most unlikely to have been in the terms alleged by Mr Berezovsky."

The point that we understood Mr Sumption to have been seeking to make is that if the agreement, including as to remuneration, was made in February 2005 -- sorry, 1995, which is Mr Abramovich's case, then that would have been made at a time before Sibneft was included as a loans-for-shares company. So it is unlikely that there could have been any discussion about a partnership in relation to the acquisition of Sibneft. That seemed to be his point.

But of course, my Lady, there is a dispute about when in fact this agreement was made and concluded. As your Ladyship may recall, contrary to Mr Abramovich's case, Mr Berezovsky's evidence was that in fact it was only in July or August that it was agreed that they would each be -- what they would each be entitled to in

connection with the arrangement that was being made. Indeed, your Ladyship may recall the cross-examination of Mr Abramovich in relation to the August date, he having started off saying that the agreement was made very much earlier, and eventually accepting that the agreement indeed was still in the process of being formed all the way up to August 1995.

In any event, my Lady, the essence of the dispute about timing between the parties is therefore this. Mr Berezovsky's case is that the three men were partners and that they agreed the partnership in July or August 1995, after working together for many months, and that is when they agreed that they would split their interests in Sibneft 50/50. By contrast, Mr Abramovich says that as early as February 1995 a deal was reached between the parties under which Mr Abramovich in effect agreed that, in return for Mr Berezovsky's assistance, he would agree to pay Mr Berezovsky in effect unlimited sums depending entirely on Mr Berezovsky's demands, but in any event, just looking at that first year, a payment of 30 million, or 75 per cent of Mr Abramovich's entire profits in the previous year.

Now that is the issue for your Ladyship, and I would submit that whilst Mr Berezovsky's case on the timing has the ring of truth to it, Mr Abramovich's case is

really rather bizarre. And I say that because it would, I submit, be truly odd for Mr Abramovich to have reached an agreement of the sort that he suggests with a man that at the time he barely knew, with whom he had never worked, at a time when the value of Mr Berezovsky's future contribution was wholly unknown, under which he was willing to pay him whatever Mr Berezovsky might in the future demand.

For your Ladyship's note on that, the reason I say that that is the agreement that Mr Abramovich is saying he was willing to make is this: his evidence is that in the first year, he says Berezovsky indicated he would require approximately \$30 million per year for ORT and his personal expenses. That's what he says at paragraph 56. But he says of subsequent years:

"... I was expected to continue to meet whatever payment demands he made."

In other words, you ask and I have to pay. That's paragraph 70 of his third witness statement E1/03/55.

Just for your note, my Lady, the reason I say he was -- on Mr Abramovich's case, he was agreeing to pay 75 per cent of his entire profits in the previous year, he made \$40 million total from the oil business in 1994, that is Day 16, pages 155 and 156, and I think it also reflects what he says in his third witness statement at

paragraph 56.

My Lady, just moving on to the second of Mr Sumption's observations. The second observation that Mr Sumption made in relation to the 1995 agreement was to point to what he said was the complete lack of interest of Mr Berezovsky in the subsequent cash auctions, that is the 1996 auction, and to suggest that, in his words, "Mr Berezovsky contributed zero" to those auctions. For your Ladyship's note, that was at Day 39, page 35.

My Lady, that might perhaps have been a point of at least some substance had the position been that it was Mr Abramovich himself who had contributed all or even most of the funding for the purposes of the 1996 auction. But of course that was not the case at all.

As we've set out in Mr Berezovsky's written closing, this is between paragraphs 350 to 353, volume 1, page 213, as we set out there, based on the evidence of Mr Abramovich's own witnesses, in fact just \$1.5 million of the sums paid in the 1996 auctions came from Mr Abramovich. All the remainder, that is to say some \$132.5 million, 98.9 per cent of the funds used in fact came from SBS loans, secured by guarantees of Sibneft companies, or from within Sibneft itself. And neither SBS's involvement, nor the assistance of

Noyabrskneftegas and Omsk Oil Refinery, could have been obtained without the efforts of Mr Berezovsky in 1995.

In other words, my Lady, in terms of the contribution to the funding for the 1996 auctions, if anything it was Mr Berezovsky's contribution that was very much more significant than that of Mr Abramovich.

While it is true that Mr Berezovsky was not involved in the process of these cash auctions, this was for very good reason. As Mr Berezovsky told your Ladyship, he had left Mr Abramovich to manage Sibneft, and that didn't just mean running Sibneft itself but also managing the partners' interests in Sibneft. So once again, my Lady, we submit that there really is nothing in Mr Sumption's second point.

MRS JUSTICE GLOSTER: Right. Before you go on to the third point, can you just give me, and I'm not in any way putting pressure on you, just give me an idea of the timetabling, not just of your submissions but also of other counsel, just so I have an indication.

MR RABINOWITZ: My Lady, indeed. At present rate I will finish in a day and a half, so I will finish around lunchtime tomorrow.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Mr Malek has suggested he'll be around --

MRS JUSTICE GLOSTER: Don't feel you're under any pressure

from the court because, as it were, my time is yours.

MR RABINOWITZ: It's very nice of your Ladyship to say so.

Mr Malek has indicated to me he will be half a day, maximum half a day. Mr Adkin I don't know.

MRS JUSTICE GLOSTER: Well, I'll ask Mr Adkin.

Mr Adkin, how long do you --

MR ADKIN: My Lady, about one and a half to two hours.

MRS JUSTICE GLOSTER: So let's say half a day, under.

MR RABINOWITZ: And Ms Davies, I suppose it depends on whether I say anything new, but I'm endeavouring to say as little as possible which is new.

MRS JUSTICE GLOSTER: Ms Davies, can you give me any indication?

MS DAVIES: My Lady, it's very difficult. There are some things that have been said today that I do need to address because they have been put in a new way, but I would anticipate certainly an hour maybe, tops, but we'll have to see as matters progress.

MRS JUSTICE GLOSTER: Yes, very well.

So that would be Thursday. And then any further reply from you on Friday.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: So we're looking at possibly finishing by the end of this week.

MR RABINOWITZ: I think everyone's expectation and hope, my

Lady, is that we will finish this week. It may not be your Ladyship's expectation and hope, but certainly from the discussions that the parties have had we anticipate that your Ladyship will be finished with the submissions by the end of this week.

MRS JUSTICE GLOSTER: Right, thank you. And it's helpful just to know when the court will be available for other court users.

MR RABINOWITZ: Indeed.

MR MUMFORD: My Lady, I should of course say that misses me out.

MRS JUSTICE GLOSTER: I know, I'm very sorry. I'm conscious that I've missed you out.

MR MUMFORD: Rightly so. Unless my Lady wants to hear from me on anything, I wasn't actually proposing to do an oral closing.

MRS JUSTICE GLOSTER: No, thank you. I'm sorry, I didn't mean to miss you out, Mr Mumford.

Very well, I'll sit again at 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MR RABINOWITZ: My Lady, I was dealing with the four observations that Mr Sumption made in relation to the 1995 agreement, I just dealt with the second of those.

The third point made by Mr Sumption in this context related to what he suggested was an absence of any correlation between the payments made to Mr Berezovsky and the profits of Sibneft, is how he put it. But again, my Lady, this is an entirely false point, and that is because it is a point that depends entirely upon Mr Sumption's incorrect assertion that Mr Berezovsky only ever claimed to be entitled to a portion of the profits made by Sibneft.

My Lady, that was never Mr Berezovsky's case, not in his pleadings and not in his evidence. Mr Berezovsky's case was always that the three partners had agreed to share the profits which they made from obtaining ownership and control of Sibneft. And that case plainly extends to profits made by companies owned by Mr Abramovich through Sibneft contracts.

In other words, my Lady, if by virtue of Mr Abramovich obtaining control of Sibneft he generated the profit in, for example, a ZATO, the suggestion that is made appears to be that that was not part of what it was agreed would be shared by way of profits. Any profits that Mr Abramovich would be able to make in another company, it seems to be suggested, was never a profit in which Mr Berezovsky claimed he was entitled to a share.

MRS JUSTICE GLOSTER: Is there any evidence, remind me, of the three partners, or two of them, sitting down together and working out what 100 per cent is of the gross profits and what a third of the gross profits is, or half the gross profits is?

MR RABINOWITZ: My Lady, the closest one gets I think to that is, your Ladyship will recall in the Le Bourget transcript there's the \$900 million where Mr Abramovich appears to be saying, in response to Mr Patarkatsishvili's question "What are we going to be making?" he says "900 million". So that --

MRS JUSTICE GLOSTER: Can you give me the page reference or the box reference for that?

MR RABINOWITZ: It's Le Bourget, it's in E6 --

MRS JUSTICE GLOSTER: I know where the transcript is, but if you could give me the specific reference to that.

Are there any other references in the evidence to the calculation method of what was the 100 per cent of the profits that were being made, and therefore what was the 50 per cent that, as Mr Berezovsky says, was to go to him and Mr Patarkatsishvili?

MR RABINOWITZ: I think, my Lady, there is -- if there is, there is minimal evidence. I don't have it off the top of my head.

MRS JUSTICE GLOSTER: And what's your case as to why that

sort of exercise was never engaged in?

MR RABINOWITZ: We're not saying they were never engaged in.

In fact the evidence was that that was something that Badri would do with Mr Abramovich, indeed possibly with one of Mr Abramovich's people. They would sit down, I think even Mr Abramovich suggested this, they would sit down with a paper which would set out what was owed one way or the other. And Le Bourget is an example of that, because your Ladyship will recollect in Le Bourget they're addressing some document which sets out what it is that is due to go to Mr Patarkatsishvili and Mr Berezovsky. And they're talking about --

MRS JUSTICE GLOSTER: I'd be quite interested to have, apart from the Le Bourget reference, the references to the evidence as to the procedure by which you say the partners or alleged partners went through the business of working out what their profit share was.

MR RABINOWITZ: I will --

MRS JUSTICE GLOSTER: I would quite like them in one place, I'm sure they're in here somewhere.

MR RABINOWITZ: We will put them in a note for your Ladyship and we will collect the references together.

For my Lady's note, just dealing with the point I was making about Le Bourget, it's paragraph 266 of -- our written closing sets out, that's at page 181.

MRS JUSTICE GLOSTER: Yes, thank you.

MR RABINOWITZ: The reason this is, we would respectfully submit, particularly helpful is because the 900 million figure ties in with broadly what it is said by Mr Abramovich he paid over in that year, or at least what is I think also shown in the bolshoi balance to have been paid over in that year, which I think we try to explain at paragraph 266 and the paragraphs that follow. And that does support the 50 per cent split.

Of course, one of the difficulties one has with this is the lack of documentation coming from Mr Abramovich's side. Your Ladyship will recall, some of that appears to have been destroyed following an inspection, I think was the evidence.

MRS JUSTICE GLOSTER: I think I'd like, at paragraph 266 -- perhaps you set it out at 265. This is the evidence about how the calculation was done, is it?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: You said I think a moment ago that there was evidence that Mr Berezovsky's people sat down with -- or Mr Patarkatsishvili's people sat down with Mr Abramovich's people to do the calculation. I'd be quite interested to have the references, if there are any in the evidence.

MR RABINOWITZ: My Lady, we will put something together.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: My Lady, on this profits point,

Mr Sumption's suggestion that one of the problems with our case is there's no correlation between the profits made by Sibneft and what was distributed to Mr Berezovsky. As I've said, that was never our case. This appears to be -- Mr Sumption's suggestion that this was our case appears to be a pleading point.

I can tell your Ladyship that we respectfully submit that that is not a submission which is borne out by the pleadings, and for your Ladyship's note, the relevant pleading is at paragraph C34 and C34B, which is at A1, tab 2, page 11 A1/02/11. And, for example, at paragraph C34B we talk about profits resulting from the joint activity. There certainly was not, and there certainly wasn't intended to be -- I say there wasn't -- any limiting of that to profits generated by Sibneft itself.

Indeed, my Lady, it would in fact have been irrational for Mr Berezovsky and Mr Patarkatsishvili to have agreed that they would receive only a share of Sibneft's profits given that they knew that Mr Abramovich was making -- planning to make the large profits outside of Sibneft by acting as Sibneft's oil trader. For your Ladyship's note again, that was

Mr Abramovich's own evidence that he told Mr Berezovsky about this, that's Abramovich 3, paragraph 53, E1, tab 3, page 48 E1/03/48.

That is why, my Lady, it follows that the true question of correlation is whether payments made to Mr Berezovsky and Mr Patarkatsishvili correlated with 50 per cent of the profits which Mr Abramovich made as a result of his control of Sibneft. My Lady will have seen what we say in this regard at paragraphs 439 to 445 of our written closing where we analyse the limited evidence which there is available on this point, which tends to suggest that there was just such a correlation, but that this can't be proven one way or the other on the evidence just because of the missing documentation.

Now, finally on this point, the point about correlation, Mr Sumption made mention of transfer pricing, claiming that our points on transfer pricing are unsupported by any evidence that we had been able to point to. That was at Day 39, page 52, line 23. That, with respect, was a rather curious submission, and the reason I say it was a rather curious submission is because we do not and never had a transfer pricing point, whether in our written opening or in our written closing or indeed in our witness evidence. We looked rather at the question of how Mr Abramovich made money

out of his control of Sibneft, and we did this solely in order to demonstrate that the sums involved meant that the payments to Mr Berezovsky and Mr Patarkatsishvili could be correlated with those sums.

As we make clear at paragraphs 439 to 442 of our written closing, that's at volume 1, page 287, there is no dispute between the parties as to how Mr Abramovich made his money and, as I have already submitted, the evidence does indeed demonstrate that the payments to Mr Berezovsky can be correlated with the profits made by Mr Abramovich from his control of Sibneft. Your Ladyship has that in particular at paragraph 445, page 293.

That then brings us to the fourth of Mr Sumption's points which I can deal with very briefly. He made this at Day 39, page 57, where he said that:

"... a partnership agreement [he said] of the kind alleged by Mr Berezovsky would not in fact have served what Mr Berezovsky accepts was the purpose for which he was entering into this [agreement] in the first place."

Namely, to generate cash.

Mr Sumption's point, my Lady, as we understood it, was that Sibneft itself did not make profits for some years and so Mr Berezovsky could have received no money for some years. But with respect to Mr Sumption, that

was simply a rehash of the previous point because it depends upon treating the partnership as one that limited Mr Berezovsky to an entitlement to share in the profits of Sibneft rather than the profits generated by the partners thanks to their control of Sibneft, which is what the agreement was really about.

Now, having dealt with Mr Sumption's four points, that was all I was proposing to say on my feet, my Lady, about the 1995 agreement.

MRS JUSTICE GLOSTER: Well, not only have I read your submissions on this point, but obviously before or during the course of writing the judgment I will go away and read them --

MR RABINOWITZ: I'm grateful, my Lady, and your Ladyship will, as I say, get another document from us.

MRS JUSTICE GLOSTER: You can assume that about all parts of your skeleton.

MR RABINOWITZ: My Lady, indeed that is precisely what we have assumed which is why I'm taking the closing in the way that I am.

MRS JUSTICE GLOSTER: Yes, thank you, that's very helpful.

MR RABINOWITZ: Can I then deal with the 1996 agreement which I can take relatively shortly. We, as your Ladyship knows, submit that there was a 1996 agreement under which it was agreed between the three partners

that their interests in Sibneft would thereafter be held in companies registered in Mr Abramovich's name alone. This was a change from the previous position because, previously, the major interest which they had had in Sibneft shares, namely the 51 per cent of Sibneft pledged to NFK, which gave NFK the right to vote 51 per cent of the company's shares, had been held in a vehicle which was 50 per cent Abramovich and 50 per cent Consolidated Bank which, as your Ladyship may recall, was a Berezovsky/Patarkatsishvili vehicle.

Sure enough, when the 50 per cent shares were auctioned under the chairmanship of Mr Patarkatsishvili, as is recorded at paragraph 106 of Mr Abramovich's third witness statement E1/03/67, when those shares were auctioned to a friendly vehicle, FNK, this new vehicle was one which was solely in Mr Abramovich's name. The net result was that by 2001, all shares were held in Mr Abramovich's name alone.

As your Ladyship may recall, there were factual issues raised by Mr Abramovich about Mr Berezovsky's case on the 1996 agreement. We've dealt with all of those in our written closing at section F and also in our corrections document, and I don't propose to spend time on that now, my Lady, subject to your Ladyship.

Can I then turn to deal with the next major issue

which concerns ORT and the circumstances which led to Mr Berezovsky giving up his stake in ORT.

Again, your Ladyship will find this in our written closing in section 8, volume 2, page 420, where we deal with ORT. Your Ladyship will see we set out in that section a number of reasons why we submit that Mr Abramovich's case as to why he bought and as to why Mr Berezovsky and Mr Patarkatsishvili agreed to sell 49 per cent of ORT for \$150 million makes no sense at all.

My Lady, just by way of a brief overview, there are, we submit, at least four main reasons why Mr Abramovich's case on this issue, that is the ORT intimidation issue, is, we say, incoherent.

The first of these reasons arises out of the fact that, as does not appear to be disputed, Mr Berezovsky had previously refused to sell his ORT interest to the state even when offered \$300 million.

My Lady, if, as is not disputed, Mr Berezovsky had been unwilling to sell his interest to the state when offered \$300 million, why then would he have agreed to sell his shares to Mr Abramovich for half of that, for \$150 million, if not because, as Mr Berezovsky says, there was some added inducement which of course we say was the imprisonment of Mr Glushkov? He refuses for

300, and yet it is said that with nothing else, nothing significant else happening, he agrees to sell to Abramovich for half of that.

My Lady may recall that Mr Sumption's only substantive response to this point, in his closing speech, was to assert at Day 39, page 109, that Mr Lesin's offer of \$300 million was pursued at the time, but that, according to Mr Sumption, shortly afterwards, Mr Lesin's offer was reduced to \$150 million whereupon the negotiations with Mr Lesin were broken off.

In other words, my Lady, in Mr Sumption's submissions what he suggested was that the government negotiations themselves had reached the point where the 300 million was halved to 150 million, and it was at that point that, in Mr Sumption's portrayal of the evidence, negotiations broke off.

Of course, the fact that Mr Sumption appreciated the need to deal with this point reflects the fact that he appreciates that this is a real problem for Mr Abramovich's case. In our respectful submission, however, Mr Sumption's attempt to deal with the point is one that entirely fails to assist his case. I say that because the version of events that Mr Sumption puts forward is simply not supported by the evidence.

Mr Sumption, when he made this submission, and my Lady may not find all of this referred to in our note because it arises out of what Mr Sumption said orally, but Mr Sumption, when he made this submission, referred to Mr Patarkatsishvili's proofing notes. But as your Ladyship will see, if you look at those notes, and I do invite your Ladyship in due course to go back to these --

MRS JUSTICE GLOSTER: Shall we go there now?

MR RABINOWITZ: Indeed. You will find them at R(D)1, tab 2, page 20 R(D)1/2/20. There are three notes, my Lady, R(D)1, tab 2, page 20; there's one at tab 3.

MRS JUSTICE GLOSTER: Yes, I've got page 20.

MR RABINOWITZ: If your Ladyship looks on page 20, your Ladyship sees:

"Badri met Lesin ..."

Does your Ladyship have that? It's about a third of the way down on page 20.

MRS JUSTICE GLOSTER: Page 20, sorry.

MR RABINOWITZ: R(D)1/2, page 20.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Your Ladyship sees:

"Badri met Lesin -- he negotiated -- agreed 300m. That's all they had -- need to pay for Gusinsky and ORT. Badri wanted to sell first -- BB stubborn -- not going

to sell -- did not go back to Russia. Agreements breached by gov. Don't trust them. So we needed trustworthy man -- recd invitation from Roman to meet -- met in Paris. [Roman] said for your sake -- I will buy shares and give them to government -- offered \$150 m -- before that agreement with [Roman] -- for election campaign for Putin. \$50m -- our share was \$25m -- RA paid -- so we sold for \$175m -- inc \$25m."

So these are Mr Stephenson's notes in 2005.

"NG mentioned one of main reasons to sell -- before meeting -- even if not paid -- we will give free for NG release. Didn't hesitate -- evidently he couldn't. Voloshin promised in personal conversation with Badri later -- not easy to persuade BB -- thought would deceive -- Badri believed should keep."

MRS JUSTICE GLOSTER: This is Mr Stephenson's notes of briefing Badri, is it?

MR RABINOWITZ: Indeed, of 2005.

The point for present purposes, my Lady, is your Ladyship sees there is no suggestion in this note at all that the price went down while Mr Lesin was negotiating from 300 to 150, which appears to have been what Mr Sumption was suggesting.

If your Ladyship then goes to the next tab, so R(D)1/3, to page 39.004 R(D)1/3/39.004, these are

Mr Lankshear's notes, again from 2005. On page 9, the extract under the heading "Page 9", your Ladyship sees:

"Badri met Lessing. He negotiated with Lessing. Price agreed at \$300 [million]. That's all Lessing had at his disposal. BP wanted to sell. BB stubborn, no we are not going to sell. As time passed, didn't go back to Russia. Many agreements breached ... Didn't trust them anymore..."

Then we get Abramovich coming into the picture, and then you have the offer for 150 million instead.

Then the third of the notes, and again this is simply not consistent with what Mr Sumption has submitted; the third of the notes, if your Ladyship goes to tab 6 in the same file, page 77 R(D)1/06/77, and this is the draft proof which was put together on the basis of those notes, from line 320, your Ladyship sees what is set out there.

So what one has as reflected in these notes is, first, an offer from Mr Lesin of \$300 million, second a refusal by Mr Berezovsky to agree to sell even at that price, and the notes record alternatively: "BB stubborn, so we're not going to sell", "BB stubborn, not going to sell", "I wanted to sell at this price but BB was adamant that we should not". And then third, Mr Abramovich's offer to pay only \$150 million after

Mr Glushkov's arrest.

So just standing back, one has a 300 million offer from Mr Lesin on the table, Mr Berezovsky rejects that. The only other offer mentioned that was made was that subsequently made of half of that of \$150 million.

So, my Lady, what appeared to be the main point that Mr Sumption sought to make in trying to explain away this difficulty is, we would submit, a false point for which there is no evidence.

I think also in this context that Mr Sumption also suggested that at this time, that is to say after Mr Berezovsky left Russia, he had left with, as Mr Sumption said -- this is Day 39, page 110 -- "very little money" and "badly needed to raise funds".

In other words, my Lady, the suggestion appeared to be that Mr Berezovsky sold ORT for half the amount he had originally turned down because he was short of cash. That seems to be what's being suggested.

My Lady, there are, I would submit, two reasons why this argument also has no merit. The first reason this argument from Mr Sumption has no merit is because, as your Ladyship heard from Mr Berezovsky when he gave evidence, this was simply not the position, the suggestion that he didn't have any money.

Mr Berezovsky's evidence was that he was not short of

cash. He told your Ladyship, this is at Day 6, page 97, line 9, he said that he had:

"... more than enough to stay for thousand years in London ..."

My Lady, that evidence was not contradicted.

The second reason that Mr Sumption's point is, we would respectfully submit, a bad point is that it involves an inherent inconsistency with Mr Abramovich's case. Mr Abramovich's case, my Lady, is that the arrangement that he had with Mr Berezovsky was that whenever Mr Berezovsky wanted money, Mr Berezovsky would come to him and ask for money, and he, Mr Abramovich, would give that money.

Now, in that context your Ladyship should note that Mr Berezovsky and Mr Patarkatsishvili received \$460 million, plus or minus \$460 million in 2000 from Mr Abramovich on Mr Abramovich's case. If the arrangement was as Mr Abramovich says it was, namely if Mr Berezovsky needed money he would just come to Mr Abramovich and ask for the money and be given it, why on earth is it said that Mr Berezovsky would, in order to get that money, have been willing to sell shares he had refused previously to sell for \$300 million? All that he needed to do was to ask Mr Abramovich and, according to Mr Abramovich, he'd give him the money for

nothing, without Mr Berezovsky having to surrender an asset which, on anyone's case, was very dear to him, namely his shares in ORT.

With respect, Mr Abramovich's case on this makes no sense at all. If Mr Berezovsky was short of funds Mr Abramovich would give them to him on Mr Abramovich's case. And it simply doesn't explain why Mr Berezovsky would, to get money, have been willing to sell his ORT shares.

So, my Lady, our question, we would submit, remains both valid and unanswered: why should Mr Berezovsky agree to sell 450 million to Mr Abramovich if not because there was some added inducement, such as the imprisonment of Mr Glushkov, which made him sell?

My Lady, the second major flaw with Mr Abramovich's case in relation to ORT is that, even now, he has been able to give no satisfactory or plausible explanation for why he would wish to buy a stake in ORT. Your Ladyship will remember that Mr Abramovich claims, and we've set these citations out at paragraph 750, subparagraph 2 of our closing --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: He says that only ORT was of absolutely no interest to him, and he also says that President Putin didn't want the shares.

If this is the case, why did he buy the shares?  
Now, Mr Abramovich claims that the reason why he bought the shares was, he says, because he was associated closely with Mr Berezovsky and that, so he says, if Mr Berezovsky didn't stop using ORT in his fight with the government, "I", Mr Abramovich, "would suffer personally".

My Lady, given the fact that Mr Abramovich had managed to become close to all those people in power, including Mr Voloshin and President Putin, one might doubt whether Mr Abramovich would really have worried that he would have been held responsible by his friends in the administration for what Mr Berezovsky was doing. But perhaps a much more significant problem for Mr Abramovich's case, and indeed his explanation, is that Mr Abramovich's own witness, Mr Voloshin, in effect the government, was insistent that the government was able to stop Mr Berezovsky's influence in ORT without any need for the state even to acquire Mr Berezovsky's shares.

Your Ladyship may remember asking Mr Voloshin about this, whether the shares were needed in order to stop Mr Berezovsky, and Mr Voloshin saying, "We didn't need the shares, we were in a position where we could control the company anyway, we just had to tell Berezovsky to

stop".

Now, if it is the case, as Mr Voloshin says, and indeed as Mr Abramovich's case generally suggests, if it is the case that the government could stop Mr Berezovsky using ORT without acquiring the shares, they didn't need the shares to stop it, then again it makes a nonsense of Mr Abramovich's explanation.

His explanation is, "I had to get the shares from him because if he didn't stop using ORT in the fight with the government, I would suffer personally". His own case appears to be, however, that they didn't need the shares to stop him, they had stopped him.

Mr Voloshin told him to get out of ORT and they didn't need to acquire the shares.

If that is right, my Lady, that removes the only other explanation that Mr Abramovich has come up with in order to explain why he was willing to acquire the shares. So one is then still left in the position that his case on this is incoherent, he has no sensible explanation for why he was willing to buy those shares, if not because he was perfectly happy to intercede on the side of the government to take the shareholding out of Mr Berezovsky's hands, and that he was assisting the state in that endeavour by approaching Mr Berezovsky in Cap d'Antibes, following Mr Glushkov's arrest, as

Mr Berezovsky has suggested.

My Lady, the third major flaw with Mr Abramovich's case in relation to ORT is Mr Abramovich's repeated insistence that Mr Berezovsky had decided to sell his ORT shares before Mr Glushkov's arrest on 7 December 2000, and especially before meeting Mr Abramovich following Mr Glushkov's arrest at that time. We of course say that this is simply not true.

Taking this in stages, the question of whether or not there is a basis for Mr Abramovich's case that Mr Berezovsky decided to sell the ORT shares before Mr Glushkov's arrest on 7 December. Taking it in stages, my Lady, we submit that the Le Bourget transcript makes clear that Mr Abramovich knew full well that no deal had yet been agreed between him and Mr Berezovsky on 6 December 2000, which is obviously when they met at Le Bourget. Your Ladyship may recall the repeated references by Mr Abramovich at Le Bourget to his wishing to finalise the deal so that he could go and tell President Putin that the deal was done.

Your Ladyship may recall that there was some encouragement from Mr Patarkatsishvili, but consistently with Mr Patarkatsishvili's proofing notes, where Mr Patarkatsishvili explained that he was willing to sell but Mr Berezovsky was stubborn, there is no

confirmation from Mr Berezovsky that the deal was indeed done.

Now, your Ladyship will have seen that Mr Abramovich's written closing, at paragraphs 185 and following, seek to demonstrate a willingness by Mr Berezovsky to sell ORT before any meeting with Mr Abramovich following Mr Glushkov's arrest, and they seek to do so first by suggesting that it was well known that Mr Glushkov was going to be arrested for some time before his actual arrest; secondly, by suggesting that Mr Berezovsky announced the sale of ORT immediately after Glushkov's arrest and before meeting with Mr Abramovich; and, third, by suggesting that there was no date after Mr Glushkov's arrest when Mr Abramovich and Mr Berezovsky could have met at Cap d'Antibes.

Now, we would respectfully submit that it is clear from the evidence that your Ladyship has that each of these points is wrong. My Lady, as regards whether it was certain prior to 7 December that Mr Glushkov would be arrested, in fact I would suggest that just the opposite is clear, namely that it was not known for sure that Mr Glushkov would be arrested on 7 December 2000.

As your Ladyship may recall, the best possible evidence of this is to be found in the Le Bourget transcript itself where, on the day before Mr Glushkov's

arrest, Mr Berezovsky asked Mr Abramovich whether he thought Mr Glushkov would be arrested and Mr Abramovich said not.

That is set out, the relevant references are set out at paragraph 775.3 of our written closing, that's in volume 2, page 440 --

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: -- where we set out the relevant exchange from Le Bourget.

Mr Berezovsky asks Mr Abramovich:

"Do you think Mr Glushkov will be arrested?"

And his response is:

"I don't think they would."

Box 641 and box 642.

So the suggestion that it was certain that he was going to be arrested is simply wrong. Indeed, as your Ladyship sees at subparagraph (d), Mr Abramovich told the court:

"I thought, I assumed, guessed that he would not be arrested."

Now, how it is consistent with that for my learned friends to say it is certain that he would be arrested, I do not know.

My Lady, so far as the second of my learned friend's points as to why the sale must have taken place -- the

agreement to sell must have taken place before  
7 December -- sorry, before Mr Abramovich and  
Mr Berezovsky could have met following the arrest of  
Mr Glushkov, contrary to what appears to be suggested by  
my learned friends it is also wrong to suggest that  
Mr Berezovsky's interview on Ekho Moskvyy on  
7 December 2000 involved him making it clear that he was  
selling ORT.

For my Lady's note, the interview is set out at  
paragraph 776 of our written closing, also beginning at  
the bottom -- beginning on page 441. It is worth having  
this one open.

MRS JUSTICE GLOSTER: I have it open.

MR RABINOWITZ: Your Ladyship sees towards the bottom --  
well, actually at the bottom of page 441, the whole  
interview pays re-reading. He's talking, as your  
Ladyship sees towards the top of the interview, about  
the arrest of Glushkov;

"The actions against Krasnenker [Krasnenker was  
I think released] are absolutely consistent with the  
authority's ..."

He wasn't arrested but he certainly wasn't detained  
in the way that Glushkov was.

"The actions against Krasnenker are absolutely  
consistent with the authority's action. My assessment

is as follows: this is pure blackmail, blackmail against me, and it is blackmail in the best KGB tradition, so to speak. In other words, the president said he would bash my head with a cudgel. The cudgel turned out to be too short. He cannot reach me here so he started hitting people close to me. In other words, it is in the very worst tradition, blackmailing someone by putting pressure on their relatives, their associates and their friends."

Then later on, towards the bottom of the page,  
Boris Abramovich:

"Did I understand you correctly that you basically plan to cancel your proposal with respect to setting up Teletrast?"

Mr Berezovsky:

"Not only that, I plan to withdraw it -- to withdraw it officially. I have now spoken with the majority of the shareholders of Teletrast and told them about my decision and I am going to implement this decision.

"So what will actually happen to the shares?"

"You know, despite all the talk, all the speculation that I sold these shares, all 49% of these shares currently belong to me and my partner, Mr Patarkatsishvili, and in this situation I believe it absolutely makes no sense to struggle against such

risks, and risks to me personally but to my friends and families, therefore I will decide within the next two days what to do with these shares."

Now, Mr Berezovsky is saying then, following the arrest: I will decide what to do with these shares. That is not, as my learned friends have suggested, a declaration that he was selling ORT, and it is also flatly inconsistent with their case that he had already agreed to do so.

He's making it clear that in light of the arrest of Glushkov he will cancel the Teletrast scheme and decide what to do with the shares.

He then, we submit, has his meeting with Mr Abramovich in Cap d'Antibes and, following that meeting, agrees to sell the shares. In other words, my Lady, this interview is entirely consistent with Mr Berezovsky's case, and I would respectfully submit entirely inconsistent with Mr Abramovich's case.

Now I will come to the third of these suggestions, which is that there was no date on which the meeting at Cap d'Antibes could have taken place after the arrest of Mr Glushkov, but I'll deal with it separately because it does warrant stand-alone attention.

Before I deal with that, can I just say something about what we would suggest or we would submit is the

fourth major difficulty with Mr Abramovich's case on ORT, and that is his complete inability to provide any credible explanation for why he and Mr Berezovsky stopped talking to each other from the time of the ORT sale.

My Lady, there can, I would suggest, be no real doubt that Mr Berezovsky and Mr Abramovich were on good terms up until -- certainly up until and including the Le Bourget meeting on 6 December 2000. So far as the period leading up to that meeting is concerned, we know that over the course of 2000 Mr Berezovsky and Mr Abramovich had met on a number of occasions, whether in France or in London, and we also know that at this time Mr Berezovsky continued to regard Mr Abramovich as his friend, as someone who could be trusted -- could act as a trusted intermediary with the state. And as your Ladyship will recall, the fact that they were friendly all the way up to December 2000 is clear also from the Le Bourget transcript which, even in Mr Abramovich's own words, was a candid and amiable meeting.

That, for your Ladyship's note, is Mr Abramovich's evidence in his fourth witness statement at paragraph 98 E5/11/42.

Then one has the rupture in the relationship that seems to occur at around this time. As my Lady knows,

Mr Berezovsky says that he and Mr Abramovich never met, indeed never spoke again, from the time when ORT was sold. Of course Mr Abramovich suggests that there was this meeting in Megeve, which we deal with in our witness statement. We say that that never happened. But even Mr Abramovich says that that was the last time they ever had contact, proper contact with each other.

Now, Mr Berezovsky's explanation for this is perfectly clear and straightforward. He says they had a falling-out at Cap d'Antibes after the Le Bourget meeting, as a result of which he regarded himself as having been so utterly betrayed by his friend and partner that he never wanted to speak to him again. I would submit that Mr Abramovich, on the other hand, simply has no real explanation for this at all.

Now, among the attempts to explain it, your Ladyship will recall that at one point Mr Abramovich suggested in his evidence that, from his point of view at least, he regarded Mr Berezovsky as having behaved dishonestly -- dishonourably, in relation to the way in which ORT had covered the Kursk incident. That was what he said at Day 22, page 124, and we cite that passage in our written closing at paragraph 865.5(c) on page 520 of volume 2.

But, of course, my Lady, that was in August, many

months before, and it is clear that that was not what gave rise to the split, given that the two men did meet, on everyone's case, at least once and I think at least twice thereafter, in meetings that no one suggests were anything other than cordial. So we know that that wasn't the reason for the split.

Indeed, my Lady, it's Mr Abramovich's own case that after that Kursk incident he says he bought ORT for more than it was worth, in effect as a favour to Mr Berezovsky, some time after the Kursk incident, and he says that in early January 2001, at Courcheval or Megeve, he agreed to make a pay-out to Mr Berezovsky which would dwarf all previous payments, that's the \$1.3 billion. And your Ladyship will recall Mr Sponring saying that these men were hugging each other, that was Mr Sponring's evidence. All of which, if remotely true, would again suggest that Mr Berezovsky would be treating, and indeed was treating, Mr Abramovich as an even closer friend than before, rather than the opposite. After all, he'd helped him out, on Mr Abramovich's case, with ORT, he'd given him this astonishingly generous -- he'd agreed to make this astonishingly generous payment of 1.3 billion in effect for nothing. Plainly, that is just not consistent with them falling out after this.

But the fact that there was some rupture in the relationship is clear, and the extent of it is clear, from the fact that after this point, my Lady, when their paths did subsequently cross in Israel they did little more than acknowledge each other's existence and then move on. And that, we would submit, is extraordinary unless, of course, something had happened between them. And Mr Abramovich is simply unable to explain that.

Now, Mr Abramovich, who I have to accept is no fool, well understood the difficulty for his case if, as Mr Berezovsky had said and consistently said, there had been this irreparable falling-out because, of course, on Mr Abramovich's case, Mr Berezovsky really should have remained indebted to him, Mr Berezovsky (sic), for ever more. He was very generous with him.

Of course that is why Mr Abramovich came out with what we would submit was the utterly false evidence in the course of the strike-out application of -- your Ladyship will recall this evidence, we've set it out at paragraph 157 of our written closing, page 113, volume 1.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It was suggested that -- this is really in response to Mr Berezovsky saying, "After this we never met again", your Ladyship sees:

"The meeting at which ORT was discussed was not the last meeting between Mr Berezovsky and Mr Abramovich. There had been at least two meetings in Israel since then."

Now, we know that that is utterly false because not even Mr Abramovich is suggesting that that is true anymore.

Indeed your Ladyship will recall -- and I think we've set this out, indeed we have, in the next paragraph of our closing -- it then became clear that there was only one occasion where they had even come across each other. I think Mr Abramovich began by calling that a meeting but by the end it was perfectly clear that it wasn't a meeting at all. It was an acknowledgement of each other's existence. I think they may have said hello and then they moved on.

MRS JUSTICE GLOSTER: Where did that take place, remind me?

MR RABINOWITZ: That was in Israel, I think it was at a hotel in Israel.

Did your Ladyship ask me when or where?

MRS JUSTICE GLOSTER: Where.

MR RABINOWITZ: In Israel, my Lady.

MRS JUSTICE GLOSTER: So there was an encounter in Israel?

MR RABINOWITZ: An encounter in Israel which, far from suggesting that there hadn't been a falling out, in my

respectful submission supports the case that there was a falling-out given what actually happened there, where they acknowledge each other's existence and they move away.

Now, given the shared history that these two men had, my Lady, going back any number of years, the fact that this was all that they could manage, acknowledging each other's existence and moving on, reinforces the point that they were no longer friends. Because even someone who you -- frankly, someone who you were at school with, you would do more than these two people did when they met in Israel, whether you liked the person at school or not. But they couldn't even manage a conversation.

So, in our respectful submission, it's perfectly clear that the evidence that Mr Abramovich gave for the purpose of the strike-out, to meet Mr Berezovsky's point, proved to be false.

One is then left with really there being no proper answer to Mr Berezovsky's point that something happened which made them fall out and that this is what it was, the ORT issue. And this final flaw in Mr Abramovich's case, my Lady, is in our submission a fatal flaw in Mr Abramovich's case on ORT.

His story of the generous purchaser and the grateful

vendor just falls apart when one sees the impact that the sale of ORT had on the relationship between the two old friends and partners.

MRS JUSTICE GLOSTER: Had Mr Berezovsky been reported as making disparaging remarks about Mr Abramovich in the press? I'm looking at your paragraph 1574. I just don't remember what those were saying.

MR RABINOWITZ: I can't remember what there was either, my Lady, but Mr Abramovich's general position in this litigation has been that Mr Berezovsky had never complained about Mr Abramovich so I'm not clear what that is.

MRS JUSTICE GLOSTER: What I would be interested to have, if there are any, are the page references to the limited comments in the press made by Mr Berezovsky about Mr Abramovich.

MR RABINOWITZ: We will get those for your Ladyship.

MRS JUSTICE GLOSTER: It doesn't matter now.

MR RABINOWITZ: We will see if there is anything that fits that description, my Lady.

That then brings us to the Cap d'Antibes meeting which, for my Lady's note, we've dealt with in our written closing at paragraphs 847 and following at volume 2, page 492. Again --

MRS JUSTICE GLOSTER: Is the chronology now in a pretty much

agreed state?

MR RABINOWITZ: I think so.

MRS JUSTICE GLOSTER: Because I am going to be using that, and maybe some work will have to be done in the next week or so by your respective teams because I really don't want to be going to a document that doesn't make it clear to me where you agree and where you disagree. Because I think it's moved on from certainly the original hard copy.

MR RABINOWITZ: My Lady, both sides have heard what your Ladyship says and we will endeavour to do that.

MRS JUSTICE GLOSTER: Yes. I really do need that document.

MR RABINOWITZ: So in Cap d'Antibes, and the first point to make about the Cap d'Antibes meeting is, as we submit, that the timing of the meeting is, or at least certainly was, we say, in fact at one stage admitted on the pleading by Mr Abramovich. We have explained why we say this at, for your Ladyship's note --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: It's in the written opening as well, I don't know whether your Ladyship has it. Can I give your Ladyship a reference to that. It's paragraph 618 to 626 of our written opening, that's at page 305 of that.

The point that we make there, my Lady, is that it is clear that when Mr Abramovich signed off on his original

pleading, he was accepting that there had indeed been a meeting at Cap d'Antibes following Mr Glushkov's arrest on 7 December but before 25 December. That's to say, the meeting was after Glushkov's arrest at some point in December, and it was admitted that it was some time in December. What he didn't admit was the location of the meeting.

Perhaps I can just give your Ladyship also a reference to the pleadings where your Ladyship will find this. It is, as I say, all set out in our written opening, but it's also at A1, tab 2, page 9 A1/02/9, that's paragraph C27 of the points of claim, particulars of claim, and then A1, tab 3, page 42 A1/03/42, for the defence, paragraph 27, D27.

Now, my Lady, in light of that pleading and that pleading position, my solicitors wrote to Mr Abramovich's solicitors to put them on notice some months before the trial -- this was on 12 August 2011, the letter is at L(2011), 14, page 59 L(2011)14/59 -- that unless Mr Abramovich could provide evidence to the contrary, we would be inviting the court to infer that Mr Abramovich's instructions in 2007 had been that he did recall that the meeting took place after Mr Glushkov's arrest on 7 December.

I can tell your Ladyship that no contrary evidence

has been produced, which means that I do therefore ask that the court, in light of this, infer that Mr Abramovich, in 2007, remembered that he had met Mr Berezovsky and Mr Patarkatsishvili in December 2000, after Mr Glushkov's arrest, in France.

What this means therefore is that this court has evidence before it that in 2007, at least, the people who recalled Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich meeting in relation to ORT, after Mr Glushkov's arrest, included, first, Mr Berezovsky, whose evidence is before the court, secondly, Mr Patarkatsishvili, whose evidence to that effect is in his proofing materials where he describes discussing the sale of ORT in return for the release of Mr Glushkov, evidence that would make no sense at all if the sale had been concluded prior to Mr Glushkov's release.

I don't know whether that point is clear to your Ladyship, but in the Badri proofing notes, and we can look at this, when he's talking about the negotiations to sell ORT with Mr Abramovich, he talks about the Glushkov release being part of the package. That makes no sense at all if that negotiation had all been concluded prior to Mr Glushkov's arrest.

So the Badri proofing notes again strongly indicate that Mr Patarkatsishvili's evidence was that the

negotiations with Mr Abramovich about the sale of ORT must have been after Glushkov's arrest.

My Lady, Mr Gillis is pointing out that at [draft] page 118, between lines 7 and 9, it's recorded, probably accurately, that I said:

"It would make no sense at all if the sale had been concluded prior to Mr Glushkov's release."

That should say "if the sale had been concluded prior to Mr Glushkov's arrest".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So one has Mr Berezovsky saying that he recalls that it must have been after Glushkov's arrest, we have Mr Patarkatsishvili telling the solicitors that it must have been -- well, giving the solicitors evidence which is consistent only with it being after the Glushkov arrest. And, as I've suggested in light of the pleading point, Mr Abramovich as well at that stage recollected that the discussion about ORT would have concluded after the Glushkov arrest and not before.

So those three gentlemen -- there is of course also Ms Gorbunova, whose evidence is before the court, who, as your Ladyship knows, was at the Cap d'Antibes when Mr Abramovich was there. And there is Mr Giroud, the French bodyguard, whose evidence I would submit about a meeting at that time was both clear and compelling.

In other words, my Lady, everyone who is known to have been at Cap d'Antibes that day, with the possible exception of Mr Berezovsky's aged mother, recalls the meeting at that time.

Now, in responding to what I would call the eye witness evidence of a meeting at Cap d'Antibes at that time, Mr Sumption in his oral closing adopted two particular lines of attack with which I can deal briefly. First, Mr Sumption attempted to dismiss the evidence of Ms Gorbunova by suggesting -- this was at Day 39, page 117, he suggested that her evidence was unreliable because, as he suggested:

"She claimed for the first time in cross-examination to have actually overheard part of the conversation on the terrace of Chateau de la Garoupe when [according to Mr Sumption], in her witness statement, she had said nothing about this except that she had learnt of the threats later from Mr Berezovsky."

My Lady, in fact Mr Sumption was entirely wrong about this and entirely wrong to criticise Ms Gorbunova in this way, and indeed the point doesn't enable him to attack the credibility of Ms Gorbunova who, I would suggest, was a patently honest and truthful witness.

My Lady, at paragraph 40 of her witness statement, this is her first witness statement, which for your

Ladyship's note is at D4, tab 8, page 66 D4/08/66, Ms Gorbunova said, and I'll give your Ladyship the exact words she used:

"I heard the men talking about Boris and Badri's interest in ORT. I recall Roman saying that the government wanted to pay significantly less for the ORT shares than he was going to pay, and that it was only thanks to Roman that they would pay more. I think Roman also said that he was personally paying some of the sale price as he was fed up with the story with Boris and Badri."

In other words, my Lady, it was always Ms Gorbunova's evidence that she overheard the conversation about ORT. So Mr Sumption's first line of defence, attacking the credibility of Ms Gorbunova on the basis of some suggested shift in her evidence, was we submit unfounded and unfair.

The second line of defence, of course, was Mr Abramovich's alibi evidence, evidence that we've dealt with in some detail at paragraph 849 of our written closing. It's a paragraph that extends over a number of pages from page 500 to 506 of volume 2. I would submit that it is clear from what we have set out there that Mr Abramovich cannot in fact establish an alibi for the Cap d'Antibes meeting, especially of

course when his diaries, mobile phone records, credit card statements and phone bills have all not been provided to the court for consideration.

Now, my Lady may recall that Mr Sumption's response to this volume of evidence directed to the difficulties with Mr Abramovich's alibi evidence was to make just two substantive points. First he said, and this was at Day 39, page 115, that we have made no attempt to explain "the automatic record of passport swipes at entry and exit which match the stamps in Mr Abramovich's passport and show that [Mr Abramovich] didn't leave Russia in the whole of the relevant period". That's what Mr Sumption said.

But, my Lady, that is wrong for at least three reasons. First and foremost, because there was no such automatic record adduced in evidence at all. What there was, my Lady, was the bare assertion in a letter from a Russian official that there was an automatic registration system accompanied, as your Ladyship may recall, by a refusal to disclose or really to tell your Ladyship anything at all about this system, refusal to disclose either the means used to collect such information or the relevant registration records themselves. For your Ladyship's note, that is the letter from a Mr Mochalov, dated 13 October 2011.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR RABINOWITZ: The second reason this was a bad point is because, contrary to what Mr Sumption submitted, we do in fact deal with the suggestion that such record might exist and we do so for my Lady's note at paragraph 849.5, that's page 500 of volume 2 of our written closing.

The third reason why Mr Sumption is wrong is because, as we there explain, the evidence given by Mr Pronichev and Mr Mochalov suggesting that such record might exist, we submit, is unreliable. We've set that out at paragraph 849.5.

Allied to all of this, my Lady, there is the feature of Mr Abramovich's evidence relating to his presence in Chukotka on which we have already made submissions which demonstrate, we submit, a willingness and an ability on his part, and on the part of his team, to manufacture travel evidence where they think that this might assist Mr Abramovich. We deal with this, as my Lady knows, at paragraphs 185 to 193 of our written closing, that's at page 138 and following.

We submit that, when taken together with Mr Abramovich's obvious political influence in Russia, these letters about some automatic system which shows that Mr Abramovich could not have been in Cap d'Antibes

really can't be given any weight at all by the court.

My Lady, the second substantive point taken by Mr Sumption in his response to our submissions on Mr Abramovich's alibi evidence was to allege that, for the Cap d'Antibes meeting to have taken place, what he said was four passport stamps should fail to appear on the passport, namely the Russian and French stamps on entry into France and the French and Russian stamps on departure. All four of them, he said, would have, by some oversight or administrative lapse, not to have appeared. That was at Day 39, page 115, at line 22 and following.

Again, my Lady, we submit that this also was a point of very little substance. I say that because even with the very few meetings which we are able to test against in Mr Abramovich's passport, we have noticed that there are at least four missing stamps. We've set all this out in paragraph 849.4 of our written closing.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: There is a missing Russian exit stamp for when Mr Abramovich left Russia on 6 December for the Le Bourget meeting. There is a missing Russian entry stamp for when he arrived in Russia on 30 May, after the Cologne meeting, 30 May 2001, and there is a missing French exit stamp for when he left France after the

Le Bourget meeting on 6 December. There is also a missing French exit stamp for when he left France after his skiing holiday in January 2001. We don't have very many meetings to test against but even by reference to the ones that we do have, one can find a great number of missing stamps. It appears, my Lady, that when one is travelling into and out of countries on a private jet, as Mr Abramovich was, passport stamping is not something that always happens. That is why, in our respectful submission, there is little weight to be given to Mr Sumption's second point.

In the end, my Lady, we would respectfully submit that the eye witness evidence about Cap d'Antibes is much more reliable than the attempt by Mr Abramovich to create alibi evidence. We submit that your Ladyship should find that there was indeed a meeting that took place at Cap d'Antibes following Mr Glushkov's arrest on 7 December. My Lady, that was all I was going to say about the Cap d'Antibes meeting. Your Ladyship obviously has our detailed submissions on that.

MRS JUSTICE GLOSTER: Yes. Just a second, Mr Rabinowitz.

Do the shorthand writers want a break?

MR RABINOWITZ: I'm getting an indication "yes", my Lady.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(3.07 pm)

(A short break)

(3.28 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I'm going to move next to the question of Sibneft intimidation. As your Ladyship will have seen, we set out our positive case on this in our written closing at volume 2, page 522. I wasn't going to repeat what we've said now. What I did want to do in relation to this issue again, if I may, is to deal very quickly with what Mr Sumption described in his closing speech as his salient points on this. We haven't dealt with this in our written closing, my Lady, because they arise out of his oral submissions.

I think he identified five points, each of which we would submit is of limited weight. What Mr Sumption called his first salient point, which for my Lady's note is found in the transcript at Day 39, page 118, involved the contention that, on their face, the words used by Mr Abramovich did not threaten Mr Berezovsky but rather warned him of adverse state action. My Lady, in fact, this so-called salient point turns out, with respect, not to be a point at all. We have always accepted that the words used by Mr Abramovich, on their face, did not purport to threaten Mr Berezovsky but rather warned him of adverse

state action. Indeed, as your Ladyship will know, it has never been Mr Berezovsky's case that Mr Abramovich said in terms that, unless Mr Berezovsky handed over Sibneft, then Mr Abramovich himself would cause the loss of his interests and cause Mr Glushkov to remain in prison indefinitely.

Rather, it has always been Mr Berezovsky's case that Mr Abramovich said this, in effect made that threat, in effect using other words and that Mr Abramovich was more subtle than to put his point expressly. He was, in the words that Mr Patarkatsishvili used when speaking to the solicitors, playing a game. But his clear message, which he intended to deliver and which Mr Berezovsky and Mr Patarkatsishvili well understood, was a threat.

So this point that there was here not a threat but just a warning, your Ladyship should know, is a point that Mr Abramovich's counsel have always had a difficulty with. Indeed it is a point that they have aired both before Sir Anthony Colman and before the Court of Appeal and on each occasion the point has failed, because, as your Ladyship knows, the question whether or not there was a threat or just a warning is, as it always has been, this: in context, is what Mr Abramovich said properly to be understood as a threat or a warning?

In our respectful submission, the most important piece of context in this case is Mr Abramovich's twin denials, first, that Mr Berezovsky ever had an interest in Sibneft and, secondly, his denial that he even said the relevant words. We say that, had Mr Abramovich's words been a mere warning or been intended as a mere warning, then he would not have denied Mr Berezovsky's interest in Sibneft and he would certainly not have denied that he said the relevant words. He would just have said, no, they were intended as a warning. But he didn't, he denied saying anything.

We have of course in our written closing, also identified further elements of context, in particular Mr Abramovich's conduct in the Le Bourget meeting where he repeatedly emphasised his access to and influence with the Kremlin and where he denied Mr Berezovsky and Mr Patarkatsishvili the opportunity to formalise their interests in Sibneft and where Mr Berezovsky and Mr Patarkatsishvili demonstrated their vulnerability to state action. For your Ladyship's note, we've set all this out at paragraph 872 and following of our written closing.

MRS JUSTICE GLOSTER: Yes, I've got that.

MR RABINOWITZ: But, my Lady, the short answer to

Mr Sumption's first point is that it goes nowhere

because, in context, the words used by Mr Abramovich were indeed intended to convey a threat and were so understood.

Now, the second of what Mr Sumption labelled his salient points, in effect, involved the suggestion that Mr Berezovsky had not made an allegation about a threat of adverse action by Mr Abramovich until the second round of the particulars of claim in September 2007. Again, there seemed to be a suggestion that there was some fluctuation in his saying that there was a threat of adverse action by Mr Abramovich. This was a point made by Mr Sumption at Day 39, page 120.

Again, my Lady, we submit that this point also is not correct. Without turning this up, I can tell your Ladyship that paragraph 17 of the original particulars of claim, which for my Lady's note can be found at K2, tab 3, page 9 K2/03/9, contained an allegation about a threat having been made by Mr Abramovich in terms very similar to that contained in the second version of the particulars of claim which, again for my Lady's note, I can tell you the Court of Appeal said very clearly was perfectly sufficient to constitute an allegation of a threat of action on the part of Mr Abramovich.

So Mr Sumption's second salient point also does not advance Mr Abramovich's case.

MRS JUSTICE GLOSTER: What's the paragraph number in the Court of Appeal's decision?

MR RABINOWITZ: Can I come back to that, my Lady?

MRS JUSTICE GLOSTER: Yes, sure.

MR RABINOWITZ: I do have it but I've put it away somewhere.

Can I then just deal with the third of Mr Sumption's points. Mr Colton will get out that reference for you.

What Mr Sumption identified as his third salient point related to whether Mr Patarkatsishvili regarded himself as having been threatened or subjected to pressure by Mr Abramovich. That third salient point is one that Mr Sumption identified at Day 39, page 121. More particularly, my Lady, it appears to have been the submission of Mr Sumption that Mr Patarkatsishvili, the person to whom the words were conveyed, did not regard himself as having been threatened. Mr Sumption sought to support this contention by a series of unreferenced statements as to what Mr Patarkatsishvili believed or felt, presumably based, although Mr Sumption didn't say so, on a particular reading of Mr Patarkatsishvili's proofing materials. In other words, Mr Sumption said it didn't appear that Mr Patarkatsishvili felt himself to be pressured by Mr Abramovich, and he didn't identify where he got this from, but we assume that he was taking it from Mr Patarkatsishvili's proofing materials.

Once again, my Lady, we submit that Mr Sumption's point about this is just not justified by the evidence.

Your Ladyship may recall that Ms Duncan and Mr McKim together interviewed Mr Patarkatsishvili in 2007 and they were able to form a clear view as to his recollections relevant to the claim. And while, as is inevitable with a draft note of the meeting, or draft proof, some of their notes are susceptible to multiple interpretations if taken in the abstract, the real value of the evidence given by the solicitors of their meetings with Mr Patarkatsishvili lies in the impression which the solicitors gained overall as to Mr Patarkatsishvili's recollection of these matters. I can tell your Ladyship that none of their evidence on this was challenged.

My Lady, before I show you the evidence, which I'm proposing to do, I can give you the reference to Lord Justice Longmore's judgment, 02/8.099/26, page 26 and following. It's paragraphs 80 to 84. I apologise that I didn't have that reference.

On the question of the impression formed by Ms Duncan and Mr McKim as to whether Mr Patarkatsishvili felt he was being pressured by Mr Abramovich, can I invite your Ladyship to go to bundle D1, tab 6, page 88 D1/06/88 where we have Ms Duncan's understanding.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If I can just show your Ladyship paragraph 27, which as I say wasn't challenged:

"I set out below my understanding of Mr Patarkatsishvili's stance based on my meeting with him.

"(a) That Sibneft was acquired 50/50 between Mr Abramovich on the one part and Mr Berezovsky and Mr Patarkatsishvili on the other.

"(b) Mr Berezovsky and Mr Patarkatsishvili would not have sold their interest in Sibneft but for the pressure from Mr Abramovich conveyed to them at several meetings.

"(c) They did not get a fair price for the interest in Sibneft but felt that they had no choice but to take what was on offer.

"(d) Mr Berezovsky and Mr Patarkatsishvili had a 50% interest in Rusal which they shared 50/50 with Mr Abramovich.

"(e) It was agreed that no partner in Rusal could sell his interest without the agreement of the others, and that Mr Patarkatsishvili, on learning that Mr Abramovich had sold his stake in Rusal, objected to this at a meeting with Mr Abramovich in Tbilisi."

I'm showing your Ladyship material here which also goes to Rusal just so that we don't have to come back to

this later on.

Mr McKim set out his views in his witness statement for trial at paragraph 31, and if I can invite your Ladyship to go to bundle D2, tab 14, page 63 D2/14/63.

MRS JUSTICE GLOSTER: I'm there.

MR RABINOWITZ: So Mr McKim says:

"My understanding of Mr Patarkatsishvili's position following the meeting included:

"(a) That the most important principle of the arrangement with Mr Abramovich was that their interests in Sibneft and any future businesses would be split 50:50, with 50% for Mr Abramovich and the other 50% for Mr Berezovsky and Mr Patarkatsishvili;

"(b) That there was no good commercial reason for Mr Patarkatsishvili and Mr Berezovsky to sell their interests in ORT or Sibneft;

"(c) That Mr Abramovich was playing a game by claiming that he was also a victim (or potential victim) of the pressure being exerted by the Kremlin and Mr Patarkatsishvili did not believe that Mr Abramovich was under any such pressure;

"(d) That they only agreed to sell their interests in Sibneft and ORT as a result of the pressure exerted on them by Mr Abramovich, and in particular:

"(i) The concern that, if they did not sell, their

interests would be expropriated and that Mr Abramovich was in a position to do so if he so wished; and

"(ii) Based on Mr Abramovich's assurances that, if they did sell Mr Glushkov would be released from prison."

And (e) --

MRS JUSTICE GLOSTER: I have read all that.

MR RABINOWITZ: Yes. So, my Lady, that is a clear understanding of Mr Patarkatsishvili's position.

Can I just show your Ladyship paragraph 32 and invite your Ladyship to read paragraph 32.

MRS JUSTICE GLOSTER: Yes, I've read it.

MR RABINOWITZ: Then finally Ian McKim, if I can ask your Ladyship to go to paragraph 48, page 71. It starts before page 72, it starts at page 69.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Can I invite your Ladyship to look at that, and in particular subparagraphs (a), (f) and (i).

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So that's the evidence that the solicitors give of their understanding of Mr Patarkatsishvili's position. In light of that, we would respectfully submit it's difficult to see on what basis Mr Sumption felt able to say that Mr Patarkatsishvili did not consider that there had been any intimidation. That

then is Mr Sumption's third so-called salient point.

Can I then deal with his fourth point, and that was the suggestion at Day 39, page 124, where he said that this whole notion of a threat was, he asserted -- what he said it was was:

"... inherently bizarre in the circumstances in which these people found themselves."

My Lady, this point was one which Mr Sumption made very briefly and to which I can respond equally briefly. Mr Sumption's suggestion appeared to be that it made no sense to threaten to expropriate what was, he said, merely a personal contractual right. With respect, this point, which also surfaced from time to time in the strike-out application, is not correct at all. As a matter of legal technicality it would, of course, be possible for the Russian State to interfere with personal contractual rights and deprive a person of them.

That could be done in a variety of ways. For example, the state could declare that all of Mr Berezovsky's assets were forfeit to the state and so any contractual obligation due to them were now due to the state. Or it could declare that his contractual rights no longer existed. Or it could put pressure on prosecutors and judges to refuse to recognise

Mr Berezovsky's rights or to create fake obligations on his part against which those obligations could then be set off.

In any event, my Lady, Mr Berezovsky has never suggested that he is alleging that Mr Berezovsky actually used the word "expropriation" in his discussions with Mr Patarkatsishvili -- sorry, that Mr Abramovich actually used the word "expropriation" in his discussions with Mr Patarkatsishvili. Nor does Mr Berezovsky allege that the precise way in which his interests would be taken were spelt out in so many words. It didn't need to be. As Mr Berezovsky explained in his first witness statement, that's Berezovsky 4, paragraph 373 D2/17/278, Mr Berezovsky had no doubt that a range of strategies using criminal investigations, court procedures, insolvency procedures, tax investigations and the like could be used if Mr Abramovich wanted. So we submit the point Mr Sumption makes is a bad one.

But it is in any event, my Lady, a red herring, because when it comes to threats, as your Ladyship knows, the court need not enquire into the question of whether the threat was in fact possible to carry out. Your Ladyship will know the loaded gun example. The fact that someone points a gun at you which is unloaded

doesn't mean that because it was not loaded and you couldn't actually be shot, no threat to shoot you was made.

What matters here is only that the person to whom the threat was made believed that this was possible, and my Lady, there is clear law on this, and it's common ground. We've referred to this at paragraph 929 of our written opening.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Significantly, I can tell your Ladyship that Mr Berezovsky was not even challenged on his evidence of what he believed in this regard.

Now, the final point that Mr Sumption made in this context involved him asking rhetorically, this was at Day 39, page 125, how it is that one is to explain the absence of any paper if this really was a sale or release of Mr Abramovich's contractual obligation to Mr Berezovsky and Mr Patarkatsishvili.

My Lady, I would submit that this point is, with respect, a little bit difficult to follow. If the interests were originally held under an oral agreement and, in particular, given that the interests were already all under Mr Abramovich's own control, the shares all being registered in his name, it's difficult to see why a paper would be needed for this transfer.

Mr Abramovich would have been very confident that he was secure, not least given the fact that he'd paid over \$1.3 billion. How, one might ask rhetorically, could Mr Berezovsky have imagined that he could have denied having agreed a transfer or waiver of his interests in light of his receipt of so substantial a payment?

And of course it is a point --

MRS JUSTICE GLOSTER: I'm not sure I'm following this. Even if the transfer of, what, initial -- or might be regarded as an equitable interest was done orally, one might have expected some sort of receipt that referred to the transaction; is that the point that's being made against you?

MR RABINOWITZ: That might be the point which is being made against me. The point that I'm making in response to that is that, if that were in England now, one might well expect a receipt. But of course this was --

MRS JUSTICE GLOSTER: Hasn't a transfer in equitable interest got to be done in writing anyway?

MR RABINOWITZ: If we're talking in England it always has to be done in writing.

Of course, we're dealing here with two people who had made an agreement orally, a situation where the shares were already in Mr Abramovich's name. I'm not suggesting that in fact it wouldn't be a good idea for

there to be paper, indeed I suggest that there was paper because there was the Devonia agreement. But I'm suggesting that even if one ignored the Devonia agreement the point really doesn't go very far, given that these parties had operated until then on the basis of an oral agreement, and the notion that Mr Berezovsky would be able to dispute that he had waived his interests in Sibneft, given his receipt of \$1.3 billion, is in my respectful submission not a realistic point to make.

Now as I say, my Lady, Mr Sumption's whole point presupposes that there is no paper here and that entirely ignores the existence of the Devonia agreement, which, as your Ladyship may recall, includes a number of recitals and operative clauses which do record Mr Berezovsky and Mr Patarkatsishvili giving up their interests in Sibneft.

For your Ladyship's note, that's recital E and clause 2(a) of the Devonia agreement, which your Ladyship will find at H(A)35, pages 215 and 218 H(A)35/215.

Your Ladyship also has the vendor certificate to be completed separately by each of the vendors for each part of the interest being sold, which is at H(A)35, page 234 H(A)35/234.

Of course, that does bring us on to the Devonia agreement, and again, as your Ladyship knows, we've set out in our written closing, section J, our detailed submissions on Devonia. We respond there to the points that are made in my learned friends' written closing, and Mr Sumption in his closing speech really largely rehashed those points so there's nothing new to add about that.

There is just one point I do -- my Lady, there is just one point I need to pick up from what Mr Sumption said about this issue in his oral closing and it's this. Your Ladyship may recall that Mr Sumption, as part of his attempt to suggest that the Devonia agreement was an obvious sham, referred in very damning terms to the due diligence that -- does your Ladyship --

MRS JUSTICE GLOSTER: No, I'm fine, go on.

MR RABINOWITZ: He referred in very damning terms to the due diligence that Clydesdale Bank had done, and he was very critical of the fact that Clydesdale were willing to accept that Mr Berezovsky and Mr Patarkatsishvili were selling their interests in Sibneft to Mr Abramovich.

What he said, this is at Day 39, page 132, he said:

"It's absolutely astonishing that Clydesdale Bank should ever have accepted such a cock and bull story, and they certainly don't appear to have accepted it when

the papers hit their head office in Australia sometime in about August."

That's what he said.

Now, Mr Sumption didn't support this assertion about Clydesdale head office with any reference, nor is any to be found in Mr Abramovich's written closing. Indeed I can tell your Ladyship that Mr Abramovich's only analysis of Clydesdale's decision to close Mr Berezovsky's accounts is to be found at annex 8 to Mr Abramovich's written opening at B(D)/179 and following. And perhaps inconveniently for Mr Abramovich's case, that analysis demonstrates the exact opposite of Mr Sumption's submission, because what this makes plain is that the Clydesdale Bank were closing Mr Berezovsky's account, a process which took many months, not because of any doubts as to the accuracy of the explanations given to them concerning the Devonia agreement, but only because they had changed their policy regarding large foreign payments.

As my Lady may recall, the Clydesdale Bank provided to the parties, under a court order, a good deal of documentation relating to the bank's dealing with Mr Curtis and others. That's at bundle H(D). And there is nothing which supports Mr Abramovich's attempts, or indeed Mr Sumption's assertion, that Clydesdale had any

concerns about the due diligence which it had performed on that transaction.

My Lady, so far as concerns the question of the authenticity of the Devonia agreement, again, the point that we would want to emphasise to your Ladyship is the one that we make at paragraph 933 of our written closing, and it is this. If the court concludes, as we respectfully say it should, that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft from 1995 onwards, and that they relinquished it in 2001, as evidenced in particular by the final large payment being made to Mr Berezovsky and Mr Patarkatsishvili in 2001, then there is no possible basis for Mr Abramovich's allegation that the Devonia agreement is a sham, because it would, in that situation, reflect the realities of the transaction which the circumstantial evidence, not to mention Mr Berezovsky's direct evidence, demonstrates occurred at that time.

My Lady, subject to one point, that is all I was proposing to say about the facts relating to the Sibneft claim.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: There is just one other point to make about the Sibneft facts, and I can make it very shortly because I am repeating the point, and that relates to

the \$1.3 billion.

The only point I'm going to make is this: your Ladyship will perhaps not recollect, but Mr Sumption in his oral closing, what screamed out about Mr Sumption's oral closing is he offered no explanation at all for this. He simply stayed away from the 1.3 billion. In our respectful submission, that reflects the fact that there really is no answer to the point that we make --

MRS JUSTICE GLOSTER: What, why it was paid?

MR RABINOWITZ: Indeed. There's simply nothing in his oral closing about that, and we submit that that really holds the key to the whole of the Sibneft factual issues.

Now, my Lady, what I'm going to go on to next is choice of law issues, and I don't know whether your Ladyship wants me to carry on. I am making good progress.

MRS JUSTICE GLOSTER: I've got to go to a meeting at 5.00, I've got quite a lot to do before then. If it would suit you to stop now it would certainly suit me but I don't want to interrupt.

MR RABINOWITZ: No, my Lady, I would rather stop now and then start fresh tomorrow.

MRS JUSTICE GLOSTER: Very well.

Just a second, I just want to make a note of this.

Very well. What time would suit you, Mr Rabinowitz,

to start tomorrow?

MR RABINOWITZ: My Lady, I would expect to finish either just before or just after lunchtime, so, subject to your Ladyship, I think we can start at 10.30, and I feel very secure that we'll finish before the end of the week.

MRS JUSTICE GLOSTER: Very well. 10.30 tomorrow.

(3.55 pm)

(The hearing adjourned until  
Wednesday, 18 January 2012 at 10.30 am)

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Closing submissions by MR RABINOWITZ .....1

Wednesday, 18 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Closing submissions by MR RABINOWITZ (continued)

MR RABINOWITZ: My Lady, on Sibneft, I was about to turn next to the legal questions relating to the Sibneft claim. There are in fact very few matters I need to deal with under this head, in part, indeed in the main, because the parties are not very far apart on the law here, and in part because again this is a subject covered in great detail both in our written opening and indeed closing documents.

Can I, however, just say something about the question of the system of law applicable to the Sibneft claim, that's the choice of law issues, where the parties are plainly not in agreement.

MRS JUSTICE GLOSTER: This is section K, is it?

MR RABINOWITZ: It's in section -- I believe it's section K, my Lady, yes.

As your Ladyship will know, the parties plainly are not in agreement about this and it may well be a matter of some significance to the outcome of the claim. In general outline, as your Ladyship knows, we submit that the Sibneft claim falls to be dealt with under French law or English law, whereas my learned friends say

Russian law. We submit that is simply wrong.

So far as the law is concerned, as your Ladyship knows, the relevant statute is the Private International Law Act 1995, and in particular sections 11 and 12 of that act. Your Ladyship has that set out in our -- I think it's in our written opening, I'm not sure we've set it out in our closing.

MRS JUSTICE GLOSTER: It doesn't matter, I can find it in the opening.

MR RABINOWITZ: I can also give your Ladyship a reference, the bundle reference. It's O11 at tab 6 01/1.06/1.

In our opening document, it's section M at B(A)2, page 437 B(A)2/437.

MRS JUSTICE GLOSTER: Thank you. Do I need to go to it?

MR RABINOWITZ: I'm going to take your Ladyship through it, I do need to emphasise one or two points.

MRS JUSTICE GLOSTER: I'm not signed in so let me just look at it in hard copy.

MR RABINOWITZ: The 01/1 --

MRS JUSTICE GLOSTER: So this is section?

MR RABINOWITZ: Page 437, it's volume 2 I think of our written opening. Page 437, section M.

MRS JUSTICE GLOSTER: No, I've got Russian law at section M. Section L?

MR RABINOWITZ: If your Ladyship goes to -- if your Ladyship

is in volume 2 of 2, you should have at page 437 -- is there a paragraph 879, paragraph 880?

Your Ladyship may be looking in our closing rather than in our opening.

I'm told it's on the screen, my Lady.

MRS JUSTICE GLOSTER: I'm in the written closing, I'm sorry. Forgive me.

If it's on the screen, I'll look at it there.

MR RABINOWITZ: It's on the screen.

Now, as your Ladyship sees there, section 9 is where one begins to get choice of law in tort and delict. Your Ladyship needs to start with section 11, which is "Choice of applicable law: the general rule".

As your Ladyship sees, section 11.1 --

MRS JUSTICE GLOSTER: Can we have section 11, please, which is just further down?

MR RABINOWITZ: Page 438 B(A)2/438.

Your Ladyship sees:

"The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur."

Then, as your Ladyship sees, section 11.2 begins:

"Where elements of those events occur in different countries, the --"

MRS JUSTICE GLOSTER: We're in (c), are we?

MR RABINOWITZ: We're exactly -- my Lady, we're (c):

"In any other case, the law of the country in which the most significant elements of those events occurred."

So one is trying to identify the country in which the most significant element or elements of the events constituting the tort occurred, and your Ladyship may wish to note here three particular points, all of which I would submit have been overlooked or ignored by my learned friends in their analysis of this provision.

First, as your Ladyship sees, for the purposes of section 11, what matters is the events or elements of events that constitute the tort which occur. It therefore obviously follows from this that the mere geographical connection of the parties, their nationality for example, are completely irrelevant to section 11. They are obviously not events --

MRS JUSTICE GLOSTER: So you say that it took place -- the threat or the alleged threat was made in France so you say it's French law.

MR RABINOWITZ: It was made in the sense of Mr Berezovsky had it in France, that's where he succumbed to the threat, and that is why France rules. The fact that Mr Abramovich may be Russian and had his residence in Russia, and that Mr Berezovsky may at one point have been Russian, is neither here nor there for the purposes

of section 11.

MRS JUSTICE GLOSTER: The events constituting the tort are the threat and the reliance and the subsequent damage, are they?

MR RABINOWITZ: The threat and the succumbing to the threat and the damage.

MRS JUSTICE GLOSTER: So you say the threat, the succumbing to the threat, and where do you say the actual transfer of the interest took place?

MR RABINOWITZ: Well, that depends on the view your Ladyship takes about the Devonia agreement. If the Devonia agreement is a valid agreement then in a sense that is going to be very relevant to the determination of the choice of law issues, and that has an English choice of law provision.

If your Ladyship disregards that, then --

MRS JUSTICE GLOSTER: Was that the Devonia agreement that was signed in Nobu or something?

MR RABINOWITZ: Exactly that.

MRS JUSTICE GLOSTER: Or handed over, I can't remember.

MR RABINOWITZ: I think it was brought to Mr Berezovsky when he was having dinner in Nobu by one of the solicitors, and he signed it there. Mr Berezovsky was plainly not in Russia, indeed he couldn't go back to Russia at any stage.

It may just be worth my analyse -- teasing out just a little bit further some of the points about this because there are a number of respects in which I would submit that Mr Sumption's submission failed really to apply section 11.

So first, the point is you're looking for events or elements which occur. Now, if something doesn't occur, then it's not relevant for the purposes of section 11. So that, for example, my Lady, a threatened event, this is the focus of Mr Sumption's submission, something which is threatened to occur: we're going to keep Mr Glushkov in jail, something is going to happen in Russia to expropriate --

MRS JUSTICE GLOSTER: You say that's irrelevant because it's not --

MR RABINOWITZ: It's irrelevant, it doesn't occur.

Now, those matters might have some connection if one ever gets into section 12, but for the purposes of section 11 they are irrelevant.

If authority is needed for this proposition your Ladyship has it in Cheshire and North's. We cite that in our written opening at paragraphs 883.4 and 5, which is volume 2, page 44. The relevant extract, my Lady, is also in the authorities bundle at O3.1, tab 2, it's pages 630 and 632 of O3.1 O3/02/630. We've cited it

rather more briefly here -- I would invite your Ladyship actually in due course to go to the full reference in O3.1 because it does make the points that I have been making. I think it's illustrated by the point we make in our written opening about mens rea not being something that occurs.

So that was the first of the points that I wanted to make arising from section 11.1.

The second point -- sorry, section 11.2(b).

The second point about section 11 is that, as your Ladyship will note, there is no question here of considering whether the location of an event was merely fortuitous or happenstance. This may be a point of relevance to section 12, which I'll come to shortly, but for the purposes of section 11, and in particular section 11.2(c), the focus is on the significance of the elements of the events and not on the significance to the parties of the location.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Again, that is relevant to a number of points that Mr Sumption sought to make about this which I'll come to.

Now, the third point to be made about section 11 is this: that factual events, including in relation to the tort of intimidation, may, by virtue of what that tort

involves, not all occur in a single time or in a single place but they may involve ongoing or continuous events.

That was a point that was made by Lord Justice Mance, as he then was, in relation to negligent misstatement claims in a case called *Morin v Bonham and Brooks*. That's a case we cite again in our written opening. Your Ladyship has that at paragraph 888 O2/4.64/888.

MRS JUSTICE GLOSTER: I've got it in front of me, yes.

MR RABINOWITZ: He referred in fact in paragraph 15, which I'm not sure is set out at paragraph 888, to the continuum of reliance and loss. I think in the passage set out he refers to the continuum of reliance. Again, for your Ladyship's note, that authority in paragraph 15 is at O2/4.64/887.

My Lady, just as reliance can involve an ongoing event, it's obvious that the intimidation or threat itself might involve an ongoing circumstance. Just by the way of example, one of the cases we have in the bundle is a case called *Godwin v Uzoigwe*, and that is in fact the only decided authority at Court of Appeal level prior to the present proceedings relating to the tort of two-party intimidation. The Court of Appeal dealt with facts in that case where the element of intimidation itself was an ongoing or continuous one.

For your Ladyship's reference, we cite the judgment of Lord Justice Stuart Smith, again this time in our written closing, paragraph 977.1 it's at page 578 of volume 2.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: My Lady, the reason for making this point, as your Ladyship will appreciate, is because in our submission the relevant elements of a threat for the purposes of the tort of intimidation may well include any steps taken by the defendant to create the conditions and context necessary for the threat which he makes to be effective, whether by communicating to his victim the defendant's own position of power or influence, or the victim's position of weakness and vulnerability.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, my Lady, with those principles generally identified, can I next address the application of those principles to this case and in so doing respond to the points that Mr Sumption made about this in his oral closing. First, when it comes to threats, it's perhaps obvious in the context of the tort of intimidation that one does not look solely at the place where the threat was communicated by the threatener, it is plainly relevant also to look to the place where the

threats are received.

I say this because, obviously, a threat is not a threat until the victim actually hears it. If Mr Abramovich had been shouting in an empty room there would have been no threat. If Mr Abramovich had spoken to Mr Patarkatsishvili, but Mr Patarkatsishvili had said nothing to Mr Berezovsky, there would have been no threat made to Mr Berezovsky. There was a threat to Mr Berezovsky only when Mr Berezovsky learned, as he was intended to learn, of what Mr Abramovich had said, understanding the threat that his statements entailed.

Of course, as your Ladyship will recollect, Mr Berezovsky was in France when he received the threats, as he was intended to receive those threats, by Mr Abramovich.

Just on this point about the place where the threats are received being relevant, we've cited at paragraph 885 of our written opening -- I'm sorry to keep flicking between our opening and closing -- but we've recited at paragraph 885 of our written opening an extract from Dicey, Morris and Collins which makes this point in the somewhat analogous case of misstatement. If your Ladyship has that, you see that they say:

"It may be the case that if a negligent or fraudulent misstatement is made by telephone or telefax

in one country but is received and acted upon by the claimant in another country, that applicable law will be the law of the latter country. The same result may also be found to ensue when representations are made by electronic mail or on the internet."

Again, one can perhaps illustrate how it will apply in the context of intimidation by reference to the sending of the letter or the making of a telephone call. If Mr Abramovich in Russia made a telephone call to Mr Berezovsky in France, in which a threat was made then, following Dicey, it may well be the case that the threat made is to be regarded as made in the place where it was received, that is to say France. So too if Mr Abramovich had posted a letter containing the threat from Russia to France.

My Lady, we submit that the fact that the message was passed on via human means, that is in the form of Mr Patarkatsishvili, really makes no difference to this. That is why I would submit there's no warrant, as Mr Sumption appeared to contend, for simply ignoring the communication of the threats to Mr Berezovsky having taken place in France.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: So that is the first point. The second point is on the question of submission, which is

obviously another element of the tort of intimidation. Submission occurs at the place where Mr Berezovsky comes to submit to Mr Abramovich's threats, and it doesn't occur when Mr Berezovsky's decision to submit happens to be communicated to Mr Abramovich.

That, of course, is because, as your Ladyship will appreciate, communication of a submission forms no part of the tort at all. It's the submission which matters. A victim may well not communicate his intention to submit to a blackmailer, he may simply submit.

So contrary to Mr Sumption's submission at Day 39, page 145, it is irrelevant under section 11 to enquire as to where Mr Abramovich was when he learnt of Mr Berezovsky's intention to submit to Mr Abramovich's threats. It just has got nothing to do with the issue.

What matters here is where Mr Berezovsky was when he submitted to those threats and that, again, was France.

Now, the third point arising from Mr Sumption's submissions that I should say something about is --

MRS JUSTICE GLOSTER: I'm just trying to work out -- I'm looking at page 445 of your opening, at paragraph 891, where you say the threats were made at the meeting at Mr Berezovsky's home at Cap d'Antibes. But that related to the ORT shares.

MR RABINOWITZ: It did, and your Ladyship --

MRS JUSTICE GLOSTER: So how can that be relevant?

MR RABINOWITZ: Your Ladyship is absolutely right to focus on it. It was a point I was going to come to.

Your Ladyship will recall that the third of my points related to the fact that in identifying the elements of this tort, just as a reliance can be a continuum, that's to say you have to look at the elements leading to the reliance, and just as loss can involve a continuum, so too with a threat, it could involve a continuum.

Your Ladyship will recall that our pleaded case, and indeed our case in our closing, is that both at the meeting in France, at Le Bourget and at Cap d'Antibes, Mr Abramovich said and did things which were material to the context in which the threat -- the words used to Mr Patarkatsishvili about Mr Glushkov and about pressure being applied in relation to Sibneft are to be interpreted.

MRS JUSTICE GLOSTER: So you say there's a continuum?

MR RABINOWITZ: Exactly that, which includes what happened both at Le Bourget -- I'm going to say something about it shortly -- and indeed at Mr Berezovsky's home at Cap d'Antibes. That's the relevance of that point, my Lady.

MRS JUSTICE GLOSTER: Yes, I see. This is the point you're

making at paragraph 977 of your closing.

MR RABINOWITZ: Indeed, yes. 977.2.

MRS JUSTICE GLOSTER: And 3, yes.

MR RABINOWITZ: If your Ladyship is content with that, can I move on to the third point arising from Mr Sumption's submissions.

He referred your Ladyship to the decision of the Privy Council in a case called *Kwok Chi Leung Karl v The Commissioners of Estate Duty*, decided in 1988. Your Ladyship may recall, that was a decision on the legal situs of a debt to which my learned friend referred your Ladyship in an attempt to identify a further event located in Russia, and that was at Day 39, page 146.

Now, my Lady, with respect to Mr Sumption, again that case doesn't assist your Ladyship at all. First, it's an authority which predates the 1995 act, and plainly therefore it wasn't considering what is an event or whether -- where an event has occurred within the meaning of section 11. All it determines, and this is for the purpose of the Hong Kong estate duty ordinance, is the legal situs of a future debt under a promissory note. But, of course, the legal situs of an obligation, and I think Mr Abramovich may have in mind the obligations under the 1995 agreement, is not an event that occurs for the purposes of the tort of

intimidation. It's really just -- it's not an element of the tort.

So even if the legal situs for some purposes of Mr Abramovich's obligation to Mr Berezovsky under the 1995 agreement was Russia, given that this was not something that was ever performed, it's difficult to see how one could regard this as an event of any sort. And this being so, it is very difficult to see how this can be said to be relevant under section 11.

So that's the third point, my Lady.

The fourth point is that Mr Sumption spoke of Mr Berezovsky's location in France. Your Ladyship will have in mind, France was the place, as your Ladyship has already remarked, where Mr Berezovsky was when the threat was made to him and the place where he was when he submitted to the threat.

Mr Sumption spoke of Mr Berezovsky's location in France as being, he said, these were his words, "purely adventitious" and as being "of no significance at all". That was at Day 39, page 151. He said, this is still Day 39, page 151, this is what he submitted to your Ladyship:

"Mr Berezovsky might have taken the call in London or in New York or on his skiing holiday in Switzerland, or in any of the other places where he was wont to

travel. The fact that he happened to be in his sitting room, or wherever, at Cap d'Antibes is of no significance at all."

With respect to Mr Sumption, I would submit that this is another bad point.

First, of course, it is simply nonsense to suggest that it is purely adventitious that Mr Berezovsky was in France. Mr Berezovsky was in France because he lived in France. That's why he was in France. He was not there on a holiday, he wasn't in some anonymous hotel or in an airport meeting room, he was at his home in France.

Your Ladyship may recall that it's not in issue that Mr Berezovsky had been resident in France at that time since the end of October 2000 so that by the end of May 2001 he had been there for some seven months. Your Ladyship may also recall that Mr Abramovich told the court that the meeting at Le Bourget in December 2000 was in France because that was where Mr Berezovsky was then living and, indeed, Mr Abramovich's own pleaded case says that the Cap d'Antibes meeting was at Cap d'Antibes because Mr Berezovsky had told him that he could no longer live in Russia. That's a pleaded part of Mr Abramovich's defence, paragraph 27.1.

Secondly, and whether or not this was adventitious,

the adventitiousness or otherwise of Mr Berezovsky's location is, as I've already submitted, irrelevant for section 11 purposes. Your Ladyship may recall that under section 11 it's the significance of the events which my Lady is called upon to weigh up under section 11, not the significance of the locations. That may be a point for section 12 but it's really got nothing at all to do with section 11.

So even if Mr Berezovsky had just been passing through France, that, the fact that he was just passing through it, at least for the purposes of section 11, would have been irrelevant.

So, in our respectful submission, for the reasons I have been submitting, and indeed for the reasons we set out in section K which, as your Ladyship knows, we give a fuller analysis, we've analysed all the relevant events, we submit section 11 of the act most naturally points towards French law as applying.

I need to deal with section 12 as well which, again, your Ladyship has in our opening. It's paragraph -- it started on paragraph 985 and following of our written closing, and on -- your Ladyship I think has on the screen the opening.

Just again looking at section 12, it's worth focusing on the words used B(A)2/438:

"If it appears, in all the circumstances, from a comparison of --

"(a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and

"(b) the significance of any factors connecting the tort or delict with another country, that it is substantially more appropriate [and I emphasise those words, "substantially more appropriate"] for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue ... is the law of that other country."

Then sub 2:

"The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events."

So plainly, as your Ladyship sees, the ambit is very substantially wider for the purpose of section 12 than it is for the purpose of section 11. But the test that one is applying here in section 12 is that section 11

applies unless, looking at the factors pointing to another jurisdiction, one concludes that it is substantially more appropriate for the applicable law to be the law of some other country.

Now, there are three points made by Mr Sumption that I need to address in relation to section 12. First, Mr Sumption said that section 12 admits of a wider range of factors than section 11, and with that we would respectfully agree.

MRS JUSTICE GLOSTER: Can you give me the reference to where Mr Sumption's arguments orally were?

MR RABINOWITZ: Day 39, page 152.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: So it does admit of a wider range of factors.

Mr Sumption was, however, wrong in this context to suggest that it was more appropriate to apply Russian law than any other law to the tort because, I think one of the reasons he gave was that Mr Patarkatsishvili was at the time of the threat a resident in Russia. That was at Day 39, page 152, line 22.

My Lady, there are two points about this. First, Mr Patarkatsishvili is of course not a party to the action. The second point to make about that is that Mr Patarkatsishvili was not, at the time of the tort,

resident in Russia. Indeed, as Mr Sumption had earlier stated in his closing speech, this was at page 62 of Day 39, Mr Patarkatsishvili had himself become a fugitive from Russia before the meeting in May 2001. Mr Sumption said this had occurred in April 2001. Mr Berezovsky's evidence -- this is Berezovsky 4, paragraph 333, that's at D2, tab 17, page 268 D2/17/268 -- Mr Berezovsky's evidence was that Mr Patarkatsishvili had become a fugitive from Russia in March 2001, but either way it was before the tort was complete.

Secondly, Mr Sumption identified the fact that Mr Berezovsky may have had a tax domicile in Russia as being relevant to section 12. This was Day 39, page 153. The tort of Mr Berezovsky having an animus revertendi to Russia. My Latin pronunciation is even worse than my French pronunciation. He talked of Mr Berezovsky having an animus revertendi to go back to Russia, which is of course the hallmark of domicile for tax purposes.

But with respect to Mr Sumption, my Lady, for the purpose of section 12, the fact that Mr Berezovsky at some point in time, perhaps when the regime changes or whatever, would like to go back to Russia, is hardly a point of any substance for the purposes of section 12

in seeking to determine what law should be applied to the tort which was committed at a time when he was --

MRS JUSTICE GLOSTER: So you say, even on the assumption that his domicile remained that of his domicile of birth, that fact is irrelevant?

MR RABINOWITZ: For the purposes of seeking to determine the proper law here, yes, my Lady.

Your Ladyship will have in mind that Mr Abramovich himself says in his evidence that Mr Berezovsky had told him at the time that he could not live in Russia. Those were the words that Mr Abramovich used in his evidence. Mr Berezovsky said he could not live in Russia. And given this, even if it were relevant that Mr Berezovsky hopes one day to return to Russia, I would submit it's of no real significance when deciding the proper law of this tort to look at that when, at the time of the tort, he could not return to Russia.

Now, the third point to make about Mr Sumption's submissions is this: he identified three further factors which he said pointed to Russian law as being substantially more appropriate. This is Day 39, again at page 153, why he said Russian law was substantially more appropriate than French law for the purposes of section 12. We submit that none of these, whether individually or in combination, comes anywhere near the

high standard required to displace section 11, and the factors were these.

The first factor was said to be that Mr Berezovsky and Mr Abramovich and Mr Patarkatsishvili all had their principal business interests in Russia. My Lady, whilst it may be true that they had their principal business interests in Russia we would submit that this is of limited value indeed. After all, why should it matter where their other principal business interests were? They also had interests in other countries. And indeed, my Lady, and this in my submission is a point of some substance, in relation to the assets, the interests which were the subject matter of the tort, all of them had taken steps to ensure that those interests were held offshore.

Your Ladyship will recall the evidence of Mr Abramovich going to Gibraltar and Cyprus to set up trusts to deal with his Sibneft interests and Liechtenstein to deal with his Sibneft interests. All of those structures that he used had some non-Russian law, so he was actually concerned himself that his interests should be governed by non-Russian law.

Your Ladyship will also recall the trusts which Mr Berezovsky and Mr Patarkatsishvili set up, the Octopus and Hotspur Trusts, again set up offshore using

a non-Russian law. So they were very concerned that Russian law should not apply to these interests.

Given that, my Lady, the fact that they may have had other interests in Russia, in my respectful submission, is not a reason why Russian law is substantially more appropriate as the law to apply than some other law which you've determined under section 11.

The second factor that Mr Sumption referred to, and this was at Day 39, page 154, was that he said the substance of the threat was to act wrongfully in Russia, with the wrongfulness of the action being subject to Russian law.

My Lady, we would submit that it's unclear why this makes it substantially more appropriate, or even more appropriate, for Russian law to apply to the tort of intimidation than French law, which is of course the law of the country where Mr Berezovsky was living when he was intimidated and succumbed to the threat. We submit that this is particularly so in circumstances which will always be the case, in relation to intimidation, where the threat was never carried out. That is to say, no conduct of any relevance in relation to these threats actually took place in Russia because Mr Berezovsky succumbed to the threat.

MRS JUSTICE GLOSTER: Is it not a factor that the threat is

to do something in Russia?

MR RABINOWITZ: I'm not saying these things have no weight --

MRS JUSTICE GLOSTER: No, but you say on its own it doesn't amount to substantial --

MR RABINOWITZ: Indeed, on its own -- indeed cumulatively with the others, it doesn't amount to make Russian law substantially more appropriate.

I'm not taking an extreme position and saying your Ladyship can't give any weight to any of these factors at all for the purposes of section 12. For the purposes of section 11 I do say of that. For the purposes of section 12 it's really a balancing exercise, although in the end you have to be satisfied that it's substantially more appropriate that French law should apply.

That then brings us to the third factor which Mr Sumption identified in this context, and that was, he said, this is Day 39, page 154:

"... the whole background to this issue is Russian."

That was, with respect, a rather vague submission because, although it's obviously correct that the history of Mr Berezovsky and Mr Abramovich's relationship and dealings was one based in Russia, that is not the same thing as saying that Russian law would be substantially more appropriate than French law.

Again, as your Ladyship will have in mind, when the tort was committed Mr Berezovsky had left Russia for good, knowing that he would not be able to achieve justice there, that Mr Abramovich came to France repeatedly, which is where he set up his intimidation of Mr Berezovsky, including at the Le Bourget meeting and Cap d'Antibes, and it was also where Mr Abramovich was dealing with Mr Berezovsky via Mr Patarkatsishvili. When he did that, he always did so outside of Russia, including on at least one occasion in Paris.

So, my Lady, we submit that none of those reasons that Mr Sumption has identified either individually or cumulatively, produced a situation where Russian law can be regarded as substantially more appropriate than French law.

That is all I was proposing to say about the choice of law issues. If your Ladyship is with us on the choice of law issues then French law applies and, as your Ladyship knows, the parties are in agreement that your Ladyship should treat French law as being the same as English law for this purpose. The only difference between the two is that French law has no arguable relevant limitation period at all, and so your Ladyship can, in a sense, deal with this as if English law did apply. Now, so far as English law is concerned, there

were, when the matter was before the court in the context of the strike-out application, some very interesting points of the English law relating to the tort of two-party intimidation, and among the points that were at issue was this, namely whether for the purposes of the tort of intimidation the threat of conduct had to be threat of unlawful conduct, or whether it was sufficient that an illegitimate threat was made. Your Ladyship will have seen this referred to in the Court of Appeal judgment.

Your Ladyship I think does not have to worry about that for the purposes of this trial because, under the two possible systems which will govern the question of whether the threat was unlawful or not, Russian law or English law, the parties are in agreement that, as a matter of Russian law, if those threats of conduct were made and Russian law governs, then they were unlawful under Russian law.

So far as English law --

MRS JUSTICE GLOSTER: So it's agreed that if the threats were made --

MR RABINOWITZ: Indeed, then they would have been threats of unlawful conduct, if that is a question, that is to say the question of unlawfulness is to be governed by Russian law. And equally, if that is a question, the

question of whether the conduct was -- the threatened conduct was unlawful, equally, if that is to be governed by English law, we have set out in some detail in our submission why, as a matter of English law, those threats would be unlawful as a matter of English law, and I had not seen any suggestion that that is challenged. Indeed, not even in the 175-page document is there any suggestion that this is challenged.

So given that, on any basis, the threats, if made, were of unlawful conduct, your Ladyship doesn't need to decide the question of whether it is sufficient that the threat be of illegitimate -- sorry, the threat itself be an illegitimate threat. So in a sense it is only if Russian law applies, that is to say if your Ladyship is against us on the choice of law issue, it is only if Russian law applies that there are legal issues, although, having said that, there are certain legal issues arising under Russian law which will apply even if your Ladyship concludes that French law or English law applies to the tort. Because, of course, your Ladyship will recall that one of the issues we had to consider with the experts was whether Mr Berezovsky actually had any rights under the 1995 and 1996 agreements. Because if he didn't have any rights, then there was nothing that he gave up in the tort of

intimidation.

MRS JUSTICE GLOSTER: No, obviously. If he doesn't have any rights --

MR RABINOWITZ: He lost nothing.

MRS JUSTICE GLOSTER: -- then there's no -- well, there may have been an intimidation but there was no submission.

MR RABINOWITZ: Indeed, and that will be a live issue for your Ladyship to decide, even if your Ladyship decides that French law or English law applies. In a sense that goes to the prior issue of whether there were rights that he was intimidated to give up.

Now, your Ladyship has detailed submissions from us on --

MRS JUSTICE GLOSTER: If it's Russian law, it's agreed that -- sorry, if the Russian law governs the tort then there's a debate as to whether, or a dispute as to whether as a matter of Russian law the limitation period is extended, yes.

MR RABINOWITZ: Exactly. I tried to take a shortcut and perhaps I shouldn't have.

There are three potential issues arising under Russian law. The first concerns whether there were any rights that Mr Berezovsky had under the 1995 and 1996 agreement. The second point is whether, if Russian law applies to the tort of intimidation, there is a tort of

intimidation, that is to say, what is the Russian law tort of intimidation? The third issue on Russian law is about the limitation period.

MRS JUSTICE GLOSTER: I thought you said the second was not in dispute.

MR RABINOWITZ: I was about to say exactly that. Of those three issues, the second one is not in dispute.

MRS JUSTICE GLOSTER: Yes, you said if the threats were made, then as a matter of Russian law there's no dispute that those threats were contrary to Russian law.

MR RABINOWITZ: Were unlawful. But there is a different question -- a different question is whether, if you look at all Mr Berezovsky's (sic) conduct, and the question of whether he's committed a tort is one -- the tort of intimidation as a whole is governed by Russian law. Number one, what are the Russian law elements of the tort of intimidation? Number two, will Mr Berezovsky have been able to make those out? That would be a different question to the question of whether the threats were of unlawful conduct under Russian law.

On that issue, that's to say the elements of the Russian tort of intimidation, there is no dispute between the parties, no serious dispute between the parties, as I understand it, and --

MRS JUSTICE GLOSTER: So what is the dispute under the

second issue?

MR RABINOWITZ: The second issue, that's to say if the law is governed by the Russian law of intimidation?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It's really -- the significant point is the limitation period, which is the third point, it's not really the second point.

Your Ladyship will recall that the experts were not even cross-examined on the Russian law tort of intimidation. Paragraphs 1025 --

MRS JUSTICE GLOSTER: I'm just looking at what you said a moment ago because I'm not following this. Just a second.

You say there's a different question, which I think is the second issue, is the question whether he's committed a tort, whether Mr Abramovich has committed a tort.

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: And that involves obviously looking at the Russian law elements of the tort of intimidation.

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: At the moment I don't understand what are the disputed issues as to the constituent elements of the Russian tort of intimidation and whether they're present here. You've told me it's agreed that, if the

threat was made, it would constitute unlawful conduct. What I'm not understanding at the moment is what you say is the Russian law dispute as to the constituent elements of the tort or whether they were present in this case.

MR RABINOWITZ: It is my fault. These questions overlap. Can I just try to separate them out. Your Ladyship has identified them but just if I can then make sure we're on the same page.

What I was addressing earlier when I said there was no dispute between the parties is this: even as a matter of English law there has been thought to be a requirement that you show that the threat should be of unlawful conduct. So let's assume English law applies -- is the proper law of the tort. We say: you made a threat, the threat was of unlawful conduct. The question is was the threat of unlawful conduct? What law governs the question of whether the threat was of unlawful conduct, even if English law governs the tort generally? It could be Russian law, it could be English law. That doesn't matter because on either law it was unlawful conduct.

MRS JUSTICE GLOSTER: What, to threaten to keep someone in jail?

MR RABINOWITZ: Exactly.

A different question is if Russian law governs -- if Russian law is the proper law of the whole tort, what are the elements of the tort and are they made out? We've dealt with that at 1017 and following. I don't understand there to be any issue between the parties -- that's pages 601 to 608 -- I don't understand there to be any issue between the parties about what the elements of the tort are.

Your Ladyship may want to note paragraph 1029 --

MRS JUSTICE GLOSTER: So it's the causation issue?

MR RABINOWITZ: It's the causation issue. The parties didn't even cross-examine the experts because on the facts it's unlikely to make any difference at all. That is the only possible issue of Russian law that might arise there.

I'm sorry, that was rather confused, but it does get rather confusing, my Lady.

So it's the second issue, and I don't want to ignore the limitation point which is also obviously --

MRS JUSTICE GLOSTER: No, I've got that, I appreciate that.

It's the other issue I wasn't so clear about.

MR RABINOWITZ: My Lady, that was all I was going to say about Sibneft law, subject to your Ladyship having questions for me about that.

Can I just, before I move to Rusal which is what

I was proposing to do next, deal with the three matters which arose in the course of my submissions yesterday, so I can just wrap up on Sibneft before I move to Rusal.

First, in relation to the question of the drawing of inferences, with regard to witnesses not called, your Ladyship will recall that you asked in the context of the Wisneski case which we cited at paragraph 194, page 142 of our closing submissions, your Ladyship had asked whether there were any cases that lay down the principle as to whose obligation it is to call a witness, or whether there's anything which would assist your Ladyship as to whom, if anybody, had the job of calling Mr Fomichev.

My Lady, we haven't been able to find cases precisely on that point, and we've looked at the standard text and had a go through the authorities. What I am going to hand up to your Ladyship, not with a view to going through this in detail now, are two decisions by Mr Justice Peter Smith who applies the Wisneski principles, and a decision by Mr Justice Burnett which also applies the Wisneski principles. Mr Justice Peter Smith applied the principles in order to conclude that he should draw the inference. Mr Justice Burnett decided he shouldn't.

Now, can I just tell your Ladyship -- we'll get the

cases handed up. They will be put on Magnum. (Handed)

I wasn't proposing to take time going through them now, my Lady, because in the end I would suggest that they're not going to help you terribly much with the point your Ladyship identified, but they will at least give your Ladyship some examples of how other judges recently have applied these principles. In a sense, what your Ladyship will see is that they reinforce the point your Ladyship made to me that this is a terribly fact-based inquiry.

MRS JUSTICE GLOSTER: Yes, that's what I thought.

MR RABINOWITZ: Can I just tell your Ladyship what the cases are then. The first in time case is the Da Vinci Code case, that's the Baigent v Random House case, 2006, EMLR, and that is one of the judgments of Mr Justice Peter Smith. He drew an adverse inference because of the failure by Random House to call Dan Brown's wife. Dan Brown's wife had been involved in research for the book, and he wasn't satisfied that the reason that Mr Brown, Dan Brown, gave as to why his wife was not called was a sufficient reason.

Your Ladyship will find the relevant passages, I'm not suggesting that they will help you enormously, but paragraphs 213 to 215 of that judgment.

The second of Mr Justice Peter Smith's decisions is

the case of Lewis v Eliades number 4, and again Mr Justice Peter Smith was content to draw adverse inferences. Your Ladyship will find the relevant passages between paragraphs 59 and 62. Your Ladyship will see from those that it's very fact-based but, again, I wasn't proposing to go through this because --

MRS JUSTICE GLOSTER: I can read them.

MR RABINOWITZ: -- you can read them and I'm certainly not promising you'll get a lot out of them.

Mr Justice Burnett's decision was in a case called Davies v Global Strategies Group. That was 2009. In a sense, your Ladyship may get more assistance out of this because this was a case where he wasn't willing to draw the adverse inference, and he was dealing with a case in which the people who were not called were either employees or had been employees. So in a sense, at least he's looking at a relationship and saying, well, does the relationship mean that there was some sort of responsibility?

Your Ladyship will see that his conclusion is that it doesn't. He concluded that these -- the people who could have been called as witnesses, one of whom was no longer an employee, he would have been a material witness but he was working in Nigeria and therefore --

MRS JUSTICE GLOSTER: What are the relevant paragraphs?

MR RABINOWITZ: Paragraphs 5 to 7 and then paragraphs 81 to 83.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Insofar as there is any point remotely approaching the point of principle which emerges out of that, it is that the fact that someone is no longer an employee is not of itself a sufficient reason not to call that person if they have important evidence to give. Your Ladyship will see that between paragraphs 81 and 83.

So that was that point, my Lady. I'm sorry we couldn't assist you with --

MRS JUSTICE GLOSTER: No, that's fine, thank you.

MR RABINOWITZ: The second issue that arose yesterday, your Ladyship asked about the other evidence relating to the procedure by which the parties went through the business of working out what the profit share was. Your Ladyship will recall, this was in the context of the profit share issue.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, in addition to the materials set out at paragraph 264 and 265 of our written closing --

MRS JUSTICE GLOSTER: Just a second, let me go back.

MR RABINOWITZ: Your Ladyship will see that we've set out there, that's pages 179 to 180, we've set out the

evidence your Ladyship has on this from Le Bourget, which is what I mentioned yesterday, and we also provide a transcript reference of the evidence that Mr Abramovich gave to the court, this is on page 181, that he sat down each year with Mr Patarkatsishvili to agree how much was to be paid. That your Ladyship has there.

I should give your Ladyship one other reference which your Ladyship may want to write down at those passages, and that's to paragraph 21 of Mr Berezovsky's fourth witness statement, that's at D4, tab 6, page 36 D4/06/36, where Mr Berezovsky makes the point I made to your Ladyship yesterday about it being Mr Patarkatsishvili -- sorry, fifth statement. Mr Berezovsky makes the point I made to your Ladyship yesterday about it being Mr Patarkatsishvili who dealt with Mr Abramovich's team in relation to profit share.

MRS JUSTICE GLOSTER: Yes, thank you very much.

MR RABINOWITZ: Then the third issue that arose in the context of Sibneft was in the context of the Israel encounter where Mr Abramovich and Mr Berezovsky acknowledged each other and moved on, and your Ladyship will recall in our written closing, paragraph 157.4, that's at page 114, we refer to Mr Abramovich's evidence that the encounter was no more than an acknowledgement,

he says, in light of Mr Berezovsky's negative comments to the press about him.

MRS JUSTICE GLOSTER: Yes, I raised a question on that.

MR RABINOWITZ: Your Ladyship asked for the page reference to any negative comments made by Mr Berezovsky in the newspapers.

Now, we have looked for these. One difficulty with this is that there appears to be no evidence before the court as to when it was that this encounter in Israel took place. Mr Abramovich, paragraph 312 of his third witness statement E1/03/129, just says he had seen Mr Berezovsky on at least one occasion in Israel.

I can tell your Ladyship that Mr Abramovich's written closing at paragraph 372, that's at page 307 of his written closing, has gathered together what appear to be the relevant references, and I can give them to your Ladyship --

MRS JUSTICE GLOSTER: If they're there I can just take them from there.

MR RABINOWITZ: Can I just say this. The first criticism of Mr Abramovich in print appears to have been made in December 2003. Perhaps I'll reference this for the transcript, my Lady. They give these references: H(A)69/3, H(A)69/5 and H(A)69/7.

Then they also refer to something in July 2005 when

Mr Berezovsky told media organisations that he claimed to file a claim against Mr Abramovich. That is at H(A)90, page 52 H(A)90/52, H(A)90, page 55 H(A)90/55, and H(A)90, page 57 H(A)90/57. Of course, my Lady, the first one they can identify is in December 2003 --

MS DAVIES: My Lady, I hesitate to interrupt but it may just be quicker on this point.

There is also a reference in Mr Abramovich's evidence to a press report in December 2002 in which Mr Berezovsky said he did not know Mr Abramovich, and the reference to that is H(A)51, page 83 H(A)51/83.

MR RABINOWITZ: I'm grateful to my learned friend, we didn't spot that one.

Even allowing for that, my Lady, one has almost a full two years which Mr Abramovich said he can't explain by reference to these witness statements. If you go from December -- or January 2001, Mr Abramovich is identifying something in December 2002 with absolutely no contact whatsoever.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, I was about to move on to Rusal.

I'm not sure when your Ladyship is proposing to take the morning break.

MRS JUSTICE GLOSTER: I'll rise now.

(11.28 am)

(A short break)

(11.45 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, before I move on to Rusal, just two comments about the reference that my learned friend, Ms Davies, volunteered about the press reports. I'm not inviting your Ladyship to turn it up, it's the document at H(A)51/83. Your Ladyship will see this when you look at it, but the first point is that although Mr Abramovich referred to disparaging remarks in the press, your Ladyship will see this is in fact a television interview.

The second point is that I would invite my Lady to read the interview because, in our respectful submission, there's nothing disparaging here about Mr Abramovich, and this plainly is not what he had in mind when he gave the evidence that we identify in our written submission.

MRS JUSTICE GLOSTER: I'll read it in due course.

MR RABINOWITZ: Can I then turn to Rusal. Your Ladyship will find this dealt with at section N, page 626 of volume 2 of our written closing. We've also provided a summary of Rusal with an overview at section A5 of our written closing. And your Ladyship will perhaps have

discerned that there are probably four key issues arising in relation to Rusal, and they are these.

First, did Mr Berezovsky and Mr Patarkatsishvili have ownership interests in Rusal? Secondly, was Mr Berezovsky and Mr Patarkatsishvili's relationship with Mr Abramovich in relation to Rusal governed by English law? Third, was there an agreement that prevented any of them selling their interests in Rusal without consulting the others?

MRS JUSTICE GLOSTER: When you say ownership interests, are you making a distinction there between proprietary interests in the assets or contractual claims or rights as against Mr Abramovich?

MR RABINOWITZ: I am drawing -- in relation to Rusal, our case is that Mr Abramovich held those interests on trusts for us, so it would be a proprietary interest, and that would carry with it the usual incidence of fiduciary duties and the like.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So the third factor was: was there an interest (sic) that prevented any of them selling their interests in Rusal without consulting the others? And fourth, did Mr Abramovich breach his obligations to Mr Berezovsky, and is he liable to account, pay compensation for their breach, although of course, as

your Ladyship is aware, the quantum issues have been deferred.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As your Ladyship knows, we submit that Mr Berezovsky's claim in relation to Rusal provides an extremely good fit with the contemporaneous materials and the inherent probabilities of the case and that Mr Abramovich's case does not.

We've identified a number of facts and matters which Mr Abramovich needs to explain away if he's to persuade your Ladyship that, as he claims, he alone acquired the aluminium assets and he alone was Mr Deripaska's partner in the merger with Rusal.

In summary, my Lady, as we've explained more fully in the written closing, Mr Abramovich must first overcome, or sorry, must overcome five significant hurdles we say, each of which is fundamentally inconsistent with the case he now puts before your Ladyship.

First, he has to explain away, if he is right about being the sole person with an interest in the aluminium assets and in those shares, why five contemporaneous contracts relating to the aluminium assets and Rusal do not in fact mean what they appear on their face to say. In particular, Mr Abramovich has to explain (a) why

Mr Patarkatsishvili, Mr Shvidler and the four BVI companies were not in fact purchasers of the aluminium assets although that is precisely how they are described in the 10 February 2000 master agreement; (b) Mr Abramovich needs to explain why he warranted to Mr Deripaska in the preliminary agreement -- I shall give your Ladyship precise references to these in a moment, where we deal with them -- (b) why Mr Abramovich warranted to Mr Deripaska in the preliminary agreement of 5 and 6 March 2000 that he had partners whose consent to the Rusal merger he promised that he would obtain, and whose consent we say he did obtain at the Dorchester Hotel meeting on 13 March.

We deal with that, my Lady, at paragraphs 1164 to 1175 of the written closing, page 672. The first point I identified we deal with between paragraphs 1103 and 1117 at page 637.

Third, Mr Abramovich needs to explain why, in both the Rusal merger contract of 15 March 2000 and the amended and restated contract of 15 May 2000, Mr Abramovich warranted that there were other selling shareholders and other P1 shareholders who had legal and beneficial interests in the aluminium assets that were being pooled with those of Mr Deripaska, and who were entitled to a share of the \$575 million equalising

payment that Mr Deripaska had to make.

That, as your Ladyship may wish to note, we deal with between paragraphs 1257 and 1276, page 722.

Fourth, Mr Abramovich will need to explain why in the second Rusal sale agreement, that's the one of July 2004, he acknowledged that he was not the beneficial owner of the 25 per cent stake, and he admitted that since 15 March 2000 Mr Patarkatsishvili had had a beneficial ownership interest of 25 per cent.

That's a topic we deal with at paragraphs 1421 to 1422 and also 1532 to 1534, page 791. I'm going to say more about these, my Lady --

MRS JUSTICE GLOSTER: Well, it's all very fully set out.

MR RABINOWITZ: It is, and I therefore propose to take this relatively quickly.

Now, of course, my Lady, Mr Abramovich has tried to come up with explanations for each of these contracts, and he's sought to explain why the provisions in his contracts do not mean what they in fact appear to say; he has had to, in order to defend the extreme position that he's taken in this case, that he and he alone was Mr Deripaska's partner in relation to the Rusal merger. We've analysed those various explanations at length in the written closing and your Ladyship has those.

But, of course, your Ladyship should not lose sight

of the cumulative impact of all of these contractual documents because we submit that, taken in isolation, Mr Abramovich's various explanations for each of these contractual provisions look thin but, when taken cumulatively, we submit that they start to look positively skeletal.

Put another way: although it may be possible for the court to conclude that something has gone wrong with the contractual wording in relation to one particular contract, by the time one gets to the third, fourth and fifth contracts such arguments we submit become less and less realistic. We submit the much simpler and more straightforward explanation for these contracts is that, consistent with Mr Berezovsky's case, Mr Abramovich did indeed have partners who were involved in the Rusal merger with Mr Deripaska and who acquired a beneficial interest in Rusal from 15 March onwards, and Mr Abramovich was not, as he would now have it, the sole legal and beneficial owner of the 50 per cent stake in Rusal.

My Lady, I obviously have to acknowledge that none of the five contemporaneous contracts expressly name Mr Berezovsky either as one of Mr Abramovich's partners in Rusal. But we would submit that is hardly surprising given that, as revealed by the transcript of Le Bourget,

it was understood and accepted as between the three men that there should be no written agreements between Mr Abramovich and Mr Berezovsky.

For my Lady's reference, that's box 460 of the Le Bourget transcript. We've set it out at paragraph 1285 of our written closing, volume 2, page 735.

Of course, as your Ladyship will appreciate, Mr Abramovich's difficulties don't stop with the five written contracts. Mr Abramovich must also, on his case -- first, he needs to explain away the numerous passages in the Le Bourget transcript where he appears to acknowledge Mr Berezovsky and Mr Patarkatsishvili's interest in Rusal and their entitlement to Rusal dividends, and, secondly, he must write off the Curtis notes as a forgery because the Curtis notes, as your Ladyship will recall, record Mr Patarkatsishvili telling Mr Tenenbaum that both he and Mr Berezovsky had beneficial interests in 25 per cent of Rusal, which they were contemplating selling, with no suggestion of any different view being held by Mr Tenenbaum about the position.

Now, I'll come back if I may to the Le Bourget transcript and what we say about it in the context of the Rusal claim.

Can I first just say, so far as the Curtis notes are concerned, I've already addressed your Ladyship on this and explained why we submit they are authentic and your Ladyship can rely upon those. If your Ladyship finds, as we say you should, that the Curtis notes are not a forgery and that they do reflect what was discussed between Mr Patarkatsishvili and Mr Tenenbaum in the presence of Mr Curtis and Mr Fomichev in August 2003, that provides extremely strong contemporaneous proof of Mr Berezovsky's case.

Again we've dealt with this, for my Lady's note, in our written closing in the context of Rusal between paragraphs 1309 and 1376. At page 749, your Ladyship will find, volume 2.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Now, again, my Lady, Mr Abramovich's difficulties do not stop even there because it's not just the five contemporaneous contracts and the Le Bourget transcript and large sections of the Curtis notes that point against Mr Abramovich's case, there is also of course the following.

First, why it was that substantial dividend payments totalling \$177.5 million were made to companies associated with Mr Berezovsky and Mr Patarkatsishvili between 2003 and 2005 from profits made by the Rusal

group.

Secondly, why it was that when Mr Abramovich came to sell up the interests in Rusal that were held by his companies he did so in not one but rather in two stages in the autumn of 2003 and the summer of 2004, and why it was that he surrendered complete control of Rusal to Mr Deripaska in the first stage.

Thirdly, Mr Abramovich will need to explain why it was that in 2004 he agreed to pay Mr Patarkatsishvili an amount of \$585 million when, on his case, even on his case, the only amount which he says Mr Patarkatsishvili was entitled to was \$115 million, that being the amount allegedly payable under the so-called commission agreements. He will also need to explain why it was necessary to pretend, as is his case, that this was in respect of the sale by Mr Patarkatsishvili of a beneficial ownership interest in the 25 per cent Rusal venture(?) holding.

This of course harks back to the overarching point I made when starting these submissions, that Mr Abramovich's case requires you to accept, both in the case of Sibneft and Rusal, that he was motivated to make huge payments to Mr Berezovsky and Mr Patarkatsishvili not in recognition of legal obligations arising through ownership interests, but out of what we would say, and

indeed what undeniably would be the case, would be remarkable largesse on his part.

In the case of Rusal, to put it in context, the payment of \$585 million, which Mr Abramovich said he agreed to pay Mr Patarkatsishvili even though the so-called commission agreements suggested an entitlement of only \$115 million, would have represented some 37 per cent of the capital profits Mr Abramovich made on the Rusal transaction.

My Lady may already have done the maths, but the \$585 million that Mr Abramovich says he agreed to pay Mr Patarkatsishvili for his assistance constitutes 37 per cent of the \$1.578 billion Mr Abramovich says he received through the sale of Rusal to Mr Deripaska.

My Lady may think, and we would submit that your Ladyship would be right in this, that it is quite inconceivable that Mr Abramovich agreed to pay such a large share of capital profits that he would otherwise receive in consequence of his four-year investment in the aluminium industry simply because he was appreciative of the assistance Mr Patarkatsishvili had provided and the investment had been profitable.

Just as with Sibneft, we suggest that my Lady would be correct to find that the scale of the payment is attributable not to any largesse on the part of

Mr Abramovich but rather to an ownership interest and dividend entitlement on the part of Mr Berezovsky and Mr Patarkatsishvili, as is evidenced by the Le Bourget transcript, the Badri proofs and the Curtis notes, as is claimed by Mr Berezovsky.

My Lady, it is a slight variation of the old adage, "follow the money". In much the same way, we submit that much light is to be thrown on where the truth in this case lies by looking at the payments made to Mr Berezovsky and Mr Patarkatsishvili -- as I've already submitted, that is one of the few non-disputed facts in this case -- and asking what the scale of those payments indicates as to the true nature of the interests held by Mr Berezovsky and Mr Patarkatsishvili in the disputed assets.

Now, again, as your Ladyship knows, we've dealt with this in some detail in our written closing. I wasn't proposing to say very much more on them. We deal with -- well, your Ladyship has the notes. I can give your Ladyship the references if it would help but your Ladyship has the documents.

MRS JUSTICE GLOSTER: No, I've got them. It's fully set out.

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: I've just got to go away and read it,

I think.

MR RABINOWITZ: Sadly for your Ladyship.

But even that is not the end of the difficulties with Mr Abramovich's case, because a further difficulty which Mr Abramovich faces, and which he must explain away, relates to the fact that the contemporaneous view of virtually all the other participants in the aluminium acquisitions, Rusal merger and Rusal sales, was that contrary to what Mr Abramovich now claims, Mr Abramovich indeed had partners that he was bringing to the merger with Mr Deripaska and who had proprietary interests in the aluminium assets that were being merged.

Again I'm not going into the detail of all these individuals but they include, of course, the original aluminium asset sellers, Mr Reuben, Mr Chernoi, Mr Anisimov and Mr Bosov, and they also include, of course, Mr Deripaska and his advisers, including Mr Bulygin and Mr Mishakov, who also did not believe that Mr Abramovich alone was the acquirer of these assets.

Significantly, they also included Mr Patarkatsishvili himself. I say that because, prior to his death, he consistently told his financial advisers, such as Mr Samuelson, in 2000, as well as Mr Berezovsky's legal representatives at the meetings

between 2005 and 2007, that both he and Mr Berezovsky had acquired a 25 per cent interest, beneficial interest, in Rusal, the other 25 per cent being beneficially owned by their partner, Mr Abramovich.

Then of course, and I know your Ladyship has this, there is the meeting at the Dorchester Hotel on 13 March 2000, a meeting right at the time that the merger with Mr Deripaska was being finalised, and a meeting at which Mr Abramovich, Mr Deripaska, Mr Berezovsky and Mr Patarkatsishvili were all present -- all the principals -- where, as is common ground between Mr Berezovsky and Mr Abramovich, the Rusal merger was specifically discussed. Again that's something I will come back to shortly if I may.

Now, what I propose to do is to run as briefly and quickly as possible through some of the more salient features of the Rusal claim and, if your Ladyship has the point, your Ladyship will tell me and I will move even more swiftly than I was planning to.

MRS JUSTICE GLOSTER: I think -- I've read this, and obviously I've got to go back and do a lot more reading, but I'm quite interested in your submissions, if you have any to add, on issues 24 and 25.

MR RABINOWITZ: Can your Ladyship just remind me --

MRS JUSTICE GLOSTER: That's the release, the Cliren and

Madison documents.

MR RABINOWITZ: In the deed of release?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We're dealing with that, as your Ladyship knows, from paragraph 1681, page 912.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, there isn't anything else, I think we've set out all our points there. We would respectfully submit that the argument -- the reason I wasn't proposing to address your Ladyship on it is Mr Sumption said nothing about it. We have addressed all the points that the other side have made about the deed of release. In our respectful submission, the argument doesn't work at all for a number of reasons that we identify in our written closing. There was nothing I was proposing to add to that.

MRS JUSTICE GLOSTER: Okay. I think what I would find of some assistance would be, again just in your own words: if, as you say, nothing was in writing and Mr Patarkatsishvili was authorised by Mr Berezovsky to deal with Mr Abramovich, why is it that the deed of settlement documents, although of course they don't mention Mr Berezovsky, you say, and don't involve any power of attorney on his part, why do you say that that is not Mr Berezovsky going along with

Mr Patarkatsishvili's apparent signing of a deed of release?

MR RABINOWITZ: Because, my Lady, in order for that to bind Mr Berezovsky, Mr Patarkatsishvili would have needed the authority of Mr Berezovsky to deal with that as well. And Mr Berezovsky's evidence was very clear to your Ladyship, I don't know whether we've identified it here, I think we have; it was very clear, he gave your Ladyship evidence that he absolutely did not authorise Mr Patarkatsishvili to enter into any such deed of release of that sort.

MRS JUSTICE GLOSTER: I'm looking at paragraph 1685.

MR RABINOWITZ: Paragraph 1706, my Lady, at page 919.

MRS JUSTICE GLOSTER: Yes, okay, thank you.

MR RABINOWITZ: I think we've set the argument out very fully there.

Your Ladyship knows there's a prior point there about the effect of a deed only taking effect inter partes, but again we've set this out at paragraph 1690 and following, and in our respectful submission that again is a complete answer to the point. Indeed I have to say there is a further point which is about the construction of the deed of release --

MRS JUSTICE GLOSTER: I've got that point.

MR RABINOWITZ: -- which also, in my respectful submission,

is a complete answer to the point because it simply doesn't cover what has happened. That's the point we deal with at 1710 and following.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It simply doesn't get far enough.

Can I just try and then take this as quickly -- subject to your Ladyship having any other points you specifically want me to deal with, I had better just go through as quickly as I can, just in case I ignore something, for example something Mr Sumption said that I need to address.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: It won't take too long and if I don't finish before the short adjournment --

MRS JUSTICE GLOSTER: You're under no pressure as far as I am concerned.

MR RABINOWITZ: I just don't want to waste your Ladyship's time, that's all. I don't feel under any pressure, I just don't want to take up unnecessary time here.

My Lady, so far as the acquisition of the aluminium assets is concerned, that is in a sense the starting point for the whole Rusal issue. Again, your Ladyship has what we say set out at section N3 in detail, and the starting point for the acquisitions was of course Mr Bosov's approach in late 1999 to Mr Berezovsky asking

if he might be interested in purchasing aluminium assets. That we refer to at paragraph 1092.

The approach to Mr Berezovsky (sic) resulted from contacts Mr Berezovsky and Mr Patarkatsishvili had with Mr Lev Chernoi, Mr Anisimov, General Lebed and Mr Bykov, all of whom were key players in the Russian aluminium industry at that time. We deal with that at 1078 to 1081. Your Ladyship will recall that there was a minor dispute as to whether Mr Berezovsky and Mr Patarkatsishvili together approached Mr Abramovich about this, or whether Mr Patarkatsishvili alone did so, but it is a notable curiosity of the case that Mr Abramovich's evidence is that the result was that he alone acquired interests in the aluminium assets.

We submit that the evidence shows that Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich agreed to acquire the aluminium assets in the same proportions as under the 1995 agreement, that's to say on a 50/50 basis. For my Lady's note, the relevant evidence for this is to be found in particular at paragraph 260 of Mr Berezovsky's fourth witness statement, D2, tab 17, page 251 D2/17/251, where Mr Berezovsky explained that the three men had agreed that the purchase price of the aluminium assets would be paid for from their collective entitlement to the

profits generated from the Sibneft interests, and that, as with Sibneft, the interests would be subject to a 50/50 split, this being in accordance with what Mr Berezovsky says was the agreement made regarding future business interests.

Now, Mr Abramovich's counsel did not directly challenge this evidence in cross-examination and yet Mr Sumption, in his closing speech, submitted that there was nothing in the evidence that supported the allegation of any discussion in 1999 that Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich would share their interests in the same way as previously.

My Lady, given what Mr Berezovsky said at paragraph 260, that was with respect a rather odd submission. I say that because paragraph 260 on its face plainly does support the proposition that the parties agreed to share their interests in the usual proportions. What is more, since the parties agreed to pay for the aluminium assets out of their Sibneft profits, they clearly intended to share these assets in accordance with their usual Sibneft division.

Of course, even though, as it turned out, the parties were able to structure the deal so that no cash was in fact paid out by them, because the entire cost was covered by Mr Deripaska's balancing payment, this is

obviously not something which they would have known at the time that they first agreed to move into aluminium.

Nor is there anything in the suggestion that this is all with the benefit of hindsight and that there is no evidence to suggest that Mr Berezovsky and Mr Patarkatsishvili could have paid for their share of the aluminium acquisitions out of the Sibneft profits had they been required to do so. This is a constant theme which runs through the submissions that the other parties have put in.

Now, we've addressed that particular red herring at paragraph 1549.1 of our closing submission, that's at page 857, and we've set out at some length the evidence, primarily in the form of the bolshoi balance, which indicates that the amounts that were due to and in fact paid to Mr Berezovsky and Mr Patarkatsishvili in the course of 2000 under the Sibneft arrangements would have more than covered their share of the contribution to the aluminium acquisitions.

Your Ladyship will recall, the bolshoi balance refers to Sibneft interests -- profits from the Sibneft interests in December 2000 being 900 million, and of that Mr Berezovsky and Mr Patarkatsishvili would have been entitled to, and indeed they did receive, some \$450 million under those arrangements, and that would

easily have been sufficient for them to pay for their share of the aluminium assets. Half of 575, or \$287.5 million, and that would be so even if there hadn't been an equalisation payment.

Now, still in the context of the original acquisition of assets in 1999, your Ladyship may recall that Mr Sumption, in attempting to suggest that Mr Berezovsky was not involved in the aluminium acquisition, described Mr Berezovsky's evidence as to his involvement in the 1999 acquisition of aluminium assets as the product of what he called disparagingly the:

"... constant and palpable desire to portray himself as the central indispensable figure in every venture that he has touched."

Mr Sumption went on to say that:

"... the contrast between the pretensions and the reality is humiliating."

That was at Day 39, page 10. I would respectfully submit that that was both unfair and completely wrong.

I've already referred to the fact that it was to Mr Berezovsky and to Mr Patarkatsishvili that Mr Bosov came with his proposal that Mr Berezovsky and his partners move into aluminium, and it is, as I've already noted, common ground that in the course of 1999

Mr Berezovsky made a trip to the Krasnoyarsk region in the company of Mr Lev Chernoi and possibly also Mr Anisimov, and that, whilst there, Mr Berezovsky met with Mr Anatoly Bykov, the chairman of the board of the Krasnoyarsk plant; indeed that was Mr Abramovich's own evidence. We provided a reference to all of this at paragraph 1081 of our written closing at page 627. As your Ladyship will appreciate, those were some of the key players in the aluminium industry at the time.

There was of course also Mr Berezovsky's relationship with General Lebed who was the governor of the Krasnoyarsk region. Mr Abramovich's own evidence, that was his third witness statement, paragraph 152 E1/03/81, was that:

"It was important that General Lebed did not oppose our purchase of KrAZ since it would have been extremely difficult to establish and maintain control of the assets we purchased without local political support."

My Lady may recall the graphic evidence Mr Anisimov gave, this was at Day 31 at page 108, as to how the governor had conducted raids on the smelter and interfered with the all-important alumina supplies. He was obviously a critical person to get on board.

Mr Berezovsky also gave unchallenged evidence of his historic dealings with General Lebed. We've given

references to that, paragraphs 1080 and 1081, that's at page 627 of our closing.

Indeed, your Ladyship may recall that there was also evidence about General Lebed too confirming that Mr Berezovsky was involved in the transaction. We refer to that at paragraphs 1099 and 1100. Of course, Mr Sumption, in wishing to advance his case that Mr Berezovsky had absolutely nothing to do with the aluminium acquisition, needed to try and explain away the reference to General Lebed saying that Mr Berezovsky was involved, and the way he sought to do this was to suggest that this was simply something that Mr Berezovsky would have done as Mr Abramovich's political protector, and that this did not mean that he should as a result be regarded as interested in the aluminium acquisition because, as Mr Sumption put it, he was being very handsomely paid for that without any need to give him a gift of a large interest in the aluminium industry. That was at Day 40, page 46.

Now, it was of course contrary to Mr Sumption's general case to even accept that Mr Berezovsky was involved. But, in any event, my Lady, it's rather difficult to follow Mr Sumption's point on this because, of course, on Mr Abramovich's case, the patronage that he says Mr Berezovsky was providing, the political

patronage, was only in respect of Sibneft and never in respect of any other business. That was Mr Abramovich's own evidence at Day 16, page 120, lines 10 to 12, which we set out at paragraph 374.2(a) of our written closing.

So, with respect to Mr Sumption, he really can't use the political patronage argument to try and explain away Mr Berezovsky's involvement in the aluminium acquisition of late 1999.

My Lady, we submit that the only explanation for Mr Berezovsky's undoubted involvement in the aluminium acquisition is that, of course, Mr Berezovsky was indeed involved in the aluminium acquisition deal, contrary to the impression that Mr Abramovich and his witnesses, especially Mr Shvidler, have sought to give.

Now, this of course is what led to the making of the 10 February master agreement and that's a document which, for the reasons we've set out at paragraph 1103 and following of our written closing, that's page 637, is very difficult to square with Mr Abramovich's case that he and he alone acquired the aluminium assets.

Your Ladyship may recall that, when dealing with the 10 February 2000 master agreement, Mr Sumption described this document -- he called it a home-made statement of intent. That was at Day 40, page 9.

In our respectful submission, it was plainly much

more than that. It was a document which was deliberately drafted in and intended to have legal effect, and indeed it was the subject of three amending protocols, all also in legal form and executed by each of the parties, none of which is consistent with it being written off simply as a home-made statement of intent, as Mr Sumption sought to do. We refer to those many protocols at paragraph 1150 of our written closing.

Your Ladyship will recall that the 10 February 2000 master agreement identified both Mr Patarkatsishvili and Mr Shvidler, together with a number of offshore companies, as being within the definition of party 1 purchasers, which of course presents a problem for Mr Abramovich's case that he and he alone invested in the aluminium assets.

My Lady will find the implausible nature of Mr Abramovich's and Mr Shvidler's answers in cross-examination, when they attempted to deal with the party 1 problem, dealt with at paragraphs 1108 to 1112 of our written closing. That's volume 2, page 637. I'm not proposing to go into those now.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: Now, the other point to make about the original acquisition of the aluminium assets is that each of the vendors believed that they were selling to

Mr Berezovsky and Mr Patarkatsishvili. Again, my Lady, we've set out at paragraphs 1118 to 1139 of our written closing, that's at page 642, why we say that each of the vendors have acknowledged or given evidence that Mr Berezovsky and Mr Patarkatsishvili acquired the aluminium assets, and, again, I'm not proposing to go through all that again.

I do need to say something about the position of Mr Chernoi -- sorry, Mr Lev Chernoi because Mr Sumption sought to suggest, in effect, that your Ladyship should not be concerned with the evidence that there was about Lev Chernoi's belief about this. This evidence is to be found first in the various press cuttings that we refer to in which Mr Chernoi, or his statement, refer to the people to whom he was selling the assets as the group of Sibneft shareholders. We've set those out at paragraphs 1126 to 1128, page 647 of our closing.

But there is also the evidence of Mr Michael Chernoi.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will recollect that there was a witness statement served for Mr Chernoi in which he explained -- this was at paragraph 23 -- that his brother had told him that when he referred to the Sibneft owners he understood Mr Berezovsky to be among

them. Now, your Ladyship may recall that Mr Sumption suggested to you that you should ignore this because, they suggested, no plausible reason -- that's what he said -- was given for Mr Chernoi not attending to give evidence. That was Day 40, page 19. This, with respect, was simply not correct.

My Lady, the position is fully set out in a letter of 20 October 2011 from Mr Chernoi's solicitor Decherts, which was provided on that day to Mr Abramovich's solicitors which, for your Ladyship's note, is to be found at bundle L(2011) 29/180 to 182 L(2011)29/180. That explained that Mr Chernoi was not willing to devote the considerable time which would be needed for him to prepare to give evidence to the court but that, in addition, a further and powerful factor was that he wished to avoid the disadvantage which might arise from exposing himself to cross-examination in circumstances where at that time he had no way of knowing whether Mr Deripaska, against whom he was litigating in his own case this year, would also turn up to give evidence. This was, it is submitted, a perfectly reasonable fear for Mr Chernoi to have. Indeed, of course, Mr Berezovsky couldn't require Mr Chernoi to give evidence given his absence from the jurisdiction.

It's respectfully submitted that Mr Chernoi's

evidence as to his brother's understanding in 2000, consistent as it is with contemporaneous newspaper reports, is a matter to which my Lady can give some weight.

MRS JUSTICE GLOSTER: Why couldn't he give evidence by video-link? That was because of the impending trial against Deripaska?

MR RABINOWITZ: Indeed. He at this stage didn't know whether Mr Deripaska would turn up to give evidence or not.

MRS JUSTICE GLOSTER: What's the relevance of that?

MR RABINOWITZ: He didn't want to be cross-examined in a way which would expose him to points when his own trial came --

MRS JUSTICE GLOSTER: What does that have to do with whether Mr Deripaska turns up or not?

MR RABINOWITZ: The view he might have taken was that, if Mr Deripaska was going to do this, then he could see why he should do it as well. But he didn't know at that stage that Mr Deripaska was going to do it and he was concerned that he would do it, Mr Deripaska would then not do it and he would have been at a disadvantage. Of course, we plainly couldn't compel him to do it, to give evidence because he was outside the jurisdiction.

My Lady, there is also Mr Bosov about whom I should

also say something. Mr Bosov said, as your Ladyship may recall, in his witness statement something about wishing to claim commission from Mr Berezovsky arising out of the 1999 aluminium acquisitions. Your Ladyship may also recall that his comments in the press, including an interview he gave with Vedomosti in January 2008, had him saying that he regarded Mr Berezovsky with Mr Patarkatsishvili as having been an acquirer of the aluminium assets.

Now, we have that set out at paragraph 1131.3 of our written closing, page 650. Your Ladyship will recall that Mr Bosov was not in the event called by Mr Abramovich. We have already made the point in our written closing as to the adverse inference that we say should be called in relation to Mr Bosov. It's plain, we submit, that had he been called he would have given evidence totally contrary to Mr Abramovich's case and that is why he wasn't.

Now, there is then also Mr Anisimov. I think we have set out what we say about him at paragraphs 1133 to 1140 of our closing submissions and about his knowledge.

That then brings us to the Patarkatsishvili proofing materials. In our respectful submission, the Patarkatsishvili proofing materials, in the context of Rusal, constitute an important piece of evidence

relating to the acquisition of the aluminium assets which is completely consistent with Mr Berezovsky's case and utterly undermines Mr Abramovich's case.

Mr Sumption in fact had to concede -- this was at Day 40, page 19, he said:

"Mr Patarkatsishvili's interview notes undoubtedly do, as I acknowledge, suggest that by 2005, at any rate, Mr Patarkatsishvili believed himself and Mr Berezovsky to have had an interest in the KrAZ and Bratsk assets, corresponding to their shares in Sibneft."

In fact, my Lady, Mr Patarkatsishvili's belief about his and Mr Berezovsky's interests in the aluminium assets has been consistent and predates 2005 by a considerable margin. What Mr Patarkatsishvili told the solicitors consistently between 2005 and 2007 is, of course, of a piece with other evidence of Mr Patarkatsishvili telling third parties that he and Mr Berezovsky were both interested in the aluminium assets with Mr Abramovich. I include in this the evidence of Dr Nosova and Mr Jenni to this effect, the instructions he gave to Mr Samuelson on Valmet in the course of 2000 and, of course, the Curtis notes in 2003.

Your Ladyship has all of this dealt with, together with references to the key documents, at paragraph 1145, volume 2, page 663, and also between paragraphs 1277 and

1282 of our written closing, volume 2, page 733.

The main response of Mr Sumption to what I would suggest is rather a great deal of evidence pointing in favour of Mr Berezovsky's case about who were the buyers in relation to the 1999 aluminium assets was to point to the commission agreements or protocols which purported to have been concluded with Mr Patarkatsishvili as an agent for the undisclosed intermediary. Your Ladyship will recall this.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Mr Sumption referred to this at Day 40, page 9. Just for your Ladyship's note, the translation of the commission agreement -- I'm not suggesting you turn that up now -- can be found at H(E)1/7, at 7 to 10 H(E)1/7.

Your Ladyship may recall that Mr Sumption asserted that these agreements referred to Mr Patarkatsishvili as an intermediary and facilitator and, on this basis, he asserted that this therefore must have been the true and only role played by Mr Patarkatsishvili in the acquisition of the aluminium assets. We would respectfully submit that that assertion is misconceived. As my Lady will recall, Ms Panchenko accepted, as indeed she had to, that the documents did not accurately or genuinely reflect whatever agreement had been made.

Indeed it was obvious that the agreements were a sham since, despite being produced after the agreement to acquire aluminium assets in February 2000, the agreements purported to have been produced at some different time and suggested that the parties had no knowledge at all whether or not any aluminium acquisition would result. They were plainly a sham.

A further point, my Lady, is that it's clear that it is accepted that those documents were never actually acted upon, reinforcing the sham nature of these agreements. My Lady may recall that your Ladyship actually asked Mr Abramovich about whether they were acted upon and he acknowledged that no payment was ever made under these documents which were really just produced and then, it appears, ignored.

Given the general willingness, my Lady --

MRS JUSTICE GLOSTER: Why does the fact that a payment wasn't made under an agreement mean that it's a sham? It may mean that the parties subsequently decided not to exercise their rights under the agreement? There was evidence, wasn't there, from Mr Abramovich that Mr Patarkatsishvili didn't press because he thought he'd get more and that was right?

MR RABINOWITZ: That's what he said but if your Ladyship looks through all the documents --

MRS JUSTICE GLOSTER: I don't see why it's just a sham because you don't necessarily enforce an agreement at the time.

MR RABINOWITZ: It's not just because of that, my Lady. Had someone tried to act upon it, that would suggest it was a genuine agreement. I accept that it doesn't follow necessarily from the converse that it is a sham but the starting point is the evidence given by Ms Panchenko which in effect shows that these were not genuine agreements. Allied to that is the fact that they were never acted upon. They seem to have been made and, insofar as we can tell, put into a file of documents, together with the explanatory note, intended to be shown to an Austrian bank, Kathrein & Co, with a view to opening up an account there.

MRS JUSTICE GLOSTER: This was the agreement that was notarised, was it?

MR RABINOWITZ: This was the agreement that was notarised. They got that notarised, they seemed to have been put into this box of documents which were intended to be shown to an Austrian bank and in effect forgotten about. Because it's not just that they didn't act upon it, my Lady. Your Ladyship will recall that, even on Mr Abramovich's case, even on his case, when he says he came to pay Mr Patarkatsishvili, the payment which he

made had nothing to do with the suggested amount in the commission agreements. It bore no relationship to that.

As your Ladyship will recall, the maximum amount that the commission agreements talked about I think was \$115 million. In fact, on Mr Abramovich's case, he paid Mr Patarkatsishvili for his services \$585 million. It's impossible, I would respectfully submit, to reconcile the two. That, again, reinforces the notion that these agreements were a sham. They were created in order to be shown to a bank in order to justify payments which were going to be made to Mr Patarkatsishvili and indeed to Mr Berezovsky as well, as it turns out, to deal with, for example, the aeroplane. Your Ladyship will recall the evidence about the Bili company and its opening accounts.

Now, the other point I think to make about this is we would respectfully submit --

MRS JUSTICE GLOSTER: Just a second, Mr Rabinowitz. The aeroplane, remind me, was the aeroplane a gift on top of the 585 or was the money given to pay for the aeroplane? I can't remember.

MR RABINOWITZ: It was on top of. Your Ladyship will recall, the evidence was -- and I don't think this was disputed -- that at the Dorchester meeting, March 13 --

MRS JUSTICE GLOSTER: I remember that.

MR RABINOWITZ: -- for some reason or other, Mr Abramovich does not dispute this, he agreed to give Mr Patarkatsishvili an aeroplane.

MRS JUSTICE GLOSTER: So it wasn't that he was given the money to buy it? There was 585 plus the aeroplane?

MR RABINOWITZ: Indeed.

Now, so far as the attempt by Mr Sumption to try and rely on the commission agreement to tell the court precisely what it was that Mr Patarkatsishvili was doing and exactly what his role was, in our respectful submission, given the general willingness of Mr Abramovich and his team to produce false documents, that's to say documents evidencing transactions that were intended to create a false impression of the transaction concluded, and I have in mind in this, your Ladyship will recall, the ORT documentation, Mr Gorodilov's suggestion, the younger Gorodilov's suggestion was, your Ladyship will recall, to produce an offshore sale of \$10 million and then an option agreement of \$140 million.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: That had nothing to do with the true nature of that transaction.

Then of course there was the Rusal second sale documentation. Mr Abramovich's own case there is that

he produced false documents, that's to say documents -- this is his case, not ours -- documents which suggested that Mr Patarkatsishvili was the beneficial owner. Now, it's difficult to see why he should say the commission agreement correctly states Mr Patarkatsishvili's position and the Rusal second sale agreement doesn't.

With respect to Mr Sumption, that point really doesn't carry very much weight.

Then of course one also has the various Devonia documents prepared by Ms Khudyk to justify the payment, again suggesting transactions which didn't actually take place. And given all this, it really hardly lies in Mr Abramovich's mouth, or indeed Mr Sumption's, to say that because there was here a sham document produced that suggested that Mr Patarkatsishvili was just an agent, that this definitively establishes that this is all Mr Patarkatsishvili was.

Now, my Lady, I've already made the point that it is relevant that the sham commission agreements -- or commission agreements, I'll stop using the word "sham", it's our submission that they're sham; the commission agreements were found together with the explanatory note. Your Ladyship will recall the explanatory note. That made clear that, in addition to the payments to be made under the commission agreements, Mr Berezovsky and

Mr Patarkatsishvili actually had an interest in the aluminium assets.

So you have the commission agreements, found together with this note which refer to the commission agreements but also say that they have an interest in the aluminium assets themselves. In our respectful submission, that also makes it very difficult for Mr Sumption simply to say: here are these commission agreements, they tell you the true story.

The fact that those commission agreements were found, as they were, in a box of documents all concerned with the opening of an account at an Austrian bank, Kathrein & Co, in our respectful submission really identifies the real purpose of those agreements.

MRS JUSTICE GLOSTER: Where do you deal with this, please?

MR RABINOWITZ: At paragraph 1227 and following of our written closing we deal with -- page 702 deals with the point about the Kathrein & Co documents, and the sham nature of the agreements --

MRS JUSTICE GLOSTER: No, what I'm really looking for is where do you deal with the note that was found with the commission agreements?

MR RABINOWITZ: Paragraph 1227 and following, it's at page 708. It goes all the way through to and including paragraph 1243 where your Ladyship can see we've quoted

from the explanatory note which identifies the fact that certainly the maker of the note thought that the partners had an interest in the aluminium complex.

We've highlighted the relevant extracts there.

MRS JUSTICE GLOSTER: Yes. Thank you.

MR RABINOWITZ: So that is what I was proposing to say about the commission agreement and Mr Sumption's reliance on that.

Can I then turn next to deal with Mr Deripaska and the Dorchester Hotel, the merger with Mr Deripaska and the Dorchester Hotel meeting. Mr Sumption submitted at Day 40, page 22, he said that if Mr Berezovsky didn't have an interest in the KrAZ and Bratsk assets then it is hardly realistic for him to be suggesting that he had a share in the merged business. That was Mr Sumption's admission.

My Lady, that would seem to be a perfectly reasonable point. If we didn't have any interest in the assets, then one can see why it would be reasonably argued that we really were unlikely to have acquired an interest in Rusal. But of course the converse is also true. If your Ladyship forms the view that we did have an interest in the underlying assets, then it would seem to follow that it is extremely unlikely that we wouldn't also have had an interest in Rusal when those assets

were combined with those owned by Mr Deripaska to form that company.

That then brings me on to the Dorchester Hotel meeting. We deal with that at section N5, pages 684 and following.

There are three introductory points to make in relation to the Dorchester Hotel issue, and we've covered this in detail, my Lady. The first introductory point is that, on Mr Abramovich's case, the Dorchester meeting was, we submit, the most remarkable coincidence.

Mr Abramovich would have the court believe that, although he and Mr Deripaska and their respective teams had been in London negotiating the Rusal merger between 7 and 12 March, and although they executed the share purchase and sale agreement on 15 March, very shortly after the Dorchester meeting, in the presence he says of both Mr Abramovich and Mr Deripaska, two men who did not know each other well, accompanied by Mr Shvidler who had led the negotiations for Mr Abramovich in relation to the deal, a meeting in London with Mr Patarkatsishvili and Mr Berezovsky on 13 March at which, as is common ground between Mr Abramovich and Mr Berezovsky, the Rusal deal was discussed, is little more than an amazing coincidence entirely unrelated to the Rusal sale.

In our respectful submission that is simply

incredible.

The second introductory point is that Mr Abramovich, Mr Shvidler and Mr Deripaska have all plainly worked hard to deny what really happened on that day. I have addressed my Lady on the dressing gown allegation, I'm not going to repeat those submissions. The significant point for present purposes is that Mr Abramovich, Mr Shvidler and Mr Deripaska were plainly so concerned about the truth of the meeting -- a meeting which, if Mr Berezovsky's evidence is accepted, will hurt Mr Deripaska in his litigation with Mr Chernoi as much as it will harm Mr Abramovich in these proceedings -- that they came up with an added but, we submit, wholly fabricated detail of the meeting in an attempt to show that no serious business was conducted there.

The third and final introductory point about the Dorchester meeting is simply to remind my Lady of what we would submit was the great difficulty that Mr Abramovich and his witnesses had in explaining how it was that the Dorchester meeting took place at all, and why it was that if Mr Berezovsky really had no interest or involvement in the acquisition of the aluminium assets, Mr Abramovich, Mr Shvidler and Mr Deripaska would all have been willing, at very short notice, to fly to London to meet with Mr Berezovsky having been

told by Mr Patarkatsishvili that Mr Berezovsky wished to talk about the transaction.

Again, your Ladyship has the relevant references set out at paragraphs 1183 and following of our written closing, that's page 683. We also deal with this at paragraphs 474 and 475 of our written opening, volume 1, page 311.

Generally, my Lady, just sort of pausing here to consider the issue whether or not Mr Berezovsky did indeed have an interest in Rusal following the merger which was discussed at the Dorchester meeting, my Lady may recall that in his oral closing Mr Sumption told the court that Mr Berezovsky's written closing on the Rusal aspect of this case he said is based almost entirely on what is at best circumstantial evidence, most of it dating from much later, and also on documents suggesting that persons who in most cases had no particular means of knowing the truth were assuming that Mr Berezovsky did have an interest in Rusal. That was at Day 40, page 45.

With respect to Mr Sumption, that was a wholly incorrect submission. There is, I would suggest, a wealth of evidence that would support Mr Berezovsky's Rusal case.

First, of course, your Ladyship has the evidence of

both Mr Berezovsky and Mr Patarkatsishvili both as to what was discussed at the Dorchester Hotel meeting and, more generally, as to their having an interest in Rusal.

As regards Mr Berezovsky's evidence as to what was discussed at that meeting, for your Ladyship's notes, that's referred to at paragraph 1213 of our written closing, page 701. As regards Mr Patarkatsishvili's evidence of what was discussed at the Dorchester meeting, I've already reminded your Ladyship of the summary evidence of Ms Duncan and Mr McKim.

My Lady, the second reason why Mr Sumption's point was a bad one, quite apart from the direct evidence of Mr Berezovsky and Mr Patarkatsishvili, and the contemporaneous contracts I've mentioned, all of which refer to Mr Abramovich having partners or there being other selling shareholders, is of course because there is the Le Bourget transcript which, as your Ladyship will recall, took place in December 2000 and is, therefore, in my respectful submission, very much contemporaneous evidence as to what the position was with regard to the aluminium assets.

I've already addressed my Lady on the significance generally of the Le Bourget transcript. Mr Sumption, when he made his submissions to your Ladyship -- this was at Day 40, page 49 -- told you that the only

significance of the Le Bourget transcript in relation to Rusal was, he said, the use of the word "we" in reference to the 50 per cent holding which your Ladyship has at box 502.

My Lady, even leaving aside Mr Abramovich's complete inability to give an adequate explanation of why he consistently referred to "we", which certainly appeared to include Mr Patarkatsishvili and Mr Berezovsky when talking about ownership or control of the Rusal interests, this, with respect, completely misstates the significance of the Le Bourget transcript.

In the first place, my Lady, it is important to bear in mind, when considering the Le Bourget transcript and what it tells us about the aluminium interests, that it is of course Mr Abramovich's case that Mr Berezovsky had absolutely nothing to do with Rusal. That's his starting point. If that is right, why then was Mr Berezovsky raising the question of Rusal with Mr Abramovich at the Le Bourget meeting at all? On Mr Abramovich's version of events, Mr Berezovsky would have had no basis at all for asking to be made a formal shareholder in Rusal, which is what he did ask, or indeed for anything whatever to do with Rusal.

And if Mr Abramovich's version of events was correct, one would have expected Mr Abramovich's

reaction to Mr Berezovsky raising Rusal, and the recognition for him of a formal shareholding in Rusal, in a fairly dismissive if polite way.

What one has instead is not Mr Abramovich saying to Mr Berezovsky "What on earth are you talking about?", what he in fact says in response when Mr Berezovsky raises the topic of Rusal is consistent only with Mr Abramovich regarding and treating Mr Berezovsky as a co-owner. This can be seen, my Lady, most clearly perhaps from two passages. Your Ladyship may recall box 500 where Mr Abramovich tells Mr Berezovsky:

"You cannot do anything with Aluminium, that's for sure."

In other words, they're discussing whether they can recognise their rights in relation to aluminium, and Mr Abramovich says to him, "You can't do anything with Aluminium, that's for sure." And the reason he gives is in box 502, he says:

"We only hold 50 per cent there [that is at Rusal], so the other party has to agree [about formally legalising their interests]."

Mr Abramovich has been able to provide no explanation at all for why Mr Berezovsky should have been asking about legalising his Rusal interests, nor indeed why he considered he had anything to do with

Rusal.

It is, we would submit, also fair to say that Mr Sumption also made no serious attempt to grapple with the other obvious difficulty posed by the Le Bourget transcript, namely the passage at box 504 where Mr Abramovich tells Mr Berezovsky, with whom he's speaking at this point, and this is in relation to Rusal:

"... you will have to wait in line for dividends" --

Sorry:

"... you will have to wait in line to receive dividends."

For my Lady's notes, that's E6.1, page 173/4 E6/01/173.

My Lady, why would Mr Berezovsky have any interest in dividends from Rusal if, as Mr Abramovich says, he had nothing whatever to do with the aluminium interests at all? Why would he have to wait in line for dividends from Rusal? There would have been no basis for him to stand in that line at all.

We've dealt with these points in relation to Le Bourget very fully at paragraphs 1287 to 1289, page 737 and following of our closing, my Lady. I'm not going to repeat them all now.

There is, however, also just one further point in

relation to Le Bourget. Your Ladyship will recall boxes 37 and 38, E6, tab 1, page 13 and 14 E6/01/13, your Ladyship will recall the reference in those to 30 million being due to Mr Patarkatsishvili and Mr Berezovsky from aluminium.

That again raises the question for Mr Abramovich as to why this would have been mentioned if neither Mr Berezovsky nor indeed Mr Patarkatsishvili had anything to do with Rusal. We've considered that again at paragraphs 288 to 293, volume 1, page 193.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Again, just to make this point, it was of course only nine months after the Dorchester Hotel meeting that the Le Bourget meeting took place. Indeed it was before Rusal was formally formed, which took place late in December, so that is very contemporaneous evidence indeed.

My Lady, the third reason why we submit that Mr Sumption's suggestion that there is nothing other than noncontemporaneous circumstantial evidence involving people who would not know the true position to support the existence of Mr Patarkatsishvili's and Mr Berezovsky's Rusal interests is wrong is of course because of the Curtis notes, and I've already addressed your Ladyship on those notes and I don't propose to do

so again.

MRS JUSTICE GLOSTER: No, fine.

MR RABINOWITZ: Paragraph 1369 and following is where we deal with that.

Then of course there is, on this same point, the payment of the dividends from Rusal profits. Your Ladyship will recall the dividend of \$177.5 million paid to Rich Brown out of the profits of the Rusal group, and the fact that when Rusal came to be sold Mr Abramovich had to do so in two stages.

Can I just mention that, go into that in a little more detail, the question of the stages of the Rusal sale because, in our respectful submission, that also is key evidence in relation to the Rusal issue.

It will not have been lost on your Ladyship that in his closing speech Mr Sumption made barely any reference at all to the sale of the first Rusal tranche. That's the one I want to focus on for the moment, the sale of the first Rusal tranche in the autumn of 2003. Your Ladyship will recall that there are -- I'm just going to give your Ladyship the reference to where we deal with this because it may help your Ladyship.

MRS JUSTICE GLOSTER: Paragraph 1377?

MR RABINOWITZ: 1377 and following, that's correct, my Lady.

Your Ladyship may recall that there were

irreconcilable differences, we would submit, between the evidence of Mr Abramovich and Mr Deripaska as to the circumstances of the sale and, more particularly, as to why Mr Deripaska only acquired half of the holding registered in Mr Abramovich's name at this time.

Mr Deripaska's evidence in February 2008 in his litigation with Mr Chernoi was that he had, in 2003, made an offer for the whole of Mr Abramovich's 50 per cent stake but was told that only 25 per cent was available.

Your Ladyship will also recall that this was completely inconsistent with Mr Abramovich's evidence that he and Mr Deripaska reached an agreement in the summer of 2003 relating to the sale of the whole of Mr Abramovich's 50 per cent stake in Rusal but agreed to structure it in two stages because Mr Deripaska did not have sufficient funds available. We deal with that at 1383 to 1386 of our written closing.

Now, the other aspect of this, your Ladyship will also recall Mr Deripaska's evidence was also consistent with what was said by Mr Abramovich's own spokesman. That's a point we deal with at paragraph 1400, subparagraph 1, at page 781. He also said that only 50 per cent was sold because there were other people with interests in the other 50 per cent. But it's not

only Mr Deripaska's evidence in the Chernoi litigation that is impossible to reconcile with Mr Abramovich's case as to what occurred in 2003. Your Ladyship will recall the documents, which evidenced the transaction itself whereby Mr Abramovich and Mr Deripaska's lawyers set out the agreement, suggest that what Mr Abramovich told the court about the deal done with Mr Deripaska in 2003 is simply not true. That we've dealt with at paragraph 1377 and following, that's page 773. Your Ladyship will recall those agreements. There was an option agreement; it was impossible, we would submit, to reconcile that with what Mr Abramovich was saying he had in fact agreed.

There really is just the common sense point about this. If Mr Abramovich really was entitled to dispose of the whole of his Rusal tranche in 2003, it is, we submit, really difficult to understand why, commercially, he would only have disposed of half of that stake. In circumstances where that would leave him at the mercy of a businessman, Mr Deripaska, whom even Mr Abramovich said liked to squeeze his partners. It just does not make sense at all, why Mr Abramovich would do that if he could have done anything different.

That, of course, is why Mr Abramovich had to come up with the story of having disposed of the whole of his

stake and fixed the price for it in the summer of 2003 because he also recognised the commercial incoherence of only having disposed of half of it, leaving him as an unprotected minority in a company controlled by Mr Deripaska. In our respectful submission, once your Ladyship concludes, as your Ladyship must, that Mr Abramovich's story about 2003 is bogus, which it undoubtedly is, that really exposes the thinness of his whole case in relation to Rusal.

Now, can I then just say something about the sale of the second Rusal tranche.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Under that tranche, of course, sale documentation was entered into that provided that, contrary to Mr Abramovich's case, Mr Patarkatsishvili and not Mr Abramovich had been the beneficial shareholder of the 25 per cent interest since March 2000. Again, we've dealt with this in our written closing, page 788 and following, that's paragraph 1418 and following. My Lady may recall that, in his oral closing, Mr Sumption suggested that the documents relating to the second Rusal sale do not assist Mr Berezovsky. We would submit that they do for the reasons we've set out in our written closing but, on any view, they certainly do not assist Mr Abramovich because

they demonstrate that a number of people who were involved in the second Rusal sale transaction understood that (a) Mr Abramovich was not the beneficial owner of the remaining 25 per cent stake in Rusal, (b) that there was at least one, if not two other persons described variously as "BB" or "B plus B" or "B1 and B2", "X and Y", who were beneficially interested in that 25 per cent stake in Rusal, and (c) that at least some people regarded or understood Mr Abramovich was in a trustee and/or fiduciary relationship with those other parties.

Now, whatever Mr Abramovich and the Chancery defendants may now seek to suggest, to the effect that that understanding arose because of newspaper reports, in our respectful submission, that is simply not a tenable suggestion. It's perfectly obvious that the understanding of a number of these representatives was ultimately derived, as one would expect in a transaction of this scale and magnitude, from instructions received from the various principals involved in the transaction and, in particular, the understanding of Mr Deripaska and Mr Patarkatsishvili.

That this was so can perhaps be most readily seen from the fact that Mr Hauser uses the language of advice when setting out his understanding of the factual background in his 9 June 2000 memorandum and the fact

that, as he admitted in the course of his cross-examination, the information set out in that memorandum and others like it was not based solely on the newspaper reports. Again, for my Lady's notes, as your Ladyship has probably picked up, we cover this between paragraph 1441 and 1443 of our written closing, page 802.

I think I said 9 June 2000; it's 9 June 2004 for Mr Hauser's memo.

My Lady, perhaps most significantly so far as concerns the second Rusal sale and the final contractual documentation executed by Mr Abramovich is the deed of acknowledgement in which Mr Abramovich openly acknowledged that he was not and never had been the beneficial owner of the last 25 per cent tranche of Rusal and that the beneficial ownership of that tranche was vested in whomever Mr Patarkatsishvili said it was vested in.

The language of the deed of acknowledgement on this point is so clear that, for once, not even Mr Abramovich can seek to argue that something has gone wrong with the contractual wording or that it should be read subject to some Russian tradition or business understanding. Mr Abramovich is therefore reduced to arguing that he was prepared knowingly to put his name to a false

document and that he was a willing party to a money-laundering scheme designed to deceive western banks and to transfer millions into western bank accounts.

What is therefore notable about this, my Lady, is that Mr Abramovich would rather admit to being a participant in that dishonest scheme rather than to admit the truth, which is altogether more straightforward and which is reflected in much of the other evidence to which I've referred, including for example the Curtis notes, Le Bourget and Mr Patarkatsishvili's proof of evidence. That is that Mr Abramovich never was the sole beneficial owner of the 25 per cent stake in Rusal but rather that he held that stake for and on behalf of Mr Berezovsky and Mr Patarkatsishvili.

My Lady, that is all I was proposing to say about the purely factual issues. As I say, they are set out in great detail.

MRS JUSTICE GLOSTER: Thank you. They've been very comprehensively set out.

MR RABINOWITZ: I was going to move on to deal very shortly with some of the legal issues but perhaps I can return to it --

MRS JUSTICE GLOSTER: After the break, at 2 o'clock. Very

well. 2 o'clock.

(12.58 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, can I say something about the choice of law issues relating to Rusal. For my Lady's note, we deal with this in our written closing at volume 2, page 872 and following, paragraphs 1573 and following. This is again an important issue in the context of the Dorchester meeting and indeed Rusal generally because, as your Lady knows, we submit that English law applies to the arrangements in relation to Rusal, indeed that it was expressly agreed, and that is the matter of some dispute.

My Lady, on the question of whether there was in fact an agreement that English law should apply, your Ladyship of course has direct evidence relating to that from Mr Berezovsky who told the court that he, Mr Patarkatsishvili, and Mr Abramovich discussed the use of English or British law both in advance of the Dorchester meeting and indeed at the Dorchester meeting itself, but there is here the usual conflict in the evidence between the parties.

Mr Sumption in closing chose to describe

Mr Berezovsky's evidence about what happened at the Dorchester Hotel meeting in relation to the agreement to apply English law as "ridiculous". Again, I would submit there was no basis at all for such an overblown submission.

There are three observations that we would make in relation to this, my Lady. First, Mr Sumption sought to persuade the court, as did Mr Abramovich's other leading counsels before him in the course of the strike-out application, that Mr Berezovsky had somehow changed his case on the governing law of Rusal arrangements. And again, as your Ladyship knows, we say that's simply not right. We've set out the details of that, paragraph 1590, page 877 and following and I'm not going to repeat --

MRS JUSTICE GLOSTER: No, it's all set out there.

MR RABINOWITZ: It is.

We also submit, secondly, my Lady, just considering the whole circumstance and what is likely to have happened at the Dorchester meeting, your Ladyship will recall that the whole discussion at the Dorchester meeting would obviously have involved, we submit, Mr Berezovsky and Mr Patarkatsishvili being filled in on where matters had reached following the earlier discussions that had taken place between Mr Abramovich,

Mr Shvidler and Mr Deripaska. It's a point we've made previously, but if in light of that Mr Patarkatsishvili, or indeed anyone else, had asked or provided a summary of what had been agreed, given what was agreed in the preliminary agreement a few days earlier about English law, it's difficult to see why that summary would not have included words to the effect such as "We've also agreed that our merger relations will be governed by English law", because that is precisely what clause 14 of the preliminary agreement said.

Now, the third point we make here is to remind your Ladyship that Mr Berezovsky's evidence about the parties agreeing English law is in fact evidence he gave at a time before any disclosure by Mr Abramovich of the mass of documentation was given which is all consistent with it.

The point is this: my Lady should know that Mr Berezovsky recorded in a second witness statement at paragraph 77 that it had been explained at the Dorchester meeting that all the merger arrangements would be governed by English law. That statement was served in July 2009 although it was in fact in materially identical terms to a version served in mid-April 2009. The only difference between the versions was the deletion of an accidental reference to

a draft witness statement in the first version. So Mr Berezovsky was saying this about English law applying in mid-April 2009.

At that time, that's to say in mid-April 2009, Mr Berezovsky had obtained a copy of the 10 February 2000 agreement which, of course, did not contain any English governing law provision, but what he had not at that time obtained was the preliminary agreement of early March 2000 which did contain an English choice of law provision. He had not yet been provided with the 15 March agreements which also contained English law provisions. He didn't have at that stage the 15 May agreement which also contained English choice of law provisions and, of course, your Ladyship will recall that those were the contracts by which the aluminium assets were merged.

Those were disclosed by Mr Abramovich under cover of Mr Mitchard's third witness statement which was only served on 19 June 2009. That, your Ladyship can see, at paragraph 56 of Mitchard 3, which is at J2/2.11, page 208 J2/2.11/208.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So, my Lady, far from it being

Mr Abramovich's evidence -- sorry, Mr Berezovsky's evidence being ridiculous, what Mr Abramovich's case

involves, your Ladyship, to conclude, is that in effect Mr Berezovsky made a very lucky guess when he said, "Oh, we agreed that English law could be applied", a lucky guess which was, as it turns out, supported by all the other documents which were subsequently produced which he didn't have in his possession.

We respectfully submit that your Ladyship should not conclude Mr Berezovsky made a lucky guess here. The fact that all of these documents also contain English choice of law provisions is very strong evidence that that is what the parties had in mind should be the law which governed the Rusal relations.

As for the circumstantial evidence supportive of Mr Berezovsky's recollection, we submit that the evidence about this is overwhelming. We've listed it out for my Lady's note at paragraph 1581, page 874, starting at 1581 and going all the way to 1592 of our written closing.

As your Ladyship will see from that, that evidence includes, for example, first the evidence of Mr Abramovich's increasing use of non-Russian law structures, more particularly the creation in late 1999 of the Cypriot trust through which he held his interests in Sibneft, and the 12 contracts through which Mr Abramovich's companies effected the necessary

transfers, each of which had an English choice of law provision. We've given references to that at paragraph 1089, page 630.

There are also the ten dual language share purchase and sale agreements which were executed at around the same time as the 10 February master agreement relating to the aluminium assets, and again, my Lady has that identified at paragraphs 1148 to 1151 of our written closing, page 666.

Then, thirdly, there is the preliminary agreement which, as your Ladyship will recall, also contained an English choice of law provision. Now, again, that's dealt with at 1158 to 1182 of our written closing, page 671. And the relevant clause, clause 14 is, we would submit, strongly indicative of the approach that Russian businessmen generally, and indeed the investors in Rusal in particular, took to the question of the governing law at this time.

My Lady, the fact that the businessmen at that meeting, that's to say the meeting at the Kempinski which I think then carried on at Mr Abramovich's house, the fact that the businessmen at that meeting themselves concluded that an English choice of law provision should be included indicates, we would submit, that Russian businessmen worried about these things, and indeed

discussed and agreed them even when lawyers were not present. It also indicates the high regard that Russian businessmen quite properly had for English law at that time, and their knowledge that they needed to expressly deal with the question of choice of law by including a provision to that effect in their agreements.

In our respectful submission, my Lady, if this was a matter which would be sufficient to be addressed by the parties at the Kempinski Hotel meeting there is no reason at all why it would also not have been addressed by very similar parties at the Dorchester Hotel meeting very shortly thereafter.

Now, a fourth matter which your Ladyship may regard as relevant in this context --

MRS JUSTICE GLOSTER: Well, Mr Berezovsky wasn't at the Kempinski, was he?

MR RABINOWITZ: No, he was (sic), but the others were. And that was really the point I was about to come on to, because they were all content with English law provisions, they were agreeing them there. Mr Berezovsky, as your Ladyship will recall, the evidence is that he comes to the Dorchester meeting having just been in the House of Lords dealing with the Forbes litigation. And the evidence he has given to your Ladyship is as to how impressed he had come to be

with the English legal process. He just thought English law and the English legal process was the bee's knees.

MRS JUSTICE GLOSTER: Had he just won in the House of Lords or was it just the argument?

MR RABINOWITZ: I think it was just the argument. I think among the things that impressed him was the bowing and the politeness and the fact that it appeared there was going to be a fair hearing, which may not have been something he was entirely used to.

In those circumstances, where Mr Berezovsky had just spent the morning in the House of Lords attending his jurisdiction battle there, if someone had mentioned the fact that they had agreed to English law to govern the future of merger relations between the Abramovich group and the Deripaska group it would, I suggest, have been entirely unsurprising that Mr Berezovsky would also have readily agreed that English law should govern internal legal relations of the Abramovich group.

This circumstantial evidence, which we submit is strongly supportive of Mr Berezovsky's actual recollection, is, as your Ladyship appreciates, the same evidence as that which would in any event support an implied or imputed choice of law under the Hague and/or Rome Conventions. Again, we've set out all this for your Ladyship at paragraphs 1590 through to 1636,

page 879.

So that is why we say, even if your Ladyship were to conclude that there were no express discussion of choice of law at the Dorchester Hotel meeting, then that does not matter because English law would be the applicable law in any event. That's under Articles 5 to 7 of the Hague Convention.

Now, finally in relation to the claim against Mr Abramovich, your Ladyship will have seen that we deal with our submissions on the law and the resolution of the Rusal issues in some detail at section O in volume 2 of our written closing. Again, I wasn't proposing to repeat those submissions here.

The very short version is that if my Lady is with us on the facts of Rusal, and in particular that Mr Abramovich was not acting alone but that Mr Berezovsky and Mr Patarkatsishvili were his joint venture partners in relation to Rusal, and that their relationship was expressly or impliedly governed by English law, then much as one might expect, there will be no legal impediment to Mr Berezovsky succeeding in his claim. That's what it will come to. There is certainly no legal argument why, if the facts are in his favour, he would nonetheless not succeed.

My Lady, can I then move now to deal with the

Chancery defendants. I propose to say very little about the position of the Chancery defendants.

MRS JUSTICE GLOSTER: Can I just be clear. The claim in relation to Rusal, the claim for compensation or accounting, only relates to the fact that the second tranche was sold, you claim, at an undervalue?

MR RABINOWITZ: Well, it was sold. The point about -- the claim in relation to Rusal --

MRS JUSTICE GLOSTER: Well, it was sold contrary to what you say was an agreement that it wouldn't be sold?

MR RABINOWITZ: They wouldn't sell without permission. In other words, you wouldn't sell in circumstances where you would put the other party into the position of a minority.

MRS JUSTICE GLOSTER: But I'm looking at the issues at page 849 in the second volume of your closing.

MR RABINOWITZ: If your Ladyship picks it up at issue 18, your Ladyship sees 18.2 --

MRS JUSTICE GLOSTER: What I'm not quite clear about is the compensation claim.

MR RABINOWITZ: Right.

MRS JUSTICE GLOSTER: I'm looking at 26, 27. Is the claim for compensation dependent upon there being a breach of what you assert is the obligation not to sell without the agreement of the others?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: Or is there another type of claim?

MR RABINOWITZ: Well, there's the breach of fiduciary duty as well, that's to say, we've set it out in our written closing, but there is also a breach of fiduciary duty not to compete with those for whom one is standing in a fiduciary position. So that -- it's not just the contract claim, there's a breach of fiduciary duty claim as well, but it is very much related to the fact that Mr Abramovich, we submit, held in trust, and by virtue of his being a trustee, if he sold his interests in a way so as to favour himself over the position of his beneficiaries that also gives rise to a claim.

That's the point we deal with at paragraph 1570, page 870.

MRS JUSTICE GLOSTER: But assume he sold the assets and there wasn't a breach of the obligation, let's assume there wasn't, the court were to find there wasn't an obligation to sell, say, with the agreement of the others, is there still an accounting claim?

MR RABINOWITZ: That would be a breach of trust claim, yes, my Lady. That would also give rise to the claim.

MRS JUSTICE GLOSTER: Because you say that irrespective of whether he should have sold or could have sold or not, he hasn't accounted to you for the proceeds?

MR RABINOWITZ: Well, he's favoured himself in the sense that he sold his share for 1.5 billion, which made our share worth --

MRS JUSTICE GLOSTER: Yes. And he should have sold you say *pari pasu* your shares and his shares.

MR RABINOWITZ: Precisely.

MRS JUSTICE GLOSTER: Yes, I'm not quite clear, if that's right -- well, no, I can see the argument on quantum.

And you don't accept that whatever was paid to Mr Patarkatsishvili was an appropriate accounting so far as Mr Berezovsky was concerned?

MR RABINOWITZ: Definitely not, my Lady.

MRS JUSTICE GLOSTER: So no credit is to be given for the money that was paid --

MR RABINOWITZ: Ah, sorry. You would give credit for that money in a sense that -- as I understand the law, we have an election, we can actually say, "You've sold our share because we were your beneficiaries", the 1.5, whatever it is, but that is not to say that there's some part of the 580 or 570 --

MRS JUSTICE GLOSTER: 585.

MR RABINOWITZ: 585 including, that you wouldn't be able to take into account by way of a deduction.

MRS JUSTICE GLOSTER: Would you just direct me? I'm afraid I haven't read quite to the end of this, which I still

have to do.

Can you tell me where you make the point on accounting in relation to the 585? It's not quite clear how you put your case on this.

MR RABINOWITZ: No, I follow, my Lady.

MRS JUSTICE GLOSTER: I can see the claim that you say Mr Abramovich wouldn't have sold at all, or that he shouldn't have told his stake, in inverted commas, at a higher price without selling part of your holding as well. And I can see that you've got an accounting claim, or that you say you've got an accounting claim. What I'm not clear about is whether or not you concede that you should credit, or some credit, for the 585 that was paid to Mr Patarkatsishvili.

MR RABINOWITZ: Can I invite your Ladyship to go to the opening submissions.

MRS JUSTICE GLOSTER: Right. Yes, I've got them. Which?

MR RABINOWITZ: Paragraph 1477 and following, page 637, behind V.

If your Ladyship looks at paragraph 1479 on page 638.

MRS JUSTICE GLOSTER: Right, 1479. You recognise it -- yes, I must have got it from there.

MR RABINOWITZ: I think that was the point my Lady was after.

MRS JUSTICE GLOSTER: So he's accepting, as it were, is this right, that Mr Patarkatsishvili had authority to receive the 45 (sic) million on the "partnership's" account.

MR RABINOWITZ: Not that he had authority but that he in fact did.

MRS JUSTICE GLOSTER: So anyway he's giving credit for that.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: For the 450 million. He's not saying, "You should have paid half to me, Mr Abramovich. You shouldn't have paid the whole lot to Mr Patarkatsishvili"?

MR RABINOWITZ: He's not disputing that Mr Patarkatsishvili would have been entitled to half of what the proceeds were, that is to say, of the 25 --

The claim arises in this way: number one, he shouldn't have sold without consent, so that as a consequence of that he was in breach of --

MRS JUSTICE GLOSTER: I've got all of that. All I'm interested in is whether, in paragraph 1479, the recognition there is an acceptance that he has to give credit for whatever his share is of the 450 million?

MR RABINOWITZ: And I think we do accept that.

MRS JUSTICE GLOSTER: Well you seem to be there.

The alternative would be to say "You had no authority to pay Mr Patarkatsishvili without my consent

and agreement, I'm not giving any credit for any part of it".

MR RABINOWITZ: Well, he could have said that, and perhaps we could have said that --

MRS JUSTICE GLOSTER: But he's not?

MR RABINOWITZ: -- but he's not saying that.

MRS JUSTICE GLOSTER: Yes, okay, I'm clear on that. Thank you.

MR RABINOWITZ: Just for your Ladyship's note, we deal with quantum issues further at section 08, page 924 and following.

MRS JUSTICE GLOSTER: In the second --

MR RABINOWITZ: In our written closing.

MRS JUSTICE GLOSTER: In your written closing.

MR RABINOWITZ: That may assist your Ladyship in terms of what our position is generally in relation to the claims.

Now, can I then turn to the position of the Chancery defendants.

MRS JUSTICE GLOSTER: Yes, certainly.

MR RABINOWITZ: I'm going to say very little about them because the position they take very largely mimics the submissions of Mr Abramovich which, as your Ladyship knows, have been dealt with in full in our written closing.

So far as the position of the family defendants is concerned, there are only two points we would wish to make. The first is really by way of a caveat to suggest that your Ladyship tread carefully when dealing with the family defendants' written closing because, in our submission, that document reflects an unfortunate tendency not always to fairly portray the documentary evidence or the oral evidence, but since a number of the issues to which those submissions are directed really just follow what your Ladyship will find in Mr Abramovich's materials, again I'm not going to take up time on that now.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Secondly, so far as the family defendants are concerned, is just to note the curious position that the family defendants have had in these proceedings. As my Lady will recall, Mr Patarkatsishvili's widow and daughters had previously run a case in Gibraltar and given evidence there which recognised the interests of Mr Berezovsky and Mr Patarkatsishvili in both Sibneft and Rusal.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Despite the fact that they were, Mr Patarkatsishvili's widow and daughters, very frequently in this court during the trial, and there

would not appear to have been any difficulty whatever with them doing so, Mr Patarkatsishvili's widow and daughters declined to give evidence to the court on matters which were plainly within their knowledge. Yet here they are, having led absolutely no evidence of their own, and in circumstances where they had previously told the court exactly the opposite, seeking to persuade the court that Mr Berezovsky had no interest in Rusal.

Indeed more than that, my Lady, they are seeking to persuade the court that Mr Patarkatsishvili also had no interest in Rusal, arguing for example at paragraph 35 of their written closing that the commission agreements demonstrate, they say, Mr Patarkatsishvili's role as a key intermediary in the aluminium deal and not a principal to it.

My Lady, if that were not enough, there is also the fact that the family defendants' case, as presented by their counsel since they called no evidence, is also inconsistent with Mr Patarkatsishvili's own evidence as described, for example, in the statements of Ms Duncan and Mr McKim. A further oddity which, in our submission, demonstrates that the position which they adopt is entirely self-serving and a position of pure convenience. And indeed, despite the family defendants'

protestations in the course of their oral opening that they would not want Mr Patarkatsishvili to be branded a gangster, that's at Day 2, page 147, it is notable that in their written closing the family defendants are perfectly prepared to seek to brand their late husband and father a serial and methodical liar.

For your Ladyship's note, you may wish to see, for example, paragraph 72 of the family defendants' written closing where it is suggested that Mr Patarkatsishvili falsely asserted to Mr Berezovsky's solicitors between 2005 and 2007 that both he and Mr Berezovsky had acquired ownership interests in Rusal when that was not in fact the case.

My Lady, the fact that the family defendants are apparently perfectly content to make submissions that their late husband and father, Mr Patarkatsishvili, was a deceptive and dishonest man, willing to mislead Mr Berezovsky's solicitors, shows, we submit, just how far the family defendants are now prepared to go in order to defeat Mr Berezovsky's claims against Mr Abramovich in the Commercial Court action and themselves in the Chancery actions.

I would submit that this does not reflect well on them and strongly suggest what the claimant has all along suspected, and which has never been openly and

adequately dealt with by the family defendants, namely that there is much going on behind the scenes which has resulted in their being willing to betray the memory of their father and husband in this way.

MRS JUSTICE GLOSTER: Can I ask, and it may be I've seen some reference to this, did your solicitors write to the solicitors acting for the family defendants to enquire whether there were any arrangements between the --

MR RABINOWITZ: They did.

MRS JUSTICE GLOSTER: What was the answer to that? Do I need to look at that correspondence?

MR RABINOWITZ: We have -- for my Lady's note, annex B to our opening document sets out that, page 660.

There was a reply which we made clear was, in our submission, not a satisfactory reply in that it left open a number of questions which were unanswered.

MRS JUSTICE GLOSTER: Annex B?

MR RABINOWITZ: Indeed, my Lady may recall I raised it in opening --

MRS JUSTICE GLOSTER: Yes, I remember.

MR RABINOWITZ: It was never dealt with by Mr Adkin then, through no fault of his own I think.

Now, given that there is overlap between what they're saying and what Mr Abramovich is saying, I wasn't proposing to address your Ladyship specifically

on the points that they have made. They are, I would submit, adequately covered by what we say in our closing.

Can I then just turn to the Anisimov defendants, and again I can be brief about this. Again, this is a document which, perhaps unsurprisingly, is also substantially parasitic on Mr Abramovich's written submissions and, again, since the points arising are really the same, I'm not going to repeat them just because they're repeated in Mr Anisimov's submissions.

My Lady there are perhaps two points arising from the Anisimov defendant's written closings that I do need to mention. The first relates to the point that they make about various matters not being put to Mr Anisimov, in particular about --

MRS JUSTICE GLOSTER: I think I may have left it in my room so I'm going to get it up on the screen.

Can you give me the reference to Mr Malek and Ms Tolaney's closing, please, so I can look at it on the screen? I may have left it in my room.

MR MALEK: Can we give your Ladyship another -- it's a clean copy I'm told, of our submissions.

MRS JUSTICE GLOSTER: Yes, I mean, I have got one, but if I could have another copy. You haven't got it in small, I suppose? It doesn't matter. That's fine. Thanks

very much. (Handed)

I have read it, Mr Malek.

MR RABINOWITZ: So the first, as I have said, the first point relates to the point that they make that there were various matters not put to Mr Anisimov about what he knew of Mr Berezovsky's involvement in the original aluminium acquisition, and the second point I need to address is a point which they make -- Mr Anisimov makes about the second Rusal sale.

Now, just on the first point, points not put and the like, your Ladyship may recall that the overlap issues, for very sensible reasons, have not been defined so as to require this court to make any findings about Mr Anisimov's knowledge or about questions of his honesty and dishonesty. That was for the very good reason that those are matters to be dealt with in the Chancery action where there will have to have been full disclosure on all matters from Mr Anisimov and all the parties, and the court in the Chancery Division will have all relevant evidence before it on all issues.

It was for this reason, that's to say that this court will not have to make any findings about Mr Anisimov's knowledge or about questions of his honesty or dishonesty, that various matters were not put to Mr Anisimov about his state of knowledge and bona

fides.

As we have made clear in our written closing, we are not inviting the court to make any findings as to Mr Anisimov's knowledge in these proceedings and nor is the court required to do so.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: That is the first point.

My Lady, the second point I need to pick up on is that Mr Anisimov, in his written closing, this is at paragraph 168, page 80, suggests to your Ladyship that it is fanciful to suppose that there was some sort of conspiracy in relation to the second Rusal sale documentation to misrepresent the true factual position. That is what he says.

My Lady, the difficulty with that submission is that it is a point that is completely undermined by Mr Abramovich's own defence in this action. In other words, both on Mr Berezovsky's case and on Mr Abramovich's case it is suggested that the second Rusal sale documentation quite deliberately did materially misrepresent the true factual position.

From Mr Berezovsky's side, Mr Berezovsky says the conspiracy was to keep his name out of that documentation. From Mr Abramovich's side, the suggestion is that Mr Patarkatsishvili was dressed up to

look like a beneficial interest holder when he was not. So that on both sides' case, they are suggesting to your Ladyship that there was indeed a conspiracy of sorts to misrepresent the true factual position in the sale documentation.

So it's somewhat ironic that Mr Anisimov, Mr Anisimov alone, contends that it is fanciful to think that there could have been any conspiracy of that sort given that, in effect, that point is common ground. So, my Lady, we submit that that point of Mr Anisimov is bad. I'm not, as I say, going to address the other points because, as I say, they do largely overlap and I would just be repeating myself even further than I already have.

So unless I can assist your Ladyship with anything else, those were our closing submissions.

MRS JUSTICE GLOSTER: Thank you very much indeed.

MR RABINOWITZ: The only other thing I would say is that we are endeavouring to get the schedule, which will become an important document for your Ladyship, I think, schedule 2 -- well, it's their schedule with our comments, we hope to do so by the end of this week.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: I'm grateful.

MRS JUSTICE GLOSTER: In fact I've got a criminal case that

I've got to deal with for three days, and some reading for that, so I'm not going to start writing this judgment --

MR RABINOWITZ: We will get it to you as soon as we possibly can.

MRS JUSTICE GLOSTER: I can tell all the parties I'm not going to start writing this judgment immediately, not least because I've got a three-day criminal case, but also because I have a lot of reading to do because, as you know, I was not given any formal reading time before the case started. Obviously you'll be kept up with progress.

So if there is anything you wish to deal with you'll have at least seven days before I get into the reading.

MR RABINOWITZ: I'm grateful. Thank you my Lady.

MRS JUSTICE GLOSTER: Right. Thank you very much, Mr Rabinowitz, and also your entire team.

MR RABINOWITZ: Thank you.

MRS JUSTICE GLOSTER: Yes, Mr Malek.

Closing submissions by MR MALEK

MR MALEK: My Lady, can I start off by saying how I intend to deal with our oral submissions.

MRS JUSTICE GLOSTER: Yes, I have read your document.

MR MALEK: I'm obliged.

What I propose to do is to break my submissions down

into two parts. First of all, to deal with some issues as to how we submit your Ladyship should approach the evidence and the issues in this case, and then I will move on to submissions directed to Mr Berezovsky's Rusal claims.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: At the outset, we are grateful for the indication that you gave to my learned friend Mr Rabinowitz as to how you will use the written submissions. And I will not repeat our written submissions although I would wish to highlight some points.

For the avoidance of doubt, we confirm that we adopt the submissions made by Mr Abramovich as far as they affect us and Rusal, and also the submissions of the family defendants. My objective this afternoon is not to go into the detail because that's the purpose of the written submissions. What I would like to do is to focus on some big picture issues that hopefully will assist your Ladyship in reaching your decisions on the issues in dispute. When I go through my submissions, I will do my best to give your Ladyship supporting references so that you can follow up the arguments if your Ladyship wishes to do.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: The first topic I would like to cover is the

difficulties that this case presents to the fact finder, namely your Ladyship. There are three features of the case that stand out. First of all, it's about hotly disputed oral agreements; it's a case where the claims are stale, and when I say stale I mean the limited evidence upon which Mr Berezovsky's claims are based is stale; and then the third feature is that the burden of proof is on Mr Berezovsky to establish his claims. We submit it's those three features that present insuperable difficulties for Mr Berezovsky. There cannot be any serious dispute about those three features.

All I wish to say about the burden of proof, your Ladyship heard submissions from my learned friend Mr Rabinowitz about overreaching questions on the case, Day 41, page 4, lines 15 to 18. He said:

"I would respectfully suggest that there is one overreaching question that the court will want to ask itself, and it is this: has Mr Abramovich on his case provided a plausible explanation for the enormous and indeed admitted payments made to Mr Berezovsky and Mr Patarkatsishvili?"

Now, all I wish to say about that is it's careful (sic), when your Ladyship considers questions like that, that there is no reversal of the burden of proof. The

burden of proof is on Mr Berezovsky to establish his case. And it's important to keep that consideration in mind when one considers the broad questions.

As to the first two features, it's quite plain that the Sibneft and Rusal claims do require consideration about alleged oral agreements made many years ago. The agreements are all oral, they are the four agreements that your Ladyship has heard about, namely the 1995 tripartite agreement, the 1996 agreement, the 1999 agreement and finally the Dorchester 2000 agreement.

Although not on the agenda for determination at this trial, but as part of the background, there is the disputed bilateral joint venture between Mr Berezovsky and Badri that is part of the Chancery proceedings, and based on that bilateral joint venture, Mr Berezovsky appears to assert an entitlement to a share of all of Badri's assets and investments from 1995 until Badri's death in February 2008 with some limited exceptions. I'll come back to that bilateral joint venture and its significance in these proceedings in a moment.

The next point to make is that this is not a case about --

MRS JUSTICE GLOSTER: When you say all Mr Patarkatsishvili's assets, are we dealing with real property and things as well?

MR MALEK: I think we're dealing with real property as well.

There are some exceptions, but the answer to that question is yes, as I understand it.

Now, the point I was about to go to --

MRS JUSTICE GLOSTER: I mean homes in Georgia?

MR MALEK: No, personal property and investments I'm told.

His personal property, yes, is excepted, yes.

As far as the point about the disputes about the alleged oral agreements, it's quite plain that this is not a case about minor disputes. In fact every aspect of the alleged oral agreements are in dispute: whether they were entered into, whether they were intended to be legally binding terms in governing law. And as your Ladyship knows, there's a dispute as to what Mr Berezovsky was wearing on one occasion that is the dressing gown issue in relation to Dorchester.

You're not going to hear me about dressing gowns, you'll be pleased to know, but there is a serious point about that which is that your Ladyship is not required, we would submit, to try every factual disputed issue, and the purpose of my submissions is to focus on the core issues and to avoid the sideshows.

Now, as to staleness, in my submission, there could be no doubt about that. The court is being asked to make findings of fact in 2012 in relation to agreements

some 16 to 17 years ago, and, as your Ladyship knows, the Dorchester Hotel meeting celebrates its 12th anniversary in March. Now, the difficulties of stale claims are well known. Oral evidence tends to be based on reconstruction rather than specific recollection. Yesterday Mr Rabinowitz criticised Mr Anisimov of amnesia in relation to the Baden Baden meeting in June 2001. In my submission, it can't be expected that individuals remember meetings so long ago and I'll come back to that specific meeting later on in the course of my submissions.

Now, even in the normal litigation, the problems are well known. Witnesses can persuade themselves of a version of events that on analysis is simply wrong, documents get destroyed in the ordinary course of business. But this case is more difficult because here is a case where the parties' resources are substantial, there are allegations of dishonesty, there has been a substantial strike-out before Sir Anthony Colman, and this has meant that the material before the court on these alleged oral agreements is substantial and that in itself gives rise to difficulties to the fact-finder.

Now, as far as how a fact-finder deals with a case like this, this is clearly a case which is intensively factual.

MRS JUSTICE GLOSTER: I don't think you need to call me the fact-finder. I'm the judge, aren't I?

MR MALEK: The judge, exactly. For the judge.

MRS JUSTICE GLOSTER: You could call me the decision-taker.

MR MALEK: Yes. I'll call you the decision-taker and the judge, of course.

But the point I'm making is that the main difficulty that Mr Berezovsky faces is that he is dealing with -- relying on conversations many years ago and where he is the only real witness in the case. As far as the facts are concerned, your Ladyship will approach this no doubt having regard to the contemporary documents, the likely probabilities and the demeanour. I'm not going to say anything at this stage about likely probabilities, and nor do I propose to say anything about demeanour because that's subjective and it's something for your Ladyship to form a view on.

But in our submission, there are two types of factors which your Ladyship should take into account. There's what I may describe as general factors that make the court's task a difficult one in any event, and then there are specific ones to Mr Berezovsky and his evidence which we submit means that his claim must fail.

As far as the general points are concerned, there are four points that I would like to draw your

Ladyship's attention to. First of all, there is the unusual background and context. It is often said in cases that context is everything. Contrary to what has been written about by some in the recent press, there are good reasons why this case is being tried in London. And this court has a unique experience dealing with cases of an international element. But you are undoubtedly trying a case with an unusual background and context. That's the medieval history point that Mr Sumption made at the outset of the case, it's the Russian context.

Of course one way that your Ladyship has been able to mitigate this difficulty is allowing in the expert evidence from Professors Fortescue, Service and Bean, and it goes without saying that we invite your Ladyship to proceed on the basis that they all discharged their duties to the court as experts.

But the fact that the court is being asked to rely on historical evidence from experts to provide context for disputed oral agreements is unusual and is why there was a dispute of application to admit this evidence. The Russian context also deals with the issues about the governing law and questions of its content and, again, your Ladyship had assistance from well-qualified experts.

But there's this other difficulty that's perhaps worth stressing at this point, that when your Ladyship comes to consider the evidence and looking at conversations, there were undoubtedly conversations involving English and Russian speakers, and that's the language barrier point or the lost in translation point, and that covers conversations that the solicitors were party to, whether it's Mr Curtis or Mr Moss, and the proof-taking before Badri died.

The second general overview point here is that the court would normally expect, in view of their importance, that the alleged agreements be recorded in writing or certainly evidenced in writing by contemporaneous documents and here they were not. Mr Berezovsky in his closing submissions challenges this by saying that there is documentary evidence. But when I'm speaking of contemporaneous documentation I am not referring to circumstantial evidence or documents that might support a version of events, I'm speaking of the type of records that you would normally see in a case of this kind of nature. I'm talking about notes, of records of any kind. But, in our submission, this lack of documentation to the alleged oral agreements is very damaging to Mr Berezovsky's case.

Now, a lot of evidence has been given about why the

agreements were oral, and to some extent that that is tied into the Russian context point that I've mentioned. But I would submit that the court should approach this as a matter more of common sense than Russian history about business practices.

Whatever might be said about the lack of written agreements between trusted friends and partners, it is hard to see why, if Mr Berezovsky's version of events is correct, no record was made by anyone of the Dorchester Hotel agreement involving Mr Deripaska, who clearly was a principal player in the merger and who Mr Berezovsky had no relationship with.

Moreover, if my learned friend Mr Rabinowitz is right in his argument, which is hotly disputed on the facts, that Mr Berezovsky and Mr Abramovich fell out after the alleged intimidation in relation to ORT at the end of 2000, and then in relation to Sibneft, why did he do nothing to secure his alleged interest in Rusal if he really believed that he had an interest in Rusal? In my submission, there is no answer to that.

So whatever might be said about the reason for the lack of contemporary documents, whether it is because there are no agreements or for any other reason, the fact of the matter is that you are dealing with agreements which are oral and undocumented. It means

that the court lacks the important material to test the parties' version of events. It means that the court is being asked to look at events and material long after the alleged oral agreements to see whether they provide circumstantial evidence in support of the matters sought to be proved.

Now, the third point is that the combination of the lapse of time and unfortunate circumstances means that there are limited materials before the court and certainly the court did not hear from all of those who could have given evidence that might have assisted the court in determining whether the alleged oral agreements were made. That is a feature of stale claims. The court simply does not have all the evidence that might have been available had the dispute been resolved nearer the time of the alleged oral agreements rather than 16 years after they were concluded.

Your Ladyship knows who I am referring to. Badri obviously was a key witness, and the various notes that were taken of meetings with him years after the event in question are clearly not a substitute for his oral evidence. Undoubtedly he would have been a key witness, not simply to Mr Berezovsky but also to Mr Abramovich whose evidence was that he remained in friendly relations until Badri died.

Important witnesses are dead. Mr Curtis is dead, he died in a helicopter accident. He suffered the same fate as General Lebed. Both of them would have been important witnesses but on different topics. Mr Moss, the solicitor involved in the Baden Baden meeting in June 2001, is dead. And some witnesses simply refused to give evidence.

And you've heard about Mr Michael Chernoi. As Mr Abramovich points out in his written closing at paragraph 251.7, it appears that there is some financial arrangement between Mr Berezovsky and Mr Chernoi. Inexplicably Mr Chernoi refused at the last minute to be cross-examined by video-link. We would submit it shows a weakness of Mr Berezovsky's case that he continues to rely on his evidence. But, in my submission, no reason has been given as to why he has not been called.

Yes, he has a litigation in relation to Mr Deripaska but arrangements were made by Mr Deripaska to protect his interests in relation to that litigation. The same could have been done in relation to Mr Chernoi. And we would submit that there may be a link, to say the least, between the financial arrangements that were mentioned in the course of evidence and Mr Chernoi refusing to come to give evidence.

We would say that if you have any interest in his

evidence you should read Mr Justice Henderson's judgment in *Cherney v Neuman* which is at 2011, it's going to go on to *Magnum* at P(A)4/05B, where you will see that there is a very odd situation where he was apparently rehearsed in cross-examination, the judge indicated that he approached his evidence with considerable caution, and the judge said that his answers in cross-examination were often evasive.

Now, as far as Mr Fomichev is concerned, it appears that he was thought to be so unreliable that no one called him. I'm not going to deal with him because your Ladyship has the submissions about him from the principal protagonists.

Joseph Kay is another person but his absence is not a surprise and, as we point out in our closing submissions, the Gibraltar court's assessment of him was somebody with a palpable predisposition to mendacity and for whom the truth is vaporous.

Now, the fourth difficulty -- he obviously made a very convincing witness.

The fourth difficulty is that this is not only a case -- not a case where the oral agreements are evidenced by the contemporary documents; the documents that do exist are of limited assistance and often do not help because there is an issue of whether they can be

taken at face value.

A good example of this is in relation to the documents relating to the second Rusal sale. Here there is some common ground between the principal protagonists. Mr Abramovich says that the declaration that Badri had been an owner since 2000 is not true, Mr Berezovsky says that Badri's representations and warranties are not true, and those agreements are summarised in our closing submissions at paragraph 207.

You've heard about the backdating of documents. You have also received allegations that sham documents were created in order to satisfy the requirements of western banks. So this means that where ownership interests are referred to in correspondence, the question for your Ladyship is whether this is reflective of real ownership interests or whether it is simply a false statement in order to allow the movement of money to satisfy money-laundering requirements.

Moreover, there is evidence that Mr Berezovsky was prone to making claims to ownership which he knew to be untrue. That's a reference to Aeroflot and I'll come back to that later in the context of the explanatory note.

What about press statements? Clearly they were sometimes unreliable and they do not always say the

truth. You remember I put to Mr Berezovsky in cross-examination the press statement that said that Logovaz had acquired the aluminium assets. He said that that was disinformation. As we point out in our closing submissions at paragraph 51.1, Mr Berezovsky accepted in his evidence that he used the media to spread deliberate disinformation.

So those four factors make Mr Berezovsky's case difficult to establish, whether it's a question of context, lack of contemporary documents, missing witnesses and unreliable witnesses, but claims which are -- of course we're dealing with claims which are dependent on the court's acceptance of his oral evidence on which he has the burden of proof.

Now, on their own, these four factors would have presented by themselves massive problems for a case based on disputed oral agreements. However, we submit that acceptance of Mr Berezovsky's case becomes almost impossible when one considers his evidence, and there are five short points to be made here.

The first is the relevance of politics in this case and how it affects the court's consideration of the evidence in this case. Politics of course is at the forefront of the allegations in relation to ORT and the Sibneft intimidation claim. Politics and law do not go

together very well, but the political aspects of this case cannot be ignored in relation to other aspects of the case.

There are three examples of this. The first is this: it was Mr Berezovsky's political influence that was important as to why he received from Mr -- money from Mr Abramovich. Whether that's under the oral agreements he alleges, or is krysha as Mr Abramovich alleges, that in itself does not affect the Rusal claim because Mr Berezovsky did nothing in relation to Rusal. However it is Mr Abramovich's case, which the Anisimov defendants support, that it was Mr Berezovsky's perceived political power, after President Putin was elected in March 2000, that is important in understanding why Mr Abramovich and others were prepared to go to the Dorchester Hotel to meet him.

The second point is this, it was Mr Berezovsky's political aspirations and his character which perhaps explains the tendency on the part of Mr Berezovsky to grandstand. You have the many statements to the press that your Ladyship was referred to and this means that the court should be slow to rely on statements to the press as being true.

You have the examples of this in the submissions. When Mr Berezovsky tells the press in February 2000 that

Logovaz has acquired aluminium assets, when in late June 2004 he says that he has an interest in Rusal and disapproves of the sale and will challenge it to the court if necessary.

Now, the question for the court is whether, when he made those statements, it was because he believed Logovaz has an interest, or he had an interest in Rusal, or was it because he wanted to be on the stage with the lights on him? We know the statement in relation to Logovaz was fiction. Our case is that the June statement about Rusal was grandstanding and again untrue.

The third fact about the political aspect ties in with political krysha and the payment for influence. I do not propose to go into the issue of krysha but you have heard how it was important for key players in Russia to have persons associated with you. This may require the relationship to involve the appearance of ownership rights. How does one determine, as a judge determining a case, whether this is a complex krysha arrangement involving real ownership or simple apparent ownership?

That was a point covered by Mr Abramovich in his evidence, and the reference to the transcript is Day 17, from page 63 onwards, and also his third witness

statement, at paragraph 32 through to 36 E1/03/42.

So the short point here is that the political aspects of the case cannot be ignored and, we submit, present difficulties for Mr Berezovsky in establishing his case.

Now the second difficulty, or the point here, is that Mr Berezovsky's case concerns important changes in his case. There are many examples of this, a good example being the alleged agreement on English law to govern the dealings in relation to Rusal. Another example is the late introduction of the 1999 agreement when it became clear that the 1995 agreement did not produce the consequences desired by reason of operation of Russian law.

In many cases, of course, we accept that amendments to a case are not reason for doubting the merits of the case. However, in a case based on alleged oral agreements and dependent on who your Ladyship believes is telling the truth it really does matter. And anyone advising a client will tell him or her that they need to get the version of events correct right at the outset, whether it's in a pleading or in a witness statement, and I would suggest that in a modern context, with statements of truth, that is a consideration of particular importance.

Now, we contend, as your Ladyship knows, that the many changes were not fine-tuning of a bona fide claim by way of clarification or correction, but have all the hallmarks of invention.

The third point is Mr Berezovsky's tendency to blame his lawyers for changes in his case, and the issue here is whether the changes to the case can be justified because of misunderstandings between a client and his lawyers or whether Mr Berezovsky, as we allege, blames his lawyers as a false excuse for changes. Again it shows how unreliable his evidence is and why it cannot be accepted.

Now, the fourth point is that there are features of Mr Berezovsky's evidence that are disturbing and, we submit, fatal to a case based on disputed oral agreements. First of all, there are his blatant lies and there are two examples of that. There's first of all Forbes, and that relates to the case he advanced in response to the justification defence which he knew to be untrue. And then, secondly, as to the nature and extent of his involvement in the acquisition of the premerger aluminium, which we cover in our closing submissions at E1.4.3. In addition to that, in addition to the blatant lies, is his tendency to supply what he called disinformation that is tied into the political

aspects that I have referred to.

Of course, the lies are important because they are lies connected with the court process, and although one may have a scale in terms of the seriousness of lies, we submit that those lies are important and are relevant because it shows an indifference to the truth and also a predisposition to make up allegations to bolster a false claim.

The last point I make on these general overview factors is what I might call the corruption of the trial process that taints his evidence in the case.

Mr Rabinowitz referred yesterday to the manipulation of the trial process by Mr Abramovich. I'm not going to respond to those points against Mr Abramovich, but one may think that people in glass houses should not throw stones.

It is not that Mr Berezovsky has paid evidence (sic), as he has in relation to the Le Bourget transcript and Cliren's Latvian bank accounts. It concerns the agreements with Dr Nosova and Mr Lindley giving them eye watering amounts of money if Mr Berezovsky succeeds in this case.

You have seen the written winning agreements. It is rather ironic that Dr Nosova and Mr Lindley were not prepared to rely on undocumented agreements of the

nature that forms the basis of Mr Berezovsky's alleged claims. You have also heard about the financial arrangement with Mr Cotlick who played an important part in the preparation of the case.

There are three other points. First of all, there is how the agreements came to light. Clearly they were suppressed from his own lawyers, and Mr Berezovsky hoped that they would never see the light of day. Secondly, it reflects very badly on Mr Berezovsky that he denied he was paying witnesses, which he himself recognised could be seen as bribing of the witnesses, until prompted by his own counsel in re-examination. Thirdly, there is a reason why these agreements were made in the first place. This is not the way litigation is carried out in London. Mr Lindley's greed shows a complete lack of judgment of the conduct this court expects from its officers. It is grubby, it shows a willingness to get a result at all costs.

In Mr Berezovsky's written submissions at paragraph 227, it is suggested that Mr Abramovich's team took a personal dislike to Dr Nosova. Personal dislikes are irrelevant. The real concern is that she gave evidence for Mr Berezovsky in a prior action in which she stood to gain under her winnings agreement without that being revealed to the court or the opposing

parties. It might be said that at least this court in this action knows the true position. However, it all leads to a lurking suspicion that is hard to displace of what else in the conduct of this litigation has taken place to achieve the desired result that we do not know about. If you're prepared to pay for evidence in this way, and to cover up that you are doing it, it may be thought that there is nothing off limit to get the desired result.

The next point about the evidence is the importance of assessing it against the relevant questions that the court must decide. I'm only dealing with Rusal. The first point is that Mr Berezovsky's claim in relation to Rusal must be evaluated against the case he has to prove. Most of his written agreement is an exercise of picking small holes in Mr Abramovich's version of events. Yet, as I've stressed earlier, the burden is on Mr Berezovsky to prove his case, not to simply undermine Mr Abramovich's defence.

Secondly, there is a chronology that cannot be ignored. I will explain this in more detail in a moment, but the essence is this. Mr Berezovsky says that he obtained an interest in Rusal by virtue of the agreement at the Dorchester meeting in March 2000 and that the reason for that agreement was, he says, because

he had an interest in the aluminium assets that were combined to form Rusal. On his formulated case, that takes one back to matters he says were agreed in 1995.

Now, that is the only way in which Mr Berezovsky says he obtained an interest in Rusal, at least insofar as this court is concerned in this action, namely by virtue of the prior aluminium assets and the Dorchester meeting.

The third point here is that Mr Berezovsky spends a lot of time in his submissions looking at subsequent events, that is after the Dorchester agreement. Now, of course, we accept that subsequent events can provide assistance in evidencing the existence of an earlier made agreement, albeit that that assistance is necessarily rather limited by virtue of the ex post facto nature of the subsequent evidence. But that is all that the subsequent evidence can do. The key point is that the subsequent evidence cannot provide a new and independent case for Mr Berezovsky that has not been pleaded in this action and is not open to him.

Now, it will be recalled that Mr Berezovsky attempted to introduce a case based on the bilateral joint venture between himself and Badri shortly before this trial commenced. That attempt failed when the allegations were struck out by the court in July 2011.

It is not legitimate to Mr Berezovsky to say that everybody thought he had an interest in Rusal in 2004 for whatever reason, therefore he must have an interest in Rusal however that interest arose.

In our submission, the court should look at this from the right end of the telescope, and that is all the more given the growing awareness of the need to legalise money flows out of Russia at the time of the various subsequent documents that Mr Berezovsky relies upon as evidencing his alleged interest in Rusal.

Therefore, evidence as to subsequent payments, the two sales of the Rusal shares or, for that matter, anything taking place after the Dorchester Hotel must be viewed through the prism of whether they support Mr Berezovsky's pleaded case.

Does this evidence help to prove that Mr Berezovsky was a purchaser of the aluminium assets in late 1999, early 2000? Does this evidence help to prove that Mr Abramovich agreed at the Dorchester Hotel to act as Mr Berezovsky's trustee?

We contend it's those questions that must be considered when you look at the subsequent events that are relied upon by Mr Berezovsky.

The next topic about the evidence concerns the allegation that Mr Berezovsky is able to make in order

to support his claim. We would submit that not only is he confined to his pleaded case in this action, he is confined to the allegations that he is allowed to make. This comes from the point that Mr Rabinowitz mentioned a moment ago. And in the course of my opening oral submissions, the issue of what points did and what points did not need to be put to witnesses was discussed, and it was agreed that in the interests of avoiding duplication in a trial of this nature it was not necessary for all points to be put to witnesses. The reference here is to N2/134.18 to 135.11.

The two categories that were left out were first of all allegations of dishonesty and then, secondly, important matters to the witnesses. Your Ladyship specifically indicated that if she were to consider something important that was not put, there would be consequences. So those are the two categories: allegations of dishonesty and important matters to the witnesses.

Now, this point is of importance as Mr Berezovsky wholly failed to put a number of key points to Mr Anisimov during the course of the trial. There are three points here to make. First of all, the alleged informal meetings with Mr Anisimov. As your Ladyship will recall, Mr Berezovsky's oral evidence about the

aluminium assets was to suggest for the first time that he had a significant and important role in the acquisition of aluminium assets. This included, he said, multiple meetings with sellers of the aluminium assets, including Mr Anisimov, yet this was not put to Mr Anisimov in cross-examination. Here we submit the court should take that into account on the basis of matters not put to Mr Anisimov.

Secondly, there was Mr Berezovsky's alleged grand conspiracy, which included Mr Anisimov, during the course of the second Rusal sale to airbrush him out of the paperwork. He says that dishonest documents were produced to disguise his interest. That would necessarily have involved a number of persons including Mr Anisimov.

In cross-examination of Mr Streshinsky, the point was made on a number of occasions that Mr Streshinsky would have shared all information with Mr Anisimov and acted on his instructions only. The point is repeated in Mr Berezovsky's closing submissions and the reference there is at paragraph 1137.7.

We would submit that these are matters of critical importance in relation to what the case is. These aren't minor points, these aren't matters that are going to go to the Chancery proceedings, these are points

which are of critical importance, and yet Mr Anisimov, like Mr Deripaska, was not asked one question about the second Rusal sale, and it was certainly not put to him that he was involved in any such dishonesty.

Now, it is not open to Mr Berezovsky, we submit, now to assert that there was a conspiracy theory involving Mr Anisimov, or that Mr Anisimov knew that Mr Streshinsky about any conspiracy -- or that Mr Anisimov knew through Mr Streshinsky about any conspiracy that Mr Berezovsky alleges was carrying on.

The third point is that Mr Berezovsky also alleges that Mr Anisimov advised Mr Berezovsky and/or Badri -- his case remains unclear -- that British law should be used, around the time of the purchase of the aluminium assets and/or the Dorchester meeting, again his case remains unclear.

This key allegation was not put to Mr Anisimov in cross-examination. The allegation is tellingly down-played in his written closing submissions, there's no mention of it made in the key sections addressing the alleged express agreement between Mr Berezovsky, Badri and Mr Abramovich as to British law, and the reference there is his closing, paragraphs 67 to 74, 1581 to 1592, but it is nonetheless maintained in the backwaters of the submissions by way of a comment in respect of the

explanatory note, and the reference there is paragraph 1253, and we deal with this at E3 of our written closing.

Again, the court should take that into account that this point was not made to Mr Anisimov at all.

The next general point about the evidence is to respond to allegations Mr Berezovsky makes about the credibility of the witnesses put forward by the Anisimov defendants. In short, Mr Berezovsky's team makes a rather tiresome point in the written submissions, paragraphs -- in the opening submissions, paragraphs 28 to 29, and repeated in their written closing, 1134 to 1136, 1137.5, that Mr Anisimov's evidence against Mr Berezovsky should not be accepted on any matter that was potentially unhelpful to Mr Anisimov because he has a financial interest in Mr Berezovsky failing to prove that he had an interest in Rusal, that financial interest being that Mr Anisimov will not have to compensate Mr Berezovsky for the proceeds of the second Rusal sale that Mr Anisimov invested into the metals industry, that's the MGOK/Metalloinvest.

In our submission, that point does not assist Mr Berezovsky at all. First of all, it is logically nonsense because it begs the question the court is to answer. Mr Anisimov has cause to lie in this case,

Mr Berezovsky says, because he is lying in the Metalloinvest action. He must lie to be consistent. But it is of course equally logical that Mr Anisimov is being constantly truthful. He has as much motive to tell the truth to honestly protect money that is rightfully his as he would have to lie to dishonestly keep money that is not his. In other words, Mr Berezovsky's argument prays in aid the dishonesty he seeks to prove.

In any event, it is not an argument that has any merit because if it applies, it applies to Mr Berezovsky as well. Two can play at that game. If millions of dollars give Mr Anisimov a motive to lie, by the same token billions of dollars give a greater motive to lie.

MRS JUSTICE GLOSTER: Just a second, Mr Malek. The allegation in the Chancery proceedings is that Mr Anisimov knew of Mr Berezovsky's interest?

MR MALEK: Correct, that's it.

The only point --

MRS JUSTICE GLOSTER: As a result of the Dorchester Hotel meeting?

MR MALEK: As a result of a separate agreement made subsequently.

If your Ladyship goes back to our opening submission we deal with this, but it is entirely separate and it's

not linked to any knowledge based about the Dorchester. It's based, as I understand it, on the alleged joint venture and also discussions that took place between the two of them.

MRS JUSTICE GLOSTER: Subsequently to the Dorchester Hotel meeting?

MR MALEK: Correct.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR MALEK: Yes. Ms Tolaney reminds me, it's not a discussion that Mr Berezovsky was a party to, it was a discussion between Mr Anisimov and Badri that he alleges. We don't accept that of course.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: So the point is that it cannot seriously be argued that your Ladyship should reject Mr Anisimov's evidence because he has a financial interest, and that tellingly is the only point that Mr Berezovsky can find to cast aspersions on Mr Anisimov's honesty.

As to Mr Streshinsky and Mr Buzuk, they no longer are employed by Mr Anisimov, as your Ladyship heard in the evidence, and they should be treated as witnesses with no witness (sic) to grind and they are independent.

I am now going to turn to the Rusal claim. Your Ladyship will say when you would like me to stop.

MRS JUSTICE GLOSTER: I will take the break now, I will take

quarter of an hour now.

(3.15 pm)

(A short break)

(3.38 pm)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR MALEK: My Lady, I'm now going to turn to Rusal. So that your Ladyship has the structure of this part of the argument I'm first of all going to deal with the interrelationship between the Sibneft and Rusal claims, then I'm going to deal with Mr Berezovsky's claim to the aluminium assets, then Dorchester, and then subsequent events, and then finally the knowledge of Mr Anisimov.

MRS JUSTICE GLOSTER: Yes, very well.

MR MALEK: As far as the interrelationship between Sibneft and the Rusal claim, there's the obvious link that's been mentioned by the parties about what might be called the holistic approach to the evidence, namely that views on, say, the credibility of evidence in relation to the Sibneft witnesses is likely to influence in relation to the evidence in relation to Rusal, and the converse is true.

But the one fundamental difference in Sibneft and Rusal is this: is Mr Berezovsky does not contend that he did anything, beyond show up at the Dorchester meeting in March 2000, towards the formation of Rusal. That's

in stark contrast to his claim to Sibneft where Mr Berezovsky says that he was the reason -- says that the reason that he was entitled to a share in Sibneft was because of the role in its creation. He doesn't claim any role in respect of Rusal, he does not say that he did anything apart from attend the meeting. Mr Abramovich did all the hard work putting Rusal together. Mr Berezovsky did nothing.

Rather, Mr Berezovsky says the reason he was entitled to 25 per cent in Rusal, and the reason Mr Abramovich allegedly agreed to hold a 25 per cent interest in Rusal on trust for him, was because Mr Berezovsky says that this reflected Mr Berezovsky's share of the aluminium assets that went into Rusal.

So Mr Berezovsky's claim to Rusal is therefore solely dependent, based on the assets he contributed. He is not entitled to anything based on work done towards Rusal, whether its creation or formation, and therefore the Rusal claim is very different from the Sibneft claim.

When we look to see why Mr Berezovsky says he owned the aluminium assets that went into Rusal in the first place, we see that the claims are quite connected. In short, although Mr Berezovsky sought to reorientate his case during the course of the trial, which we will go

into shortly, Mr Berezovsky's pleaded case is that it was because of his earlier agreement with Mr Abramovich in 1995, and the use of Mr Berezovsky's Sibneft profits to purchase the aluminium assets, that Mr Berezovsky gained an interest in the aluminium assets.

For this purpose, could I just invite your Ladyship to turn to the particulars of claim, which is in A1/02/26. It may be that this can just come up on the screen, but if your Ladyship has the pleading, it's paragraph C59B.

What you see there is:

"As Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich had agreed in 1999, before the aluminium assets were acquired, the 1995 Agreement (as set out in paragraphs C34 to C[35]B) applied to the aluminium assets, and payment for these assets came from Mr Berezovsky's, Mr Patarkatsishvili's and Mr Abramovich's share of profits derived from their interest in Sibneft. Accordingly, Mr Berezovsky and Mr Patarkatsishvili had Russian law rights in respect of the aluminium assets under the 1995 agreement, and Mr Abramovich was obliged to act in good faith and reasonably towards them in respect of such assets."

So it's really that part of the pleading which refers to the earlier agreement and the use of the

Sibneft profits, which is the basis of the acquisition of the interest in the aluminium assets. I'll come back to that, if I may, in a moment.

Now, the second topic, I've now dealt with the interrelationship, is how does Mr Berezovsky seek to establish an interest in the aluminium assets? There are three ways that he seeks to establish that interest. We deal with it in our --

MRS JUSTICE GLOSTER: Yes, I've got your --

MR MALEK: In fact we deal with it in our opening submissions at D2.2 which explains how the claim emerged. But if I could just summarise the three ways.

The first way is that the 1995 agreement he alleges between himself, Mr Abramovich and Badri, and that's the first way. In short, it is his submission that it was agreed that in 1995 all future business would be shared in the same proportions as it was shared in relation to Sibneft. That allegation was modified in his written evidence, the fourth witness statement, which was to the effect that each of them would have a right of first refusal in relation to the other's future business ventures. That's the first way.

The second allegation is that there was an agreement in 1999 that the 1995 agreement would be applied to the aluminium assets.

And the third allegation is that the aluminium assets were paid for -- the aluminium was paid from Mr Berezovsky's and Badri's share of the Sibneft profits.

So those are the three allegations.

We submit that all three allegations fail. The points are made in writing, but essentially the short points are these. As far as the 1995 agreement, there are two points, one legal and one factual. The legal point is that in relation to the agreement in relation to future business, whatever the agreement was in 1995, it was governed by Russian law. And the Russian experts are agreed that an agreement to cover future business lacks certainty and that an agreement covering future business would be ineffective as a matter of Russian law. So this means that even if Mr Berezovsky establishes the 1995 agreement, which we contend he does not, the claim fails.

The factual point about the 1995 agreement is a point that Mr Sumption made in his oral submissions at N40, page 3, which shows that this argument was a nonstarter.

MRS JUSTICE GLOSTER: Can you give me the transcript date, please? That's Day 40, is it?

MR MALEK: Day 40, yes, page 3, where he makes the point,

which we adopt, that this argument was a non-starter because it's inherently implausible that Mr Berezovsky would have given up, in 1995, 50 per cent of all future business to Mr Abramovich whom he viewed at the time as having achieved nothing in politics or business.

So those are the two points in summary why the 1995 agreement fails.

We then move on to the 1999 agreement which also fails, and the second way -- this is the second way in which he formulates a claim, by relying on an agreement made in 1999 to the effect that the 1995 agreement would be applied to any acquisition of the aluminium assets.

We submit that that argument is hopeless. The origin of the allegation appears to come from the evidence of Dr Rachkov, the Russian law expert. It was introduced late, the allegation was introduced into this action in April 2011, and in the Metalloinvest action in February 2011, as we point out in our closing at paragraph 68.2.

We submit that not only was it late and based on the Russian law evidence, we submit that even Mr Berezovsky has not gone as far as to say that the 1995 agreement was mentioned, discussed, or any agreement made by explicit reference to it during the discussions he says he had with Mr Abramovich in 1999.

Now, there is a dispute here. You will see it in the claimant's schedule 1 which was handed up yesterday, at page 33, which attempts to strain the reading of his fourth statement to suggest the 1995 agreement was referred to in oblique terms during his discussions with Mr Abramovich. But we submit that the statement cannot be read in that way, and we cover that in our closing submissions at paragraph 70 to 72. I will not repeat it.

But significantly, the alleged agreement was not even put to Mr Abramovich in the course of the evidence. Again, that's covered in our written closing at 70 to 72. And, in short, the parties never agreed that the aluminium acquisition would be subject to the same partnership terms as the Sibneft arrangement.

One other reference to give on that is Mr Abramovich's schedule that was handed up recently at pages 122 to 123, and we adopt what is said there as well. So that's the second way the case is put, the 1999 agreement.

Then the third way is the one that I've just mentioned, namely that the third basis for an interest in the premerger aluminium interests is that it was paid for from Mr Berezovsky's and Badri's share of the Sibneft profits. And that's the particulars of claim

that we just looked at, at C59B.

Your Ladyship may think that, given the importance and significance of the alleged agreement, one might have expected Mr Berezovsky to be able to state how and when the profits were applied in this way. However, his evidence was completely lacking. He could not tell us, because as Mr Sumption explained during the course of his oral submissions, and the reference there is Day 40, pages 5 to 8, Sibneft profits were not used to pay for the aluminium assets.

Now, we cover that in our written submissions at E1.2.2. We also rely on Mr Abramovich's closing at paragraph 412, and on Mr Abramovich's schedule at paragraph 21 commenting on paragraph 62.4 of Mr Berezovsky's closing submissions.

As we point out in our closing submissions at paragraph 73, this was another late change to Mr Berezovsky's case. It was introduced in February 2011 in the Metalloinvest action and was pleaded in the Abramovich action in April 2011.

So the fact of the matter is that Mr Berezovsky made no contribution to the acquisition of the aluminium assets.

The fact that the Sibneft profits were not in fact used is more than a simple mismatch between what

Mr Berezovsky says was originally agreed with Mr Abramovich and what in fact subsequently happened. We submit it is fundamental to Mr Berezovsky's pleaded case that Sibneft profits were used to purchase the aluminium assets. This is because Mr Berezovsky's pleaded case is that he, Badri and Mr Abramovich agreed in 1999 that the 1995 agreement applied to the aluminium assets and payment for those assets came from Mr Berezovsky's, Mr Patarkatsishvili's and Mr Abramovich's share of profits derived from their interest in Sibneft. That's the passage that we just looked at.

So it's not simply an agreement that profits would be used; it's an assertion that profits were used. Moreover, it is not an independent basis, separate from the alleged application of the 1995 agreement, for Mr Berezovsky to have acquired an interest in the aluminium assets. In our submission, it's clear that it is a necessary requirement for the 1995 agreement to have been able to apply.

Now, this very specific formulation of the pleaded case as to the nature and operation of the 1995 agreement was repeated by Mr Berezovsky in his oral evidence when he made it clear, following an express question from your Ladyship, that the 1995 agreement

required each party to contribute to the cost of any business investment.

If I could ask your Ladyship, or if this could be put on to the screen. It's Day 6, it's N6 at 125.1 to 125.8. We can see that, I don't know if your Ladyship has the transcripts to hand, but this is one passage that I would like your Ladyship to see, or to see it on the screen if we can put it up there.

MRS JUSTICE GLOSTER: It's on the screen.

MR MALEK: It's at 125 and this is 10 October. Your Ladyship asked this question:

"What were the terms of the right of first refusal? Was there an agreement that if you wanted to go into the new venture, you had to put up 50 per cent of the capital for it as well?

"Answer: Yes, absolutely. It means that we should put --

"MRS JUSTICE GLOSTER: Match the capital that the other party was putting in?

"Answer: Absolutely correct. Absolutely correct.

"MR SUMPTION: Was that actually agreed? Do you that that was agreed?

"Answer: Absolutely correct. It was agreed that we invest 50/50, definitely.

"MR SUMPTION: ... so that's something we should add

to your witness statement, is it?

"Answer: Thank you very much, but it was absolutely clear because we share ... 50/50 and if we go to new business we should share 50/50 our investment."

This is a point that we make in our closing submission at paragraph 76. Now, the point here to stress is that the realisation that Sibneft profits were not in fact used to purchase the aluminium assets has led to this assertion in Mr Berezovsky's closing submissions, and if your Ladyship could turn to Mr Berezovsky's closing submissions at paragraph 1152, where this point is made.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: Perhaps I could just ask your Ladyship to read paragraph 1152.

MRS JUSTICE GLOSTER: I've read that.

MR MALEK: The point that's being made is that, yes, he accepts that no financial contribution was made to the acquisition of the aluminium assets, and that his case that he was one of the people who was entitled to benefit from the -- this is a reference to the balancing payment of 575 million, ultimately paid by Mr Deripaska in the Rusal merger arrangements, being one of the partners in the aluminium acquisition itself.

Now, there are a number of responses to this. The

first point, it involves rather overenthusiastic but incorrect and circular logic. Mr Berezovsky's case is that he was a partner in the purchase of the aluminium assets because the 1995 agreement applied and Sibneft profits were used. We submit it's logical nonsense to assert that Mr Berezovsky can dispense with a necessary basis for that partnership, ie that Mr Berezovsky's money was used to purchase the aluminium assets, because he was entitled to the benefit of Mr Deripaska's subsequent payment because he was already a partner in the aluminium acquisition.

Now, the second point is that the assertion that Mr Berezovsky ever contended that he was entitled to the benefit of Mr Deripaska's payment because he was already a partner is simply wrong. It is wrong for four reasons.

First, there would need to be a clear agreement with Mr Abramovich that Mr Berezovsky was intended to be a partner from the outset despite not having any input into the aluminium asset sale. That has never been Mr Berezovsky's case and, until Mr Berezovsky's embarrassing attempts in his oral evidence to carve out a role for himself in the negotiations of the aluminium assets, Mr Berezovsky has never presented any discernible rationale as to why Mr Abramovich would

agree to make Mr Berezovsky a partner in the absence of any financial contribution.

Secondly, such an agreement would make nonsense of Mr Berezovsky's case that he agreed with Mr Abramovich in 1999 that Sibneft profits would be used.

Thirdly, as mentioned in paragraph 103 of our written closing, no such agreement could possibly have been made because it was not known at the time of purchasing the aluminium assets that Mr Deripaska's payment under the Rusal arrangements would equal the sums needed to purchase the aluminium assets.

Finally, Mr Berezovsky did not even know at the time what the structures of the financing were. Apparently he thought that Sibneft profits had been used, and this is another example of making it up as he goes along.

So you have before your Ladyship a very late amendment alleging that he has an interest by virtue of the Sibneft profits that went into purchase aluminium assets. When it became clear that that case was flawed, he came up with another unpleaded allegation relating to the equalisation payment and, for the reasons I've just identified, that too fails.

That ties in with another point. In order to bolster his case, Mr Berezovsky came up with a number of new and, we would submit, wild allegations in his oral

evidence about meetings Mr Berezovsky had never before mentioned with the sellers of the aluminium assets and the importance of Mr Berezovsky's alleged influence with General Lebed to the survival of the aluminium deal.

If your Ladyship just briefly turns to our written closing, we cover this from page -- I think it's about page 40, it starts at E1.4.1 and goes through to E1.4.3. Your Ladyship has read that, but what, we submit, is clear from that explanation of the evidence is that this role that Mr Berezovsky now asserts is pure fiction. He's had many opportunities to present what his case is on the aluminium assets, and it's quite clear that the departure, and the new evidence that was given during the course of cross-examination, just simply shows that he was lying on this.

I'm not going to go through that because it's all self-explanatory, but as we point out at paragraph 97, he had every opportunity in the Metalloinvest to explain that he had this important role that he now asserts before your Ladyship, and at no time was it ever suggested that he had this role. And in fact in support of the allegations of knowledge on the part of Anisimov, he didn't refer to any discussions or meetings, he just simply referred to press cuttings and the like.

As we say at 99, he has given no credible

explanation as to why he introduced this new and inconsistent evidence during the course of the oral evidence, and we submit that Mr Berezovsky's case on this was untrue and that he knew it was untrue.

There's only a few points that I wish to add by way of oral submissions. The first is, if the court wishes to enquire why Mr Berezovsky lied on this, the answer, we submit, is clear. He lied because he knew he had to come up with a reason why Mr Abramovich would have agreed to give him an interest in Rusal. Mr Berezovsky's sudden creation of a role for himself in the negotiations leading up to the aluminium asset sale was an attempt to present a rationale for why Mr Abramovich agreed to give him 25 per cent of the aluminium assets even though not a penny of Mr Berezovsky's money had gone towards their acquisition. In other words, he needed to replicate his Sibneft case.

But a role in the aluminium negotiations alone does not assist Mr Berezovsky. His pleaded case is flatly inconsistent with any new, distinct performance-only based interest in the aluminium assets.

Secondly, all of Mr Berezovsky's evidence in respect of the aluminium negotiations -- sorry, all that Mr Berezovsky's evidence in respect of the aluminium

negotiations served to do was to show that he was willing to, and did, present evidence which was manifestly false and untruthful. He had nothing to do with the deal, and we cover that in our written submissions and I do not repeat it.

What is said in my learned friend's submissions at paragraph 53 is that the claim in respect of Rusal is, on any view, a strong one. What we have seen, just from looking at the way the case is pleaded, and the way the evidence emerged, is that Mr Berezovsky's claim to have acquired an interest in the aluminium assets rests solely on the allegation that in 1999 it was agreed that the 1995 agreement would apply to them. We would submit that the claim is not a strong one, it is hopeless.

Nor is Mr Berezovsky's case assisted any further by any sundry ambiguities and gaps he points to. These include, first of all, the inclusion of Badri and Mr Berezovsky, as a signatory to the master agreement, and secondly the argument that Mr Berezovsky was a party to the master agreement by virtue of being a beneficial owner of the purchasing companies.

Mr Berezovsky relies on the master contract of 10 February. I don't need to take your Ladyship to it. It's at H(A)17 at 38T H(A)17/38T. Badri is described as one of the persons constituting party 1, it also

includes Mr Shvidler, and the evidence as to why Mr Shvidler was a party was to the effect that he was one of the critical figures in the process of negotiating the deal.

As far as Mr Badri's role is concerned, he was the person who facilitated the deal, and his involvement is covered in the four protocols which were prepared for him in February. They are the documents that were notarised before a Moscow notary on 16 March 2000. There is a dispute as to whether these were documents designed to cover the cost of an aircraft which was agreed at the Dorchester. However, we adopt Mr Abramovich's submission that these agreements were unconnected to the acquisition of aircraft, which is dealt with in Mr Abramovich's closing at paragraph 406.3 and footnote 1461.

As to the dispute of whether or not Mr Badri was a purchaser of the aluminium assets, evidence was given on behalf of Mr Anisimov to the effect that he believed that Badri was a purchaser. That evidence was also given by other witnesses called by Mr Anisimov.

But a number of points need to be made on this. First, the relevant question for this court is whether or not Mr Berezovsky was a purchaser of the aluminium assets. Now, one of the issues in the Chancery case is

whether or not Mr Berezovsky and Badri were partners so that Mr Berezovsky could claim in respect of Badri's interest in the aluminium assets, assuming he did acquire an interest, and that issue is in the Chancery Division and it doesn't arise before this court.

That's a point that we make in our closing at paragraph 117, especially 117.3.

The second point is that it follows that Mr Berezovsky cannot say in the proceedings before your Ladyship that Badri acquired some interest, specifically by way of the master agreement, and that helps Mr Berezovsky. That would be bringing in by the back door the argument that Mr Berezovsky is not allowed to make. He is not allowed to say that if Badri had a right, Mr Berezovsky had half of that right because of his alleged bilateral joint venture with Badri.

As your Ladyship --

MRS JUSTICE GLOSTER: I'm not sure I agree with that. I'm not sure it needs to rest on the alleged joint venture agreement with Mr Patarkatsishvili.

MR MALEK: If it doesn't need to rely on the joint venture then the point doesn't arise. But if it does need to --

MRS JUSTICE GLOSTER: No, the point I'm making, Mr Malek, is that surely it's open to Mr Berezovsky to say, well, Mr Abramovich knew, because of my agreement with him,

that I was in there half and half and Mr Badri was there, as it were, fronting for me.

MR MALEK: That's fine, there's no difficulty with that. My only argument is the argument that because Badri was a party to the bilateral joint venture, and therefore if Badri acquired an interest then I'm entitled to claim an interest by virtue of that.

MRS JUSTICE GLOSTER: I can see that.

MR MALEK: That's the only point I'm making.

The contention that Mr Berezovsky was an undisclosed principal to the master agreement is, we say, absurd. As he confirmed in cross-examination in response to my questions, he had not even seen the agreement prior to this litigation. He did not know its terms. Clearly he did not assume any obligations under it and could not have acquired any rights.

The third point, which I think is tied into the point I just made to your Ladyship under my second point, is that Mr Berezovsky cannot say that because Badri signed, everyone must have known that Badri (sic) was involved because everybody knew of Mr Berezovsky's partnership with Badri. That's another case, that Mr Berezovsky expressly tried to add but was struck out by the court.

So the attempt to sneak this argument back, and the

reference is to his closing submissions at paragraph 62.3 and 1114, where he states that his partnership with Mr Patarkatsishvili was notorious, is in our submission inappropriate.

So it therefore follows that a fourth possible route to make a claim to the aluminium assets is simply not open to Mr Berezovsky in these proceedings, and it's that fourth possible route which I'm addressing here. There was the three routes, there is no fourth route.

So that highlights a point that, when considering the question of whether the subsequent evidence indicates that Mr Berezovsky thought he had an interest in the aluminium assets, whether pre or post merger, for the court to keep in mind that the critical question is not whether or not Mr Berezovsky has an interest based on arguments that are not open to him; the critical question must be whether or not it proves one of the three ways in which he brings this claim.

That's a point that we submit is very important to keep in mind when your Ladyship comes to look at the subsequent evidence. You have to look at the subsequent evidence, we submit, to see whether it supports a pleaded case based on the 1995 agreement, the 1999 agreement, or the contribution of the Sibneft profits into the aluminium assets.

The final point here is that Mr Berezovsky's closing submissions jump upon Mr Anisimov's, Mr Streshinsky's and Mr Buzuk's assumption that Badri may have been one of the purchasers as evidence in support of his case that they believed that Badri and Berezovsky were purchasers.

The references there to Mr Berezovsky's submissions are 1139, 1143.5. And Mr Berezovsky asserts at 1114 that the view, and I quote, of "all four sellers", including specifically Mr Anisimov, was that "Mr Berezovsky acquired an ownership interest in the aluminium assets and was one of the principals involved in the transaction."

Now, to put it lightly, this is a gross mischaracterisation of Mr Anisimov's evidence. It is a point repeated over and over again in Mr Berezovsky's closing submissions, and, again, in the schedule 1 handed up yesterday at page 33, responding to paragraph 395 of Mr Abramovich's submissions, and at page 40, the box concerning paragraph 414. But hollow repetition of this bad point does not give it credibility.

Mr Anisimov was very clear in his evidence about this, and it's in paragraph 42, where he says that:

"Mr Berezovsky was not present at any of the

meetings which I attended and at which the sale of the KrAZ assets was discussed nor, to the best of my knowledge, was his name even mentioned."

Paragraph 45:

"I am aware that Mr Berezovsky is claiming that he had an interest in the KrAZ assets".

Then he goes on to say in the same paragraph:

"For my part it was neither apparent to me nor was it ever suggested to me that Mr Berezovsky was involved in the purchase of, or acquired [an] interest in, the KrAZ assets."

And as to any assumptions as to Mr Badri's interest, Mr Anisimov, Mr Streshinsky and Mr Buzuk's assumptions were just that, assumptions. There is a subtle but significant difference between an assumption without an enquiry and a belief based upon extraneous knowledge.

Mr Anisimov's, Mr Streshinsky's and Mr Buzuk's assumptions should not be mistaken for any concrete form of belief. They do not provide evidence of what Mr Badri's evidence in fact was, and they certainly do not provide any support as to whether or not Mr Berezovsky had any interest.

Now, the other point made is Mr Berezovsky as a beneficial owner of the purchasing companies. In cross-examination of a number of witnesses, Mr Buzuk and

Mr Streshinsky, see paragraph 113 of our written closing submissions for references, a point was made that the sellers did not know the identity of the beneficial owners of the purchasing company. Mr Berezovsky now says that he was one of those beneficial owners. The cross-reference to his closing submissions are paragraphs 62.3, 1114 and 1149.

Mr Berezovsky was never able to identify what exactly it was he says Mr Abramovich held on trust for him. Was it the companies or the plants? The cross-reference to our opening submissions on that, where we deal with this point, is at paragraph 39.10.

Now, in his written closing, Mr Berezovsky at paragraphs 1114 and 1149, plumps, contrary to his pleaded case in this action at C59A to C59B, for being a beneficial owner of the companies rather than the plants. Mr Berezovsky says that this is significant because the four purchasing companies were party to the master agreement. The reference there is 1114.

But this does not add anything to Mr Berezovsky's case on the alleged 1999 agreement or the master agreement as he contends. He does not advance any specific basis for asserting that he was a beneficial owner of the companies, for example a declaration of trust by offshore nominee holders. He simply relies on

Mr Abramovich's alleged agreement in 1999 that the aluminium assets would be held on the same terms as the 1995 agreement.

Mr Berezovsky would be as much a party to the master agreement by being a beneficiary behind Mr Abramovich as he would be a beneficiary behind the companies.

So the beneficial owner of the companies case is therefore not a distinct case for the alleged 1999 agreement, and it certainly does not give Mr Berezovsky an additional route into being a party to the master agreement.

Can I just deal briefly with the Badri interview notes.

MRS JUSTICE GLOSTER: Can I just say this. I've got to rise promptly at 4.15 because I've got a meeting. If you're going to go beyond 4.15 then I'm going to ask you to continue tomorrow.

MR MALEK: I'll be one minute, two minutes, last point.

MRS JUSTICE GLOSTER: Again I don't want to put any pressure on you.

MR MALEK: I'm obliged, your Ladyship. It's just this on the Badri interview notes.

It was argued by Mr Berezovsky that these indicate that Badri believed himself and Mr Berezovsky to have an interest in KrAZ and Bratsk assets corresponding to

their shares in Sibneft.

However, the only indication as to how that interest was acquired was on the basis that the money to acquire those assets had come from the Sibneft assets. We know that that is not correct, as I've just indicated, and therefore the evidence of the interview notes do not take matters further.

The reference to this can be found in Mr Abramovich's schedule at page 126, commenting on paragraphs 1145.4 to 5 of Mr Berezovsky's closing submissions.

My Lady, that's a convenient point to rise, if that's convenient to your Ladyship.

MRS JUSTICE GLOSTER: Yes. How much longer do you think you're going to be?

MR MALEK: An hour.

MRS JUSTICE GLOSTER: Thank you very much indeed. Very well, 10.30 tomorrow.

I think there is some sort of educational function here arranged by one of the parties after court.

I assume you all know about it?

MR MALEK: I don't but I don't think it matters.

MRS JUSTICE GLOSTER: Okay. Well, perhaps you could ask Mr Huntley, who is sitting at the back of the court, about it.

MR MALEK: We will ask Mr Huntley.

MRS JUSTICE GLOSTER: Just so you all know. I may have got  
it wrong, it may be next week.

Very well. 10.30 tomorrow.

(4.17 pm)

(The hearing adjourned until  
Thursday, 19 January 2012 at 10.30 am)

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Thursday, 19 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

Closing submissions by MR MALEK (continued)

MR MALEK: My Lady, we were looking yesterday at the question of whether Mr Berezovsky had an interest in the aluminium assets on the basis alleged in these proceedings, and we say no.

So the next point to deal with is the question as to what are the consequences if he didn't have that interest, and we submit that there are three consequences. The first one is that, when considering the question of the likely probabilities, we contend that the court should conclude that it is inconceivable that Mr Abramovich and Mr Deripaska would have given an interest to him during the course of the Dorchester meeting on 13 March 2000. There is no reason for Mr Abramovich to have done so. Mr Berezovsky had nothing to do with the hard work of putting together Rusal, and he had no role in relation to Rusal and its creation or its future business.

The second consequence, and this follows from the first point, is that Mr Berezovsky would have provided no consideration for the alleged express trust in relation to Rusal which he alleges was agreed at the

Dorchester Hotel.

The third consequence is that Mr Berezovsky has no interest that he can trace into Rusal, whether by way of a constructive trust or otherwise.

My Lady, there's one point, I should pick up this point that is made in the claimant's schedule that was handed up by my learned friend, Mr Rabinowitz, in the opening, and it's at page 32 where he makes a point in response to what is said by Mr Abramovich at paragraph 395 of the closing submissions.

If I could ask your Ladyship just to read what the response is and I will make a short point in response. So it's at the bottom of page 32, it's the last box dealing with 395.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: It's really the first point made there, the so-called non sequitur about the technically defective. Our response to that is that we are not saying that Mr Berezovsky's interest was technically defective as a matter of Russian law. We contend that he had no interest at all, and that's a response to that point.

That is the end of his claim for a constructive trust or resulting trust in respect of Rusal since his claims are based on him having a pre-existing proprietary interest in the assets contributed in the

merger.

I can now then deal with the next, I think my third, topic in the list of subsequent events, and that's the Dorchester Hotel meeting. Various points about this meeting have been fully canvassed, and by way of oral submission I wish to make seven short points on why that claim fails.

The first point is that your Ladyship is aware of the essential background: the negotiations started in March 2000 at the hotel, continued at Mr Abramovich's house. The material terms found their way into the sale and purchase agreement of 15 March, and it was amended on 15 May to reflect the addition of the Bratsk assets.

Our point there is that there is no evidence that Mr Berezovsky was involved in anything relating to the negotiations apart from the Dorchester Hotel meeting. He therefore is forced to contend that this meeting is of critical significance during which everything was agreed.

The second point is that a lot is made by Mr Berezovsky as to why Mr Abramovich and others were willing to see him in London. As I mentioned earlier in my submissions yesterday, we contend that the evidence makes sense as a Russian presidential election had taken place on 7 March. Mr Berezovsky was at the height of

his political influence. In view of Mr Berezovsky's interest in promoting his profile, it is reasonable to conclude that he wanted the meeting in order to highlight his importance.

The third point is that Mr Berezovsky's account of the meeting does not make sense in a number of respects. He had not been involved in the working group or in the drafting of the various agreements. His evidence that important matters were agreed is simply not made out during the course of that meeting. Of the matters that he says were agreed at the Dorchester meeting, it is clear that they had already been covered in the preliminary agreement.

The fourth point is that Mr Berezovsky's evidence that he recalls about the equalisation payment involving Mr Deripaska is simply false and dishonest. This is a matter which was agreed later and was related to the addition of certain of the Bratsk assets to the merger. The evidence of Mr Hauser was that certain of the Bratsk assets were added later and this gave rise to the 15 May revision.

We refer your Ladyship, not to turn to it now, to Mr Abramovich's schedule commenting on Mr Berezovsky's closing at paragraph 1181, and that's at pages 130 to 132 of the schedule, where there is a whole series of

points demolishing Mr Berezovsky's new theory that it was agreed at the Dorchester Hotel meeting that the Bratsk assets would be included in the merger, in return for increasing the compensatory payment from Mr Deripaska from \$400 million to \$575 million.

The fifth point is that had Mr Berezovsky or Badri been parties to the deal in relation to the merger, it is reasonable to suppose that they would have been involved in the addition of the Bratsk assets which culminated in the agreement of 15 May. They were not.

Sixthly, the only term that Mr Berezovsky has identified which was not included in the preliminary agreement was a no selling without consent provision. There is no reason why this term should have been agreed. It is denied by Mr Abramovich, Mr Shvidler and Mr Deripaska. And as Mr Sumption pointed out in the course of his oral submissions, it is not a term that would have made any commercial sense. That's Day 40, 35.27 to 37.7.

Seventhly and finally, none of the persons involved in the process of finalising the terms of the purchase agreement knew of the meeting. This confirms that nothing of substance was agreed at the meeting.

There is one issue which your Ladyship raised with my learned friend Mr Rabinowitz, which related to the

question of the nature of the interest that Mr Berezovsky acquired as a result of the meeting, and your Ladyship asked the question whether it was personal or whether it was proprietary. You will find a discussion of this point in Mr Abramovich's written closing at paragraphs 516 to 519. And the point that is made there, and I just simply summarise, is that it is all too vague and nothing was identifiable which could constitute trust property. But we simply adopt the submissions that are made there and I do not repeat them.

The only other point to make about Dorchester is that the allegation upon which Mr Anisimov has adduced evidence is Mr Berezovsky's contention that it was agreed that the merger agreements would be governed by English law. That's the British law point. And, as I mentioned to your Ladyship yesterday, this allegation was not put to Mr Anisimov during the course of his cross-examination.

By way of oral submission, I just wish to highlight four brief points. The first point is that Mr Berezovsky's written submissions in respect of this allegation have been thoroughly inconsistent, both in respect of when the advice was given, what it related to, and who it was given to, whether it was to Badri

and/or Mr Berezovsky. The reference there is E3.3 of our written closing submissions.

Secondly, the court will no doubt wish to trace the history of the allegation. The allegation was only introduced in the context that Mr Berezovsky suddenly realised that he needed to prove English law in order for this claim to be valid. We deal with that in section E3.2 of our written closings. We submit that everything here points to this being an invention. Had the allegation any substance it would have been raised far earlier.

The third point is that this part of the trial was a low point for Mr Berezovsky. His performance in the witness stand in respect of the alleged advice from Mr Anisimov was abysmal. He flipped and flopped all over the place, and we deal with that at E3.4.2 of our written closing submissions.

The fourth point is that the third point I have just made was tacitly recognised in Mr Berezovsky's closing submissions.

Tellingly, Mr Anisimov's alleged advice about British law is not cited as one of the pieces of evidence in support of the alleged express agreement between Mr Berezovsky, Badri and Mr Abramovich. You will see that from the closing submissions of

Mr Berezovsky at 67 to 74, 1581 to 1592, whereas previously it had always been cited in support, and you will get that from Mr Berezovsky's written opening at paragraph 457.

In fact, the only mention of Mr Anisimov's advice in Mr Berezovsky's written closing submissions, which is not warranted given that the point was not even put to him, has now changed. Mr Berezovsky's closing submissions -- and this is paragraphs 1253 to 1254 -- say that the explanatory note, which does not refer to British law but refers to using offshore structures and generically western lawyers, supports Mr Berezovsky's allegations that Mr Anisimov advised Badri, and I quote:

"... to structure his affairs offshore using western laws, and that it was Mr Patarkatsishvili who had subsequently used the phrase 'British law'."

As I say, that's at paragraph 1254, lines 5 to 6.

Now, we say that that is simply wrong.

Mr Berezovsky's allegation has always been that Mr Anisimov advised the use of British law, not Badri. The reference there is paragraph E3.3 of our written closing which sets out Mr Berezovsky's various allegations in pleadings and the written evidence. And it is not correct to say now that Mr Berezovsky's case has been that Mr Anisimov's advice was confined to

western law in order to manipulate the evidence to support Mr Berezovsky's last minute argument that the explanatory note was authored by Mr Anisimov or his advisers.

Now, the next point is the Rusal contractual documentation. Mr Berezovsky has made a number of submissions concerning what was referred to in his written opening submissions as the Rusal contractual documentation, and the starting point on that is that it cannot be said that this documentation can be used for the purpose of establishing any knowledge on the part of Mr Anisimov. He was not involved in the formation of Rusal and did not see any of the documentation prior to the commencement of these proceedings.

Now, let's just deal with the main points made by Mr Berezovsky. First, he contended that he was an undisclosed party to the preliminary agreement, and that was provided for in the use of the word "partners" of Mr Abramovich. You will get that from his closing submissions at paragraphs 1164 to 1175. But the answer to that is that Mr Berezovsky had not seen the preliminary agreement before these proceedings and admitted that he knew nothing about its negotiation.

We contend that it is hard to see how it could seriously be contended that he was an undisclosed

principal to an agreement which he did not see, he did not know its terms and, moreover, the drafting of the agreements indicate that Mr Berezovsky was not considered to be involved. The concern, as your Ladyship heard, was that one of the parties might be acting as a front for the Trans-World Group. Mr Hauser's evidence is important on this and we submit that Mr Hauser is a credible witness with no axe to grind.

The reference to the materials on this is our closing submissions, E2.2 and paragraph 157, and we also adopt Mr Abramovich's closing submissions at paragraphs 422 to 428, and also Mr Abramovich's schedule which deals with this at paragraphs 127 forwards -- sorry, page 127 forwards, and which deals with the evidence of the draftsmen.

Now, the second point is that Mr Berezovsky contends that he was similarly an undisclosed party to the merger agreement of 15 March after the Dorchester meeting, and that's covered by the phrase "Other Selling Shareholders". He makes the same point concerning the restated and amended SPSA in his closing submissions at paragraph 1271 forwards, where the reference is to the "other P1 shareholders". Again Mr Hauser's evidence comprehensively demolished these points and this has

been dealt with by Mr Abramovich's team. The reference to our closing is E2.2 and paragraph 157, Mr Abramovich's closing submissions paragraphs 422 to 428, and Mr Abramovich's schedule at page 127 onwards.

So we submit that the only conclusion that can be reached is that Mr Berezovsky's account concerning the Dorchester agreement is false and must be rejected. We submit the account given by Mr Abramovich, Mr Shvidler and Mr Deripaska should be preferred. We point out that there is no contemporaneous documentation supporting Mr Berezovsky's account. And as far as his heavy reliance on the notes of the interviews with Mr Badri, these were made long after the events in question. They started in 2005 and, we submit, do not support -- are not contemporaneous and do not support Mr Berezovsky's account. You will find a useful summary of the various points in Mr Abramovich's schedule at page 134 commenting on Mr Berezovsky's closing submissions at paragraph 1215.

Let's move on to the fourth topic, which is the subsequent events to the Dorchester meeting that Mr Berezovsky relies upon. As your Ladyship knows, this is concerned with the question of the weight that can be attached to circumstantial evidence covering events after the merger as an indication that Mr Berezovsky had

an interest in Rusal.

As I mentioned yesterday, the question is not whether there is evidence that is consistent with Mr Berezovsky having an interest in Rusal, but whether there is evidence that supports his case that he acquired an interest in Rusal by virtue of the case that is pleaded and which he can advance in these proceedings before your Ladyship. You are not concerned with the allegation in the Chancery Division that he acquired an interest by virtue of the alleged bilateral joint venture between Mr Berezovsky and Badri.

It is also right to record here that it is not suggested by Mr Berezovsky that he can advance a case outside his pleadings, and we are proceeding on the basis that the only case we have to meet is the one that has been pleaded.

Now, the matters that are relied upon are six. There's the Le Bourget transcript; the internal planning documents; the Curtis notes of August 2003; the alleged distribution to Mr Berezovsky and Badri of Rusal profits; the terms of the --

MRS JUSTICE GLOSTER: Just stopping there, Mr Malek, and going back to the point you made a moment ago.

MR MALEK: Yes.

MRS JUSTICE GLOSTER: It is relevant for the purposes of

this action for me to consider and probably to decide whether the fact that Mr Patarkatsishvili was paid 585 million reflected an interest which he, Mr Patarkatsishvili, might have had in the assets.

MR MALEK: Correct, I agree with that.

MRS JUSTICE GLOSTER: I have got to decide what is the correct characterisation or the reason for that payment.

MR MALEK: Correct.

MRS JUSTICE GLOSTER: Which has or potentially might have an ongoing impact for the Chancery proceeding.

MR MALEK: My Lady, if your Ladyship could just bear for a moment, I'm going to come back specifically to that question of what your Ladyship needs to decide, and I'll deal with that, if I may, at that point of time, but I will come back to that point.

Just going through the list, I think the last point I made were the terms of the 2004 documents for the sale of the second tranche and the Badri interview notes. I'm going to deal with most of this very quickly.

As far as the Le Bourget transcript is concerned, your Ladyship has Mr Abramovich's closing submissions at paragraphs 429 to 432. We have nothing to add on this beyond to stress that they do not give rise to any indication on any reading that Mr Berezovsky acquired an interest in Rusal which -- along the lines that he

alleges in these proceedings.

The second point is the internal planning documents, which is dealt with in Mr Abramovich's closing submissions at paragraph 433 to 435. And the main document there is the explanatory note, and the reference for the transcript is H(E)1/3/4T. That's a document that was found in the office of Mr Badri's financial adviser, Mr Kay. It is now suggested that Mr Streshinsky was the author of the explanatory note but there is no evidence to support this, and that's a point that I will come to at the end of my oral submissions. And we adopt what Mr Sumption said about this document in the course of his oral argument, Day 40, page 51, where he said:

"It looks very much like a money-laundering exercise but it is hard to be sure about that on the very paltry information that we have about this rather incoherent document."

Curtis notes are covered by Mr Abramovich at 436 to 441. We submit that Mr Tenenbaum's evidence was entirely credible. The creation of this note suggests it was part of a legalisation document process. It ties into the Spectrum transaction and the Devonian transaction, from which Mr Curtis received a personal payment of \$18 million in addition to his firm charging

full professional fees.

As far as the alleged distribution of the dividends in Rusal, that relates to the 175 million which is described as constituting Rusal dividends paid to Mr Berezovsky and Badri in 2003 and 2005. It is covered in Mr Abramovich's written closing, paragraphs 442 to 448. Nothing further to add.

So that leads us on to Rusal. I'm not proposing to say anything about the first tranche because that's covered by Mr Abramovich, I want to deal with the second Rusal sale which, of course, is more important as far as my client is concerned.

Now, Mr Berezovsky's case on this, in a nutshell, is that references to multiple beneficiaries and BB in the draft documentation proved that he was a beneficial owner of Rusal but that he was airbrushed out of the final documents. We covered this in our written submissions at section E2.5, which is page 77, and E2.6 which is page 79.

What I propose to do is just to make a few short remarks by way of oral submission.

MRS JUSTICE GLOSTER: E2.5 is the sale of the first --

MR MALEK: It's the first one, and then the second one is E2.6. So it's really E2.6.

Now it's important to distinguish between different

issues. The matter in issue is whether or not Mr Berezovsky had an interest in Rusal proceeds on the basis pleaded in this case, and that is not the same as whether or not Badri had an interest in the Rusal proceeds because, as everybody agrees, Badri did have an interest in the monies he received, precisely because he received them. The defendants contend that they were his commission payments that he agreed with Mr Abramovich.

As I've just mentioned, the issue which does not arise in these proceedings is whether or not Mr Berezovsky had an interest in Badri's Rusal proceeds simply by virtue of the alleged joint venture between Badri and Mr Berezovsky.

MRS JUSTICE GLOSTER: Yes, I can quite see that, but the issue that does arise in these proceedings is whether, as Mr Berezovsky contends, because he's going to give credit for his share of the payment, that that was paid as part of the alleged ownership interest in Rusal.

MR MALEK: Agreed. And so the question then is not simply whether people thought that Mr Berezovsky had an interest in the Rusal proceeds, but whether any such speculation assists Mr Berezovsky in proving that Mr Abramovich agreed, back in 2000, to act as a trustee for Mr Berezovsky.

In this context, the key point is that none of the draft documents and none of the people involved in the creation of the documents for the second Rusal sale ever referred to the Dorchester meeting. It was never suggested to anyone during the course of this trial that the Dorchester meeting was linked to the second Rusal sale and the matters discussed.

So the short point here is that the second Rusal sales do not help Mr Berezovsky establish any of his claims to Rusal in these proceedings.

The second point is that the essence of Mr Berezovsky's case is that those drafting the documentation in connection with the second tranche transaction recognise that Mr Berezovsky did have an interest in Rusal and airbrushed him out of the contractual documentation by the time that the transaction was executed on 20 July 2004.

The point we make here is that there is no doubt that an allegation of airbrushing involves an allegation of dishonesty on the part of those involved in the transaction, in other words, the production of documentation which was knowingly false and a fraud on Mr Berezovsky to disguise -- to wipe out his interest.

We submit, as I indicated yesterday, that it was incumbent on Mr Berezovsky to put to the witnesses that

particular allegation so that it could be answered by them. What he cannot do is to invite his lawyers to present a case theory in closing that was not firm enough to put to the witnesses so that they can answer the allegation.

Now, as I said, if there was a conspiracy to airbrush that would have necessarily involved Mr Anisimov. It was not a case that was put to Mr Anisimov and therefore it is not appropriate for him to maintain that Mr Anisimov was involved in any impropriety or conspiracy. That is true of all the allegations against Mr Streshinsky about Salford and Leboeuf's removal from the transaction, and it goes to the allegations that Mr Streshinsky told First Zurich Bank that Mr Berezovsky was a beneficiary and then withdrew the statement when money-laundering became an issue.

The sole purpose of those allegations was to implicate Mr Anisimov in Mr Berezovsky's alleged conspiracy theory. But as I say, that option is not open to Mr Berezovsky because no case of impropriety was put to Mr Anisimov.

The third point is that not only was the conspiracy theory not put to Mr Anisimov, it was comprehensively rebutted by the witnesses in evidence and the conspiracy

theory is wholly unsupported by any evidence.

Let's look at the draft documents. The court will no doubt recall Mr Hauser's evidence when he emphatically denied that any airbrushing took place. His evidence was credible and should be accepted. Your Ladyship will remember Mr Hauser's evidence on that. He was clearly angry, he was irritated that this allegation was made against him and he answered that allegation to your Ladyship, and I would submit that his evidence was honest, it was credible and it should be accepted.

Now, the sole basis for this assertion by Mr Berezovsky is that because Mr Hauser confirmed that the references in documents that he drafted to BB and beneficiaries did not come from Mr Abramovich's representatives or Badri's representatives, and Mr Hauser indicated in one answer that the press reports may not have been the sole reason he persisted in including the references in his documents, that therefore by process of deduction it is alleged that the only logical conclusion is that Mr Deripaska instructed Mr Hauser that Mr Berezovsky was involved.

Now, the logic of its origin is attributed on some of the occasions that the point is asserted, but it is repeated with such frenzy, and the references are 1418.5, 1424.1, 1425 to 27, 1439 to 1443, 1462, 1488,

1492, 1512, 1513. It's a point that's made over and over again, but where you perhaps see it most clearly is in the closing submissions at paragraph 1418.5 where it is stated in his closing submissions:

"Mr Deripaska's team were originally instructed that Mr Berezovsky was also a beneficial owner alongside Mr Patarkatsishvili. However, they were prepared to live with the acknowledgement from Mr Abramovich and the warranty from Mr Patarkatsishvili that he was the sole beneficial owner."

This detailed version of the instructions given to Mr Deripaska's representatives, and Mr Deripaska's representatives' mindset, is pure make-believe. It finds no support in the evidence.

Let's start off by looking at Mr Deripaska's knowledge. The one person who could speak to Mr Deripaska's belief in 2004 was the one person who was not asked and that was Mr Deripaska himself. Mr Deripaska was only asked about events up to 2003, he was not asked about 2004. You will get that from his evidence at Day 29 --

MRS JUSTICE GLOSTER: Just a second. Before you go there, I'm just checking the reference you gave a moment ago.

MR MALEK: To 1418, subparagraph 5.

MRS JUSTICE GLOSTER: You referred to 1518.5 [in the draft

transcript].

MR MALEK: I should correct it, it's 1418, subparagraph 5.

I think there was a mistake.

MRS JUSTICE GLOSTER: Just a second, please.

Yes, thank you.

MR MALEK: So the point I'm making is that this is an allegation of instructions given by Mr Deripaska, and the point is that no questions were asked of Mr Deripaska.

Since Mr Deripaska was not asked any questions about the 2004 events, he was not asked whether he believed that Mr Berezovsky was behind the second Rusal sale. Instead of that, what Mr Berezovsky does is he relies on yet a circuitous and speculative route to establish something that could have been simply asked of Mr Deripaska directly.

In fact, we submit that the evidence shows that Mr Deripaska did not have this belief. As we point out in our closing submissions at paragraph 205.4, Mr Anisimov's unchallenged evidence was that he was asked by Mr Deripaska whether Mr Berezovsky had any connection to the transaction. Mr Anisimov therefore raised this with Badri, Badri assured him that Mr Berezovsky was not anywhere near the deal.

Now, this unchallenged evidence from Mr Anisimov

indicates that Mr Deripaska did not have the knowledge alleged.

If I could ask you to turn to the schedule again of Mr Berezovsky, the claimant's schedule, at page 46, what is said in the bottom box is this, in relation to that.

MRS JUSTICE GLOSTER: I can read it.

MR MALEK: Yes, it's the first sentence:

"Mr Deripaska denied having ever had the initial conversation with Mr Anisimov despite being asked about the matter by Mr Anisimov's own counsel, Mr Malek."

Now, with respect, that is wrong. He made no denial. In a note that was supposed to correct errors, alleged errors, this is a rather unfortunate error itself because if your Ladyship turns to Day 29, page [5] at line 18, he made no denial. He said he simply does not recall. And we would submit that it's not a case of what Mr Rabinowitz called amnesia in relation to Mr Anisimov's evidence on Baden Baden; it's hardly surprising that he doesn't recall this because it happened seven years ago. So that's Mr Deripaska.

What about Mr Hauser? We say it's bizarre for Mr Berezovsky to rely on Mr Hauser's evidence to support this conspiracy theory, and there are four points on this.

The first point is that Mr Hauser vehemently denied

any impropriety in deliberately airbrushing Mr Berezovsky out of the documents. That's Day 32, page 29.16 to 30.6.

Secondly, if, as Mr Berezovsky's theory requires, Mr Hauser knew well from Mr Deripaska's instructions that Mr Berezovsky was a beneficial owner, then on Mr Berezovsky's case, what Mr Deripaska would have told Mr Hauser would not be a simple belief or possibility that Mr Berezovsky was involved, it would have been Mr Deripaska's instruction that he incontrovertibly knew that Mr Berezovsky was a beneficial owner, and had always been, and had had personal dealings with Mr Abramovich concerning the shares from at least the moment of the meeting at the Dorchester Hotel in 2000, because Mr Deripaska was at that meeting, a party to the alleged Dorchester agreement, and a witness to the alleged trust agreement between Mr Abramovich, Badri and Mr Berezovsky.

The acknowledgement from Mr Abramovich and the warranty from Badri would thus have simply been a lie and Mr Hauser would have known that. Yet Mr Hauser specifically confirmed, in addition to generally confirming that he was not a party to airbrushing conspiracy, that he would not have allowed his client to sign a document that he knew to be factually inaccurate.

The references to Mr Hauser's evidence are Day 31, 29.16 to 30.6, Day 31, 93.4 to 17. We submit, as I indicated earlier, that his evidence was credible and we would invite your Ladyship to accept it.

Thirdly, were it to be the case that Mr Hauser allowed his client to knowingly sign agreements which were liable to be challenged by Mr Berezovsky, because Mr Deripaska knew at the time that they were false, then as Mr Hauser explained, those documents do not do what they purport to do. That's Day 31, 26.16 to 30.6. But Mr Hauser made it clear that he thought that that would be an incompetent thing for a solicitor to have done. That's Day 31, 30.1 to 6.

The fourth point is that it follows from this that Mr Berezovsky's speculation that Mr Deripaska must have instructed Mr Hauser that Mr Berezovsky was a beneficiary based on what Mr Hauser could not say, namely what Mr Deripaska's instructions to him were, was an avenue that is closed off by what Mr Hauser did say. That's the important point. Mr Hauser's evidence is clear.

Now, what other sources Mr Hauser may have been referring to when he said that the press was not the sole reason for including a reference to Mr Berezovsky in his documentation, whatever it could have been, it

cannot have been Mr Deripaska's instructions.

That deals with Mr Deripaska and it deals with Mr Hauser.

In fact the explanation for the draft documentation is simple. It's addressed in our closing submissions at paragraphs 182 to 184 and goes back to Mr Berezovsky's public assertions that he had an interest in Rusal. As we explained there, people who draft documentation have to be careful, they want to avoid risk, and those drafting the documents adopted an approach to drafting which did not proceed on the basis that they thought that Mr Berezovsky had an interest in the Rusal proceeds, but rather they proceeded on the basis that their respective clients would not take the risk that Mr Berezovsky had an interest.

MRS JUSTICE GLOSTER: Just remind me, Mr Abramovich called Mr Hauser, not your client?

MR MALEK: That's correct. Under a witness summons.

As your Ladyship will recall, this goes back to the period in early June 2004, shortly after the negotiations had begun, where Mr Berezovsky made the announcement to the press that he had an interest in the assets being sold and would, if necessary, resort to the courts to block the sale. That of course resulted in a consequent flurry of activity between the lawyers as

to which party should take the risk that Mr Berezovsky would follow up his public assertions with some kind of nuisance claim in the future. Understandably, none of the parties were willing to do so.

The reasons for this are addressed fully in our submissions at paragraph 206, which I will not repeat here, but again commonsense comes into play. What is particularly telling is that, although Mr Berezovsky was prepared to make those statements to the press, he did not make any statement to those involved in the drafting of the documents. We would submit that that is important. Because had Mr Berezovsky genuinely held an interest in Rusal, it is reasonable to suppose that he would have asserted an interest directly rather than sitting by and making grand and empty statements which no doubt increased the perception of his importance by virtue of those statements but which had no legal consequences and were untrue.

We contend that the events surrounding the second Rusal sale show that Mr Berezovsky's account about the Dorchester meeting, or that he had an interest in the assets that found their way into Rusal, is false.

Your Ladyship knows that Mr Badri gave a confirmation that was inconsistent with Mr Berezovsky having any interest, and it is worth stressing that

Mr Berezovsky's case about what he knew about that confirmation by Mr Badri is confusing to say the least. We submit that it seems likely that he knew that Badri gave that confirmation, and that's a point that we cover in our closing submissions at paragraph 210, page 104.

Now, the next point concerns this point, which is we know that it was Badri who took on that risk. He was receiving the money from the transaction so he was the natural commercial party to accept the risk. Badri was happy to do so, and indeed expressly confirmed both in documentation and privately that the representations were correct.

There are two points here. First, Badri told Mr Anisimov that Mr Berezovsky was not involved in the deal, and that's referred to in our closing submissions at paragraph 205.4, which makes a reference to Mr Anisimov's evidence at paragraph 71. And this evidence is an important point relevant specifically to Mr Anisimov, and it falls within the second category of points which should have been put to Mr Anisimov if Mr Berezovsky disagreed with it. Yet Mr Anisimov's evidence about this conversation was not challenged in cross-examination.

The second point is that Badri confirmed to Mr Streshinsky that the representations he was making

were correct and that he was in fact the sole beneficial owner of the shares, and that was during Mr Streshinsky's trip to Badri's dacha in Georgia. Now Mr Berezovsky necessarily challenges Mr Streshinsky's evidence on this, and this entails, in order to explain away the conversation between Badri and Mr Streshinsky, an elaborate theory that Badri and Mr Streshinsky sent Mr Faekov of Akin Gump off on a merry wander down the beach so that he was out of earshot whilst Mr Streshinsky and Badri cooked up a plot to give the warranties, even though they were false, just to get the deal done.

That theory is far-fetched, it is unfounded. There is absolutely no evidence to justify the assertion. Mr Berezovsky contends in his closing submissions at paragraph 1522, subparagraph 5, that there is no credible alternative explanation for why Mr Faekov accompanied Mr Streshinsky on the trip to Georgia. This is both illogical and inconsistent with the evidence.

As Mr Streshinsky explained, the trip was a three-day trip in which both of them worked on the documentation. Just because Mr Faekov was not a party to one conversation with Badri does not mean that his presence on the trip is inexplicable in the absence of Mr Berezovsky's conspiracy explanation.

In fact, Mr Streshinsky followed up the meeting with Mr Patarkatsishvili by sending him the deal approval document, and that's a document at H(A)81 at 184 H(A)81/184, and we deal with that in our closing at 205.8 to 205.11.

What Mr Berezovsky does is that he interprets this document as an admission of Mr Berezovsky's interest, and you get that from his closing submissions at 1525(c) to 1529. But, and this is the important point, he omits to mention that Mr Faekov's and Mr Streshinsky's conclusion was that they did not know of any facts that Mr Berezovsky could rely on to substantiate his allegation.

If your Ladyship could just turn to paragraph 205.8 of our --

MRS JUSTICE GLOSTER: I'm there.

MR MALEK: You'll see the point, and it's made there.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: The statement that they did not know of any facts that Mr Berezovsky could rely upon, that necessarily would have been false and known to be false if the conspiracy theory is correct, and we would submit that there is no basis at all for doubting that conclusion.

So the position is that there was no conspiracy. There are many other flaws in the conspiracy. Had there

been a conspiracy, it would involve many persons apart from Mr Anisimov. There were too many professionals involved to suggest that this allegation has any substance to it. And it is important to stress that the conduct of the parties and the advisers can be explained in a way that does not involve any dishonesty or wiping out of Mr Berezovsky's interest.

What the evidence shows are concerns of the drafting parties that Mr Berezovsky might have an interest that was genuine, as was the subsequent acceptance that Mr Berezovsky did not have an interest and their residual caution about allocating the risk of an unfounded and baseless claim by Mr Berezovsky.

Now, the only other two allegations concerning the alleged conspiracy that concern Mr Anisimov directly are Mr Berezovsky's allegations concerning the removal of Salford/Leboeuf from the transaction negotiations, and Mr Streshinsky's communications with First Zurich Bank. My Lady, those arguments are dealt with in our submissions, I don't propose to go through them.

MRS JUSTICE GLOSTER: Can I ask you one question, I'm looking at the document --

MR MALEK: At H(A)81/184, is that the one?

MRS JUSTICE GLOSTER: Yes. Just remind me, because I can't see my note on it, who put the comments in the

right-hand column, the prescient comments? Was there ever any evidence on that?

It's the column that says "Methods of elimination and assessment of the risk". Just remind me --

MR MALEK: My Lady, it was a jointly prepared document by Mr Streshinsky and Mr Faekov of Akin Gump, so it would --

MRS JUSTICE GLOSTER: It was jointly prepared by both -- it's not a response in any way, it's jointly prepared by Mr Streshinsky and Mr Faekov, is it?

MR MALEK: That's our understanding, correct.

MRS JUSTICE GLOSTER: Thanks.

MR MALEK: As I say, the only other two allegations -- there's the Salford/Leboeuf point, which is the point that we cover in our submissions at 186 to 193. Your Ladyship has our submissions in writing, and the points that are made -- relied upon are fully set out in writing and I don't propose to repeat them because there's nothing further to add.

Now, as far as the First Zurich Bank is concerned, that is at 194 to 204 of our written closing, and it's the height of Mr Berezovsky's case on this, as it appears from Mr Streshinsky's comments to First Zurich Bank that Mr Streshinsky contemplated the possibility that Mr Berezovsky was a beneficial owner of the Rusal

shares but, again, that is an argument that is built upon speculation, and there's just three points worth stressing in relation to that.

The first point is that, as Mr Streshinsky conclusively clarified, until he had spoken to Badri in June 2004 in Georgia, he did not know with confidence what the position was with regard to Mr Berezovsky. He knew Mr Berezovsky was claiming an interest. He knew that Mr Deripaska was concerned about this but he had no personal knowledge of the true position. So on any view this evidence does not help Mr Berezovsky prove an alleged Dorchester meeting at all.

The second point is that nor does it assist Mr Berezovsky to prove Mr Anisimov's knowledge. The argument appears to be that if Mr Streshinsky thought something, Mr Anisimov must think the same. That is just pure speculation.

Then the third point, and this is perhaps the most important point about the FZB communications, is that Mr Berezovsky's -- the unreliability of the FZB communications to Mr Berezovsky's case is in fact borne out by the later communications, which Mr Berezovsky's written closing conveniently ignores.

As set out in paragraph 203 of our written closing, that's page 96, FZB's conclusion on the evidence they

had seen, and the information Mr Streshinsky had provided them, was that there was some form of retroactive structuring going on for the purposes to provide a satisfactory explanation for the settlement of account, but the evidence did not support any actual historical interest in the Rusal shares, whether in Badri or Mr Berezovsky.

We would submit that that very conclusion is wholly contradictory to Mr Berezovsky's case that he acquired in 2000 at the Dorchester meeting the interests that he pleads in Rusal. It is, on the other hand, supportive of the legalisation activity that was a particular concern for Badri at the time.

There remains one specific allegation -- one allegation specific to Mr Anisimov that needs to be addressed, and that is Mr Anisimov's alleged knowledge of Mr Berezovsky's interest in Rusal. If your Ladyship turns to Mr Berezovsky's closing, you'll see that this is dealt with at 1137 to 1140. I have two issues which I need to address. The first is the issue of what findings the court should make in respect of Mr Berezovsky's allegations about Mr Anisimov's knowledge. Then the second is it to address why Mr Berezovsky's allegations about Mr Anisimov's knowledge, which are set out in detail in his written

closing, are wrong.

Let's deal with this first question, the question of what findings a court should make as to Mr Anisimov's state of knowledge. Now, it was suggested by my learned friend Mr Rabinowitz yesterday to your Ladyship that no findings should be made about Mr Anisimov's knowledge of Mr Berezovsky's alleged interest in Rusal. What Mr Rabinowitz said is that this was the correct approach because, I quote:

"... the overlap issues ... have not been defined so as to require this court to make any findings about Mr Anisimov's knowledge or any questions of his honesty or dishonesty."

The transcript reference to that is Day 42, page 112, lines 11 to 15. We submit that that is not correct, and Mr Berezovsky's team did not take that approach when making detailed submissions about Mr Anisimov's knowledge in their written closing submissions.

We would submit that there are three very good reasons why this court should make findings of fact as to Mr Anisimov's knowledge. In summary -- let me just list them and I'll develop the points. The first point is that it is Mr Berezovsky who has put Mr Anisimov's alleged knowledge in issue in this case and, on

Mr Berezovsky's own case, the question of Mr Anisimov's knowledge falls to be determined under overlap issues 1, 2 and 3. Mr Berezovsky relies on Mr Anisimov's alleged knowledge in both 2000 and in 2004 as evidence of Mr Berezovsky's alleged interest in the aluminium assets and in Rusal. That's my first submission.

My second submission is that Mr Berezovsky has himself invited the court to make findings about Mr Anisimov's knowledge. Mr Rabinowitz's position yesterday was a reversal from the position in Mr Berezovsky's written closing submissions.

My final point is that this court is the forum in which issues about Mr Anisimov's knowledge relating to the aluminium assets and Rusal are to be decided. Any other outcome would involve exactly the duplication and waste of court time that the joinder of these actions was intended to avoid and would be unfair to the Anisimov defendants.

MRS JUSTICE GLOSTER: When you say issues about Mr Anisimov's knowledge, do you include dishonesty as part of the knowledge issue?

MR MALEK: Yes, exactly. If it's part of their case, the allegation involves allegations of dishonesty, the answer is yes. And, of course, these are -- the fact that those points were not put needs to be considered.

Let's just deal with each of these three points that I've just mentioned. My first submission was that Mr Anisimov's alleged knowledge of Mr Berezovsky's interest in the aluminium assets and Rusal is squarely within overlap issues 1, 2 and 3, having been brought into those issues by Mr Berezovsky himself.

Now, overlap issue 1 concerns whether Mr Berezovsky acquired an interest in the aluminium industry prior to the meeting at the Dorchester meeting in March 2000, namely by acquiring an interest in the aluminium assets sold by Mr Anisimov as one of the sellers in early 2000.

As your Ladyship is aware, Mr Berezovsky's case is that he was one of the purchasers of the aluminium assets. He has attempted to prove that case by asserting that the sellers, including Mr Anisimov, all knew that he was one of the purchasers. Indeed, Mr Berezovsky went to town in his oral evidence in his assertions that the sellers, including Mr Anisimov, all knew that he was the key to the deal, saying that he had had numerous meetings with them and so on. So this is not an insignificant part of Mr Berezovsky's case.

Your Ladyship can see that these allegations are repeated in Mr Berezovsky's closing submissions, and the references there to his closing submissions are 59.5, 1114, 1118, 1137 to 1139, 1143 subparagraph 5, 1146,

1251, 1547.7, and it's repeated in the schedule 1, pages 33 and 40.

It was also a case advanced orally by Mr Rabinowitz yesterday, which is at Day 42, page 63.27 to 64.7 -- sorry, 63.23 and 64.7.

So we submit it is perverse that Mr Berezovsky now suggests that the court should make no findings concerning Mr Anisimov's knowledge, despite relying on what he asserts the sellers, including Mr Anisimov, knew in order to prove his case against Mr Abramovich.

Mr Berezovsky's submissions concerning Mr Anisimov's alleged knowledge to prove his case on overlap issue 1 are not limited to a general assertion about the four sellers. In fact Mr Berezovsky goes out of his way in a series of very detailed arguments, which I will address shortly, to prove that specifically Mr Anisimov did have knowledge of Mr Berezovsky's alleged interest in the aluminium assets, and Mr Berezovsky then makes detailed points on the basis of various matters.

First of all, there is Mr Anisimov's visa declaration, and that's his closing submissions, 1137.1. Secondly, there's Mr Moss's note of the purported Baden Baden meeting with Mr Anisimov, and that's paragraph 1137, subparagraphs 2 to 5. Thirdly, there is Mr Anisimov's alleged knowledge about the use of British

or western law, and the closing submissions there are 1245 and 1253 to 1254.

Fourthly, there's Streshinsky's email to Ms Khudyk, and that's his closing submissions at 1137, subsection 6. Fifthly, there is the fax from Syndikus to Mr Streshinsky dated 27 March 2000, and the closing submission is at 1250. Sixthly, there is Mr Streshinsky's communications with First Zurich Bank, and that is Mr Berezovsky's closing submissions, paragraph 1137, subparagraph 6(g). And seventhly, there is the explanatory note, which is in his closing submissions at 1137, subparagraph 8.

Your Ladyship will recall that a lengthy amount of cross-examination of Mr Streshinsky was devoted to these last four documents in order for Mr Berezovsky to try to assert that Mr Streshinsky, and therefore Mr Anisimov, knew about Mr Berezovsky's alleged interest in the aluminium assets. That's Day 33, page 46, 112, and page 129 to 147.

We would submit: what was the purpose of this cross-examination if the court was not going to make any findings because that was a matter for the Chancery Division? With respect, this demonstrates how bad this point is that has been taken on behalf of Mr Berezovsky.

Indeed, of the four sellers whose purported views

Mr Berezovsky relies upon as evidence of his alleged interest, it is Mr Anisimov who is the focus of his written closing submissions. Messrs Reuben, Chernoi and Bosov get about eight and a half pages all together, Mr Anisimov is 14 pages, and there's five and a half pages on the question of the authorship of the explanatory note.

So that's overlap issue 1.

Overlap issues 2 and 3 deal with the agreement allegedly made at the Dorchester Hotel meeting concerning Rusal. In addition to recycling the arguments about Mr Anisimov's alleged knowledge of Mr Berezovsky's alleged interest in the aluminium assets, Mr Berezovsky relies upon a case that he was deliberately airbrushed out of the second Rusal sale documents. And specifically, in relation to Mr Anisimov, Mr Berezovsky relies upon Mr Streshinsky's alleged knowledge of Mr Berezovsky's interest as a beneficiary which he asserts would have been knowledge shared by Mr Anisimov. The reference there for your Ladyship is Mr Berezovsky's closing submissions at 1127, subparagraph 7, where he says:

"Given Mr Streshinsky's knowledge, it would be astonishing if Mr Anisimov was not aware of the position."

So the position is this: Mr Berezovsky relies upon the draft documents circulated during the negotiations for the second Rusal sale as evidence that everyone involved in the second Rusal sale, including specifically Mr Streshinsky, that they considered that Mr Berezovsky was a beneficial owner of the shares. The references there are 1418 --

MRS JUSTICE GLOSTER: Just a second.

1127, subparagraph 7 is a misreference. Can you give me the correct one, if it's a reference to Mr Berezovsky's closing.

MR MALEK: I'm told it's 1137.

MRS JUSTICE GLOSTER: Thanks very much.

MR MALEK: So we're looking at the point about the draft documentations, and the reference there is 1418, 1429 --

MRS JUSTICE GLOSTER: Yes, I have it.

MR MALEK: The next point is the disinstruction of Salford, and that's paragraph 1420, subparagraph 4, which Mr Berezovsky alleges was deliberate because of Salford's investigations into Mr Berezovsky, and the reference there is 1430 and 1448 to 1506.

The next one is the allegation that Badri told Mr Streshinsky that Mr Berezovsky was involved and told him that the representation he was asked to give was therefore false, allegedly false. The reference there

is --

MRS JUSTICE GLOSTER: Just a second.

Yes.

MR MALEK: The last one is the allegation that Badri told Mr Streshinsky that Berezovsky was involved and told him that the representation he was asked to give was therefore allegedly false. The reference there to the closing submissions is 1418(c) to 1516, and 1525.

So the point about this first submission is this: it is therefore quite wrong to say that Mr Anisimov's state of knowledge does not fall within the overlap issues. It does, and it does so precisely because Mr Berezovsky has sought to rely upon Mr Anisimov's alleged knowledge of his interest in Rusal, which he says is demonstrated by the events of the second Rusal sale, to prove his case on those overlap issues. This alleged knowledge forms a central part of the purported evidence that Mr Berezovsky relies upon.

Now, the second point is that Mr Berezovsky himself invites the court to make findings about Mr Anisimov's knowledge. The point here is that the second reason why it is not correct to suggest that the court should not make findings about Mr Anisimov's knowledge is that Mr Berezovsky in fact has invited the court to do so. In addition to positively asserting a case based upon

Mr Anisimov's knowledge, Mr Berezovsky expressly invites the court to evaluate Mr Anisimov's evidence and to reject it. The reference to his closing there is at 1138.

He then recognises that the court may take the view that it will not make specific findings as to Mr Anisimov's knowledge but seeks to persuade the court to make findings about Mr Anisimov's and Mr Streshinsky's understanding during both the aluminium asset sale and the second Rusal sale that would support Mr Berezovsky's case. The reference there to his closing submissions is 1139, subparagraphs 1 to 2.

I explained yesterday why we submitted that Mr Berezovsky's claims in these proceedings are doomed to failure. But we submit that in this case, where the wheels really did come off was during Mr Berezovsky's performance in the witness box. He no doubt wishes to see whether he can salvage something for the Chancery Division and therefore wants to narrow the findings your Ladyship makes so that he can fight another day.

We say the true reason for Mr Rabinowitz's shift of position yesterday is obvious. It follows from the realisation that Mr Anisimov was a credible and honest witness who said that he did not have any knowledge that Mr Berezovsky was a purchaser of the aluminium assets or

had any interest in Rusal. In fact, he believed that Mr Berezovsky did not have any interests because of what Badri said.

Now, Mr Rabinowitz appealed to the scope of the overlap issues to explain why points were not put to Mr Anisimov, but we would submit that that explanation simply does not work. He had to put the points which were relevant to his case in these proceedings, and the points that he relies upon, as we have seen, were not simply points that might or could have been put, they should have been put if he was going to advance a case against Mr Anisimov. And the obligation to put important points applied to all witnesses and was nothing to do with the scope of the overlap issues.

This change of position also followed the receipt of our written submission where it was pointed out that Mr Berezovsky failed to put to Mr Anisimov a number of important points and therefore cannot maintain a case that Mr Anisimov knew about certain matters when he was not asked about them, or certainly he cannot put a case of dishonesty against Mr Anisimov.

So this is the context in which Mr Berezovsky now says that the court should not make any findings about Mr Anisimov's knowledge at all so that Mr Berezovsky can have another go in the Chancery action, with the caveat

that, rather hypocritically, Mr Berezovsky would still like to rely on Mr Anisimov's knowledge to support his case in this action.

That cannot be right. He cannot both have his cake and eat it, and he cannot seek to relitigate the same issues in the Chancery proceedings.

That leads on to my third point, which is that this court is manifestly the appropriate forum to make findings as to Mr Anisimov's knowledge concerning the aluminium assets and Rusal.

The first point is that the whole point of the conjoinder of the Chancery defendants was so that the Rusal issues could be decided once and once only, in the best forum, with the best evidence and without duplication or waste of the court's time. The basis for that assertion is what was said in the combined judgment, the joint judgment, which is at -- and I've asked for this to come on to the Magnum screen if your Ladyship doesn't have the hard copy.

MRS JUSTICE GLOSTER: I've got it.

MR MALEK: It's I1/05/138 to 139. Hopefully the judgment will come up. I'll repeat the reference -- it's that judgment.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: We would invite your Ladyship to have a look at

that judgment, and particularly at paragraph 28, particularly subparagraph 2, and 29, where it is made plain what the purpose of this trial is, and the purpose of this trial is to deal with all the Rusal issues.

It simply can't be right that we're going to have a repeat of all of this in the Chancery Division. It is this court that has seen and heard all the evidence in respect of the aluminium assets and Rusal, and the key points are these. First of all, all the documents relating to the aluminium assets and Rusal were disclosed in this action. Secondly, this court has heard from all the relevant witnesses including, for example, Mr Reuben who was another seller of the aluminium assets, and perhaps most importantly, Mr Berezovsky spent a significant amount of time conducting detailed cross-examination of Mr Anisimov and, in particular, Mr Streshinsky that was aimed solely at establishing Mr Streshinsky's and Mr Anisimov's knowledge of Mr Berezovsky's alleged interest in the aluminium assets and Rusal.

That cross-examination, if Mr Anisimov's knowledge is now said to be irrelevant, as Mr Rabinowitz says, would have served no purpose and been entirely wrongful.

MRS JUSTICE GLOSTER: Just a second, Mr Malek. Are you saying that I should decide once and for all the extent

of Mr Anisimov's knowledge? Surely all I can do in relation to the overlap issues is to decide, if I agree with the submissions you've made, the extent of his knowledge of the alleged trilateral agreement.

MR MALEK: Yes, that's correct.

MRS JUSTICE GLOSTER: I can't decide, can I, whether or not Mr Anisimov had knowledge of the bilateral joint venture agreement between Mr Berezovsky and Mr Patarkatsishvili because that's not within my remit.

MR MALEK: Correct. Your Ladyship has to, in our submission --

MRS JUSTICE GLOSTER: You may say one leads to the other but, strictly speaking, I can't go further than determining, if I agree with your submissions, whether Anisimov had knowledge of the trilateral joint venture.

MR MALEK: Correct, and a knowledge of interest based on the aluminium assets.

The point is, yes, we entirely agree with what your Ladyship says. Your Ladyship can only deal with the allegations of knowledge that are before this court relevant to the proceedings that are before your Ladyship.

Your Ladyship is not in a position to deal with the bilateral joint venture, alleged bilateral joint venture between Badri and Mr Berezovsky, but what your Ladyship

can do is that where in their written submissions they make allegations about Mr Anisimov's knowledge, where Mr Anisimov has made statements about his knowledge in his witness statements, where Mr Anisimov has been cross-examined about his knowledge, where anything is said about Mr Anisimov and what he knew, your Ladyship is in a position to make, and we say should make, determinations about those matters.

How it plays out eventually in the Chancery case in terms of the bilateral, that's a matter for another occasion and before a different court, but we would submit that your Ladyship should make findings of Mr Anisimov's knowledge on the points because the whole process, including evidence of witnesses and arguments, will not be repeated in the Chancery trial. The Chancery trial is not going to go into Rusal and aluminium assets again because that would be a complete duplication and a waste of the court's time.

Moreover, it specifically makes Mr Anisimov's and Mr Streshinsky's and Mr Buzuk's appearance at this trial a complete waste of time. If their belief, understanding and knowledge is irrelevant to the overlap issues, then there was no conceivable reason for them to waste their time, effort and money coming here as they do not testify directly to Mr Berezovsky's alleged

interest in either the aluminium assets or Rusal; the only conceivable use of their evidence at this trial requires a finding of fact by the court as to their knowledge or belief. And that is exactly the use that Mr Berezovsky seeks to make of their evidence.

If one stands back, can it really be said that in their closing submissions they spend pages and pages going on about what Mr Anisimov knew, and then to say, "Well, you're not meant to make any findings", it just doesn't make any sense what is being said here.

What is really happening in this case is that they know the case has been lost, and what they're trying to do is salvage something for the Chancery Division and they should not be allowed to do that.

Now, the only other point that I make on this is that there is no -- not only is there every reason why this court should not make findings as to Mr Anisimov's state of knowledge about Mr Berezovsky's alleged interest and the aluminium assets and Rusal, but conversely there is no reason why the Chancery court would be put at a disadvantage when considering Mr Anisimov's alleged knowledge of a bilateral joint venture.

This is because any documents in this action that arguably show knowledge specifically of the alleged

bilateral joint venture will obviously be deployed by Mr Berezovsky before the Chancery court.

Insofar as Mr Berezovsky hopes to prove knowledge of the alleged bilateral joint venture simply by showing that Mr Anisimov knew individually about Mr Berezovsky's interest in lots of specific investments, the court does not need to retry the question of whether Mr Anisimov had specific knowledge about Rusal. It will of course remain open to the Chancery court division, the Chancery judge, to find that even if as a result of this trial Mr Anisimov is not shown to have any specific knowledge of any alleged interest in Rusal, he must nevertheless have known of Mr Berezovsky's alleged interest in Rusal and/or the Rusal proceeds received by Badri because he knew about the bilateral joint venture by virtue of knowledge about other assets.

But there are therefore many reasons why this court should, indeed will, need to make findings about Mr Anisimov's knowledge and no obvious reasons why those findings should not be binding for the purposes of the Chancery actions, and therefore we invite the court to make those findings.

My Lady, the last part of my submissions was to deal with a separate point, which are the specific arguments that Mr Berezovsky has advanced to support his

allegation that Mr Anisimov knew about Mr Berezovsky's alleged interest in the aluminium assets and in Rusal.

I think it will take me about 20 minutes to do that so it may be that that's a convenient time to break.

MRS JUSTICE GLOSTER: Okay. I'll take the break now for a quarter of an hour.

(11.41 am)

(A short break)

(12.00 noon)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR MALEK: My Lady, the last topic I need to address before your Ladyship concerns Mr Anisimov's alleged knowledge and I can deal with this quickly, not because it's not important but simply because it's covered in our written submissions.

The matters that are relied upon in support of knowledge are the declaration that Mr Anisimov gave in connection with a visa application for a visit to the USA in which he said that the aluminium assets were to the shareholders of Sibneft, that's dealt with in Mr Berezovsky's written submissions at 1137, subsections 1 to 5, which is at page 654. Then there's the documentation prepared by Mr Streshinsky in the course of the second Rusal sale and that's covered at 1137.6 to 7, and then there's the explanatory note, which is 1137

to 1138.

I'm not going to deal with the visa declaration because although we exchanged written submissions we anticipated that that point was going to be made and we covered that in our written submissions. The same in relation to the Streshinsky documents and the emails to Ms Khudyk, and also the FZB compliance report.

So all we need to deal with is the explanatory note, which is at H(E)1/03/4T, that's the English translation, and that's a star late entrant to Mr Berezovsky's case on knowledge. It's listed at 1137.8 as evidence of Mr Anisimov's knowledge although the substantive argument as to its authorship is set out at paragraph 1249 and at page 59 of schedule 1.

We say that the argument is completely overstated. The argument is presented as if the authorship of the explanatory note is obvious, and insinuates that the Anisimov defendants only question its authorship because it is damaging to their case.

The first point we make is that that is a bold assertion given that, as we set out at paragraph 129.5 of our closing submissions, Mr Berezovsky was still accusing various people of drafting the explanatory note as late as his opening submissions. His latest theory that Mr Streshinsky is the author appears to only have

occurred to him during the course of the trial.

What I will now do is go through each of the reasons given by Mr Berezovsky in his closing submissions dealing with this question of whether or not Mr Streshinsky is the author. As I will show, these arguments range from the superficial to the demonstrably wrong.

Let's just go through them very quickly because we haven't done this in our written submissions. The first point is at 1249.1, and the argument here is that the note contains both Russian and English words. That's at 1249, subsection 1, on their closing.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: If your Ladyship could have that perhaps open.

MRS JUSTICE GLOSTER: I've got it.

MR MALEK: Then I can deal with our responses.

In our submission, that hardly narrows this down to Mr Streshinsky. Your Ladyship will know that it's our case, and indeed Mr Abramovich's case, that Mr Kay is the most likely author and he spoke both Russian and English as well.

Now, the next point is the question of where the document was found and the argument there is that it was found in -- I'm just finding the reference to this in my submissions.

The next point is that the argument that the -- in fact, the first point, yes, is English and Russian words, and the next point I think is at 1249.4(a), it says:

"Amongst all Mr Kay's other papers at 11 Grosvenor Place, there is not a single document which Mr Kay appears to have authored in Russian."

That is a very odd submission to make, and your Ladyship will note that there is no reference to support that argument, there's no footnote, and we are not aware of the evidence that supports that proposition. What we can say is that this part of the skeleton is very misleading because, as far as we are aware, Mr Berezovsky's solicitors have not reviewed all the documents at 11 Grosvenor Place but only a proportion of them. Our submission is that this argument ought to be dropped now, or at least Mr Berezovsky should explain when all the documents at 11 Grosvenor Place were reviewed if he's going to substantiate this allegation.

So that's a first point about Mr Kay.

The second point is that the note contains errors in Russian language, and Mr Streshinsky was a dual Russian/English speaker, and that point is made at 1249.2. Our response to that is that Mr Streshinsky's native language is Russian and it's actually very

unlikely that he would make simple grammatical errors. So our conclusion is that that is a factor against Mr Streshinsky being the author.

In fact, there is no basis in fact and no evidence to support the assertion in paragraph 1249.2 that the explanatory note does contain grammatical errors that are replicated in other documents supposedly authored by Mr Streshinsky. Again there is no supporting evidence, this is only mere assertion and we submit should be dropped.

The third point is that Mr Streshinsky would have been familiar with the financial information on KrAZ and the other company that it was envisaged in the information -- explanatory note would be supplied. That's at 1249.3.

Our response to that is that anyone who was familiar with the Russian aluminium industry is likely to have known that Mr Anisimov owns his assets through the Coalco companies. Moreover, Mr Streshinsky's knowledge of the financial information is such that it's most unlikely that he would have referred to the purchase price as being "about 600 million" as the author of the explanatory note states at the top.

He knew what the figure is, he wouldn't have used language like 600 million. Similarly, he knew from

a recent report, and the reference there is to our opening submissions at paragraph 50 and footnote 84, that he knew from a recent report that had valued those assets, a third of the aluminium assets, at 940 million.

As your Ladyship can see, the author of the explanatory note values the assets at 6 to 8 billion. Our point there is that Mr Streshinsky would not have done that.

MRS JUSTICE GLOSTER: Mr Streshinsky said he'd not seen it before and he wasn't the author of the note?

MR MALEK: That's correct. These are the points that are --

MRS JUSTICE GLOSTER: Was it suggested to him in cross-examination that he was the author of the note?

MR MALEK: Yes, it was, and that's why I'm going through these points, at least giving your Ladyship the bullet references.

MRS JUSTICE GLOSTER: Yes, thank you.

MR MALEK: Point four is the one at 1249, subparagraph 4, which is that Mr Berezovsky and Badri are referred to as "the clients". What Mr Berezovsky says is that Mr Streshinsky would have referred to Badri and Mr Berezovsky as "the clients" but Mr Kay would not.

Our response to that is that it's complete speculation that Mr Berezovsky does not even attempt to explain. He gives no reason why Mr Kay would not have

referred to Mr Berezovsky and Badri as "the clients", given that he worked for them, while Mr Streshinsky would have referred to them as "the clients". In fact they were not Mr Streshinsky's clients at all, and there is no evidence that we can point to to suggest that Mr Streshinsky ever referred to Badri as "the client".

You can see that from the compliance memo, the FZB, which is at H(A)77/95, Ms Khudyk's communications which are H(A)76/54 and 57, and the Syndikus fax at H(E)3/22/1 which Mr Berezovsky says is linked to the explanatory note.

In fact, as your Ladyship may recall, Mr Streshinsky's evidence was that he'd never spoken to Mr Berezovsky and confirms that he would not have referred to him as "the clients". That's at paragraph 22 of his statement, F1/02/60.

It's also worth pointing out that in Mr Berezovsky's oral opening, Day 1/55, 10 to 22, my learned friend Mr Rabinowitz explained that Mr Berezovsky and Badri were planning a trip to see Samuelson to discuss moving their assets and Mr Rabinowitz linked the explanatory note to this evidence. Mr Berezovsky and Badri were therefore Samuelson's clients. So again, that point is a bad one.

The fifth point is at 1249, subparagraph 5, which is

that the explanatory note lists Aeroflot as Mr Berezovsky's asset and Mr Kay would have known better. That is a particularly bad argument, as we point out in our closing submissions at 129.6, page 62, where we reference to a number of documents created by Mr Berezovsky's other advisers containing this error.

The indication is that this is something that Mr Berezovsky told his advisers. That ties into the point I made to your Ladyship yesterday that it is hard to take at face value anything said by Mr Berezovsky about his ownership because it seems that he told his advisers that he had an interest in Aeroflot, although he expressly disavowed this.

Indeed, Samuelson in particular is known to have recorded this point, and the reference there is H(A)19/10. Neither Mr Anisimov nor Mr Streshinsky have ever expressed the view that Mr Berezovsky had an interest in Aeroflot. So the conclusion on this point is that that is a factor against Mr Streshinsky being the author, and more likely that one of Mr Berezovsky's other advisers, whether it's Kay or Mr Samuelson, as being the author of this document.

The next point is not any better, which is the point that there are similarities in the layout of the explanatory note and one document authored by

Mr Streshinsky. That's 1169 at 6. In our submission, this is extremely superficial analysis. Most of the formatting points can be made about Mr Berezovsky's own submissions, introductory paragraphs with colons, use of subparagraphs, bold and underlining and bullet points. There are an equal number of differences between the explanatory note and Mr Streshinsky's email to Ms Khudyk that Mr Berezovsky refers to, different fonts, different formatting of headings, different spacing between the numbered paragraphs.

So this evidence is little more than a superficial attempt to compare writing styles which is usually the purview of more sophisticated and complex expert analysis.

Point seven is the final what is described as remarkable evidence that Mr Berezovsky points to, and that's at 1250 at page 720, which is that Mr Streshinsky appears to have envisaged on the steps identified in stage 1 of the explanatory note at exactly the same time as the explanatory note was drawn up -- sorry, was engaged on the steps, I should have said, appears to have been engaged on the steps identified in stage 1.

Another bad point. The date of the explanatory note is certainly not clear, and that's a point that Mr Abramovich's schedule at page 137, commenting on

Mr Berezovsky's closing submissions at paragraph 1250, make. But in fact the only steps that Mr Streshinsky is said to have been involved with is the provision of documents to a third party to help set up an account for Badri, and that's the only one. So this argument is thin to say the least.

So we submit that Mr Berezovsky's case on the explanatory note is speculation, supposition, and a lot of inaccurate and misleading assertions. We in fact agree with what Mr Abramovich says in his closing submissions at paragraph 433, subparagraph 1, that the author of the explanatory note is likely to be Mr Kay in whose offices the document was found.

The other point I would like to make on this is that it is said in paragraph 1252 of Mr Berezovsky's closing submissions, and that's at page 721, that Mr Streshinsky's evidence on the explanatory note is, and I use his phrase, "deeply unsatisfactory". It was only so insofar as it was unsatisfactory to Mr Berezovsky because he did not give the answers that Mr Berezovsky wanted.

In fact when you come to re-read the cross-examination of Mr Streshinsky, you will see that it consists of a whole series of speculative assertions in lengthy speeches at Mr Streshinsky with

Mr Streshinsky having very little to say. But he certainly denied, and this is the point that your Ladyship raised with me, in clear terms that he was the author of the explanatory note, and as set out above in the points I've just made there is no good evidence to show anything to the contrary and a lot of good points to show that he was not the author of the explanatory note.

The only other point I would make on the explanatory note is that the points need to be kept in context. Mr Berezovsky is using speculative inference upon inference to infer, one, that Streshinsky was the author of the explanatory note; two, that Mr Streshinsky therefore knew that Mr Berezovsky was a purchaser of the aluminium assets; three, that Mr Streshinsky told Mr Anisimov about this; and four, that Mr Anisimov therefore knew that Mr Berezovsky was a purchaser of the aluminium assets and therefore had an interest in Rusal. It is a creative case certainly, but it is not credible or a viable case from which to find that Mr Anisimov had any knowledge about Mr Berezovsky's alleged interest in the aluminium assets.

And, of course, the other point to make on this is that, were it true, why did Mr Berezovsky feel the need to make up in his oral evidence a load of direct

conversations with Mr Anisimov which, as we've said to your Ladyship, are simply fiction?

My Lady, that's all I wanted to do, apart from just cover up -- just to make a few corrections and to answer a point made by your Ladyship.

The first point is the transcript of Mr Deripaska's evidence, and I made a mistake which in fact doesn't help Mr Berezovsky but it is a correction that I need to make. I said to your Ladyship incorrectly that no questions were asked --

MRS JUSTICE GLOSTER: Hang on, can you just give me the --

MR MALEK: Yes, it's at Day 29, which I think is in volume 2 of the transcripts, and it's at Day 29, and it's at page 45. This was one of the documents that was put to Mr Hauser -- to Mr Deripaska, and therefore what I said to your Ladyship was incorrect.

MRS JUSTICE GLOSTER: What line on the page?

MR MALEK: I'm not sure where it starts, but the passage concludes at page 45. Your Ladyship asked Mr Deripaska at line 13 on page 46:

"Mr Deripaska, in this first paragraph the suggestion is made that Madison, that's Mr Abramovich's company, is holding the 25 per cent shareholding in Rusal Holdings Limited on behalf of another company, called B Company, or that company's ultimate owners, B.

"Is that something or is that issue something that you knew anything about at that time?"

"Answer: No, I was not aware of that in any way."

So it is -- so that corrects what I said to your Ladyship this morning at [draft] page 20 at lines 6 to 11. So if your Ladyship could just note that correction.

The second point is the effect of findings and this touches upon a question that your Ladyship asked. If your Ladyship is prepared to turn down the transcript to page --

MRS JUSTICE GLOSTER: So you made a misstatement at page 20, lines 6 to 11 of today's transcript?

MR MALEK: Yes, and my mistake was when I said that nothing had been asked of Mr Deripaska about the events in 2004 concerning the second Rusal sale where it's quite clear that there was a reference.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: And in fact a clear denial on the part of Mr Deripaska.

The second topic, just by way of wrap-up, is if your Ladyship turns to the transcript for today at [draft] page 12, and your Ladyship said:

"It is relevant for the purpose of this action for me to consider and probably to decide whether the fact

that Mr Patarkatsishvili was paid 585 million reflected an interest which he, Mr Patarkatsishvili, might have had in the assets."

Now, your Ladyship does need to decide on the evidence whether, as Mr Abramovich said, Badri did not acquire an interest in Rusal but was simply paid a debt through the sale of the second tranche of the Rusal shares in 2004.

MRS JUSTICE GLOSTER: Yes, obviously I've got to decide that.

MR MALEK: Yes. Or whether, as Mr Berezovsky says, he and Badri jointly acquired an interest in Rusal in 2000.

The point I just make there is the one your Ladyship I'm sure has that Mr Berezovsky does not allege in these proceedings that only Badri acquired an interest in Rusal in 2000. His case is that he and Badri jointly acquired an interest in Rusal in 2000 and, as the judge said, the finding made by the court in these proceedings will be relevant to the Chancery actions, because, for example, if the court decides that Badri did not acquire an interest in Rusal in 2000 then no such interest can form part of the joint venture that he has to establish.

So that's the point there.

The other point that your Ladyship raised, and this is the third of my miscellaneous points, is that your

Ladyship asked me the question about the deal summary that we looked at earlier, which is at [draft] page 30 of the transcript at 11.15, where your Ladyship asked for the authorship of the document at H(A)18/181 (sic), which, your Ladyship remembers, the point I was making there is it records the fact that the authors did not know of any fact that Mr Berezovsky could have relied upon in order to assert an interest.

The evidence dealing with that is Mr Streshinsky's evidence in his written evidence at F1/02 at page 87 at paragraph 122 F1/02/87, where he gives evidence to the effect that "Around this time, at my instruction, Mr Faekov began to prepare a document entitled 'Transaction with Rusal Holdings'".

As your Ladyship knows, in fact we need to go back, it starts at -- Ms Tolaney reminds me I should read the whole passage or in fact just have the reference. It starts at 121 and we would ask your Ladyship to read 121 and 122. In fact it's 135, it's the whole section. And in fact it shows that they both authored it, so that was the point to your Ladyship's question.

The only other point I would make is that I did go through the references to the bundles quite quickly --

MRS JUSTICE GLOSTER: I've got them all on the transcript.

MR MALEK: What we were going to do is to check them and if

there were any errors to give those corrections to your Ladyship.

MRS JUSTICE GLOSTER: Yes, fine, if you would email them to my clerk.

MR MALEK: Thank you.

Those are my submissions, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed, and thank you to the entire team as well.

Yes, Mr Adkin.

Closing submissions by MR ADKIN

MR ADKIN: My Lady, the overlap issues each reflect issues you were asked to decide in the Commercial Court action, and we have sought in our closing document to indicate the paragraphs from the agreed list of issues arising in that action to which each overlap issue relates.

It follows, of course, that we are in the happy position of being able to rely, as we do, on the evidence and submissions advanced on behalf of Mr Abramovich on those issues.

Although each is a separate overlap issue, Mr Berezovsky's case in relation to those issues requires him, we submit, to establish a chain of agreements, each of which is necessary to make out the next. In order to successfully establish that he obtained an interest in Rusal, and therefore in its

proceeds, he needs to show that he had an interest in the aluminium assets merged into it. In order to establish an interest in those aluminium assets, he relies on an agreement said to have been reached between himself, Mr Abramovich and Mr Patarkatsishvili in 1999 by which they amended or agreed to supplement the 1995 agreement.

Since it's common ground that the acquisition of the aluminium assets was in the event funded by a bridging loan, and not Sibneft profits in which Mr Berezovsky can assert an interest, that alleged 1999 agreement is in fact now the only basis upon which Mr Berezovsky is able to assert an interest in the aluminium assets, so that agreement must be made out. And in order to make that agreement out, we submit Mr Berezovsky needs to make out the claimed 1995 agreement. That is because, as all of the Russian law experts were agreed, in order for there to be an effective amendment or an addition to an existing agreement, that existing agreement itself had to be effective. We've set out the references to that expert evidence in our closing document at paragraph 19, footnote 27.

It follows therefore that if there was no effective 1995 agreement, either because it was not made as alleged by Mr Berezovsky or it didn't work under Russian

law, the claims '99 agreement cannot work and the whole of the case on the overlap issue, we submit, collapses.

My Lady, all of the agreements that Mr Berezovsky seeks to rely on were, of course, oral. None of them is recorded or indeed evidenced in writing. None of them resulted in any form of documented ownership interest in Mr Berezovsky. And the only person present on any of the occasions at which those agreements can sensibly have been said to have been made, who supports Mr Berezovsky's story, is Mr Berezovsky himself.

We therefore endorse the submission made on behalf of Mr Abramovich that, in approaching the evidence, unless your Ladyship can have a high degree of confidence in Mr Berezovsky's truthfulness as a witness it's unlikely that he can succeed.

Now, Mr Berezovsky has, through his closing, urged upon your Ladyship a somewhat different approach to the evidence. The theme of the submissions made on his behalf yesterday, as we understand them, was to suggest that there is a large number of evidential matters relating to the Rusal part of the action which cannot be explained in a manner consistent with Mr Abramovich's case, as a result of which it is said Mr Berezovsky's case should be accepted.

We respectfully submit that there is a number of

problems with that approach. The first, of course, is that it amounts to an illegitimate attempt to reverse the burden of proof which lies with Mr Berezovsky. Second, whatever one might conclude as to the consistency of the evidence pointed out by Mr Rabinowitz with Mr Abramovich's case, and we don't accept that the evidence is in fact inconsistent, most, if not all, of the matters relied on by Mr Berezovsky are in fact entirely inconsistent with his own case. A good example of this, we would submit, is the reliance placed by Mr Berezovsky on the five contemporaneous agreements relating to aluminium which might, we would say, fairly be said to be amongst the most significant documents on this part of the case.

Now, Mr Berezovsky is not recorded as a party to a single one of those agreements, nor is he expressly referred to in any of them. The key term which he says was agreed at the Dorchester Hotel, and on which reliance is now placed, the provision that nobody would sell their interest without the consent of others, is wholly absent from any of the subsequent agreements following the Dorchester meeting which your Ladyship has seen.

Another term, the balancing payment of 575 million from Mr Deripaska which is said to have been agreed at

the Dorchester Hotel meeting, is absent from a written agreement which was produced only a few days later.

The remaining terms which are said to have been agreed at that meeting are in fact to be seen in an earlier agreement, all already having been agreed to.

Emphatic representations are made in the July 2004 sale agreement which are completely inconsistent with Mr Berezovsky having had an interest in the Rusal assets.

So, in fact, we submit, on analysis, the only way in which any of those agreements can be said to lend support to Mr Berezovsky's case is the reference in the February 2000 document to "partners", and in the March and May agreements to "other selling shareholders". But of course those are points upon which your Ladyship has had evidence from the draftsmen, including Mr Hauser, a man of undeniable, we would submit, neutrality and integrity, who have all made very clear that such references had nothing whatsoever to do with Mr Berezovsky.

Similar points can be made on various of the other parts of the evidence upon which Mr Berezovsky relies as being inconsistent with Mr Abramovich's case. The point I want to make now is that, whilst your Ladyship will undoubtedly want to test the known facts against the

conflicting evidence of Mr Abramovich and his witnesses, and that of Mr Berezovsky, it is not enough, we would submit, for Mr Berezovsky simply to assert inconsistencies with Mr Abramovich's case unless he can also establish that the known facts are consistent with his own case. That, as we will submit in due course, is a burden, we say, he is unable to discharge on the overlap issues.

Now, my Lady, of course the critical part of the evidence that you will have to assess is that of the witnesses that you have seen. Your Ladyship has received a number of submissions from both sides, which I don't propose to repeat, as to the particular importance of the witness evidence in a case such as this where one is dealing with oral arrangements and the documents are not to be trusted, it being common ground that documents were created which did not properly reflect the true position on both sides of the case.

I want simply to add one further point to the significance of the witness evidence and the role that we submit it should play in your Ladyship's approach to the overlap issues. It is, we submit, a fact of critical importance that, although Mr Berezovsky claims, as he must, that his involvement in the acquisition of the aluminium assets in February 2000, and in the merger

of those assets with Mr Deripaska's business in March 2000, was to be concealed from the documents, he emphatically does not claim that his involvement was to be concealed from those others involved in the deals. In fact Mr Berezovsky claims to have been a, indeed the, key player in both deals and to have met with and negotiated the arrangements with the relevant counterparties.

We've set out the references to Mr Berezovsky's position in relation to the February 2000 deal at paragraph 25 of our closing document.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Mr Deripaska's -- the March 2000 deal of course needs no reference since, as your Ladyship knows, it's a central part of Mr Berezovsky's case that he met with Mr Deripaska and negotiated that merger at the Dorchester Hotel.

Now, if Mr Berezovsky's case is to be believed, there are a number of people on both sides of these deals who must have known of his involvement, indeed who he says he met and with whom he discussed the deals and whose evidence would, if truthful, support his case. Of course, as your Ladyship has seen, Mr Berezovsky's case has received no such support from any of the witnesses from whom you have heard involved in either of these

deals. None of Mr Abramovich, Mr Shvidler, Ms Panchenko, Mr Tenenbaum, Mr Anisimov, Mr Streshinsky, Mr Buzuk, Mr Deripaska, Mr Hauser suggested in their evidence that Mr Berezovsky had any part of any of those agreements. We've summarised their evidence at paragraphs 26 and 27 and paragraph 50 sub 1 and sub 2 of our document.

Even Mr Reuben, who Mr Berezovsky himself called, made clear that he had no particular idea with whom he was dealing and that, quite contrary to Mr Berezovsky's evidence that he'd met and discussed the terms of the sale with him, in fact the whole deal from his side had been negotiated by somebody else. And the references to his evidence we've set out at paragraph 26.1 of our closing document.

Now, the best that Mr Berezovsky is able to do is to rely in large part on the evidence of two witnesses, Mr Bosov and Mr Michael Chernoi from whom your Ladyship has not heard. In fact Mr Bosov nowhere says in the statement that has been filed, which is devoted solely to a disclosure issue, that Mr Berezovsky was a party to the aluminium deal. As to Mr Michael Chernoi, your Ladyship has of course heard submissions as to why very little, if any, reliance can sensibly be placed on his evidence, which is further undermined by the excuse he

proffered for not coming to give it, namely a fear that Mr Deripaska might not go after him, which must on any view have been apparent to Mr Chernoi and indeed those dealing with him from the very time he gave his statement.

MRS JUSTICE GLOSTER: When you say "namely a fear that Mr Deripaska might not go after him", what do you mean by "not go after him"?

MR ADKIN: As we understand it, the excuse Mr Chernoi has principally proffered is that he wasn't willing to come and give evidence on a topic which touched on his claim against Mr Deripaska because there was a possibility that Mr Deripaska might not subsequently turn up and himself be heard and give evidence to the court, thereby obtaining --

MRS JUSTICE GLOSTER: In this action?

MR ADKIN: In this action, thereby obtaining some sort of illegitimate advantage.

The difficulty with that explanation, other than we would submit it lacks any sensible credibility at all, is that it's an explanation which was inherent in the process and which he must have known from the time that he gave his statement.

Now, to overcome the problem that the witness evidence presents for him, Mr Berezovsky has been

compelled to assert the existence of what, as we understand it, amounts to a substantial conspiracy to deceive your Ladyship. It's important to note that this conspiracy must, on the logic of Mr Berezovsky's case, extend not only to Mr Abramovich and his close advisers and those who have given evidence on his behalf, it must also of course extend to Mr Deripaska, and it must also, of course, extend to Mr Anisimov and the witnesses called by him.

It is similarly important, we would suggest, to note that the conspiracy must also encompass witnesses, most notably Mr Streshinsky and Mr Buzuk, who have no continuing association with any of the key players in this case and no apparent axe to grind at all. We've set out references to that point at paragraph 28 of our skeleton.

Now, I don't propose to add to the submissions that your Ladyship has already heard on the credibility of the witnesses arrayed against Mr Berezovsky, but we respectfully submit that the claims of widespread dishonesty advanced on Mr Berezovsky's behalf come nowhere close to being supported by the few peripheral points relating to dressing gowns, Dr Evil texts and the like, which Mr Berezovsky's team have been able to make out about credibility of witnesses.

Now, Mr Berezovsky, of course, was his own principal witness on the Rusal issues. Indeed he was the only witness from whom your Ladyship has heard with any direct involvement in the aluminium agreement who stated that he was a party to them. We have set out our submissions on Mr Berezovsky's own credibility at paragraph 8 of our closing document. You've had the main points from Mr Sumption and Mr Malek and I don't propose to repeat them.

What I do want to do, my Lady, is to add one further point about Mr Berezovsky's character which we submit is of some significance and with which one suspects he might himself agree. Mr Berezovsky is a man who recognised the importance of being politically powerful and being seen to be powerful. Indeed, it is his evidence that, after he survived the assassination attempt against him in 1994, he realised that the key to success in business was the acquisition of power and influence. One sees that from his fourth witness statement at paragraphs 40 to 41 at D2/17/205. Of course, as the enumerable contemporary references to Mr Berezovsky and his activities in the press illustrate, it can, we submit, fairly be said that Mr Berezovsky was keenly interested in being seen to be powerful.

Now, that facet of Mr Berezovsky's character is significant to a number of the issues in this case but, for the purposes of the overlap issues, we submit it is of considerable importance when one comes to consider the evidence as to the circumstances and reasons for why the Dorchester Hotel meeting took place.

Before finishing with dealing with the witnesses, my Lady, I should also address the suggestion made on Mr Berezovsky's behalf that the family defendants are somehow in Mr Abramovich's pay and have participated in some sort of deception. The foundation of that allegation appears to be a suggestion made by Mr Berezovsky that the family defendants have changed their tune on Rusal and have done so because they have been bought off by Mr Abramovich. That was set out in Mr Berezovsky's written opening at annex B; it was not reprised in the written closing but it was by Mr Rabinowitz yesterday.

MRS JUSTICE GLOSTER: Well, it's said you said something inconsistent or members of the family said something inconsistent in the Gibraltar litigation.

MR ADKIN: My Lady, yes.

The further suggestion was made, very seriously, that the reason why the tune has been changed is because the family has been bought off.

Now, when I moved to address that suggestion in opening, your Ladyship, with respect quite rightly, indicated that it would be more helpful if it was dealt with at the end of the trial, after hearing the relevant evidence. The reference for that is Day 2, page 143, line 4 to page 144, line 25. Now, in the event, there has been no relevant evidence on that point and that is because Mr Berezovsky at no stage saw fit to put the very serious suggestion that he had bought off the family defendants to Mr Abramovich or indeed any other of his witnesses. We submit, with respect, that if that sort of allegation was to be pursued, it needed to be put and it is simply not open to Mr Berezovsky to resurrect it now.

In fact, the family defendants had in their pleadings made clear that they would, if appropriate, rely on Mr Abramovich's position in the Abramovich action at a time long before it was directed that these two claims be tried together and, therefore, long before they could offer any particular support to Mr Abramovich in the way alleged. The references to that are paragraph 85 of the family's defence at M1/06/229, a paragraph which can be seen was introduced in March 2010, M1/06/180, the idea of a joint trial first being canvassed before Mr Justice Mann in May 2010

at I1/04/115.

After the suggestion that the family defendants have changed their tune, the suggestion was made yesterday that Mr Patarkatsishvili's widow and daughters had previously given evidence in Gibraltar that recognised Mr Berezovsky's and Mr Patarkatsishvili's interest in Rusal and Sibneft. That is not in fact the case in relation to the daughters, one of whom gave no evidence in Gibraltar at all and one of whom gave very brief evidence there which made no mention of Rusal or Sibneft.

So far as Ms Goudavadze is concerned, it is true to say that, in answer to a question whether Mr Patarkashivili sold a number of assets when he left Russia which were listed by the cross-examiner and which included Rusal and Sibneft, Ms Goudavadze replied yes. One sees that at S1/1.13/201, in the manuscript, page 109, lines 1 to 9.

We respectfully submit that the weight that has been sought to be placed by Mr Berezovsky on that answer, given in wholly unrelated proceedings to which Rusal and Sibneft was entirely irrelevant, is rather greater than it will bear.

Ms Goudavadze can hardly be criticised for having previously concluded that Mr Patarkashivili had

an interest in Rusal --

MRS JUSTICE GLOSTER: Can you just give me the reference again? It hasn't come up in the transcript.

MR ADKIN: That is S1/1.13/201. I referred your Ladyship to the manuscript within the page which is 109, lines 1 to 9.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: In fact, the available documents, namely the July 2004 sale document, showed on their face Mr Patarkatsishvili to have had an interest and indeed it's common ground that, for at least a time in July 2004, Mr Patarkatsishvili did acquire such an interest which was then immediately sold to Mr Deripaska.

Now, the fact is, as Ms Goudavadze had alluded to in the preceding line of her cross-examination, her knowledge of many of Mr Patarkatsishvili's and Mr Berezovsky's financial affairs prior to and in the time immediately following her husband's death was seriously limited, not least because Mr Berezovsky and his associates, Dr Nosova and Mr Lindley being prominent amongst them, had refused her access to the relevant material. That is a theme in fact picked up by the family defendants in their pleading in the Chancery actions, and your Ladyship has the references at

M1/06/187, paragraph 4, and M1/06/268,  
paragraphs 170 to 197.

Of course, as the family defendants have obtained greater access to documents and heard what Mr Abramovich has had to say, they have had every reason to conclude that Mr Berezovsky's account of events is untruthful. Now, we respectfully submit that the indignation with which the attacks on the family defendants have been pursued is particularly misplaced given that the most serious of the allegations thrown out by Mr Berezovsky, that they've been bought off by Mr Abramovich, was simply not put, and the person throwing that particular stone, Mr Berezovsky, is in an especially vulnerable glass house given the evidence of his own concealed commission agreements with his own witnesses, Dr Nosova and Mr Lindley.

Finally on this, my Lady, I ought to deal with the suggestion that's been made that the family defendants' position departs from what has been described as Mr Patarkatsishvili's own evidence on the Rusal issues. This is a point which, we respectfully submit, has been grossly overblown. Repeated reference has been made on behalf of Mr Berezovsky, both in his written and oral closing, to Mr Patarkatsishvili's evidence. Mr Patarkatsishvili, of course, has not and is not in

a position to give any evidence. Indeed, none of the draft witness statements attributed to him were signed by him, nor is there any real evidence that he ever saw or approved of their contents or of the contents of the notes or conversations with him.

Now, it would in our submission be quite wrong, as Mr Berezovsky has on occasion sought to do, to elevate these various drafts, lawyers' notes et cetera, to the status equivalent to as if Mr Patarkatsishvili had actually come to court, appeared before your Ladyship, taken an oath and given evidence. Indeed it's a particular irony that Mr Berezovsky seeks to disregard the limitations inherent in comments or instructions given to lawyers in circumstances where he has, in his own evidence, frequently sought to resile from statements his own lawyers have made on his behalf.

But whatever may or may not be derived from the comments Mr Patarkatsishvili made at various times to Mr Berezovsky's various lawyers, about which your Ladyship has heard a very great deal to which I don't propose to add, two things can safely be said about Mr Patarkatsishvili's own position in relation to Mr Abramovich prior to his death, namely that he remained on entirely friendly terms with Mr Abramovich and that he did not join with Mr Berezovsky in suing

Mr Abramovich in respect of matters which, if Mr Berezovsky is to be believed, Mr Patarkatsishvili had an equally valid claim. Indeed, he allowed the limitation period, on any view, for such claims to pass before he died.

Now, the characteristics to be attributed to Mr Patarkatsishvili, if Mr Berezovsky's story is right, are, we would suggest, deeply dishonourable ones.

MRS JUSTICE GLOSTER: Just a second, Mr Adkin. You made the point that he didn't join with Mr Berezovsky in suing Mr Abramovich. Can you just remind me of the chronology? When did Mr Patarkatsishvili die and when was the writ issued?

MR ADKIN: The writ was issued in 2007, Mr Patarkatsishvili died in February 2008.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, the characteristics to be attributed to Mr Patarkatsishvili, if Mr Berezovsky's story is right, are, we would suggest, deeply dishonourable ones. He suggests, that is Mr Berezovsky suggests, that Mr Patarkatsishvili was prepared to continue to pretend to Mr Abramovich that he was his friend and to do so over a great many years, indeed to within weeks of the alleged intimidation of Mr Patarkatsishvili in May 2001, to go and see Mr Abramovich, invite Mr Abramovich's wife

and Mr Abramovich to join him in his home in Georgia, generally entertained them and generally behaved in a thoroughly friendly way. That is all seen from Mr Abramovich's seventh statement, paragraphs 12 to 13, E8/18/219, which evidence has not been challenged.

We respectfully submit that the reason Mr Patarkatsishvili continued to be friendly with Mr Abramovich is because he was his friend.

My Lady, overlap issue 1, the acquisition of the aluminium industry assets. We've dealt with that issue at paragraphs 13 to 42 of our closing document.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: The principal points on the evidence have already been set out there, and also of course by Mr Sumption and Mr Malek in their oral closings.

I want to add only a very few further points. Now, in the absence of any documented interest in the aluminium deals struck in February 2000, or of any supportive witness evidence from those involved, Mr Berezovsky's evidence on this overlap issue, we submit, boils down to two things.

First, a claim that he can show himself to have made some sort of contribution to the acquisition of those assets, and, second, a pointing to the presence of Mr Patarkatsishvili and Mr Shvidler on the documented

agreement from which, he suggests, it can sensibly be inferred that he was a party to it as well.

So far as the claimed contribution is concerned, we submit there's very little significance(?) to what Mr Berezovsky says. He says that it was agreed that the acquisition would be funded from Sibneft proceeds, though since in the event the acquisition was funded from a bridging loan paid off from the proceeds of the subsequent merger with Mr Deripaska, we only have Mr Berezovsky's word to go on that.

Mr Berezovsky also says that his contracts with General Lebed were critical. It is not at all clear why. None of the witnesses, not even Mr Berezovsky himself, has suggested that General Lebed played any particular part in the deal. It's also said, and this was a point repeated by Mr Rabinowitz in his oral closing, that General Lebed confirmed Mr Berezovsky's involvement in the deal by making certain statements in the media. The short answer to that point is that he didn't.

In fact, as your Ladyship will see from the article relied on by Mr Berezovsky at H(A)18/71.003T, what General Lebed in fact said was that the main purchaser was Mr Abramovich. He refuted any suggestion that Mr Berezovsky was going to buy some of the aluminium

shares, and he said that Mr Berezovsky was a middleman, a position which is consistent with nobody's case and which, again, underscores the difficulties of relying on what's said in the papers.

Finally, Mr Berezovsky says that the deal -- that he, as it were, brought the deal to Mr Abramovich and Mr Patarkatsishvili because the deal was brought to him by Mr Bosov on behalf of the vendors. The difficulty with that proposition --

MRS JUSTICE GLOSTER: Sorry, can I just go back to the article.

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Where do you say --

MR ADKIN: It's right at the bottom, my Lady.

MRS JUSTICE GLOSTER: I've got it on my screen, the document. Yes, I've got it, thank you.

MR ADKIN: Your Ladyship has it.

Now, the difficulty, we submit, with the proposition that the deal was brought to Mr Berezovsky by Mr Bosov is that we only in fact have Mr Berezovsky's word for that. Furthermore, Mr Berezovsky himself said in his evidence that Mr Anisimov had already taken the deal to Mr Patarkatsishvili and that Mr Bosov's role was considerably overplayed. One sees that from the transcript, Day 9, page 9, line 21 to page 10, line 2.

So there is, we submit, nothing of substance in Mr Berezovsky's first suggestion that he made some form of contribution to the deal.

This second suggestion relies on the master agreement in which Mr Berezovsky points to Mr Patarkatsishvili and Mr Shvidler being named along with Mr Abramovich as parties to it. My Lady, if Mr Berezovsky's claim to have participated in the purchase of the aluminium assets is to have any credibility, one would, we submit, at the very least expect him to be able to present a coherent case as to who his partners in that venture actually were.

The case which has emerged in Mr Berezovsky's written closing is that Mr Shvidler, as well as Mr Patarkatsishvili and Mr Abramovich, was his partner in that venture. That is set out in the written closing at paragraph 61, sub 1, paragraph 1113, paragraph 1114, paragraph 1143, sub 4, and paragraph 1149, sub 1, sub (b).

That is a case which appears to spring entirely from the reference to Mr Shvidler in the definition of "Party 1" contained in the written agreement. Indeed it is a case that Mr Berezovsky has to make if the point about Mr Patarkatsishvili and Mr Shvidler being parties to the master agreement is to be any good to him,

because if Mr Shvidler was not in reality a co-investor then his presence on that agreement is not at all inconsistent with what Mr Abramovich says.

Now, the assertion that Mr Shvidler was Mr Berezovsky's co-investor is, we submit, yet another very clear example of Mr Berezovsky massaging, indeed changing his story in order to fit the facts when he thinks it might help him to do so. It is in fact a case which is entirely inconsistent with Mr Berezovsky's previous position and with his pleaded position.

Mr Berezovsky has never before suggested that Mr Shvidler was a party to that deal. It's not the position that Mr Berezovsky maintains in his pleadings, one sees that from the particulars of claim in the Commercial Court action at paragraph C59 to C62, A1/2/26 to 27 A1/2/26, nor was it in fact a point mentioned by Mr Berezovsky in his evidence.

The claim that Mr Shvidler was a co-purchaser of the aluminium assets, which is now pursued with such vigour in Mr Berezovsky's written closing, is also, of course, hopelessly inconsistent with the remainder of Mr Berezovsky's case. It is, of course, his case that the aluminium acquisition deal was simply an extension of the 1995 agreement, an agreement which he has never suggested and does not now suggest included Mr Shvidler.

It is also Mr Berezovsky's case that it was agreed that the aluminium assets would be paid for out of the Sibneft profits yet nobody has suggested that Mr Shvidler had any entitlement to any part of those profits. And it's impossible to understand how, on Mr Berezovsky's case, he would have acquired(?) an entitlement to the aluminium assets to be purchased with them.

It is also in fact a case which is inconsistent with the Curtis notes upon which Mr Berezovsky places such great reliance.

Now, Mr Berezovsky's belated attempt to suggest that Mr Shvidler was a co-investor in the aluminium assets, we submit, simply illustrates the extent to which he is willing to drop one story and pick up another to fit what he perceived to be the evidence that might help him, and that he has in fact no true idea as to the true nature of the deal in which he claims to have participated.

My Lady, before moving on from the first overlap issue I should say something briefly about the Patarkatsishvili commission agreements. Now, the significance of those documents in support of Mr Abramovich's case is of course obvious and has been developed in his closing by Mr Sumption. In an attempt

to draw the sting out of those documents, it's been suggested on Mr Berezovsky's behalf that they were somehow produced after the Dorchester agreement had been made for money-laundering purposes to enable Mr Patarkatsishvili to obtain funds for a plane which, it is common ground, he would obtain by way of commission.

Now, we submit that that suggestion, which appears to be based solely on the fact that the relevant documents were found in a box with the name of a particular bank crossed out, is hopeless for all the reasons set out orally by Mr Sumption and in the various skeleton arguments that your Ladyship has received from the defendants.

We also note that this particular piece of inventiveness in relation to the commission agreements does not sit at all well with Mr Berezovsky's case on the explanatory note which is relied on by Mr Berezovsky as an accurate account of what happened but, in fact, records the commission agreements as being for the benefit of both Mr Berezovsky and Mr Patarkatsishvili, something which cannot be squared with the suggestion now made that the commission agreements were produced simply for the purpose of allowing Mr Patarkatsishvili alone to receive a plane.

We also submit that Mr Berezovsky's position fails to deal with a further and more fundamental question which is why, if Mr Patarkatsishvili was as he says a principal to this agreement, he was being paid any commission at all.

Now, I should add a further point which arises out of Mr Berezovsky's case in relation to the commission agreements which is this, the suggestion that they were manufactured for essentially a money-laundering purpose does at least recognise one plain fact amongst the vast amounts of material in this case that Mr Berezovsky has so far been unwilling openly to acknowledge, which is that a great many documents were manufactured to legitimatise payments to be received by Mr Berezovsky and Mr Patarkatsishvili in the west.

My Lady, I was about to turn to the second overlap issue. If this is a convenient moment --

MRS JUSTICE GLOSTER: I will rise now. 2 o'clock.

(12.59 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Adkin.

MR ADKIN: My Lady, over lunch, it's been pointed out to me that there are some corrections I need to make to the transcript.

The reference to bundles at [draft] 76, lines 18 and 20 is to "N" for November, it should be to "M" for Mike.

At [draft] 73/23, it records me as saying that Mr Berezovsky was able to make out a number of criticisms about Mr Abramovich --

MRS JUSTICE GLOSTER: Yes, I wondered about that.

MR ADKIN: If I did say that I certainly didn't mean it. We don't accept that any of the various criticisms that have been made about Mr Abramovich's witnesses have any validity at all.

MRS JUSTICE GLOSTER: Yes, I assumed you weren't making a concession there.

MR ADKIN: My Lady, no.

Finally, your Ladyship asked me about the issue of Mr Berezovsky's claim against Mr Abramovich in relation to Mr Patarkatsishvili's death. Your Ladyship will see from the claim form that Mr Berezovsky issued his claim against Mr Abramovich on 1 June 2007, that can be seen from K2/2/4. That of course is over six/seven/eight months before Mr Patarkatsishvili died.

MRS JUSTICE GLOSTER: I have it all in the chronology but I just wanted to be in touch there.

MR ADKIN: My Lady, yes.

My Lady, overlap issue two, the Dorchester meeting. We deal with that at paragraphs 43 to 72 of our closing

document, and your Ladyship has already heard the principal points on it from Mr Sumption and Mr Malek to which I wish to add very few.

The first point that I want to add concerns the circumstances in which the Dorchester Hotel meeting can be shown to have come to be arranged. Now, it was Mr Berezovsky's evidence that the Dorchester meeting was a pre-planned summit of principals at which the key terms of the merger deal were finalised and agreed. And he said that the meeting had been arranged to take place in London and that such arrangement had been made some seven to ten days before in fact it occurred.

The reference to that in Mr Berezovsky's cross-examination is set out in our closing at paragraph 51.1, to which I would invite your Ladyship to add a reference in Mr Berezovsky's witness statement as well, fourth witness statement, paragraph 274 at D2/17/255.

Conversely, it was Mr Abramovich's evidence that the meeting was a last minute arrangement which was only set up on 12 March at Mr Berezovsky's request, indeed insistence, after Mr Abramovich had returned to Moscow and reported to Mr Patarkatsishvili the deal that he'd just concluded with Mr Deripaska, a matter in which Mr Patarkatsishvili can fairly be said to have had an

interest given his commission arrangements with Mr Abramovich in relation to aluminium.

We submit, with the greatest of respect to Mr Berezovsky, that his evidence on how the Dorchester meeting came to be arranged and came about simply cannot be true. We know, both from their evidence and also the passport stamps, that Mr Abramovich and Mr Shvidler flew back to Moscow from London on Sunday 12 March, the very day before the Dorchester meeting occurred. It appears also that Mr Deripaska flew back from London to Moscow at around the same time. That suggestion is supported by Mr Berezovsky himself in his closing document at paragraph 1184.

Now, my Lady, it is impossible to understand why these people would have flown from London to Moscow on 12 March if they knew, as Mr Berezovsky says they must have known, that there was to be a summit meeting in exactly the same place, London, the very next day. Indeed, the difficulties with Mr Berezovsky's evidence on this topic are further underscored by the fact that Mr Berezovsky himself can be shown to have arrived in London on 12 March and, therefore, been in exactly the same place on exactly the same day as Mr Abramovich, Mr Shvidler and Mr Deripaska, the people he summoned back to attend the meeting at the Dorchester Hotel the

following day.

Mr Berezovsky's passport stamp shows him arriving in London on 12 March, that's at R(I)1G/30/15, and that is of course consistent with the evidence of Ms Gill, the Carter Ruck lawyer acting for Mr Berezovsky in the Forbes appeal to the House of Lords, who said that Mr Berezovsky was attending the hearing of that appeal the very next morning.

We submit all of this goes to demonstrate that Mr Berezovsky's case for the Dorchester meeting was a pre-arranged summit of principals arranged to thrash out the terms of a merger deal --

MRS JUSTICE GLOSTER: Sorry, why is Mr Berezovsky coming into London on 12 March something that goes to support your analysis as opposed to his analysis?

MR ADKIN: My Lady, we say this, because if as Mr Berezovsky says this was a pre-arranged summit of principals, what on earth were those principals doing --

MRS JUSTICE GLOSTER: I can see the point you're making in relation to Mr Abramovich and Mr Deripaska but I can't see why that is supported by Mr Berezovsky flying in on 12 March.

MR ADKIN: Because they could have had the meeting on the 12th when they were all in the same place at the same time. Mr Berezovsky must have known long in advance

that he would be in London on that date because he was attending a no doubt long-in-the-diary fixed hearing at the House of Lords. We submit it simply defies belief, if there was indeed a pre-planned meeting of these people, that half of them should have flown from one city to another at the very same time that the others flew into that city and the very day before they were all going to have to fly back there. It simply beggars belief.

Now, doubtless recognising that problem, those tasked with drafting Mr Berezovsky's closing document have in fact departed wholesale from Mr Berezovsky's evidence on this particular topic and now appear to accept that the Dorchester meeting was indeed a last-minute arrangement put together at very late notice.

MRS JUSTICE GLOSTER: Where was Mr Berezovsky flying in from?

MR ADKIN: I'm so sorry?

MRS JUSTICE GLOSTER: When was Mr Berezovsky flying in from?

MR ADKIN: That I'm afraid we don't know. Or if we do, I don't.

The departure from Mr Berezovsky's own evidence in his closing is to be seen from paragraphs 1192, 1199 and 1548, sub 2 of that document. Now, the problem with

that, quite apart from the fact that it is wholly at odds with Mr Berezovsky's own evidence, is that it is impossible to make sense of it in a way consistent with his case. If it is right, as now appears to be accepted, that the Dorchester meeting was arranged at the very last moment on 12 March 2000, the question arises: what happened on that day to cause the meeting to come about?

Now, Mr Abramovich's evidence provides a ready answer to that question. What happened is that Mr Berezovsky found out about the merger, was informed about it, and insisted that his protege, Mr Abramovich, attend the meeting to tell him about it.

Mr Berezovsky's case, indeed his evidence, is totally contradictory to that and provides no explanation at all.

Now, my Lady, there is a further and we say important way in which Mr Berezovsky's case on the Dorchester Hotel has experienced a significant shift in his closing submissions. Faced with the difficulty of trying to provide a reason for the Dorchester meeting consistent with the rest of the evidence, Mr Berezovsky's team have, at paragraphs 1175 and 1199 of their closing document, departed from what we understood to be Mr Berezovsky's case, and indeed his

evidence, that the event was a prearranged meeting of principals at which the terms of the merger deal were arrived at, and now suggest that the Dorchester meeting came about because Mr Abramovich had to make good on what they claim was a promise, contained in clause 4.2 of the preliminary agreement with Mr Deripaska, that his "partners" would consent to the merger deal which had already been done.

Now, there are, we submit, a number of problems with that proffered explanation. First, as the evidence makes clear, the reference to "partners" in that particular clause of the preliminary agreement is not in fact a reference to Mr Berezovsky at all. You've heard submissions on the point from Mr Sumption and Mr Malek and I don't propose to repeat them.

Second, the suggestion is wholly inconsistent with Mr Berezovsky's own evidence. It was his evidence not only of course that the meeting was planned seven to ten days before, but that the terms of the merger were actually negotiated and agreed to at the Dorchester Hotel, which is a far cry from the suggestion now advanced that it was simply an occasion on which he signified his approval to a deal already done.

Third, if, as Mr Berezovsky's submissions suggest, the preliminary agreement envisaged from the outset that

there would be some occasion in the future on which Mr Berezovsky was to signify his consent to it, it is impossible to understand why that occasion was not planned well in advance rather than arranged, as it evidently was, at the very last moment at great inconvenience to all concerned.

Finally, if the true purpose of the Dorchester meeting was to obtain Mr Berezovsky's consent to the preliminary agreement, which he says had been signed on his behalf by Mr Abramovich a number of days or weeks before, it is difficult, we would submit impossible, to understand why no reference was made to that agreement and no copy of the agreement was produced, indeed why Mr Berezovsky never saw a copy of the agreement at all, which we understand it to be common ground he did not.

The fact is, my Lady, that the circumstances in which it is clear the Dorchester meeting came to be organised are entirely consistent, on analysis, with Mr Abramovich's evidence as to why it happened, and entirely inconsistent with Mr Berezovsky's own evidence and his case, whether taken in its original form or in its rejigged form as set out in his closing document.

The next point I want to deal with is the effect of Mr Berezovsky's case on ORT and Devonian as it relates to the overlap issues. Now, of course, Mr Berezovsky must

live with the consequences of his Sibneft case when it comes to considering what he says about Rusal. We submit that those consequences are rather significant. We set out some of those at paragraph 52 of our closing document and I want to develop some of those points.

It is at the heart of Mr Berezovsky's case that from December 2000 onwards he was forced by Mr Abramovich to sell out first of ORT and second of Sibneft at a knock-down price on a promise that Mr Glushkov would be released, a promise which Mr Berezovsky says Mr Abramovich broke not once but twice.

Now, against that background, Mr Berezovsky would have it believed, in relation to Rusal, first, that he was entirely content to remain partners with Mr Abramovich in the company and leave the valuable asset in the hands of Mr Abramovich without making any attempt whatever to obtain a record or acknowledgement of his ownership interest in it, and, second, that despite Mr Abramovich's ruthless intention to force Mr Berezovsky out of Sibneft for a song, and turn his back on his former mentor, he balked at doing the same in relation to Rusal and indeed continued diligently for the following four years to pay dividends to Mr Berezovsky.

Now, we respectfully submit that Mr Berezovsky's case, as it relates to his continuing interest in Rusal, makes very little sense when considered against the backdrop of what he said happened in relation to Sibneft.

There is a further point which we submit can fairly be made on this. The evidence shows that Mr Berezovsky and Mr Patarkatsishvili were in fact aware that the \$1.3 billion Devonia payment was actually derived from Rusal profits. That is referred to by Mr Jacobson in his witness statement at D2/16/126, a point developed in cross-examination at Day 13, page 134, lines 1 to 6.

Now, if Mr Berezovsky and Mr Patarkatsishvili truly believed that they had an interest in Rusal, it is hard to understand why they were willing to be paid for what Mr Berezovsky says was their interest in Sibneft from what must have been their own monies.

My Lady, finally on this point, I want, if I may, to deal with the point Mr Rabinowitz described as "follow the money". The problem with this point, from Mr Berezovsky's point of view, is that it is quite plain from the evidence that he had no idea whether he was receiving any of the monies to which he says he was entitled or indeed where the money actually went.

So far as the alleged Rusal profits are concerned,

the suggestion that Mr Berezovsky received any profits at all, let alone the amount of them, is not one born of Mr Berezovsky's own knowledge. It is simply constructed from the available evidential material, and we've set the point out in our closing.

Mr Berezovsky's own evidence is that --

MRS JUSTICE GLOSTER: What paragraph are you referring to?

MR ADKIN: I'm so sorry, my Lady, I've missed the paragraph from my submissions, I'll make sure your Ladyship has it in due course.

Mr Berezovsky's own evidence is that he had no idea whether he was receiving any Rusal profits but feels sure that, if he was not, Mr Patarkatsishvili would have told him.

Now, in light of the fact that Mr Berezovsky says that he catastrophically fell out with Mr Abramovich at the end of 2000, the suggestion that he paid no regard to whether he received what was due to him from Mr Abramovich in relation to Rusal over the ensuing four years is, we submit, difficult to credit.

So far as concerns the amounts actually paid over by Mr Abramovich, and which Mr Berezovsky claims represent profit payments, those of course payments of which it is common ground he was entirely unaware, we would submit that there is in fact a fair amount of common ground as

to the circumstances in which those payments were made, and we set this out at paragraph 61 of our closing document.

It is common ground that, following the Devonia transaction, Mr Patarkatsishvili approached Mr Abramovich and asked him for more money to compensate for the very considerable costs associated with that transaction, including in particular the large sums of commission which had to be paid to legalise the money. It also appears to be common ground that very substantial sums of commission were indeed paid under the Devonia deal, including to the sheikh, to Mr Curtis, to Mr Kay and others.

I should also add that it is also common ground that, in respect of the prior transaction between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich, namely the sale of ORT, substantial commission costs associated with that deal were indeed met to the tune of over 10 per cent of the value of the deal by Mr Abramovich. One sees this in the bolshoi balance.

The only issue in dispute therefore is whether, when Mr Abramovich was approached by Mr Patarkatsishvili and asked to contribute again to the costs that had been incurred in the Devonia transaction, Mr Abramovich said no, as Mr Berezovsky claims he did, or whether

Mr Abramovich said yes, as he claims he did.

If, as we submit the evidence suggests, Mr Abramovich did say yes, then this provides a ready explanation for the sums that can in fact be shown to have been paid from Mr Abramovich to Mr Patarkatsishvili and Mr Berezovsky between 2003 and 2004. It is also of course entirely consistent with what happened in relation to the ORT transaction.

Now, the suggestion that these monies were in fact representative of Rusal profit entitlements to which Mr Berezovsky -- which Mr Berezovsky was entitled to receive is further undermined by the fact that he is unable to point to a single piece of evidence which suggests any attempt to calculate any entitlement to such profits, or to corroborate (sic) the payment of the profits -- the payments shown to have been made to any profits actually made by Rusal, and the fact that it is clear from the bolshoi balance that nothing which could sensibly be said to represent Rusal profits was in fact paid to Mr Patarkatsishvili or Mr Berezovsky in the period which it covers in 2000 and 2001.

So far as concerns the proceeds of the second Rusal sale in July 2004, I really want to deal with these very briefly but to emphasise quite how little evidence Mr Berezovsky is in fact able to give about what

happened to these monies, to take Mr Rabinowitz's words, how completely inadequately he is in fact able to follow the money.

Indeed, when asked in cross-examination, Mr Berezovsky admitted that other than the alleged investment made in Metalloinvest, also referred to as MGOK, he had absolutely no idea where the 585 million went. That is at Day 10, page 120, line 16.

My Lady, I don't propose to add to any of those points. Your Ladyship has already heard at considerable length on the Curtis notes, the Le Bourget transcript and all the other various bits of evidence which Mr Berezovsky relies on. I don't think I need to add to what's been said and what's in the closing submissions.

I want therefore, if I may, to move on to overlap issue three, which is the express English law trust. I propose to say very little on that. Your Ladyship has already heard a great deal about it and it's dealt with in our closing document at paragraphs 73 to 78.

We submit that there has, in relation to the claimed express English law trust, been a tendency in Mr Berezovsky's closing document, which has been repeated by Mr Rabinowitz orally, to elide two rather different concepts.

Great reliance is placed on the proposition that it

was agreed that the terms of the merger with Mr Deripaska were to be governed by English law, and reference is made to the English law clause there undoubtedly was in the prior preliminary agreement, though how far that point goes is questionable given that Mr Berezovsky admits he never saw that document. It is suggested on the back of all of that that, in the circumstances, it was perfectly natural for the parties to the Dorchester meeting to have agreed that the terms of their merger would be governed by English law.

Now, my Lady, we submit that the problem with all of this is that it overlooks the case which Mr Berezovsky actually makes and needs to prove. That is not a case as to an express choice of any particular system of law to govern the merger agreement. It's a rather different proposition, that there was a specific agreement between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili that the interests to be created in Rusal would be held subject to a trust and that that trust would be governed by English law. That is an arrangement which is in fact said to have been made between the three of them prior to the Dorchester meeting and reaffirmed by them at that meeting.

Now, we respectfully endorse Mr Sumption's submissions that that proposition is difficult to credit

and we seek to add some points on the inherent implausibility of this at paragraph 75 of our written closing. It is simply incredible, we would respectfully submit, that any parties to a trust agreement should have considered it more important to select a system of law to govern that agreement than to bother to write the agreement down. That is an even more incredible suggestion in relation to these particular parties who, on Mr Berezovsky's own evidence, never in a million years contemplated falling out and trusted each other completely.

They therefore had absolutely no purpose which anybody has been able to identify in agreeing a system of law to govern their relationship which could only be of any relevance in relation to Mr Abramovich, Mr Patarkatsishvili and Mr Berezovsky in the event that they might actually fall out, an event which Mr Berezovsky himself acknowledged none of them ever considered might be feasible.

It's all the more incredible, we submit, when one considers Mr Berezovsky's own evidence that he had very little idea of how English trusts worked, had never come across one in oral form, neither sought nor received English law advice, and therefore, one must assume, had absolutely no idea, even on his case, to what he says he

was agreeing to.

It is, we submit, similarly incredible that they all should have solemnly reaffirmed this particular agreement, said to have been reached between the three of them prior to the Dorchester meeting, reaffirmed that agreement at the Dorchester meeting when, on the face of it, the terms upon which Mr Abramovich was to hold the assets for Mr Patarkatsishvili and Mr Berezovsky were nothing to do with Mr Deripaska and irrelevant to anything that they actually had to discuss on that occasion.

On the validity of any express trust, and on the resulting and constructive trust case, I don't propose to add anything to what your Ladyship already has in my written document at paragraphs 76 to 81, or indeed to the submissions from the other defendants. That therefore covers overlap issue four.

So far as regards the final overlap issue, which is related to how the proceeds of the second Rusal sale are to be regarded, that issue of course will turn on your Ladyship's findings on the preceding issues and I need say no more about it.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Finally, my Lady, it's right that I should mention something about the experts which I've called

and who have been subject to a great deal of criticism by my learned friend in closing.

A great deal of time has been taken up in Mr Berezovsky's document making various criticisms of the historical experts, including Professor Bean who of course was called by me. I'll deal with those criticisms in due course, briefly, but so far as concerns the Rusal part of the claim, we submit that they are largely beside the point. The reason for that is that all three history experts were agreed that whatever the position may have been in the early to mid-1990s, by 2000, which of course is the relevant date for the purposes of the Rusal claim, Russian businessmen such as Mr Berezovsky did document their interests and did formalise their holdings.

The reference to that is to be found in the joint memorandum which is at paragraphs 43 and 44 at G(B)6/1.01/20.

So, my Lady, it can fairly be said that Mr Berezovsky's claim to have acquired a wholly undocumented interest in the aluminium assets, both in relation to the initial acquisition of such assets in February 2000 and indeed the merged business set up in March 2000, runs contrary to the expert evidence, including that of his own history expert.

Given that the position on business practice by 2000 is common ground, the primary relevance of Professor Bean's expert evidence is as to the 1995 agreement which, for the reasons I've explained at the beginning of my oral closing, is relevant to the Dorchester -- to the overlap issues.

Professor Bean gave evidence to the effect that Russian businessmen who wished to make binding agreements in the mid-'90s did so in writing, very often involving the use of offshore structures. In relation to his evidence, it can fairly be said that Mr Berezovsky has sought in his closing document to have his cake and eat it. He relies heavily on Professor Bean's understanding and evidence that offshore structures were used by Russian businessmen, but he refutes the suggestion that the agreements made between Russian businessmen at the time, at least where they intended to operate beyond the system of honour only, were in writing.

The tension between those two points, of course, is an obvious one. The use of sophisticated offshore holding structures is hardly consistent with a system of undocumented obligations, handshakes and mutual understandings. The assertion is made in Mr Berezovsky's closing document that Professor Bean is

somehow unqualified to give the evidence as to business practice which he in fact gave. That is to be found at paragraph 246 of Mr Berezovsky's written closing.

Unsurprisingly, of course, it's not advanced in respect of that proportion of Professor Bean's evidence as to business practice upon which Mr Berezovsky himself seeks to rely. Indeed, Mr Berezovsky's submissions go so far as to assert that Professor Bean accepted that his conclusions were inapplicable to the types of agreement which are the subject of this action, that's in Mr Berezovsky's closing at paragraph 246, sub 6(?).

As Mr Abramovich's team have pointed out in their responsive document, that is an assertion wholly unsupported by the transcript references provided in which Professor Bean fairly accepted the obvious point that he did not see every single agreement made between Russian businessmen at the time, and indeed it's not an assertion supported, so far as we can see, by any other portion of Professor Bean's evidence.

We would submit, with force, that Professor Bean was in fact the best placed of all the experts as to Russian history, from whom you heard, to give evidence on Russian business practice at the relevant time. As is clear from his evidence and from his CV, he was able to draw on two strands of knowledge, both the academic

learning that he has in the field but also, uniquely in this case, his experience as a lawyer working in Russia at the relevant time, 16 hours a day it would seem.

Now, the suggestion is made that Professor Bean's evidence is to be discounted because his experience is limited to working with multi-national and not Russian clients. That assertion, even on its face, is incorrect because, as Professor Bean pointed out, he had many more Russian clients than the ones he identified in the limited list he provided with his CV. One sees that from the transcript, Day 38, page 83, lines 19 to 22.

It might also fairly be said that whatever the number of Russian clients whose business arrangements he was involved with actually was, it was a greater number than any other expert.

In fact Professor Bean came closest of all the experts to giving evidence of a truly comparable situation in Russia when he talked about his experience, his direct experience, dealing with the Yukos ownership structure and the relationship between Mr Khodorkovsky and Mr Lebedev. That is to be found in the transcript at Day 38, page 85, line 19, to page 87, line 8.

That evidence made clear that, in relation to Yukos, the ownership structure was fully documented using offshore arrangements and the services of Mr Curtis or

somebody like him, even though the relationship between Mr Khodorkovsky and Mr Lebedev could not, as Professor Bean described it, have been closer.

Of course we don't submit that it must be assumed because one comparable set of transactions or relationships was recorded in writing, the agreement that Mr Berezovsky claims was made must also have been recorded in writing.

MRS JUSTICE GLOSTER: If that's right, where is the expert evidence going on all this?

MR ADKIN: Well, my Lady, quite. Quite.

MRS JUSTICE GLOSTER: One can tell from one's own -- or one knows from one's own practice at the Bar, if one had any Russian clients back in the '90s, that some transactions were documented and some weren't.

MR ADKIN: Your Ladyship will recall that the proposition that your Ladyship would benefit from hearing Russian history evidence, expert evidence, was loudly vaunted by Mr Berezovsky and resisted by everybody else for precisely the reason that your Ladyship has identified.

MR RABINOWITZ: With respect, not on this issue though, my Lady.

MRS JUSTICE GLOSTER: I think that's right, Mr Rabinowitz.

MR ADKIN: Well, if I've made an incorrect submission --

MRS JUSTICE GLOSTER: All I would say is that on this

particular point, Mr Adkin, obviously one is assisted to a certain extent by expert evidence, but at the end of the day I've got to decide whether or not there was an oral agreement in this case.

MR ADKIN: My Lady, absolutely. Absolutely.

The short and, we submit, elementary point that I seek to make is simply to rebutt the suggestion that Professor Bean's evidence is a complete waste of time and Professor Fortescue's should be preferred, and to suggest that, insofar as any evidence is going to help your Ladyship on this issue from the experts, Professor Bean is going to be the most helpful because he is the closest to some sort of vaguely comparable transaction. That's as far as I seek to take the point.

As far as Professor Maggs is concerned, it can fairly be said that a great deal of reliance has in fact been placed by Mr Berezovsky's team on Professor Maggs's opinions in various places. In fact, they refer to and endorse his published views on Russian law on no fewer than seven occasions in their closing document.

Now, it's quite plain from this and from the scope and the nature of his publications that Professor Maggs's views are entitled to the fullest respect and are of the greatest assistance to the court. It is particularly regrettable therefore that what we

submit was a purely tactical decision was apparently taken on behalf of Mr Berezovsky not to explore Professor Maggs's evidence at all, even where that evidence contributed to and expanded on, indeed differed from, that given by Professor Rozenberg on Mr Abramovich's behalf.

Now, it was suggested at paragraph 496 of Mr Berezovsky's written closing that Professor Rachkov's evidence was to be preferred to that of Professor Maggs because Professor Maggs's evidence was, to quote, brief and did not always represent fully researched views. Very limited examples are given in support of that proposition, neither of them was put to Professor Maggs, and it's difficult to see how any reliance can fairly be placed on either of them when Professor Maggs was not given an opportunity to comment.

The position that your Ladyship has been left in as a result of the decision taken not to cross-examine Professor Maggs is, we would submit, particularly unsatisfactory given that he developed a number of points in his reports which added to or departed from Professor Rozenberg's position. A point of particular importance was Professor Maggs's evidence that the primary remedy in Russian contract law was specific performance, the primacy of which was mirrored in the

approach to compensation in the Russian courts which would be calculated as the cost of obtaining alternative performance, so that either way you would need to know what the obligations of the parties to a contract actually were.

That is to be found in Maggs's second report, paragraph 25(a), at G(A)5/02/9, and in cross-examination by Mr Sumption at Day 37, page 46, line 2.

A further point that Professor Maggs developed in addition to those made by Mr Rozenberg was his evidence on the way Article 434 of the 1964 Civil Code worked during the period in 1995 after the entrepreneurial activity rules came in but prior to the express repeal of that provision. That is to be found at Maggs 2, paragraph 18, G(A)5/02/6.

Now, my Lady, we submit that, in circumstances where Mr Berezovsky has deliberately chosen not to challenge the views expressed by Professor Maggs on those issues, no serious weight can be given to the various criticisms now sought to be made by him in relation to those views and you should be very slow to reject them.

My Lady, that's all I have to say about the overlap issues.

My Lady, during the course of his submissions,

Mr Malek reminded your Ladyship of the interrelation with the Chancery actions. If it would assist your Ladyship to have the latest directions order in the Chancery actions we'll make sure that your Ladyship has that.

MRS JUSTICE GLOSTER: Yes, I think so.

MR ADKIN: My Lady, one final thing. The reference that I was unable to give your Ladyship was --

MRS JUSTICE GLOSTER: Yes, just remind me what it was in connection with.

MR ADKIN: It relates to Mr Berezovsky's own knowledge of the Rusal profits, and that reference is paragraph 62, subparagraph 1 and following of our closing document.

Unless I can assist your Ladyship any further, those are my submissions.

MRS JUSTICE GLOSTER: No. Thank you very much, and thank all members of your team too for the work that has gone into the submissions.

Yes, Mr Mumford.

MR MUMFORD: My Lady, I was only going to confirm that our position remains neutral on the overlap issues on which we are to be bound and, accordingly, unless there's anything that I can assist my Lady with, I wasn't proposing to --

MRS JUSTICE GLOSTER: No, thank you very much, Mr Mumford.

I have read your charmingly brief submission of three pages.

Yes, Ms Davies.

Reply submissions by MS DAVIES

MS DAVIES: My Lady, many of the points made by my learned friend Mr Rabinowitz in his oral submissions, with which we respectfully disagree, are points that have already been addressed in our written closing, or were made in my learned friend's lengthy written closing and have therefore already been addressed in Mr Sumption's oral closing submissions or in our schedule. I'm obviously not going to seek to repeat points that have already been made there.

Given the disparaging remarks that were made by my learned friend at the outset of his oral submissions in relation to our schedule, I would however just make two observations about it. The first is that the schedule seeks to provide your Ladyship with appropriate cross-references to our written closing submissions on key points which we hope will be of assistance to your Ladyship in finding the relevant materials amongst the morass of documentation that is now before the court.

But second, and more substantively, the schedule also identifies the key respects in which we submit my learned friends' written closing submissions

mischaracterise Mr Abramovich's case or the evidence before the court, and provide the references to make good those points. We obviously hope that my Lady will work through and take up those points when working through my learned friends' written closing.

MRS JUSTICE GLOSTER: I will do, Ms Davies.

MS DAVIES: We heard from my learned friends that they intend to produce a response to our schedule, which will presumably focus on the second category of point but we have obviously not yet seen that.

MRS JUSTICE GLOSTER: Hang on, can I just be clear what I've got. At the moment I've got schedule 1 to Mr Berezovsky's submissions which sets out --

MS DAVIES: That's claimant's schedule of errata 1.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: That responds, as we understand it, to our written closings and sets out what are described as so-called errors in our written closing. What we are told is yet to come --

MRS JUSTICE GLOSTER: Yes, is a response --

MS DAVIES: -- is a response to this document.

MRS JUSTICE GLOSTER: Can we just call them something different?

Your defendant's schedule 1 is -- shall we call it the defendant's errata schedule?

MS DAVIES: Of course.

MRS JUSTICE GLOSTER: Theirs is the claimant's errata schedule. What is proposed is that they're proposing to respond to your errata schedule.

MS DAVIES: Errata to errata, yes, my Lady.

MRS JUSTICE GLOSTER: Yes, errata to errata, okay.

MS DAVIES: The simple point I was just making is we haven't seen that yet, and nor did my learned friend address in his oral submissions any of the particular points that we made in our schedule so we will have to see what they produce on that.

MRS JUSTICE GLOSTER: Okay, let me just work out where we are on this.

Mr Rabinowitz, what's the easiest way of dealing with this? I'm happy to give you seven days.

MR RABINOWITZ: My Lady, we hope to get it to your Ladyship in the middle of next week.

MRS JUSTICE GLOSTER: Okay, so seven days for you. And any response, as far as I'm concerned, reply, I don't want it to go on forever, but if either side feels they've got to put in a further response of course you're free to do so.

MS DAVIES: My Lady, we would not unless we felt it was really necessary of course.

MRS JUSTICE GLOSTER: Okay. So if I give Mr Rabinowitz

seven days from today to get the document in.

MR RABINOWITZ: It will be in by then, my Lady.

MRS JUSTICE GLOSTER: And if Ms Davies or indeed anyone else feels that they simply have got to put something in, do so, but please identify precisely what it is so that my clerk can add it to the bundles and make sure it goes on Magnum.

MS DAVIES: Of course, my Lady.

What my learned friend Mr Rabinowitz did do in his oral submissions, when developing certain of the points made on Mr Berezovsky's behalf, was to interject a number of new mischaracterisations of Mr Abramovich's case or the evidence and it is on those points which I intend to focus now. I will take the matters as briefly as I can and I propose to follow broadly the same order as my learned friend, rather than any order of significance to the issues my Lady has to decide, as I anticipate that will be of most use to my Lady.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: I will mainly be addressing points relating to the general criticisms of my client's case or Sibneft as many of the points on Rusal have already been addressed by my learned friends, Mr Malek and Mr Adkin.

My learned friend Mr Rabinowitz started his oral submissions by making a number of points about the

conduct of this trial by Mr Abramovich and his witnesses. Those included the suggestion of improper collusion between Mr Abramovich's witnesses, including the suggestion of collusion in supposedly changing the case in relation to the reasons for the payments to Mr Berezovsky, or what my learned friend described as the smears and innuendo issue. Most of those points already feature in section B of his written closing and are therefore fully addressed in section B of our schedule in response, and they were also addressed by Mr Sumption at various points in his oral submissions. In our respectful submission, there is no merit in any of them.

There are, however, four short points arising from my learned friend's oral submissions on this topic that I should address. First, in the context of the smears and innuendo issue, my learned friend suggested that in his oral submissions Mr Sumption had indicated that your Ladyship could safely ignore the evidence about Mr Berezovsky's attire at the Dorchester Hotel meeting. That was at Day 41, pages 19 to 20. Now, with respect to my learned friend, that was not what Mr Sumption was saying at all. Rather Mr Sumption was making the different point that my Lady could safely ignore the allegation made in my learned friends' written closing

that Mr Abramovich, Mr Deripaska and Mr Shvidler colluded together to make up their evidence about the circumstances of Mr Berezovsky's arrival at the meeting. The reference to Mr Sumption's submissions on that are at Day 40, pages 47 to 48.

The reasons why your Ladyship can safely ignore the allegations of collusion on this point are elaborated upon at page 28 of our schedule where we address the circumstances in which this evidence came out. The point did not, as my learned friend suggested orally was a constant theme, emerge in Mr Abramovich's re-examination at all. He mentioned it in his cross-examination. And, as my Lady may recall, the evidence from Mr Shvidler and Mr Deripaska on this point was effectively forced out of both of them by my learned friend himself in cross-examination because they were repeatedly asked about the issue.

We respectfully submit that those circumstances provide the most unpromising basis for a suggestion that the parties colluded to smear Mr Berezovsky about his behaviour.

In passing, I would also point my Lady to the next box at page 28 of our schedule --

MR RABINOWITZ: My Lady, I'm not going to do this too often but I do have to rise at this point because what my

learned friend has just submitted misrepresents the situation.

The reason that I dealt with that in cross-examination is because Mr Sumption came to me in the course of the cross-examination to tell me that he was going to deal with it in re-examination and, in those circumstances, if I didn't deal with it in cross-examination I wouldn't have had the opportunity to deal with it again.

MS DAVIES: My Lady, I would ask my Lady to re-read the transcript on those points and to see that the point I was making was the repeated questions made by my learned friend Mr Rabinowitz of both Mr Deripaska and Mr Shvidler on this issue in which my learned friend persisted in seeking to extract the evidence from them.

I was then moving very briefly just to point out to my Lady the next box at page 28 of our schedule, which is responding to paragraphs 133 to 135 of my learned friends' written closing, where we address the suggestion that was put, if anything, in even stronger terms orally by my learned friend, that's at Day 41, pages 18 to 19, that the evidence establishes that Mr Abramovich, Mr Shvidler and Mr Deripaska arrived at the Dorchester Hotel at about 1.00 pm and, as my learned friend put it, that Mr Berezovsky did indeed arrive

about one hour after they did at 2.00 pm which, it is said, demonstrates that Mr Berezovsky could not have arrived from the internal door in Mr Patarkatsishvili's suite.

The evidence that is said to demonstrate that, as we point out, is in fact nothing more than travel schedules. And when each of Mr Abramovich, Mr Deripaska and Mr Shvidler were asked about it, unsurprisingly, they could not be precise as to times.

The second point under this heading relates to the Dr Evil text. When addressing that issue in his oral submissions, my learned friend appeared to suggest in response to an intervention from my Lady that Skadden in correspondence had identified the number from which the text had been sent and, when that was given, that phone was checked and no record of the text was found. That's Day 41, pages 23 to 24.

No doubt that was inadvertent by my learned friend but it is not correct. Skadden were only asked to which number the text was sent, which is what they provided. I of course accept that Addleshaw Goddard then indicated that they'd checked the relevant phone records for Mr Berezovsky's phone, whatever that might mean, and they showed no record of the text being sent. We've set out the relevant references at page 3 of our schedule.

But that obviously does not rule out the possibility, which is the possibility my Lady was putting to my learned friend and to which my learned friend was attempting to respond, that the text was sent from another phone. With respect, your Ladyship was therefore exactly right to query where my learned friend's submissions on this issue got him.

Third in this category, it was suggested by my learned friend in his oral submissions that there didn't appear to be a dispute that the bolshoi balance had been, as he put it, sat on for a period of six months in the sense of not being disclosed after it had been identified as relevant, a process he elsewhere described as one of suppression for a period of six months, and that this event should in some way lead my Lady to conclude that Mr Abramovich and his team had failed to comply with their disclosure obligations. That was at Day 41, pages 28 to 30.

Now, the issues that have been raised in relation to the disclosure of the bolshoi balance have been repeatedly addressed in correspondence and in our submissions, but those explanations were unfortunately again mischaracterised by my learned friend in his oral submissions.

In particular, it was not just a question of

translation. Rather, the key point is that it was a document that contained a whole host of confidential information, much of which was not obviously relevant to the issues in dispute and indeed hasn't been referred to at trial. For example, details of payments received or made from various third parties that had nothing to do with Sibneft or Rusal.

It also, as my Lady will recall, includes a lot of abbreviations: PRR, PBR, PRBBR and the like which needed to be understood in order that the potential relevance of the figures then given could be understood, and so that the issue of the extent of disclosure that needed to be made could be determined, and that meant it was one of some complexity.

It is also just not correct to suggest, as my learned friend did, that we accept that the document was sat on for a period of six months after it was identified as disclosable. That misstates the time line. We set out the correct time line at page 33 of our schedule, which is that the document was harvested as part of the harvest of electronic documents in November 2010. That harvest produced, as my Lady might expect --

MRS JUSTICE GLOSTER: You've set it all out here, haven't you?

MS DAVIES: Indeed, and it wasn't until February 2011 that it was identified as potentially relevant. It was then considered in light of the points I've just made.

There is in fact, my Lady, a certain irony in my learned friend's criticisms of these events given the extent of the very late disclosure that has been made by my learned friend's client in this case with important documents continuing to be disclosed right up to and through the trial. Those include documents relating to Mr Berezovsky's and Mr Glushkov's asylum applications --

MRS JUSTICE GLOSTER: Do you know, I'm not going to decide this case on the lateness of discovery on either side. I know Mr Rabinowitz has made some substantive submissions about the absence of documents on your side.

MS DAVIES: Indeed, my Lady, and that's why I'm addressing this, because what is being suggested, and it's a very serious allegation indeed, is that my client has wholesale failed to comply with his disclosure obligations. My client is heavily criticised, for example, for failing to disclose documents of the very same type as are missing from Mr Berezovsky's own disclosure, such as mobile phone bills, bank statements, credit card statements and the like. Those criticisms are made notwithstanding that, on Mr Berezovsky's own evidence, he anticipated bringing these claims from as

early as 2001 whereas the first that Mr Abramovich heard about them was 2007.

Moreover, and this is an important point in our respectful submission, none of these serious allegations of disregard of disclosure obligations were put to Mr De Cort, who was the person within Mr Abramovich's internal team with internal responsibility for overseeing the disclosure process and who signed the disclosure statements.

The suggestion that there has been some sort of blatant disregard for the disclosure process or blatant withholding of documents is wholly unjustified.

Fourth, and the last point in this category, relates to the points made by my learned friend in relation to what he suggested was Mr Abramovich's failure to call Mr Fomichev, and specifically my Lady's query whether we could find any assistance, or my Lady would find any assistance in the authorities on the issue of whose job it was to call Mr Fomichev.

Now, like my learned friend, following my Lady's query, we have looked and we've found nothing specific in the authorities. There is of course no obligation on any party to call a witness, that's confirmed at Phipson, paragraph 11.15. And what all the cases do is simply seek to apply the test of whether it's

appropriate to draw an adverse inference to the particular facts.

My learned friend yesterday produced three authorities. Those really are, as he readily acknowledged effectively, no more than recent examples of the application of the principles to the facts. The two Peter Smith decisions are cases where the individual concerned was a relative of one of the parties, close relative, so it's not surprising an adverse inference was drawn.

The third decision, Mr Justice Burnett, is perhaps of slightly more interest as, whilst the judge was not prepared to draw an adverse inference in that case, he did indicate that the fact that the individual was no longer in his previous employer's employ was not a sufficient reason not to call him. That is of some relevance, we would submit, in the present case, for, as my Lady will appreciate, we submit that it was in fact Mr Berezovsky, if anyone, and not my client, who might reasonably have been expected to call Mr Fomichev.

Mr Fomichev was after all --

MRS JUSTICE GLOSTER: What, even after he sued him for the recovery of money?

MS DAVIES: Well, my Lady, Mr Fomichev is based in London and susceptible to a summons so the fact they've fallen

out is not a reason not to call him. In fact what Mr Berezovsky said in his oral evidence is that he didn't want to call Mr Fomichev because he now regards him as untrustworthy.

If that's a good reason not to call him, it's actually a good reason why no party in this litigation would wish to call him as a witness on their behalf.

Now, my learned friend in his oral submissions on this point latched on to just one of the reasons that had been given by Mr Sumption in his oral closing for not calling Mr Fomichev, namely the evidence that shows that he was directly involved in the preparation of sham documents, and he sought to knock that point down. That ignored the fact that Mr Sumption had also referred to the fact that Mr Fomichev was Mr Berezovsky's agent, which I've just addressed.

But, in an effort to make it good, my learned friend went on to suggest that there was no difference between my client calling Mr Fomichev on this account and calling other witnesses, such as Mr Gorodilov, who, he suggested, was the architect behind the sham Spectrum documents produced in relation to the ORT sale. That's at Day 41, page 35. That was a theme he returned to yesterday when he suggested that it was Mr Gorodilov's idea to produce an offshore sale of the ORT shares for

\$10 million and then an option agreement of \$140 million, Day 42, page 73.

Now, even leaving to one side the obvious point that Mr Gorodilov is an employee of Mr Abramovich, the basis upon which my learned friend suggested that Mr Gorodilov was the architect of the sham Spectrum documents was not clear from his submissions. It's not in fact borne out by Mr Gorodilov's evidence. That was to the effect that what was agreed was that there would be a payment of \$10 million in Russia and a direct payment of \$140 million outside of Russia to an account indicated by Mr Fomichev. That's paragraphs 70, 73, 76 and 84 to 96 of Mr Gorodilov's first witness statement at E2, tab 4.

He repeated that explanation in his oral evidence at Day 24, pages 93 to 94, in a passage of his evidence where he was providing an explanation of the background to the payments that were made. None of that evidence was challenged.

His evidence was further that he knew nothing about the Spectrum documents, that's paragraphs 88 to 90 of his first witness statement. That again was not challenged. Indeed, there was no reference in his cross-examination to the Spectrum agreements at all.

What Mr Gorodilov did say in his witness statement,

and that's in paragraph 87, was that at a much earlier stage of the discussions in relation to the ORT sale he had identified the possibility of using an option agreement as one amongst the various means then being considered of transferring the shares, but he went on in the same paragraph to point out that, so far as he was concerned, the potential use of an option agreement had been rejected by the time of the meeting at Le Bourget. And if my Lady follows up the reference to the documents prepared by Mr Gorodilov, it's at H(A)23/191T, my Lady will also see that what Mr Gorodilov was talking about having previously been considered was a real option agreement, executed before any share transfer, as a means of transferring the shares. He wasn't contemplating a fictitious grant of an option in respect of the ORT shares, coupled with a forged assignment of that option, both executed following the actual sale by Mr Berezovsky to Akmos as we know in fact occurred.

What the evidence in fact demonstrates is that the sham Spectrum documents were conceived by and produced by a combination of Mr Fomichev, Mr Curtis and Mr Ivlev on Mr Berezovsky's behalf, and that Mr Gorodilov had nothing to do with it. That is all set out at paragraphs 271 to 274 of our written closing.

That's all I wanted to say on the criticisms of --

general criticisms of my client's case.

So I turn now specifically to the Sibneft claim. Now, my learned friend started by identifying and addressing various key -- pieces of key evidence which it is suggested will be of most assistance to my Lady in determining the nature and content of the 1995 agreement. Most of these points are points that we have already addressed at length in section A1 of our written closing and pages 42 to 64 of our schedule. There are, however, three topics arising specifically out of what my learned friend said in his oral submissions that I wish to address.

First, when addressing the Curtis notes, my learned friend suggested that no credible attempt had been made to explain how certain information contained in those notes could have been known by Mr Curtis if it was not information provided by Mr Tenenbaum. That is an issue which we had addressed in paragraph 440, subparagraph 5 of our written closing, but, in his oral submissions, my learned friend focused on two specific pieces of information that he suggested could not have been learned from the sources that we cite there. That was at Day 41, pages 46 to 50.

In particular, my learned friend suggested that those sources do not identify that the shareholders in

Rusal were held on a 50/50 basis with Mr Deripaska or were bearer share companies. We respectfully submit there is nothing in either point.

First, Mr Berezovsky's own particulars of claim expressly recognise -- and that's paragraph C65A at A1, tab 2, page 30 A1/02/30 -- that the 50/50 split of ownership between Mr Abramovich and Mr Deripaska in respect of Rusal had been publicly announced by as early as 4 April 2001. That 50/50 split of the aluminium interests was then of course expressly confirmed by Mr De Cort in July and early August 2003, shortly prior to Mr Tenenbaum's visit to Georgia, in the context of the payments being made to Blue Waters. I'm referring there, my Lady, both to Mr De Cort's letter to Mr Curtis dated 8 August 2003 at H(A)62/26, and the attendance note of Mr De Cort's conversation with Mr Keeling on 16 July 2003 at H(A)62/19.

Second, in the context of arranging the payments to Devonia, at least Mr Fomichev and probably Mr Curtis would have been well aware that Mr Abramovich used bearer share companies in the BVI. As Ms Panchenko explained in her evidence, the mechanism by which the US 1.3 billion payments were made, starting in 2001, was that bearer shares in Pex, which was itself the shareholder in Madison, which in turn was the

50 per cent shareholder of Rual, were transferred temporarily to Devonian for the period of time required to allow Pex to declare a dividend to Devonian using funds received from Rual. That's Panchenko's second witness statement, paragraphs 86 to 87 and 96, at E3, tab 7, 186 and 189 E3/07/186.

The same point can be made about the later top-up payments in 2002 to Devonian, that's again explained by Ms Panchenko in her second witness statement at paragraphs 104 to 105, E2/07/191.

Further, your Ladyship will in fact recall that Mr Tenenbaum's evidence was that, by August 2003, he thought the reorganisation of Rusal had been undertaken, so the information in the Curtis notes which related to the preorganisation structure did not reflect his understanding at the time. That's Mr Tenenbaum's evidence at Day 28, pages 126 to 128.

Now, also in relation to the Curtis notes, my learned friend then went on to suggest that Mr Tenenbaum's explanation of what was discussed in Georgia was obviously false, and indeed he put it as high in his oral submissions as impossible, because the meeting in Georgia pre-dated, so he said, Mr Patarkatsishvili's interest in Brazilian football by almost a year.

That suggestion is in turn based on the document produced by the Brazilian authorities when investigating Mr Berezovsky which my learned friend did not take your Ladyship to but which my learned friend suggested confirms that Mr Patarkatsishvili's first contact in Brazilian football was only a year later.

That document is at H(G)28/218.

MRS JUSTICE GLOSTER: Hang on, I'd like to look at that.

MS DAVIES: It's a lengthy document, my Lady, starting at page 28.

MRS JUSTICE GLOSTER: H(G)28, is it?

MS DAVIES: Have I got the reference wrong? I do apologise.

H(G)28, page 218. Page 218, which is actually the first reference to Mr Joorabchian, "First steps in Brazil".

My Lady, it's a lengthy document. What it does indicate or suggest, particularly for example at page 220 if we can go forward to that, is that Mr Patarkatsishvili's first contact with Mr Joorabchian may have been in 2004, but we submit that if you go through the whole of this document, which I wasn't proposing to do now, there is nothing in it on the issue of whether Mr Patarkatsishvili had any other contacts or interest in Brazilian football before this date.

I'm being referred to the last paragraph on page 219 which is perhaps one of the ones my learned friend is

relying upon.

MRS JUSTICE GLOSTER: So that's doing it in August 2004.

MS DAVIES: Yes, it is suggesting that the first meetings with Mr Joorabchian were then, but that's not the point that my learned friend is seeking to extract from this document. What he's seeking to extract from this document, and we say you can't extract it from this document, is that Mr Patarkatsishvili had no interest and no contacts with anyone in Brazilian football prior to 2004. And as well known as Mr Joorabchian is in this jurisdiction now, it is difficult to conceive that there are not others in Brazil who have contacts in Brazilian football apart from him.

The second topic I wished to address under this head was one that featured a number of times in my learned friend's oral submissions, namely his suggestion that the evidence as to the payments that were made by Mr Abramovich clearly support, as he put it, Mr Berezovsky's case as to the 1995 agreement.

The first point I wish to pick up in that context is my Lady's request to my learned friend for references to the evidence suggesting that there had been an exercise of calculating what was 100 per cent and what was 50 per cent.

Yesterday, my learned friend in response to that

referred you to paragraphs 264 to 265 of their written closing. My Lady may also wish to note that all the references to the evidence indicating how the amounts of payments were decided upon are to be found in paragraphs 46 to 57 of our written closing. We refer there, for example, to the evidence, including the evidence of Mr Berezovsky's own witnesses such as Dr Nosova, which show that the payments were the result of an ad hoc negotiation process and not the result of any correlation with Sibneft's profits, whether that means the profits of Sibneft itself or, as it is now suggested, something broader.

We also specifically address at paragraphs 55 to 57 the discussions at Le Bourget and the question of what other discussions there were between Mr Abramovich and Mr Patarkatsishvili --

MRS JUSTICE GLOSTER: You need not repeat those.

MS DAVIES: No. All I would ask my Lady to do is to put a note against those paragraphs to refer also to footnote 251 to paragraph 46 because that also sets out information about the conversations between Mr Abramovich and Mr Patarkatsishvili.

In short, we submit that the evidence does not demonstrate that there was anything even approximating the exercise my Lady was enquiring about.

In relation to the payments made, my learned friend also took issue with the suggestion we had made in both our written and oral closing that, prior to his oral evidence, Mr Berezovsky had only ever claimed to be entitled to a portion of the profits earned by Sibneft rather than by any other entity, and he suggested that Mr Berezovsky's case in his pleadings and his evidence was always that the three partners had agreed to share the profits which they made from obtaining ownership and control of Sibneft.

To support that suggestion, my learned friend referred my Lady in particular to paragraphs C34 and C34B of the particulars of claim. When my Lady takes up that reference, you will, in our respectful submission, find that it is in fact silent on this issue. That is perhaps unsurprising as Mr Berezovsky's witness statement on the 1995 agreement was equally silent on the issue. In fact, the paragraphs of that statement describing the terms of the 1995 agreement, that is Berezovsky 4, paragraphs 95 to 106, at D2/17/216 and following, those paragraphs say nothing at all about an agreement to share profits, let alone any agreement to share profits of any company other than Sibneft.

Indeed tellingly, in paragraph 401 of his written closing submissions on this issue, my learned friend put

the suggested entitlement to profits of companies other than Sibneft as an implied term of the alleged 1995 agreement.

That's an allegation that doesn't work for the reasons we've set out at page 57 of our schedule, but it is also an allegation that is obviously inconsistent with the suggestion now made that Mr Berezovsky's case all along has been that it was expressly agreed that they would share any profits earned as a result of the obtaining of control of Sibneft.

Now, to find Mr Berezovsky's pleaded case on the profits to which he was entitled a share of, my Lady in fact needs to look at paragraph C37.4 of the particulars of claim in relation to the 1996 agreement at A1/02/14, to which my learned friend did not refer in his oral submissions.

There it is said unequivocally that in 1996 it was orally agreed that Mr Berezovsky and Mr Patarkatsishvili would continue to be entitled to dividends and to any other payments made by Sibneft to its owners. That can only be interpreted as a reference to payments being made by Sibneft and no other company.

The reason my learned friend spent time making his, in our submission, incorrect pleading point was that he then went on to suggest that both of our points on the

absence of the correlation between the payments made and the profits of Sibneft, and our point as to Mr Berezovsky's purposes in reaching his understanding with Mr Abramovich in 1995, both those points were, as he put it, entirely false because they depended entirely on the incorrect assertion that Mr Berezovsky only claimed to have an entitlement to the profits of Sibneft. That was at Day 41, pages 86 and 93.

We submit that the premise for that suggestion was wrong for the reasons I've just explained. But, in any event, my learned friend is also wrong to say that that's what our case on this issue depends upon.

First, there are a number of reasons why the absence of correlation point doesn't depend on Mr Berezovsky's claimed entitlement only being to Sibneft profits. For example, the evidence of ad hoc negotiation, and also the contents of the bolshoi balance which even my learned friend accepts reveal that Mr Berezovsky and Mr Patarkatsishvili were paid less than half of the receipts from the oil trading companies and the ZATOs. I'm referring here to their comment on paragraph 56 of our closing submissions at page 11 of their schedule of so-called errata.

But significantly, the bolshoi balance also reveals that the payments were made on an erratic basis which

bears no discernible relationship to any receipts, so that even if there was an entitlement to something broader than Sibneft profits, properly so-called, there was no correlation.

Significantly, as my Lady will appreciate, there is also the clear evidence that payments commenced in early 1995, essentially from the moment that Mr Berezovsky started to provide his political patronage and way before any question of control of Sibneft arose. Revealingly, these payments in 1995 were not mentioned at any point by my learned friend in his oral submissions. The evidence of those payments, my Lady will recall, included the evidence of both Mr Abramovich and Ms Gorbunova who, in the strike-out application before the disclosure exercise was undertaken -- sorry, Goncharova, not Gorbunova, who, in the strike-out application before the disclosure exercise was undertaken, had explained that the payments started in early 1995.

MRS JUSTICE GLOSTER: I've got that evidence.

MR RABINOWITZ: My Lady, again I hesitate to rise. My learned friend knows, we've discussed this, that she doesn't have a right of reply. She has a right of reply in relation to new points. How it is said there is a new point when I didn't say something I frankly don't

understand.

We have tried to stay seated and I would be grateful if my learned friend really just stuck within the parameters --

MRS JUSTICE GLOSTER: I have got a lot of these points in your written closing submissions already and I really must restrict you to a right of reply on new points.

MS DAVIES: My Lady, what I was trying to deal with was the point which is completely new, which is that our case on correlation and purposes depends entirely on the suggestion that Mr Berezovsky was only claiming an entitlement to Sibneft profits, and the 1995 payments are one of the very key reasons why that suggestion, which was made for the first time by my learned friend in his oral submissions, is wrong.

The 1995 payments are also the reason why our submissions on Mr Berezovsky's purposes in 1995 are not dependent on the claimed entitlement only being to Sibneft profits, because under the loans-for-shares auction, on any view, Mr Abramovich was not even going to get control of Sibneft until 1996, whereas Mr Berezovsky's needs in early 1995 --

MRS JUSTICE GLOSTER: This is repetitive, I've got all this.

MS DAVIES: The third topic I wish very briefly to address, given the significance to the issues my Lady has to

decide, are the repeated criticisms made by my learned friend in his oral submissions of Mr Abramovich's case on krysha. I was going to take this very briefly because Mr Sumption of course addressed my Lady on this issue, but various further points were developed by my learned friend in his oral submissions on this point which I just very briefly --

MRS JUSTICE GLOSTER: Well, as long as they're new, Ms Davies. I have had an awful lot of submission on krysha, both in your closing and by Mr Sumption in oral closing.

MS DAVIES: The very short point I would ask my Lady to note is that when my Lady works through all the various criticisms made by my learned friend in his oral submissions on this topic my Lady will find, in our respectful submission, that they are dependent on the mischaracterisation by him of the evidence as to the nature of the krysha relationship. And in particular what he sought to do repeatedly orally was to pigeonhole Mr Abramovich's case on this issue as being one where the concept of krysha merely involved the provision of specific lobbying services which he could then suggest had come to an end. Whereas, as my Lady knows, our submission, supported by the evidence of Mr Abramovich and the evidence of the historical experts, is that

krysha is a much broader concept.

MRS JUSTICE GLOSTER: I have got that point.

MS DAVIES: My learned friend also suggested orally, and this was a new suggestion, that Mr Abramovich's case on krysha was bizarre because in 1995 Mr Abramovich barely knew Mr Berezovsky, had never worked with him --

MR RABINOWITZ: My Lady, that may be a new adjective but it's really not a new point.

MRS JUSTICE GLOSTER: I don't think it is, Ms Davies.

I have got an awful lot of material, and unless it's a really new point arising out of what Mr Rabinowitz said, you know, it's just actually even keeping a note of it or going back to the transcript. I really must ask you to be a bit disciplined about it.

MS DAVIES: My Lady, we're seeking to, but we hadn't understood that suggestion to be made before but I'll move on.

That brings me to ORT where there are six very short points raised by my learned friend in his oral submissions that I need to address.

I will take these very briefly. First, my learned friend criticised Mr Sumption's submissions about the evidence relating to the negotiations with Mr Lesin and took my Lady to various passages of the notes of the interviews. All I would ask my Lady to do is to also

refer, when looking back at those passages, at R(D)1/06/78 lines 361 to 364, which my learned friend didn't take my Lady to in the course of his oral submissions but which we submit is important on this issue of whether Mr Lesin's offer remained on the table.

MRS JUSTICE GLOSTER: Right, well, I'll look at those.

MS DAVIES: Second, in connection with the same point, my learned friend went on to refer to Mr Berezovsky's evidence that he had more than enough money to stay in London for a thousand years, and made a whole host of criticisms of Mr Abramovich's reasons for the ORT share purchase. Again, just to give my Lady some references, we would ask my Lady to look at Abramovich 3, paragraphs 209 to 214 at E1/03/98, and Abramovich 4, paragraph 57, E5, tab 11, page 26 E1/11/26, where Mr Abramovich sets out all the various reasons, the pressure from Mr Patarkatsishvili, the concerns about money and so on, and also Mr Jenni's evidence at Day 11, pages 109 to 110, and Mr Ivlev's evidence at Day 14, pages 118 to 120 about the difficulties Mr Berezovsky was experiencing in obtaining funds at that time.

The third point, and again it's a very brief point but it was a suggestion that was made more than once by my learned friend in his oral submissions, that Mr Abramovich has previously admitted that there was

a meeting with Mr Berezovsky after Mr Glushkov's arrest,  
and that his evidence --

MR RABINOWITZ: My Lady, again that is not a new point. It  
was made in our written opening.

MS DAVIES: Again, I just wanted to --

MRS JUSTICE GLOSTER: Ms Davies, just a second. I've got  
all the points about changing case on both sides.  
I mean, I must have enough material before me to decide  
all that.

MS DAVIES: I just wanted to give my Lady the reference to  
Mr Abramovich's evidence on it, that's all I wanted to  
do.

MRS JUSTICE GLOSTER: Okay, it's not in your closing --

MS DAVIES: Unfortunately it's not there.

MRS JUSTICE GLOSTER: Okay, give it to me then.

MS DAVIES: Abramovich, Day 21, page 126, where he expressly  
rejected the suggestion of change of case. Day 21,  
page 126.

Fourth, and this is again a very quick point to give  
my Lady the reference, it relates to Ms Gorbunova. My  
Lady will recall my learned friend took my Lady to  
paragraphs 40 to 41 of Ms Gorbunova's witness statement  
and suggested that Mr Sumption's criticisms of her  
evidence were wrong. My Lady, what we would ask my Lady  
to do is to compare paragraphs 40 to 41 with

Ms Gorbunova's evidence at Day 11, page 133 to 135.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: The final point on this relates to the catastrophic breakdown and I don't want to repeat all the points we've made about why there was no catastrophic breakdown. But the point I wanted to pick up relates to the occasion in Israel where I gave my Lady a reference yesterday to Mr Berezovsky's comments in the media in December 2002. My learned friend in response invited my Lady to read that report and suggested it contained nothing disparaging of Mr Abramovich but my Lady also needs to look at Mr Abramovich's fourth witness statement, paragraph 150, at E5, tab 11, 61 E5/11/61, where he explained that when he read it at the time he regarded it as being very disparaging, was stunned by it and arranged a specific meeting with Mr Patarkatsishvili to discuss it.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: I then turn to Sibneft intimidation which I really -- there's only one point I want to address which relates to the reliance by my learned friend orally in relation to the witness statements of Mr McKim and Ms Duncan, and there are just three short points we would ask my Lady to take into account in relation to that. The first is that my learned friend studiously

didn't refer to any of the 2005 notes of the interviews.

MRS JUSTICE GLOSTER: Well, I've got to look at all those.

MS DAVIES: Indeed. My learned friend, to try and make good his points, referred solely to 2007 material and it's not just what Mr Patarkatsishvili said in 2005 that needs to be looked at against that, it's also Mr Berezovsky's own public statements in 2005.

Finally, when considering the evidence that my learned friend relied on of Ms Duncan and Mr McKim, my Lady of course needs to have in mind what Ms Duncan and Mr McKim said in their oral evidence about those impressions and notes representing a combination of sources, in particular Mr Berezovsky. That's Day 16, pages 12 to 13 and Day 16, 37 to 38.

My Lady, I have about ten more minutes.

MRS JUSTICE GLOSTER: Well, I'm going to go on because I think I want to finish this now.

MS DAVIES: I'm then turning to Sibneft choice of law which I accept of course, my Lady, we addressed fully in section A5 of our closing but the submissions made by my learned friend yesterday at Day 42, page 2 to 5, not only appear to demonstrate some confusion about what we were saying but they also introduced a couple of new points that I just do need to deal with.

MRS JUSTICE GLOSTER: Please do.

MS DAVIES: The starting point is of course section 11 which requires my Lady to identify where the events constituting a tort occur --

MRS JUSTICE GLOSTER: I know what section 11 does.

MS DAVIES: Yes, exactly. There's no dispute between us about what section 11 requires my Lady to look at. We identify at paragraph 319 of our closing the four constituent elements of the tort as identified by the Court of Appeal in this case. The first is a threat of unlawful act --

MRS JUSTICE GLOSTER: I don't need to have those repeated to me, Ms Davies, I really have got this on board.

MS DAVIES: No. Well, my Lady, I just need to make a couple of points about them. The threat of unlawful act, no threats are said to have been uttered by Mr Abramovich in France. Instead what my learned friend in his oral submissions sought to do was to identify a new concept in this respect, that is of the threat being made in France in the sense of that being the place where Mr Berezovsky received and succumbed to the threat. But, with respect to my learned friend, the issue of the place where Mr Berezovsky succumbed confuses the elements of the making of the threat and the element of coercion.

MRS JUSTICE GLOSTER: He says it was made in France because

that's where the recipient of the threat was at the time.

MS DAVIES: Yes, and that's the point I'm trying to address.

We say that confuses the making of the threat and the coercion which is a separate element. But in any event the evidence demonstrates that Mr Berezovsky left it to Mr Patarkatsishvili to handle the relations with Mr Abramovich once he'd left Russia in October 2000. Communications to Mr Patarkatsishvili were therefore in effect communications to Mr Berezovsky and the empty room example that my learned friend referred to yesterday is not, in our submission, analogous.

He also sought to rely on what he said was the context to the threats, the meetings at Le Bourget and Cap d'Antibes. Now, assuming for a moment my Lady were to accept that anything of relevance occurred on those occasions, that, in our submission, doesn't of course mean that the relevant event constituting the tort occurred in France. The event only occurs once the threats are made.

Moreover, if my Lady is trying to --

MRS JUSTICE GLOSTER: This is his continuum point, I've got that on board.

MS DAVIES: My Lady, the second big point that my learned friend focused on is the coercion in fact submission.

The submission was originally said by my learned friend to have occurred in England when Mr Berezovsky signed the Devonia agreement but now it's suggested occurred in France because that's where he took the decision to submit and it was suggested communication of that submission is not necessary.

With respect, that can't be right. For as long as Mr Berezovsky remained uncommitted to sell to Mr Abramovich, the alleged threat had not resulted in any coercion in fact and the commitment to sell could only come with some form of outward communication by Mr Berezovsky of his decision. That's why indeed it has previously been my learned friend's case that the submission occurred through the Devonia agreement in London when the commitment came about.

MRS JUSTICE GLOSTER: So you say they've changed their case on it?

MS DAVIES: They have changed their case but in a way that doesn't work because simply a decision to submit doesn't amount to coercion in fact.

The final point here is damage. My Lady has our submission that the situs of the loss is Russia but in that connection my learned friend criticised Mr Sumption's reference to the Kwok Chi Leung case on the ground that it had nothing to do with one of the

events giving rise to the tort. With respect, that's difficult to understand. Mr Sumption was merely making the point that damage is a necessary component of the tort, as with any tort, and what Kwok Chi Leung tells my Lady is that damage here was in substance suffered in Russia.

Finally on Sibneft, my Lady, my learned friend suggested that there was no issue between the parties whether what was threatened was unlawful as a matter of Russian or English law. That's correct so far as Russian law goes if my Lady accepts Mr Berezovsky's case at its very highest, although there are other elements of Russian law my Lady will need to consider, but it's not correct in relation to English law. We have set out in our closing submission at paragraph 355 to 379 various submissions as to why what is said to have been threatened was not unlawful as a matter of English law. I wasn't going to repeat those but just draw attention to that.

I then come to Rusal where there are only five very short points. First, in relation to the nature of the agreement between Mr Abramovich and Mr Patarkatsishvili in respect of aluminium, my learned friend suggested it was incredible to suggest that what Mr Abramovich was doing in 2004 was paying Mr Patarkatsishvili his

deferred commission for the assistance he'd provided in relation to the original aluminium asset because, he said, the amount Mr Patarkatsishvili received represented 37 per cent of the capital cost of Rusal. That was Day 42, page 49.

To get to that figure, he compared the 585 paid to Mr Patarkatsishvili to the 1.58 billion Mr Abramovich received from Mr Deripaska in 2003. Now, on any view, that's not the right comparison because Mr Deripaska in fact paid 450 of the 585 directly to Mr Patarkatsishvili but, more significantly, that point also ignores the very substantial dividends that Mr Abramovich received in respect of aluminium in the period between 2000 and 2004, the quantum of which is in fact demonstrated by the fact that those dividends were the source used to fund the 1.3 billion payments made between 2001 and 2002.

Second, a very short point in relation to events in 2003 where my learned friend firstly suggested Mr Sumption hadn't referred to this in his oral closing, he did, Day 40, page 64 to 65; but secondly said that there was no commercial sense in the decision on Mr Abramovich's part only to sell half in 2003. We address this at 451 of our closing submissions. The short point is Mr Deripaska couldn't afford to buy the

whole 50 per cent, so it makes a lot of commercial sense.

MRS JUSTICE GLOSTER: I've got that in 451.

MS DAVIES: Third is to pick up on a question my Lady asked about the deed of release and whether my learned friend had any further submissions he wished to make, and my learned friend pointed to paragraph 1706 of his closing, which dealt with paragraphs 422 to 425 of Mr Berezovsky's fourth.

I just wanted to give my Lady, because it's not clear from other materials, the reference to our closings that deal with those paragraphs of Mr Berezovsky at 560 to 564.

MRS JUSTICE GLOSTER: Hang on. Yes, thank you.

MS DAVIES: The key point really is that Mr Berezovsky stated in his oral evidence that he told Mr Patarkatsishvili he is absolutely free to do everything he likes in relation to the sale. In our submission, that was obviously authority enough.

It's also the reason, incidentally, why my learned friend was wrong to suggest yesterday that his client could have refused to have given credit for the 585 million paid in 2004. Mr Berezovsky had authorised on any view Mr Patarkatsishvili to enter into the 2004 documents.

Rusal choice of law issue --

MRS JUSTICE GLOSTER: Did Mr Rabinowitz suggest yesterday that he could have refused? I thought the suggestion came from me actually.

MR RABINOWITZ: Indeed.

MS DAVIES: And it was picked up by my learned friend and they said: but we haven't done it anyway.

MR RABINOWITZ: And my learned friend simply asserts her case and says on any view he was authorised. Really this is not a new point.

MRS JUSTICE GLOSTER: Well, I'm interested in this point, and I raised the point I think with Mr Rabinowitz yesterday because there seems to be a concession.

Mr Rabinowitz, are you saying you could have refused?

MR RABINOWITZ: My Lady will have to put the point to me again. Could have refused what? I think my Lady said --

MRS JUSTICE GLOSTER: Could have refused to have given credit.

MR RABINOWITZ: Not -- because we had the money, that was the point. Your Ladyship said was it because you were authorised, I said, well, we had the money. If we had the money, how could we refuse to give credit?

MRS JUSTICE GLOSTER: You got the money from

Mr Patarkatsishvili?

MR RABINOWITZ: As I understand it, to the extent that we have the money we have to give credit for it. It's got nothing to do with the authority. That was the point I made to my Lady.

MRS JUSTICE GLOSTER: Yes. The point I put to you, I thought, yesterday was theoretically there was a defence or there was a point that Mr Berezovsky might have taken which was paying the money to Mr Patarkatsishvili is not a good discharge by Mr Abramovich of the obligation that he owes me.

MR RABINOWITZ: That was the point your Ladyship put to me.

MRS JUSTICE GLOSTER: And as I understand it, you accepted that you had to give credit for the half-share because that's in your closing submission.

MR RABINOWITZ: To the extent that we --

MRS JUSTICE GLOSTER: And is that on the basis that you're simply not taking the point or that you did in fact get the money or half of the money that was paid to Mr Patarkatsishvili?

MR RABINOWITZ: We in fact got the money, it was on that basis.

MRS JUSTICE GLOSTER: Okay. Thank you. That's clarified it for me.

MS DAVIES: My Lady, I was trying to make a broader point

which is actually there's a further reason why they had to give credit, which is Mr Berezovsky's own evidence, and we give the references at paragraph 563.1 of our written closing, that he had told Mr Patarkatsishvili that he was absolutely free to do everything what he liked to do in relation to the sale.

The dispute between the parties is really about, we would submit, whether specific authority was needed in relation to the release.

MRS JUSTICE GLOSTER: Okay, thank you.

MS DAVIES: Then finally, two short points on the Rusal choice of law issue. Firstly, my learned friend submitted that the principals had discussed and agreed upon the choice of law at the meeting at the Kempinski Hotel. Just for my Lady's note, that submission we submit is not borne out by the evidence. Mr Bulygin's evidence was that he put the clause in, it's paragraph 15 of his statement, and that was confirmed by Mr Abramovich at Day 19 --

MRS JUSTICE GLOSTER: That's in your closing, isn't it?

MS DAVIES: It may be there somewhere.

The final point is that my learned friend suggested, and this certainly was a very new point and is in fact also wrong, that in April 2009, when Mr Berezovsky first suggested that there was an express agreement of English

law, Mr Berezovsky didn't know what system of law governed the underlying aluminium asset acquisition agreement or the Rusal merger agreement, and he went on to say that his fixing on English law in those circumstances would have been a lucky guess if there was in fact no express agreement.

MRS JUSTICE GLOSTER: Yes, I remember that submission.

MS DAVIES: I'm sure it's inadvertent on my learned friend's part but it's based on a false premise. Mr Marino's first witness statement, which was served at the same time as Mr Berezovsky's statement and which Mr Berezovsky confirmed in his statement he had read, states in terms that both the underlying aluminium acquisition asset agreements, and the Rusal merger agreements, were governed by English law. That's Marino 1, paragraphs 266 to 284 at J2.2/09/121.

He may well not have seen the executed agreements by that time but what Mr Marino's statement reveals is that he had seen other evidence which clearly indicated to him the position, for example a statement from Mr Hauser confirming that the merger agreements were governed by English law, to which Mr Marino refers. So there was, with respect to my learned friend --

MRS JUSTICE GLOSTER: Mr Marino was a solicitor acting for Mr Berezovsky?

MS DAVIES: Indeed. No question of a lucky guess at all.

My Lady, unless there are any further points on which I can assist?

MRS JUSTICE GLOSTER: No, thank you very much, and thank all the team too, please, Ms Davies, for your helpful submissions.

MR RABINOWITZ: My Lady, so far as anything that my learned has said requires to be addressed, we will do it in the schedule that we're dealing with because it's largely repetitive.

MRS JUSTICE GLOSTER: You have got the last word, Mr Rabinowitz.

MR RABINOWITZ: Indeed. And insofar as we want to address points she has made I would largely do it in writing.

I would just say one thing --

MRS JUSTICE GLOSTER: I think it will be quicker and easier if you do it from the transcript in writing.

MR RABINOWITZ: Indeed. That's really what I'd rather do.

What I'd like to do is just address one point which was made, because it may matter to my Lady when your Ladyship is considering the issues. It arose out of something that in fact Mr Malek said about whether we are inviting or not inviting your Ladyship to make findings about Mr Anisimov's knowledge.

MRS JUSTICE GLOSTER: You've got a right of reply in

relation to anything that Mr Malek said and anything that Mr --

MR RABINOWITZ: Most of it simply repeats points that are, in any event, in Mr Abramovich's schedule, and insofar as we need to deal with it we will deal with it there.

I do want to address this point because it affects the way your Ladyship approaches the determination of the matter. Mr Malek, I think, suggested that we had changed our position from one which we were taking in our written closing where he said we were telling your Ladyship you should make findings about Mr Anisimov's knowledge. He said that in my oral closing I had changed that and I was now saying that your Ladyship shouldn't.

In fact, neither of those was correct.

Paragraph 1139 of our written closing says exactly what I said on my feet, which is that the overlap submissions do not require your Ladyship to make findings about Mr Anisimov's knowledge. The point that we were trying to make was this, my Lady: the overlap issues in effect try and carve out for the purposes of this trial the question of the determination whether objectively Mr Berezovsky and Mr Patarkatsishvili had an interest in Rusal because, plainly, if objectively they did not have such an interest, the issues which arise in the Chancery

trial about tracing claims and the like, depending on Mr Anisimov's knowledge of that interest, cannot arise in relation to that interest because it didn't exist.

Now, the point that we have been trying to make in our written closing, and obviously not made well enough, was this. If incidentally, on your Ladyship's route to try to determine whether or not Mr Berezovsky and Mr Patarkatsishvili had interests, your Ladyship finds it of assistance to either find or not find that Mr Anisimov had knowledge of that, then that is plainly something that your Ladyship will want to consider.

The only point that we were trying to make is that outside of that your Ladyship may regard it as not appropriate to make findings about the stand-alone question of the extent of Mr Anisimov's knowledge, that's to say, subjective knowledge, because that really is something which arises not as part of the objective determination of whether these interests existed but as part of an issue which arises in the Chancery litigation.

I don't mind taking your Ladyship to this now, although given the time your Ladyship may not want to do it, but the overlap issues, at least the previous draft, because your Ladyship knows that there was an amendment to it, are found at bundle I2 --

MRS JUSTICE GLOSTER: Have we not got --

MR RABINOWITZ: Your Ladyship changed something. We can see it insofar as we need to -- in fact we can hand it up --

MRS JUSTICE GLOSTER: Is this the final version of the overlap issues?

MR RABINOWITZ: Just let me ask Mr Gillis exactly what it is.

Rather than take it from this, which I'm not sure what it is exactly, if your Ladyship wants to take it from Magnum, your Ladyship will find it at bundle I2, tab 6, page 24 I2/06/24.

Now, there was an amendment which your Ladyship made but I don't understand it to affect the point that I'm making --

MRS JUSTICE GLOSTER: I hope somebody has set out for me in one of the closing submissions what the overlap issues are in their final form.

MR ADKIN: My Lady, we have. You'll find them at the beginning of our submissions and also --

MRS JUSTICE GLOSTER: And that is the final version, is it?

MR ADKIN: That is the final version.

We rather piously promised your Ladyship that we'd ensure that this sealed order was actually put onto the database. I'm afraid we've not lived up to that promise, I think in part because the order hasn't

actually been sealed.

MRS JUSTICE GLOSTER: I don't want to go to anything that isn't the final version.

MR ADKIN: The final version is set out in our closing in paragraph 1 in italics, and in annex 1.

MRS JUSTICE GLOSTER: Right. Well, Mr Adkin, can you make sure, because you might be interested in the point, that they are actually on Magnum, they do get --

MR ADKIN: We will get the order sealed if it hasn't already been sealed, and we will make sure that a sealed order ends up on Magnum, my Lady.

MRS JUSTICE GLOSTER: While you're standing, Mr Adkin, I would like to thank you, or your junior, for the useful chart at annex 2.

MR ADKIN: My Lady, I'm grateful.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz. So I'm working from there then.

MR RABINOWITZ: I2, page 26. Your Ladyship has the overlap issues subject to the amendment which was made which doesn't affect the point I'm making. If your Ladyship goes through those, you will see they're directed to, in a sense, the determination of whether, objectively, Mr Berezovsky -- obviously Mr Patarkatsishvili as well -- had the interest. They don't raise the question in the context of the overlap issues for determination

of, for example, Mr Anisimov's knowledge. That was the only point that we were trying to make.

We weren't saying to your Ladyship, you can't decide this, or that you must decide it, simply that the overlap issues were done in a way which does not require your Ladyship to do it because the question of Mr Anisimov's knowledge will be an issue -- that is going to be one of the main issues in the Metalloinvest action where there will be any number of other related issues before whoever tries it.

We're not saying your Ladyship should stay away from it insofar as you find it helpful in considering whether or not they had an issue, and that was the only point. I just wanted your Ladyship to be clear about what we were or not saying.

And insofar as there are any points which have arisen, as I say, we will set it out for your Ladyship in the written document that we are producing rather than take up more time now.

MRS JUSTICE GLOSTER: It will be quicker for you, won't it, as well, if you do it by reference to the transcript?

MR RABINOWITZ: It certainly will.

MRS JUSTICE GLOSTER: Very well. Obviously I'm going to reserve my judgment.

So far as communication with counsel is concerned,

Mr Rabinowitz, should my clerk communicate, rather than with all counsel, could you designate and let him know from each party who he should communicate with?

MR RABINOWITZ: Indeed, my Lady.

MRS JUSTICE GLOSTER: Otherwise, does he communicate to all your clerks or all solicitors? So can each team have one designated point of contact?

MR RABINOWITZ: We will do that.

Two other things I ought to mention. Your Ladyship asked for an up-to-date chronology.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We have progressed that at our end, and it will be progressed, and your Ladyship will have an up-to-date chronology.

MRS JUSTICE GLOSTER: Can you send me a hard copy of it?

MR RABINOWITZ: We will do.

MRS JUSTICE GLOSTER: With an agreed statement that it either sets out the agreed chronology or it identifies where people disagree.

MR RABINOWITZ: We will do.

The only other point, my Lady, first can Mr Gillis just deal with a point.

MRS JUSTICE GLOSTER: Certainly.

Yes, Mr Gillis.

MR GILLIS: My Lady, just one point of housekeeping, and it

relates to the order that your Ladyship made on  
28 October which was --

MRS JUSTICE GLOSTER: Remind me.

MR GILLIS: It was amending -- can I hand it up? (Handed)

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: It was amending the overlap issues as against  
the Chancery defendants in order to introduce the  
constructive trust, resulting trust claim.

MRS JUSTICE GLOSTER: Yes, I remember.

MR GILLIS: I've mentioned this to my learned friends, the  
Chancery defendants. Your ladyship made the order on  
Day 15 but we've never received a sealed copy of the  
order.

MRS JUSTICE GLOSTER: Whether I've signed it or not, why  
don't I just sign it now?

MR GILLIS: If your Ladyship could do that.

MRS JUSTICE GLOSTER: This is just -- it's in the Chancery  
Division action?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: But that's all right, I haven't got to  
go and get Mr Justice Mann to co-sign it?

MR GILLIS: No. This was brought to Mr Justice Mann's  
attention after you had made the order and he has  
confirmed it in the Chancery proceedings as well. It is  
just a formality, we don't actually have a sealed copy.

MRS JUSTICE GLOSTER: Right. I'll say this can be sealed.

There you are.

MS DAVIES: My Lady, may I mention one other point of housekeeping?

MRS JUSTICE GLOSTER: Mr Gillis, that's all you have?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: Thank you very much.

MS DAVIES: It's to do with the transcripts. Behind the scenes there has been much correspondence between the parties about translation issues arising in relation to the transcripts. The interpreters have now, as it were, signed off on the final version. That's gone to Addleshaw Goddard. I'm sure that the corrected transcripts will be uploaded very quickly but I just wanted to mention that there is that process that has been --

MRS JUSTICE GLOSTER: Okay. Will they be corrected final transcripts? I mean, I don't want to have to go to three different transcripts of Day 15.

MS DAVIES: No, my understanding is that they're corrected final transcripts.

MRS JUSTICE GLOSTER: Yes, I see.

MS DAVIES: And that hasn't affected the page numbering, otherwise all these wonderful documents might be -- but that hasn't happened, because they are sort of words and

so on in places.

MRS JUSTICE GLOSTER: So if, for example, in quotations from transcripts something has changed, are you going to bring that to my attention?

MS DAVIES: My Lady, we will do that. I can't say on my feet now whether I know there's anything that's changed in our submissions --

MRS JUSTICE GLOSTER: It's just that if you quoted a particular nugget, and as a result of the work that you've all done behind the scenes it has now changed, I don't want to be the one who has to go and check each reference you've made to check that it hasn't been amended.

MS DAVIES: I entirely understand that, my Lady. We will get that exercise done.

MRS JUSTICE GLOSTER: Okay.

MS DAVIES: It may be that there isn't anything, I just don't know, but we will check.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: My Lady, the only thing that remains from this side of the court, and I'm sure I speak on behalf of all the counsel teams for all the parties, is to thank your Ladyship for the way in which your Ladyship has conducted the case.

MRS JUSTICE GLOSTER: That's very kind of you.

MR RABINOWITZ: Also, if I may, the transcript writers and I'm sure the translators as well.

MRS JUSTICE GLOSTER: I would certainly like to say thank you very much to the translators, to the IT people and to the transcript writers because we've cracked through, with everybody's cooperation, very quickly, and in fact that goes for the witnesses as well. We have actually cracked through and finished pretty much on time.

Right, is there anything else that from a practical point of view that needs to be dealt with now? No?

MR RABINOWITZ: I don't believe so, my Lady.

MRS JUSTICE GLOSTER: You will have tomorrow to move your papers. I'm sitting tomorrow on something else but I don't know whether it's in this court or not, hopefully it won't be, but you can liaise with my clerk about that.

Very well, thank you very much.

(3.48 pm)

(The hearing concluded)

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